

Randwick Local Planning Panel (Electronic) Meeting

Thursday 14 March 2024



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held on Thursday, 14 March 2024 at 1pm

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D18/24

Subject: 49-53 Clovelly Road, Randwick (DA/350/2022)

Executive Summary

| | |
|-----------------------------|--|
| Proposal: | Alterations & additions to each building at 49, 51 & 53 Clovelly Road including: retention of shops & shopfronts; new toilets & kitchenettes to the non-residential tenancies at 51 and 53 Clovelly Road; part demolition of rear wings; demolition of the garage; internal reconfiguration at the rear; new ground & first floor additions to the rear of 49 and 51 Clovelly Road; new ground floor addition to 53 Clovelly Road; landscaping & associated works (Heritage item). |
| Ward: | North Ward |
| Applicant: | Mrs S Byrnes |
| Owner: | Mr A Byrnes |
| Cost of works: | \$981,750.00 |
| Reason for referral: | The development contravenes the development standard for floor space ratio by more than 10% and involves demolition works to a Heritage Item |

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/350/2022 for alterations & additions to each building at 49, 51 & 53 Clovelly Road including: retention of shops & shopfronts; new toilets & kitchenettes to the non-residential tenancies at 51 and 53 Clovelly Road; part demolition of rear wings; demolition of the garage; internal reconfiguration at the rear; new ground & first floor additions to the rear of 49 and 51 Clovelly Road; new ground floor addition to 53 Clovelly Road; landscaping & associated works (Heritage item), for the following reasons:

1. The proposal does not comply with the provisions of Randwick Local Environmental Plan 2012 (RLEP 2012) pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in particular:
 - The proposal is not consistent with the objectives of the R2 Low Density Residential zone pursuant to Clause 2.3 of RLEP 2012, that requires, among other, development to provide for the housing needs of the community within a low density residential environment and to protect the amenity of residents.
 - The proposal does not comply with Clause 4.4 – Floor Space Ratio which is not supported by an acceptable Clause 4.6 variation statement with adequate environmental planning grounds.
2. The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in particular:
 - Part C2 Low Density Residential – 2.3 Site coverage.
 - Part C2 Low Density Residential – 3.3 Setbacks.
 - Part C2 Low Density Residential – 5.1 Solar access and overshadowing.
3. The proposal will result in adverse environmental impacts on both the natural and built environments, and social and economic impacts in the locality, pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
4. The adverse environmental impact of the proposal means that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

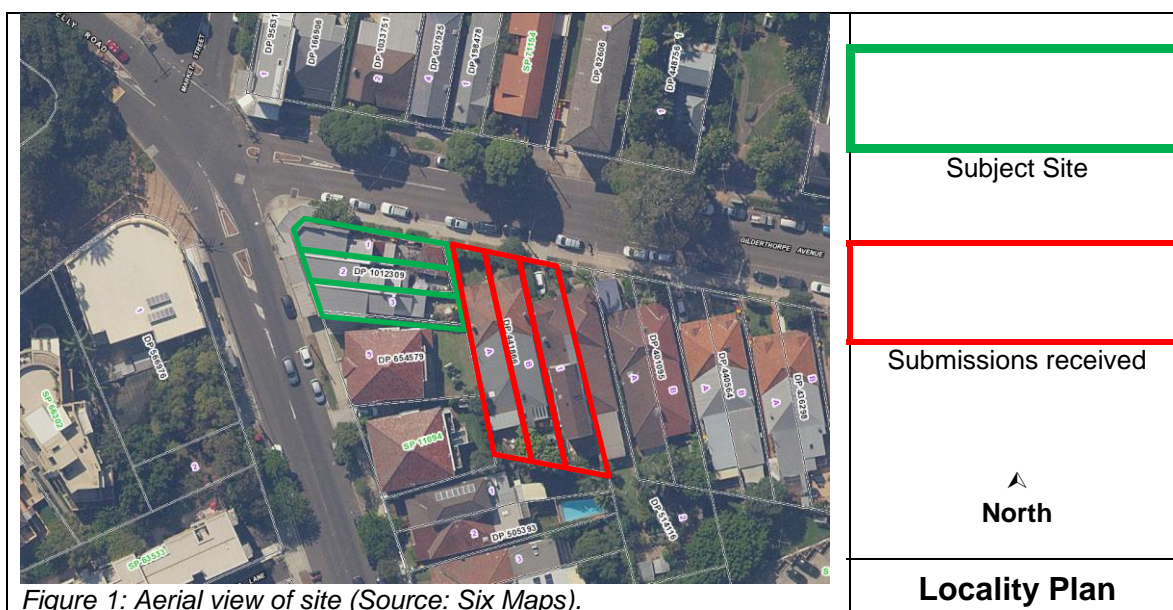
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5. The public submissions raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

Attachment/s:

Nil

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1. Executive summary

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

- The development contravenes the development standard for floor space ratio by more than 10%;
- The development involves demolition works to a heritage item.

The proposal seeks development consent for alterations and additions to each building at 49, 51 and 53 Clovelly Road. A detailed description of the works sought is provided under part 4 of this report.

The key issues associated with the proposal relate to:

- Existing use rights
- Variation to floor space ratio (FSR) standard
- Demolition works to heritage item.
- Site coverage
- Rear setbacks
- Overshadowing

The proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as 49, 51 & 53 Clovelly Road, Randwick and are legally described as Lots 1, 2 & 3 in DP 1012309. Each site is irregular in shape with the following measurements:

- **49 Clovelly Road**
 - Site area: 138.7m²
 - Primary frontage: Splayed frontage of 6.66m to Clovelly Road
 - Secondary frontage: 25.95m to Gilderthorpe Avenue.
- **51 Clovelly Road**
 - Site area: 128m²
 - Frontage: 5.685m.
- **53 Clovelly Road**
 - Site area: 149.7m²
 - Frontage: 6.07m.

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Each site contains a part one, part two-storey attached shop and residential premises. Each site slopes approximately 0.6m - 1.5m in a northerly direction.



Figure 2: View of subject site at the intersection of Clovelly Road and Gilderthorpe Avenue.



Figure 3: View of subject site from Gilderthorpe Avenue.



Figure 4: View of existing rear elevation from within No.53 Clovelly Road.

3. Relevant history

Pre-lodgement application meetings for the proposed development were held between the applicant and Council on 25 October 2021 and 1 November 2021. Written pre-lodgement advice was subsequently prepared on 6 December 2021.

The following key issues/comments were outlined in the pre-lodgement advice letter:

- Permissibility and existing use rights.
- Built form and bulk and scale, specifically;
 - Floor space ratio
 - Site coverage
 - Landscaping and deep soil areas
 - Setbacks
 - Solar access and overshadowing
- Heritage.

Following lodgement of the development application, a request for information was sent to the applicant on 15 November 2022. The following request for additional information/concerns were raised:

- *I have to advise the pre DA advice was issued that even for sites that have existing use rights, that if it exceeds a development standard (in this instance the FSR) then it must include a submission under clause 4.6 of the LEP – which is a submission that seeks an exception to a development standard. The relevant court case is: Saffioti v Kiama Municipal Council [2019] NSWLEC 57 Preston CJ at [55].*

In this instance, the development standard that's being exceeded is the Floor Space Ratio development standard of 0.5:1 under clause 4.4 of the LEP for each of the sites at No. 49, 51 and 53 Clovelly Road. To assist in your clause 4.6 submission, I've provided a proforma further below at the end of this email showing the way in which a clause 4.6 is generally assessed by Council.

- *To assist further, I've had a closer look at your application and make the following suggestions:*
 - *Clause 4.6: The subject sites are currently zoned R2 low density residential however in future, these particular properties including 1 Gilderthorpe Avenue will have their zoning changed from R2 into E1 Local Centre zone. The attached translation paper explains this change noting that at page 10 it identifies No. 49, 51, 53 and 1 Gilderthorpe Avenue as a group (see page 10 of the paper). Please note that the submitted clause 4.6 will first and foremost address the objectives of the R2 zone as required, however it is also helpful to indicate that there is also the potential for the zone to change into E1 local Centre zone and that this new zone generally aligns with the current LEP B1 neighbourhood centre zone which has its own set of objectives under the LEP.*
 - *No. 53 Clovelly Road:*
 - *Side setback of southern attached dwelling: Please provide a 900mm side setback to the boundary shared with No. 55 Clovelly Road as the elevation shadow diagrams clearly show that the proposed results in additional adverse overshadowing impacts on a nearby residential zoned building namely its living space. It is difficult for Council to support a variation and also allow for additional adverse impacts as it would contravene a particular FSR objective. Please note, that I have read the SEE reference to this matter and I don't consider it to be substantiate the additional overshadowing.*
 - *The solar panels on the roof of No. 53 Clovelly Road don't appear to have any direct solar access therefore, I would reconsider this aspect of your application.*

Amended plans were received in response to the request for additional information by Council on 23 November 2022, while a Clause 4.6 Variation statement was received by Council on 30 November 2022.

Following a review of the amended plans and Clause 4.6 variation statement, a request for information was sent to the applicant on 13 April 2023. The following request for additional information/concerns were raised:

Floor Space Ratio

The proposal seeks a significant variation to the current Floor Space Ratio (FSR) standard of 0.5:1, which applies to all three properties. While it is acknowledged that the existing building on each lot exceeds the 0.5:1 FSR standard, the submitted Clause 4.6 variation statement has not demonstrated that there are sufficient environmental planning grounds to justify a further increase to FSR.

Although the Clause 4.6 variation statement references the draft zoning and FSR standard changes to the subject site under the Randwick Comprehensive Planning Proposal (RCPP), the maximum FSR standard envisaged for the site under the RCPP is only 1:1. The proposal seeks the following FSR on each property:

- **49 Clovelly Road:** 1.15:1
- **51 Clovelly Road:** 1.31:1
- **53 Clovelly Road:** 0.95:1

The Randwick Comprehensive Planning Proposal (RCPP) seeks to rezone the site from R2 Low Density Residential to E1 Local Centre and increase the FSR standard from 0.5:1 to 1:1. However, the variations listed above for 49 and 51 Clovelly Road will exceed the maximum envisaged for the site under the RCPP. Further, it should also be noted that the proposed FSR sought on the site is significantly higher than the maximum 0.5:1 FSR afforded to the adjoining low density residential properties.

Clause 4.6, subclause (3)(b) of the Randwick Local Environmental Plan (LEP) 2012 outlines that development consent must not be granted for development which contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard. The environmental planning grounds outlined in the Clause 4.6 variation statement are not considered sufficient to justify further contravention to the current FSR standard 0.5:1.

Your attention is drawn to the caselaw established in Initial Action Pty Ltd v Woollahra Municipal Council (2018) 236 LGERA 256; [2018] NSWLEC 118, where, at [24] the Chief Judge explained the following:

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 consent needs to be “sufficient”.

- i. 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].*
- ii. 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].*

Therefore, the variation sought to FSR standard cannot be supported.

Parking

Council's Development Engineer has reviewed the proposal and provided the following comments:

"it appears the proposed off-street car space does not satisfy the required absolute minimum length of 5.00m and thus the applicant is to either:

- a) Amend the plans to show the car space has a minimum internal length of 5.00m, at any point.*

Note: this may require the extended boundary wall between No.49 & 51 at the rear of the site to be setback further from Gilderthorpe Ave frontage so as to provide the 5.00m requirement.

- b) Amend the plans to either retain or delete the existing garage."*

In response to the request for additional information, an amended ground floor plan was received on 26 April 2023, while an amended Clause 4.6 variation statement was received on 8 May 2023. Additionally, a letter of support from the applicant's heritage consultant was received on 1 June 2023.

4. Proposal

The proposal seeks development consent for alterations and additions to each building at 49, 51 and 53 Clovelly Road.

49 Clovelly Road

Ground floor

- Partial demolition of the rear wing to accommodate new entry foyer.
- Demolition of existing garage.
- Addition of a living room.
 - Addition of a terrace directly accessible from the living room.
- Addition of a laundry and a water closet.
- Minor alteration to kitchen.

First floor

- Conversion of central bedroom into bathroom.
- Addition of bedroom 3 connected to existing first storey via a roof link.

51 Clovelly Road

Ground floor

- Partial demolition of the rear wing to accommodate new integrated entry foyer and living room.
 - Addition of a terrace directly accessible from the living room.
- Addition of a laundry and a water closet.
- Minor alteration to kitchen.
- New kitchenette and water closet to retail premises.

First floor

- Conversion of central bedroom into bathroom.
- Addition of bedroom 3 connected to existing first storey via a roof link.

53 Clovelly Road

Ground floor

- Partial demolition of the rear wing to accommodate new integrated entry foyer and living room.
 - Addition of a terrace directly accessible from the living room.
- Addition of a laundry and a water closet.

- Minor alteration to kitchen.
- New kitchenette and water closet to retail premises.

First floor

- Reduction to the size of bedroom 1 to accommodate new bathroom.

The proposed development also includes new landscaping and siteworks as well as the installation of photovoltaic panels.

5. Notification

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

- 2 Gilderthorpe Avenue, Randwick

| Issue | Comment |
|--|---|
| <p><u>Privacy</u></p> <p>The recent DA plan still shows three balconies/terraces that overlook our house and front yard. These belong to dwellings currently being rented out by the landlord/developer to tenants and we are concerned about the noise and privacy of these terraces as they will be built very close to our house.</p> <p>Similarly, the plan to replace the courtyard belonging to 49 Clovelly Rd with more buildings that look onto the front of our house seems excessive.</p> | <p>The proposed development does not include any balconies or terraces that will provide opportunities for overlooking of No. 2 Gilderthorpe Avenue. Nevertheless, it is acknowledged that the proposed additional floor space and reduced first floor setback will result in visual bulk impacts to the streetscape elevation of the existing dwelling at No. 2 Gilderthorpe Avenue.</p> |

- 4 Gilderthorpe Avenue, Randwick

| Issue | Comment |
|---|--|
| <p><u>Existing use rights</u></p> <p>As detailed in the DA, attached dwellings are prohibited in the R2 Low Density zone. The bulk and scale of the building is not appropriate for the site and is only being squeezed through approval using a loophole of the existing use provisions.</p> <p>The proposal relies on a continuation of existing use, however, the proposed development will significantly change the existing use of the ground floor extensions into living spaces, encroaching further to the eastern boundary.</p> <p>The modifications will result in significant impacts to adjoining land and residents on Gilderthorpe Avenue.</p> | <p>The proposed development seeks to rely upon existing use rights. However, it is agreed that the proposed bulk and scale of the development is not appropriate considering the proposal significantly exceeds the 0.5:1 FSR standard which currently applies to the site and adjoining sites. Existing use rights does not allow for the proposal to significantly exceed the FSR standard which applies to the site without sufficient environmental planning grounds. The proposed variation to FSR results in increased visual bulk impacts to the adjoining dwellings located along Gilderthorpe Avenue.</p> |

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| Issue | Comment |
|--|---|
| <p>Noise</p> <p>Noise issues from the residents at 49-53 Clovelly Road is a current and ongoing issue based on the existing use.</p> <p>Conversion and expansion of the ground floor living spaces moving closer to the boundary with 2 Gilderthorpe Ave will encourage more use of the outdoor space which will exacerbate existing noise issues.</p> <p>There will be additional noise from the terraces, balconies and windows of 1st floor extensions.</p> <p>The design and materials proposed, with large brick structures at over 2M high will act like an echo chamber, funneling noise to the East towards residents at 2 & 4 Gilderthorpe Ave.</p> <p>Removal of the existing garage at 49 Clovelly Rd will encourage dual-use of the space and in practice will only be used for courtyard space and hence more noise. The existing garage provides a noise barrier with front of house at 2 & 4 Gilderthorpe Avenue.</p> | <p>The proposed development seeks to rely on existing use rights as attached dwellings are not permissible within the R2 Low Density Residential zone. The use of the attached dwellings as residential accommodation is considered to be consistent with the overall residential use of the R2 Low Density Residential zone. As such, it is considered that noise generated from the use of the site as an attached dwelling is appropriate for the context of the site.</p> <p>Nevertheless, it is acknowledged that the proposed reduced ground and first floor setback has the potential of generating additional noise impacts to the adjoining residential properties along Gilderthorpe Avenue. However, it is not considered that the proposed development will result in any unacceptable noise impacts given that the existing location of the courtyard areas has been retained. Private open space is a requirement for all residential development and there is no other feasible location where private open space can be provided.</p> |
| <p>Parking</p> <p>The claim that there will be no loss of parking is onerous. Replacing the existing garage at 49 Clovelly Rd with a dual-use hardstand car space, in combination with the building extension will mean the only courtyard space available to the resident at 49 Clovelly Road will be the hardstand space and it will never be used to park a car.</p> | <p>The applicant originally proposed a single off-street carparking space within No.49 Clovelly Road. However, this parking space was removed as per the recommendation of Council's Development Engineer (refer to Appendix 1 for the engineering referral). Council's Development Engineer has reviewed the proposal and raised no concerns regarding the parking provision shortfall.</p> |
| <p>Shadowing</p> <p>The design of 49 Clovelly Rd, with the large northern brick wall having no setback from Gilderthorpe Ave and at a height of over 2.4m will create additional shadowing into 2 Gilderthorpe Ave.</p> | <p>Given the orientation of the lots, any additional overshadowing to No. 2 Gilderthorpe Avenue generated by the proposal will occur in the afternoon. The submitted shadow diagrams and SEE suggest that no change to the existing overshadowing cast to No.2 Gilderthorpe Avenue will occur at 4pm during the winter solstice. However, given the location and height of the proposed additions sought, it is anticipated that increased overshadowing to the west facing windows of No. 2 Gilderthorpe Avenue will occur between 1pm – 3pm. Insufficient information has been provided by the applicant in order to accurately determine if additional overshadowing will occur.</p> |

| Issue | Comment |
|--|--|
| <p><u>Visual Amenity</u> The design of 49 Clovelly Rd, with the large northern brick wall having no setback from Gilderthorpe Ave and at a height of over 2.4m will be visible from the front bedroom at 4 Gilderthorpe Avenue and will be very prominent from all bedrooms at 2 Gilderthorpe Avenue.</p> | <p>Agreed - The development results in increased building bulk at the rear of the site, overwhelming the adjoining low density residential zoned properties as well as the Gilderthorpe Avenue streetscape. The proposed departure from the FSR standard of 0.5:1, will result in a built form that does not respond to the density of the area.</p> |
| <p><u>Privacy</u> The 1st floor windows, terraces and balconies provide an unacceptable loss of privacy for the families at 2 and 4 Gilderthorpe Avenue.</p> | <p>A detailed assessment of privacy impacts is provided in Appendix 3 (Item 5.3 – Visual Privacy). The proposed development has been designed with windows offset from the windows of adjoining residential development. Additionally, the proposal includes façade elements around new windows which minimise overlooking opportunities to the neighbouring private open space areas. Thus, the proposed development will not result in any unreasonable adverse privacy impacts.</p> |

- 6 Gilderthorpe Avenue, Randwick

| Issue | Comment |
|--|--|
| <p><u>Existing use rights</u> As detailed in the DA, attached dwellings are prohibited in the R2 Low Density zone. The bulk and scale of the building is not appropriate for the site and is only being squeezed through approval using a loophole of the existing use provisions.</p> <p>The proposal relies on a continuation of existing use, however, the proposed development will significantly change the existing use of the ground floor extensions into living spaces, encroaching further to the eastern boundary.</p> <p>The modifications will result in significant impacts to adjoining land and residents on Gilderthorpe Avenue.</p> | <p>The proposed development seeks to rely upon existing use rights. However, it is agreed that the proposed bulk and scale of the development is not appropriate considering the proposal significantly exceeds the 0.5:1 FSR standard which currently applies to the site and adjoining sites. Existing use rights does not allow for the proposal to significantly exceed the current FSR standard which applies to the site without sufficient environmental planning grounds. The proposed variation to FSR results in increased visual bulk impacts to the adjoining dwellings located along Gilderthorpe Avenue.</p> |

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| <p>Noise</p> <p>Noise issues from the residents at 49-53 Clovelly Road is a current and ongoing issue based on the existing use.</p> <p>Conversion and expansion of the ground floor living spaces moving closer to the boundary with 2 Gilderthorpe Ave will encourage more use of the outdoor space which will exacerbate existing noise issues.</p> <p>There will be additional noise from the terraces, balconies and windows of 1st floor extensions.</p> <p>The design and materials proposed, with large brick structures at over 2M high will act like an echo chamber, funneling noise to the East towards residents at 2, 4 & 6 Gilderthorpe Ave.</p> <p>Removal of the existing garage at 49 Clovelly Rd will encourage dual-use of the space and in practice will only be used for courtyard space and hence more noise. The existing garage provides a noise barrier with front of house at 2, 4 & 6 Gilderthorpe Avenue.</p> | <p>The proposed development seeks to rely on existing use rights as attached dwellings are not permissible within the R2 Low Density Residential zone. The use of the attached dwellings as residential accommodation is considered to be consistent with the overall residential use of the R2 Low Density Residential zone. As such, it is considered that noise generated from the use of the site as an attached dwelling is appropriate for the context of the site.</p> <p>Nevertheless, it is acknowledged that the proposed reduced ground and first floor setback has the potential of generating additional noise impacts to the adjoining residential properties along Gilderthorpe Avenue. However, it is not considered that the proposed development will result in any unacceptable noise impacts given that the existing location of the courtyard areas has been retained. Private open space is a requirement for all residential development and there is no other feasible location where private open space can be provided.</p> |
| <p>Parking</p> <p>The claim that there will be no loss of parking is onerous. Replacing the existing garage at 49 Clovelly Rd with a dual-use hardstand car space, in combination with the building extension will mean the only courtyard space available to the resident at 49 Clovelly Road will be the hardstand space and it will never be used to park a car.</p> | <p>The applicant originally proposed a single off-street carparking space within No.49 Clovelly Road. However, this parking space was removed as per the recommendation of Council's Development Engineer (refer to Appendix 1 for the engineering referral). Council's Development Engineer has reviewed the proposal and raised no concerns regarding the parking provision shortfall.</p> |
| <p>Shadowing</p> <p>The design of 49 Clovelly Rd, with the large northern brick wall having no setback from Gilderthorpe Ave and at a height of over 2.4m will create additional shadowing into 2 Gilderthorpe Ave.</p> | <p>Given the orientation of the lots, any additional overshadowing to No.2 Gilderthorpe Avenue generated by the proposal will occur in the afternoon. The submitted shadow diagrams and SEE suggest that no change to the existing overshadowing cast to No.2 Gilderthorpe Avenue will occur at 4pm during the winter solstice. However, given the location and height of the proposed additions sought, it is anticipated that increased overshadowing to the west facing windows of No.2 Gilderthorpe Avenue will occur between 1pm – 3pm. Insufficient information has been provided by the applicant in order to accurately determine if additional overshadowing will occur.</p> |

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| <p><u>Visual Amenity</u> The design of 49 Clovelly Rd, with the large northern brick wall having no setback from Gilderthorpe Ave and at a height of over 2.4m will be visible from the front bedroom at 4 Gilderthorpe Avenue and will be very prominent from all bedrooms at 6 Gilderthorpe Avenue.</p> | <p>Agreed - The development results in increased building bulk at the rear of the site, overwhelming the adjoining low density residential zoned properties as well as the Gilderthorpe Avenue streetscape. The proposed departure from the FSR standard of 0.5:1, will result in a built form that does not respond to the density of the area.</p> |
| <p><u>Privacy</u> The 1st floor windows, terraces and balconies provide an unacceptable loss of privacy for the families at 2, 4 & 6 Gilderthorpe Avenue.</p> | <p>A detailed assessment of privacy impacts is provided in Appendix 3 (Item 5.3 – Visual Privacy). The proposed development has been designed with windows offset from the windows of adjoining residential development. Additionally, the proposal includes façade elements around new windows which minimise overlooking opportunities to the neighbouring private open space areas. Thus, the proposed development will not result in any unreasonable adverse privacy impacts.</p> |

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6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

6.2. SEPP (Resilience and Hazards) 2021

The subject sites have been utilised as mixed use buildings for a significant period of time, with the existing shops utilised for a variety of business uses over a significant period of time. No change to the existing shops or uses of the sites form part of the proposed development.

The proposal relates to alterations and additions to the existing attached dwellings portion of the site. An inspection of the site has not revealed any land uses that suggest contamination of land has occurred. No significant risk is posed and therefore under Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered suitable for the continued use as attached dwellings.

6.3. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 Low Density Residential under Randwick Local Environmental Plan 2012. Under the R2 Low Density Residential land use zone, any development not specified as permitted without consent or permitted with consent is prohibited within the zone. As attached dwellings are not listed as permitted without or with consent, the proposal is not permitted within the zone. However, the application before Council has been lodged on the basis that the subject site benefits from existing use rights.

6.3.1. Existing use rights

Division 4.11 of the Environmental Planning and Assessment Act, 1979 provides for specific standards with regards to existing use rights. The following Clauses are of note:

“4.65 Definition of “existing use”

(cf previous s 106)

In this Division, **existing use** means—

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and
- (b) the use of a building, work or land—

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

4.66 Continuance of and limitations on existing use

(cf previous s 107)

(1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.

(2) Nothing in subsection (1) authorises—

- (a) any alteration or extension to or rebuilding of a building or work, or
- (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
- (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or
- (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or
- (e) the continuance of the use therein mentioned where that use is abandoned.

(3) Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

(4) During the period commencing on 25 March 2020 and ending on 25 March 2022, the reference to 12 months in subsection (3) is taken to be a reference to 3 years.

4.67 Regulations respecting existing use

(cf previous s 108)

(1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—

- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and
- (b) the change of an existing use to another use, and
- (c) the enlargement or expansion or intensification of an existing use.
- (d) (Repealed)

(2) The provisions (in this section referred to as **the incorporated provisions**) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.

(3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.

(4) Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 4.33 to a development application for consent to carry out prohibited development”.

The following comments are made with respect to the above.

With regards to Clauses 4.65 and 4.66(1), the Heritage Impact Statement prepared by John Oultram Heritage & Design submitted as part of the development application, outlines that the existing three attached shops with dwellings above were built in 1926. A review of Council's records has revealed that dwelling components of the buildings were approved by Council in the 1980's (Consent Nos. 1580/80, 9/85 and 128/85).

With regards to Clause 4.66(3) a copy of the Council rates issued in 2016 has been provided within the submitted Statement of Environmental Effects (SEE) prepared by Lockrey Planning and

Development Solutions. The Council rates identify that the site has been utilised as both a residential and business premises.

Therefore, the proposed development has demonstrated that the proposal benefits from existing use rights in accordance with Division 4.11 of the Environmental Planning and Assessment Act, 1979.

With regards to Clause 4.67, alterations and additions are permitted to an existing use as described under the Regulations as detailed below.

Clause 163 of the Environmental Planning and Assessment Regulation 2021 states:

“163 Certain development allowed

(1) *An existing use may, subject to this Part—*

- (a) *be enlarged, expanded or intensified, or*
- (b) *be altered or extended, or*
- (c) *be rebuilt, or*
- (d) *be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
- (e) *if it is a commercial use—be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or*
- (f) *if it is a light industrial use—be changed to another light industrial use or a commercial use, including a light industrial use or commercial use that would otherwise be prohibited under the Act.*

(2) *However, an existing use must not be changed under subclause (1)(e) or (f) unless that change—*

- (a) *involves only alterations or additions that are minor in nature, and*
- (b) *does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and*
- (c) *does not involve the rebuilding of the premises associated with the existing use, and*
- (d) *does not involve a significant intensification of that existing use.*

(3) *In this section —*

commercial use *means the use of a building, work or land for the purpose of commercial premises*

light industrial use *means the use of a building, work or land for the purposes of light industry*

The regulations reinforce the capacity to undertake alterations and additions to a building which has existing use rights under sub-clauses 1(a) and (b).

Sub-clauses (2) and (3) do not apply in this instance as existing use rights do not apply to the business premises portion of the building.

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

49 Clovelly Road

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------------|------------------------------|-----------------------------|---------------------|
| CI 4.4: Floor space ratio (max) | 0.5:1 (69.35m ²) | 1.15:1 (160m ²) | No |
| CI 4.3: Building height (max) | 9.5m | 7.5m | Yes* |

51 Clovelly Road

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------------|---------------------------|-------------------------------|---------------------|
| CI 4.4: Floor space ratio (max) | 0.5:1 (64m ²) | 1.31:1 (167.7m ²) | No |
| CI 4.3: Building height (max) | 9.5m | 7.04m | Yes |

53 Clovelly Road

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------------|------------------------------|-------------------------------|---------------------|
| CI 4.4: Floor space ratio (max) | 0.5:1 (74.85m ²) | 0.95:1 (142.5m ²) | No |
| CI 4.3: Building height (max) | 9.5m | 8.7m | Yes |

*** Note: The table above identifies the building height of the proposed rear additions. The existing building contains parapets along the Clovelly Road elevation with the following building heights:**

- 49 Clovelly Road: 10.3m.
- 51 Clovelly Road: 9.26m.
- 53 Clovelly Road: 9m.

The proposal does not include any changes or works to the existing parapets along Clovelly Road. As such, only the building height of the proposed works sought have been identified in the compliance table above.

6.3.2. Clause 4.6 - Exceptions to development standards

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

6.3.3. Clause 5.10 - Heritage conservation

The combined property is individually listed at the local level as a group heritage item, being I317 in Schedule 5 of the Randwick Local Environmental Plan (RLEP) 2012.

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

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

The proposed development was referred to Council's Heritage Planner for comments. Council's Heritage Planner raised no objections to the proposed development subject to conditions of consent.

Reference should be made to Appendix 1.1 of this report for internal referral comments from the heritage planner.

6.3.4. Clause 6.13 Business premises, office premises, restaurants or cafes and shops in residential zones.

Clause 6.13 of the Randwick LEP relates to the continued use of small-scale business development in residential zones.

The existing development includes small-scale shops within each building. The proposed alterations and additions seek to retain the existing business uses currently occupying each building. With exception to the internal addition of a kitchenette and water closet to Nos. 51 and 53 Clovelly Road, no other changes to the existing shops are proposed. Therefore, no further consideration of Clause 6.13 of the Randwick LEP is required.

7. Clause 4.6 exception to a development standard

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

49 Clovelly Road

| Clause | Development Standard | Proposal | Proposed variation | Proposed variation (%) |
|------------------------------------|------------------------------|-----------------------------|---------------------|------------------------|
| CI 4.4: Floor space ratio (max) | 0.5:1 (69.35m ²) | 1.15:1 (160m ²) | 90.65m ² | 130% |

51 Clovelly Road

| Clause | Development Standard | Proposal | Proposed variation | Proposed variation (%) |
|------------------------------------|---------------------------|----------------------------------|---------------------|------------------------|
| CI 4.4: Floor space ratio (max) | 0.5:1 (64m ²) | 1.31:1 (167.7m ²) | 103.7m ² | 162% |

53 Clovelly Road

| Clause | Development Standard | Proposal | Proposed variation | Proposed variation (%) |
|------------------------------------|------------------------------|----------------------------------|---------------------|------------------------|
| CI 4.4: Floor space ratio (max) | 0.5:1 (74.85m ²) | 0.95:1 (142.5m ²) | 67.65m ² | 90% |

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*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The applicant's written request seeks to justify the contravention of the FSR development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved, the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required and the zoning of the land is unreasonable or inappropriate.

Are the objectives of the standard achieved notwithstanding non-compliance with the standard?

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 outlines that this objective is satisfied by noting that:

- *The height, bulk and scale of the proposal is characterised by the desired future character for the area. A compatible mixed use development is maintained/proposed. The height, bulk and scale of the altered mixed-use development does not influence or set a precedent for future buildings on neighbouring or nearby properties.*
- *The maintained/proposed land use (mixed use development) is not incompatible with the existing and likely future land uses surrounding the site.*
- *Each building's design at the rear is highly articulated with varying façade treatments, setbacks, materials and openings and a significantly improved landscape condition. A contextually appropriate massing is proposed. The elevations are articulated in response to the form and size of each dwelling. The proposed design is re-interpreting established roof shapes and slopes (to the rear), whilst integrating contemporary materials and a superior architectural aesthetic. There is no adverse visual impact and the rear extensions to the existing attached dwellings are clearly not incompatible with its existing and likely future built form context. The altered built form will clearly maintain a positive streetscape contribution.*
- *The site is suitably located to provide additional floorspace above that permitted, being within walking distance of existing infrastructure (public transport, shops, parks, amenities and facilities) which will be able to cope with any perceived increase in demand.*
- *The design is of a high quality and is complementary to nearby development.*

- *The building's bulk and scale will not set an undue precedent and will not preclude appropriate redevelopment of other neighbouring and nearby properties.*
- *The resultant FSR of each property within the site, is a function of their small lot size (<150m²), not the size of the altered built form in terms of GFA for each property.*
- *The proposal represents a modest increase to the existing GFA of the buildings.*
- *The existing number of storeys has been retained.*
- *The site's overall permeability and provision of landscaped areas/ deep soil permeable surfaces has improved from that existing.*
- *The angled/ staggered rear building lines maintain a consistent rear building alignment relationship with the neighbour to the south and a 900mm setback at the ground floor level is maintained for 53 Clovelly Road to its southern boundary. Clear sight lines and a curtilage is maintained.*

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

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

- *The proposal provides an urban framework that supports the principles of ESD/environmental initiatives and is BASIX compliant.*
- *Limited site preparation works are required.*
- *The site's permeability has increased from that existing. Additional areas of unrestricted deep soil landscaping are proposed which promotes infiltration and absorption as opposed to runoff.*
- *The retention of a large portion of the existing built form and materials enables environmental sustainable development (ESD).*
- *Northerly openings are provided where possible.*
- *Generous floor to ceiling heights have been provided.*
- *Natural light penetration is provided throughout each dwelling via the open floor plan and stair voids and the unaltered street front openings to the existing non-residential tenancies.*
- *Provision of skylights to Nos. 51 and 53 Clovelly Road.*
- *Provision of six rooftop photovoltaic solar panels to Nos. 49 and 51 Clovelly Road respectively.*
- *The proposal includes the retention of the ground floor breezeways.*
- *The proposed windows and openings and the internal open floor plan enable solar exposure to all areas of the dwellings.*
- *Shading devices will serve to protect the dwelling and its occupants from heating effect of solar radiation.*
- *The design minimises reliance on artificial lighting and mechanical ventilation.*
- *Each dwelling benefits from both cross and stack effect ventilation.*
- *The provision of operable doors and windows enable the use of natural ventilation.*
- *The internal reconfiguration of the dwellings enables rear open plan primary living rooms with direct connection to improved (relative to useability) external private open space.*
- *The occupants of each dwelling will enjoy good amenity through the separation of living, sleeping, and service zones.*
- *The construction materials proposed provide high thermal mass to the south to minimise heating and cooling loads.*

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

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

The applicant's written justification outlines that this objective is satisfied by referencing the Heritage Impact Statement (HIS) prepared by John Oultram Heritage & Design, submitted

as part of the development application. The applicant's written request references the following points from the HIS to demonstrate compliance with objective (c):

- *The rear additions are well scaled and retain the primary form and detail of the shops and are set well below the primary parapet. The new works is contemporary in form and detail.*
- *The rear addition is well scaled and in a subservient form to the existing primary form and retains the articulation of the rear wings.*
- *The addition is to a simple form and detail with only the inset angled window reveals providing modest articulation.*
- *The additions are to the rear and retain parts of the existing rear wings that provide insets at the junctions.*
- *No external works are proposed to the principal building form.*
- *The doors and windows to the rear are to a contemporary detail and there are no new openings in the primary form.*
- *The additions are in a simple, contemporary form that do not compete with the robustness of the primary elevations.*
- *The rear addition sensibly adopts contemporary, contrasting materials to suit the design.*
- *The hardstand space is to the rear and has a timber gate to the side street.*
- *The fences are to the rear gardens and are in a combination of timber and brick.*

(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 outlines that this objective is satisfied by noting that:

- *As outlined in the submitted SEE, the departing built form preserves environmental amenity in relation to:*
 - *Solar access and overshadowing.*
 - *Access to natural daylight and ventilation.*
 - *Aural and visual privacy.*
 - *Views and vistas from neighbouring and nearby properties and the public domain.*
 - *Visual impact and massing.*
 - *Parking or traffic generation.*
- *The existing and proposed departure to the FSR standard and the development generally is not inconsistent with the relevant objectives of the FSR standard because they do not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor do they alter the buildings' compatibility is appropriate under the circumstances given the overall lack of adverse impacts to neighbouring properties and the surrounding public domain.*
- *Modestly sized upgrade works are proposed to the heritage listed buildings to meet required amenity standards. The relatively minor additional quantum of GFA for each property has been arranged in such a manner that does not result in adverse environmental or amenity related impacts to neighbours of the public realm.*
- *The altered built form exhibits a high quality architectural design solution within an improved landscape condition that positively contributes to the locality's character and the site's overall heritage significance, a desirable outcome.*
- *The nature of such an urban environment is that all future development will seek to maximise levels of residential amenity and density through design.*
- *The site is suitable located to provide additional floorspace above that permitted. It is within walking distance of existing infrastructure which will be able to cope with any perceived increase in demand.*

Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?

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 underlying objective or purpose of the standard would

be defeated or thwarted if compliance was required. The applicant's written request outlines the following points to demonstrate that the underlying objective or purpose of the standard be defeated or thwarted if compliance was required:

- *The quality of the residential outcome would be compromised for no sound planning reason.*
- *Further compliance would require demolition of each heritage listed built form, which is highly unlikely and economically impractical given the relatively modest nature of the rear extensions to each building.*
- *Each altered built form provides an unquestionable improvement of internal amenity for its occupants, whilst preserving the environmental amenity of the neighbours and the surrounding public domain.*
- *The site's heritage significance has been maintained and works to the primary Clovelly Road façade / streetscape presentation are not proposed.*

Is the zoning of the land unreasonable or inappropriate?

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 zoning of the land is unreasonable or inappropriate. The applicant's written request outlines the following points to demonstrate that the zoning of the land is unreasonable or inappropriate:

- *Considering that proposed under the RCPP, Council considers the site's current land use zoning, R2 Low Density Residential to be inappropriate with a change to E1 Local Centre proposed.*
- *A range of built form/ land use is found within the site's visual catchment.*

Assessing officer's comment:

As will be discussed under section 7.1, part 3 of this report, the proposed variation to FSR is considered to contravene objectives (a) and (d) of the Clause 4.4 – Floor space ratio of the Randwick LEP 2012. Thus, the proposed variation to FSR does not satisfy the objectives of the standard.

Moreover, the applicant's written request has not adequately demonstrated that the underlying objective or purpose of the FSR standard would be defeated or thwarted if compliance was required. The applicant's written request has not stated what is the underlying objective of the FSR standard. Therefore, the objectives of Clause 4.4 previously outlined have been taken into consideration. While it is acknowledged that the existing built form exceeds the current FSR standard of 0.5:1 afforded to the site, the proposed development seeks further departure to the standard. One of the objectives of Clause 4.4 is to ensure that the size and scale of the development is compatible with the desired future character of the locality. Therefore, as the variations to FSR proposed for 49, 51 and 53 Clovelly Road greatly exceed the maximum FSR of 0.5:1, the proposed size and scale of the development will be inconsistent with the desired future character of the locality.

It is acknowledged that the applicant's clause 4.6 variation request was based on the proposed zoning and FSR changes within the Randwick Comprehensive Planning Proposal (RCPP). At the time of lodgment, the RCPP sought to rezone the site from R2 Low Density Residential to E1 Local Centre and increase the FSR standard from 0.5:1 to 1:1. However, these changes were not adopted and are thus irrelevant to the proposal.

Therefore, the applicant's written request has not adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

- *The proposal clearly achieves an improved streetscape and amenity outcome for the public domain, it clearly maintains the site's heritage significance and the site's presentation to Clovelly Road, it undertakes appropriate restorative works where required to the existing built form and unquestionably provides for a substantially improved residential amenity for the future occupants without any unreasonable amenity and environmental impacts to neighbours.*
- *The SEE and supporting documentation submitted with the DA provides a holistic environmental planning assessment of the proposal and demonstrates that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. In particular, the submitted documentation demonstrates that despite the site benefiting from EUR's and considering the existing and further proposed contravention of the current FSR standard and enables the relatively modest and appropriate redevelopment of the site to occur irrespective of the large percentage variation.*
- *The standard's breach is a better planning outcome than if compliance were to be achieved. Each existing building already departs from the mapped FSR development standard. It is considered unreasonable for Council to retrospectively reinforce a development standard which does not reflect the existing development on the site. Furthermore, compliance with the standard, as it exists or as is proposed, is most unlikely as it would require demolition of a heritage listed built form. It would also be economically impractical given the relatively modest nature of the proposal.*
- *The proposed breach of the standard results in an improved amenity outcome for the future residents without contributing additional bulk, adverse environmental or amenity related impacts or relative intensification of the altered built form. This includes the provision of open plan primary living areas with direct connections to increased in size (compliant) and eminently more useable external private open space areas, including lawn promoting infiltration and absorption, whilst maintaining an appropriate curtilage to neighbouring built form.*
- *The proposal provides for enhanced amenity to the residents through alterations and additions to the existing built form through a relatively modest increase in GFA without any unreasonable impact to neighbouring properties and the surrounding public domain. The resultant FSR of each property within the site and their large percentage variation, is a function of their small lot size (<150m²), not the size of the altered built form in terms of GFA for each property. Modestly sized upgraded attached dwellings to meet required amenity standards are provided at the rear of the heritage listed mixed use development where the size of the altered built form in terms of GFA for each property. Modestly sized upgraded attached dwellings to meet required amenity standards are provided at the rear of the heritage listed mixed-use development where the size of the existing non-residential tenancies providing a local daily service to residents remains unaltered.*
- *The development intensity of the locality is anticipated to increase in the foreseeable future and that the site is located in an area with anomaly of differing densities which does not appear to follow a distinct or intended pattern of development. The site's existing long term mixed use development better reflects Council's desired future character for the Clovelly Road Cluster 2 as proposed under the RCPP. The provision of increased and improved mixed use accommodation will support this strategic direction and the unquestionable demand for such.*
- *The additional GFA is accommodated within a building height and wall height that complies with the relevant controls. Further an equitable distribution of GFA/FSR at the ground floor and first floor levels of both 49 and 51 Clovelly Road is proposed. Only an additional 0.5m² of GFA is proposed at the ground floor of 53 Clovelly Road. This building's existing first floor level GFA is unaltered. Further a staggered rear building alignment reduces the overall scale of development when viewed from the public domain. This built form would comply with the future RCPP FSR standard.*

- *Building bulk is further reduced with the choice of finishes and materials, which promote visual interest and maintain the site's heritage significance. Materials and finishes are of a high quality, are durable and complement the character of the locality. The materials together with the design of façade building elements and the stepping of the development are particularly successful in breaking down the building bulk to minimise any impacts to neighbouring properties and create visually attractive development.*
- *The maintained mixed land use is not incompatible with the existing and likely future land uses surrounding the site. An active ground floor level, street front non-residential land use serving the needs of local residents / community is maintained to Clovelly Road with appropriately altered residential accommodation (attached dwellings) at the rear of each building that will add to a vibrant and active local neighbourhood and maintain passive surveillance of the surrounding public domain.*
- *The site is suitably located to provide additional floorspace above that permitted. It is within walking distance of existing infrastructure (public transport, shops, parks, amenities and facilities) which will be able to cope with any perceived increase in demand.*
- *Appropriate environmental initiatives are proposed.*

Assessing officer's comment: As per the caselaw established by Chief Justice Preston in ***Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*** previously outlined in this report, the applicant's written request needs to focus 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.

The proposal seeks to vary the current maximum FSR control applying to the sites, being 0.5:1. The following variations to the current standard are proposed:

| Address | Proposal | Proposed variation to 0.5:1 FSR | Proposed variation (%) |
|------------------|-------------------------------|---------------------------------|------------------------|
| 49 Clovelly Road | 1.15:1 (160m ²) | 90.65m ² | 130% |
| 51 Clovelly Road | 1.31:1 (167.7m ²) | 103.7m ² | 162% |
| 53 Clovelly Road | 0.95:1 (142.5m ²) | 67.65m ² | 90% |

It is acknowledged that at the time of lodgment, the Randwick Comprehensive Planning Proposal (RCPP) sought to rezone the site from R2 Low Density Residential to E1 Local Centre and increase the FSR standard from 0.5:1 to 1:1. However, these changes were not adopted and the current R2 Low Density Residential land zoning and FSR standard of 0.5:1 continue to apply to the site.

Nevertheless, given the Clause 4.6 variation request sought to contravene the current FSR development standard on the basis of the changes indicated within the RCPP, an assessment against the notified FSR increase of 1:1 was undertaken, with the following variations identified:

| Address | Proposal | Proposed variation to 1:1 FSR | Proposed variation (%) |
|------------------|--------------------------------|-------------------------------|------------------------|
| 49 Clovelly Road | 1.15:1 (160m ²) | 21.3m ² | 15.35% |
| 51 Clovelly Road | 1.31:1 (167.7m ²) | 39.7m ² | 31% |
| 53 Clovelly Road | 0.94:1 (141.52m ²) | N/A | N/A |

The environmental planning grounds provided in the applicant's written request outline the overall benefits of the development but do not specifically state why further departure from the current FSR standard is justified. Although the written request states that the proposed

development will allow for the improvement of internal amenity standards of the residential dwellings, this does not justify further contravention to the current FSR standard.

It is acknowledged that the GFA of No.53 Clovelly Road will be increased by 0.5m², which does not change the FSR. The applicant has stated that increasing the GFA allows for the amenity to be enhanced. However, it is considered that improvement to the internal amenity standards of the residential dwellings can be undertaken without significantly increasing the existing floor area of the buildings.

Although the increase to FSR under the RCPP was not adopted, the variations to FSR proposed for 49 and 51 Clovelly Road still exceeded the notified maximum FSR standard of 1:1. Thus, the proposed size and scale of the development as a whole would have been inconsistent with the desired future character of the locality even if the increase to FSR was adopted, thereby contravening objective (a) of Clause 4.4 of the Randwick LEP 2012.

Moreover, if the zoning and FSR standard changes proposed to Nos. 49-53 Clovelly Road under the RCPP were adopted, the R2 Low Density Residential zone and FSR standard of 0.5:1 would have still continued to apply to the neighbouring properties along Clovelly Road and Gilderthorpe Avenue. The proposed variation to FSR will result in increased building bulk at the rear of the site, overwhelming the adjoining low density residential properties along Gilderthorpe Avenue.

Considering the above, the proposed development is inconsistent with the objectives of the standard as the size and scale of development is not compatible with the desired future character of the locality; the building articulation does not respond to the site context; and the development adversely impacts on the amenity of adjoining and neighbouring land in terms of visual bulk and overshadowing.

In conclusion, the applicant's written request has **not** adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

Assessment against objectives of floor space ratio standard

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

Assessing officer's comment: The desired future character of the locality is established in the land zoning and development standards which apply to the site under the Randwick LEP. Although the Randwick Comprehensive Planning Proposal (RCPP), sought to rezone the site from R2 Low Density Residential to E1 Local Centre and increase the FSR standard from 0.5:1 to 1:1, these changes were not adopted. Thus, the current R2 Low Density Residential land zoning and FSR standard of 0.5:1 continue to apply to the site.

Therefore, the size and scale of the proposed development is not compatible with the 'desired future character of the locality' as it will significantly contravene the FSR standard of 0.5:1 which applies to the site and surrounding properties.

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

Assessing officer's comment: The proposed development is well articulated and designed to respond to environmental and energy needs. Skylights and solar panels have been proposed to improve the energy efficiency of the existing building. Increased landscaping

has been provided within the rear courtyard area, allowing for increased water infiltration within the site, reducing the extent of stormwater runoff.

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

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

Assessing officer's comment: The combined property is individually listed at the local level as a group heritage item, being I317 in Schedule 5 of the Randwick Local Environmental Plan (RLEP) 2012.

Council's heritage planner has reviewed the application and has advised that the proposal is a high-quality architectural resolution of the site and will have a very limited and acceptable impact on the heritage item, or on heritage items in the immediate or wider vicinity.

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

The assessment that must be made is whether or not the development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

- Visual bulk: The development results in increased building bulk at the rear of the site, overwhelming the adjoining low density residential zoned properties as well as the Gilderthorpe Avenue streetscape. The proposed departure from the FSR standard of 0.5:1, will result in a built form that does not respond to the density of the area envisaged under the Randwick LEP 2012.
- Loss of privacy: A detailed assessment of privacy impacts is provided in Appendix 3 (Item 5.3 – Visual Privacy). The proposed development has been designed with windows offset from the windows of adjoining residential development. Additionally, the proposal includes façade elements around new windows which minimise overlooking opportunities to the neighbouring private open space areas. Thus, the proposed development will not result in any unreasonable adverse privacy impacts.
- Overshadowing: A detailed assessment of the overshadowing impacts is provided in Appendix 3 (Item 5.1 – Solar access and overshadowing) and the key issues section under art 9.1 of this report. This assessment shows that the proposed development will result in additional overshadowing impacts to the north facing living room windows of No.55 Clovelly Road.
- Views: There are no significant views or vistas that are visible from the subject site or adjoining properties.

Based on the above assessment, it is considered that development will adversely impact on the amenity of adjoining and neighbouring properties in terms of visual bulk and overshadowing.

Therefore, the development is considered to contravene objectives (a) and (d) of the floor space ratio standard.

Assessment against objectives of R2 Low Density Residential zone

As previously outlined in this report, attached dwellings are not permitted within the R2 Low Density Residential zone, thus the proposed development is seeking to rely on existing use rights. As such, the objectives of the R2 Low Density Residential zone have only been taken into consideration where appropriate.

The objectives of *R2 Low Density Residential* zone are:

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

Assessing officer's comment:

- Although the proposal will continue to provide for the housing needs of the community, the proposed scale of the development will not conform to the low density residential character of the R2 zone. Although the buildings within the site currently exceed the maximum FSR standard of 0.5:1, the proposal seeks further contravention to the standard. As such, the proposed development is of a size and scale that is not appropriate for the low density residential setting of the area.
- It is acknowledged that at the time of lodgment, public notification of the RCPP indicated that the sites were proposed to be rezoned from R2 Low Density Residential to E1 Local Centre, with the FSR standard increased from 0.5:1 to 1:1. While the zoning and FSR changes were not adopted, the fact that the proposal exceeded the notified draft FSR standard of 1:1 demonstrates that the proposed development is of a size and scale that is not appropriate for the context of the site or consistent with the desired future character of the area.
- The existing retail/business use provided in each building will be retained and continue to serve the needs of people who live and/or work in the local area.
- The proposed variation to FSR results in a built form that impacts the amenity of adjoining residential properties in regards to visual bulk and overshadowing.
- The proposal will continue to contribute to the housing stock of the locality.
- The existing small scale business uses on site will be retained.

Based on the assessment above, the development is not consistent with all of the objectives of the floor space ratio standard the current R2 Low Density Residential zone. Therefore, the development will not be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the maximum floor space ratio standard will result in Council significantly departing from the FSR control of 0.5:1 identified for the site and surrounding properties under the Randwick LEP 2012. Therefore, there is a public benefit in maintaining the development standard in this instance as it will ensure that development on the subject site is appropriate for the context of the site and neighbouring properties.

Conclusion

On the basis of the above assessment, the proposed variation to FSR is not supported and the submitted Clause 4.6 is not considered well founded nor conducive to the objectives of Clause 4.6 particularly as the development does not result in a better environmental or planning outcome.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument | See discussion in sections 6 & 7 and key issues below. |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | The Randwick Comprehensive Planning Proposal (RCCP) was considered within this assessment were applicable. Although draft changes to the zoning and FSR standard of the subject site were notified at the time of lodgment, these changes were not adopted. As such, the site remains zoned R2 Low Density Residential and the FSR standard of 0.5:1 continues to apply. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The proposal does not satisfy all the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below. |
| Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement | Not applicable. |
| Section 4.15(1)(a)(iv) – Provisions of the regulations | The relevant clauses of the Regulations have been satisfied. |
| Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is not consistent with the dominant character in the locality and represents a built form that contravenes the desired future character envisaged for the area under the Randwick LEP 2012.</p> <p>The proposed built form results in unacceptable amenity impacts to adjoining residential properties.</p> |
| Section 4.15(1)(c) – The suitability of the site for the development | The site is located in close proximity to local services and public transport. The site does not have sufficient area to accommodate the proposed land use and associated structures, as demonstrated through non-compliance with the current and draft FSR standards. |

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| | Therefore, the site is not 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 contravenes the objectives of the zone and will result in significant adverse environmental and social impacts on the locality. Accordingly, the proposal is not considered to be in the public interest. |

9.1. Discussion of key issues

Part B7 - 3.2 Vehicle Parking Rates

The following vehicle parking rates specified under the Randwick DCP apply to the proposed development:

- *Business and office premises in residential zone: 1 space per 100m² GFA.*
- *Attached dwellings: 2 spaces per dwelling with 3 or more bedrooms.*
- **Note:** *Parking calculations should be rounded to the nearest whole number. Where the fraction is 0.5, then the figure must be rounded up to the next whole number.*

The GFA of the business portion of Nos. 49, 51 and 53 Clovelly Road equates to 44m², 45m² and 44m² respectively. This equates to a parking rate of 0.44 – 0.45 parking spaces. As the DCP states that parking calculations should be rounded to the nearest whole number, no parking spaces are required for the business portion of the buildings.

In terms of the residential portion, each attached dwelling currently contains three (3) bedrooms. The proposed alterations and additions retain the existing number of bedrooms. Thus, a total of six (6) on-site parking spaces are required.

Currently, only one (1) parking space is provided on site through a detached brick garage located on No.49 Clovelly Road and accessed from Gilderthorpe Avenue. The existing garage is proposed to be demolished to accommodate additional private open space and landscaping for No.49 Clovelly Road. Subsequently, no on-site carparking spaces are proposed on site.

Nevertheless, the proposed shortfall to the number of parking spaces is considered appropriate given the context of the site. The provision of two (2) parking spaces for each dwelling is impracticable considering the limited width of each lot and the fact that Nos.51 and 53 Clovelly Road do not directly adjoin Gilderthorpe Avenue. Furthermore, the provision of parking for each dwelling is unable to be accommodated without severely compromising the private open space and landscaping provision of each lot.

It is noteworthy to state that the applicant originally proposed a single off-street carparking space within No.49 Clovelly Road. However, this parking space was removed as per the recommendation of Council's Development Engineer (refer to Appendix 1 for the engineering referral). Council's Development Engineer has reviewed the proposal and raised no concerns regarding the parking provision shortfall.

Therefore, based on the assessment above, variation to the parking rate control is considered acceptable on merit.

Part C1 - 2.3 Site Coverage

The Randwick DCP states that the maximum site coverage for development on lots less than 300m² is 60% of the total site area. The proposed alterations and additions seek the following site coverage on each respective lot:

- **49 Clovelly Street:**
 - Max = 83.22m² (60%)
 - Existing = 101.58m² (73.2%)
 - Proposed = 96.9m² (69.8%)
- **51 Clovelly Street:**
 - Max = 76.8m² (60%)
 - Existing = 82.32m² (64.3%)
 - Proposed = 100m² (78%)
- **53 Clovelly Street:**
 - Max = 89.82m² (60%)
 - Existing = 89.25m² (59.6%)
 - Proposed = 94.8m² (63.3%)

With exception to No.49 Clovelly Street, the proposed development seeks to further increase the site coverage of the built form on each lot. The built form proposed on each lot exceeds the maximum 60% site coverage control.

As outlined in the DCP, the objective of the site coverage control is to *ensure new development and alterations and additions to existing dwellings reserve adequate unbuilt upon areas for the purpose of private open space, deep soil planting, permeable surfaces and ancillary development.*

With regard to deep soil planting, the proposed development notably increases the extent of landscaping and deep soil areas within each lot (see comments below). Nevertheless, despite the increase in deep soil area, the proposal still falls short of the minimum deep soil area specified for the site under the Randwick DCP.

In terms of private open space, although Nos. 49 and 51 Clovelly Road do not comply with the minimum private open space requirements, this is attributed to the limited width of the allotment rather than the site coverage of the built form. The proposal notably seeks to remove the existing detached garage to increase the private open space and landscaping of Nos. 49 and 51 Clovelly Road.

It is important to note that the proposal seeks a significant variation to the FSR standard of 0.5:1. Therefore, considering the proposal does not comply with the Randwick LEP FSR standard and Randwick DCP deep soil area control, the objective of the site coverage control has not been satisfied. Although there is an existing non-compliance, further variation to the maximum site coverage control is not supported in this instance.

Part C1 - 2.4 Landscaping and Permeable Surfaces

The Randwick DCP states that the minimum deep soil area required for development on lots less than 300m² is 20% of the total site area. The proposed alterations and additions seek the following deep soil area on each respective lot:

- **49 Clovelly Street:**
 - Min = 27.74m² (20%)
 - Existing = 0m²
 - Proposed = 26.84m² (19.35%)
- **51 Clovelly Street:**
 - Min = 25.6m² (20%)
 - Existing = 0m²

- Proposed = 14.7m² (11.4%)
- **53 Clovelly Street:**
 - Min = 29.94m² (20%)
 - Existing = 0m².
 - Proposed = 25.63m² (17.12%)

Note: Only areas with dimensions of at least 900mm have been counted towards deep soil areas.

The existing sites are currently dominated by hardscape areas. Although there are a few minor trees and plantings scattered throughout the rear courtyards, there are currently no deep soil areas located on site.

Therefore, despite the variation sought, the proposed development will significantly increase the amount of deep soil area provided within the site, encouraging a range of new landscaping and tree plantings. If considered on its own merits, the proposed deep soil provision is considered acceptable. However, given the non-compliances with FSR and site coverage, the shortfall to deep soil area cannot be disregarded.

Part C1 - 2.5 Private Open Space

The Randwick DCP states that the minimum dimensions for private open space for dwellings and semi-detached dwellings on lots less than 300m² is 5m x 5m.

The proposed development relates to a mixed use building, with the residential portion best defined as attached dwellings. Given that attached dwellings are prohibited within the zone, no private open space control is specified for attached dwellings under part C1 of the Randwick DCP. Nevertheless, a merit assessment of the proposal in relation to the private open space control has been undertaken.

Only No.53 Clovelly Road satisfies the minimum 5m x 5m dimension for private open space. However, as previously discussed under the site coverage assessment, Nos. 49 and 51 Clovelly Road do not comply with the minimum private open space requirements as a consequence of the limited width of the allotment. Nos. 49 and 51 Clovelly Road only provide an allotment width of approximately 4.5m and 4.6m within the rear setback area. The proposal notably seeks to remove the existing detached garage to increase the private open space of Nos. 49 and 51 Clovelly Road

Based on the assessment above, the proposed provision of private open space is appropriate for the context of the site.

Part C1 – 3.2 Building Height

The Randwick DCP states that the maximum external wall height for development within the R2 Low Density Residential zone is 7m.

The proposed rear alterations and additions seek an external wall height of 7.7m and will integrate with the existing form and scale of the rear wing of the building. It should be noted that the existing building has an external wall height of 10.3m. Moreover, the external wall of the proposed rear additions incorporates recesses and protrusions as well as different materials between the ground and first floor to break up the appearance of any long unarticulated walls.

Therefore, variation to the external wall height control is considered acceptable in the context of the site as the proposed works are situated below the existing wall height of the building.

Part C1 – 3.3.3 Rear Setbacks

The Randwick DCP states the following setback control:

- *The minimum rear setback must be 25% of allotment depth or 8m, whichever is the lesser.*

The proposed alterations and additions seek the following rear setbacks for each building:

- **49 Clovelly Street:**
 - Min = N/A (Rear setback control does not apply to corner allotments).
 - Proposed = 4.59m – 7.9m.
- **51 Clovelly Street:**
 - Min = 6.5m – 6.7m.
 - Proposed = 2.8m – 4.5m.
- **53 Clovelly Street:**
 - Min = 6.7m - 6.88m.
 - Proposed = 5.7m to 7.58m.

The proposed development seeks ground and first floor rear additions to the existing buildings, reducing the setback of the built form to the rear boundary. As No.49 Clovelly Road is a corner site, no rear setback control applies as per the Randwick DCP. However, the built form on Nos. 51 and 53 Clovelly Road are proposed to encroach within the required rear setback (25% of the allotment depth).

Inevitably, the reduced rear setback will result in increased building bulk directly facing the adjoining low density residential zoned properties along Gilderthorpe Avenue. Additionally, the reduced rear setback pushes the useable area of private open space closer to the neighbouring property boundary and results in glazing to habitable rooms being within the required rear setback. Consequently, the proposed development will result in additional building bulk impacts to the adjoining Low Density Residential zoned property at No.2 Gilderthorpe Avenue.

Considering the proposed development seeks to further exceed the maximum FSR standard and site coverage control which applies to the site, further encroachment of the built form towards the rear boundary of the site is not supported.

Part C1 – 5.1 Solar Access

The Randwick DCP outlines the following solar access controls:

(ii) The private open space of proposed development must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The area covered by sunlight must be capable of supporting passive recreation activities.

(iii) A portion of the north-facing living area windows of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.

(iv) The private open space of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The area covered by sunlight must be capable of supporting passive recreation activities.

In terms of private open space, while the submitted shadow diagrams indicate that the subject site and neighbouring private open space areas will receive direct solar access during the winter solstice at 12pm, insufficient information has been provided to determine whether the proposal achieves a minimum of 3 hours of direct sunlight between 8am and 4pm. Shadow diagrams have only been provided at four (4) hourly intervals and illustrate that the private open space of the subject sites and the neighbouring property at 55 Clovelly will entirely be overshadowed at 8am and 4pm.

Given the orientation of the lots, any additional overshadowing to No.2 Gilderthorpe Avenue generated by the proposal will occur in the afternoon. The submitted shadow diagrams and SEE suggest that no change to the existing overshadowing cast to No.2 Gilderthorpe Avenue will occur at 4pm during the winter solstice. However, given the location and height of the proposed additions sought, it is anticipated that increased overshadowing to the west facing windows of No.2 Gilderthorpe Avenue will occur between 1pm – 3pm. Insufficient information has been provided by the applicant in order to accurately determine if additional overshadowing will occur. Notwithstanding this, the controls apply to north facing windows and the front setback area of No.2 Gilderthorpe Avenue is not the principal private open space.

In terms of control (iii), the proposed development will result in the overshadowing of the ground floor north facing windows of the adjoining property at No.55 Clovelly Road as illustrated in the hourly elevational shadow diagrams prepared by Ben Giles Architect. No.55 Clovelly Road contains a four (4) unit residential apartment building.

Based on the available information and Statement of Environmental Effects prepared by Lockrey Planning and Development Solutions, the northern windows affected by overshadowing service a bedroom and an enclosed balcony, which in turn allows for natural light to enter the centrally located living room.

Currently, the existing building overshadows the enclosed balcony for the majority of the day, with partial solar access provided between 8am and 11am. As indicated on the elevational shadow diagrams, the proposed alterations and additions will result in further overshadowing to the north facing enclosed ground floor balcony of No.55 Clovelly Road, entirely removing the opportunity of any direct sunlight reaching the central living room at 8am and 9am and reducing the provision of direct solar access to only a small portion of the north facing window between 10am to 11am. Thus, the north facing enclosed balcony, which allows for natural light to enter the centrally located living room, does not achieve the minimum 3 hours of direct sunlight requirement specified under the DCP.

Control (vi) of Part C1, section 5.1 of the Randwick DCP 2012 states that any variation from the solar access requirements will be subject to a merit assessment having regard to the following factors:

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

The proposed development seeks to further vary the FSR standard of 0.5:1. Additionally, the proposal seeks to exacerbate the existing non-compliance to the current site coverage control. Although the neighbouring north facing windows affected are located at ground level and already heavily overshadowed, the proposed variation to FSR sought will consequently result in significant reduction to the amount of direct solar access provided to the centrally located living room. Therefore, given the proposal will result in a built form that exceeds what is allowable and envisaged for the site, the proposed variation to part C1, section 5.1, control (iii) of the Randwick DCP cannot be supported.

10. Conclusion

That the application to alterations & additions to each building at Nos. 49, 51 & 53 Clovelly Road including: retention of shops & shopfronts; new toilets & kitchenettes to the non-residential tenancies at Nos. 51 and 53 Clovelly Road; part demolition of rear wings; demolition of the garage; internal reconfiguration at the rear; new ground & first floor additions to the rear of Nos. 49 and 51 Clovelly Road; new ground floor addition to 53 Clovelly Road; landscaping & associated works (Heritage item) be refused for the following reasons:

1. The proposal does not comply with the provisions of Randwick Local Environmental Plan 2012 (RLEP 2012) pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in particular:
 - The proposal is not consistent with the objectives of the R2 Low Density Residential zone pursuant to Clause 2.3 of RLEP 2012, that requires, among other, development to provide for the housing needs of the community within a low density residential environment and to protect the amenity of residents.
 - The proposal does not comply with Clause 4.4 – Floor Space Ratio which is not supported by an acceptable Clause 4.6 variation statement with adequate environmental planning grounds.

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2. The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in particular:
 - o Part C2 Low Density Residential – 2.3 Site coverage.
 - o Part C2 Low Density Residential – 3.3 Setbacks.
 - o Part C2 Low Density Residential – 5.1 Solar access and overshadowing.
3. The proposal will result in adverse environmental impacts on both the natural and built environments, and social and economic impacts in the locality, pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
4. The adverse environmental impact of the proposal means that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
5. The public submissions raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The Site

The site is a consolidated corner presentation, which is a good example of a single storey, Inter-War commercial/residential development, with a well-detailed primary frontage to Clovelly Road (east side) and a secondary frontage to Gilderthorpe Avenue (south side). Its rear forms are typical, skillion rear wings and the residential interiors present with common Inter-War detail. The site includes the three property addresses of 49 (Lot 1 in DP 1012309), 51 (Lot 2 in DP 1012309) and 53 (Lot 3 in 1012309) Clovelly Road.

The ground floor consists of three shops and there are residential sections at the first-floor level, with access from the rear. The combined premises is largely intact, presenting in liver-brick external form, showing a high parapet with a splayed corner and entrance; plate glass, metal framed windows with tiled stalls and piers, leadlight hampers and inset doorways with terrazzo finishes and a suspended metal awning. The forward components of the interior are substantially intact, but with some internal alterations, while the outer rear components are substantially degraded and modified. There is a single storey, brick garage with skillion roof to the rear of 49 Clovelly Road.

The combined property is individually listed at the local level as a group heritage item, being I317 in Schedule 5 of the Randwick Local Environmental Plan (RLEP) 2012.

The property is not sited within a Heritage Conservation Area, however there are several individually listed items in the immediate and proximate vicinity: I406 – Local Listing at 47 A Market Street (Randwick literary Institute); I382 – State Listed (Hooper Cottage at 17 Gilderthorpe Avenue; and further removed, I383 and I384 - Local Listing (Federation house and Federation semi-detached pair of cottages) at 63-71 Gilderthorpe Avenue. To the north of the site Market Street has views towards Queen's Park, about 300m away, and to the south of the site Frenchmans Road mixed use shopping village and its surrounds is approximately 240m away.

Background

A previous Development Application (DA 462/2020) proposed alterations and additions specifically to 51 Clovelly Road but this was withdrawn prior to its determination. Subsequently formal pre-DA meetings were held on 25 October 2021 and 1 November 2021. This reviewed the possibility of a combined development for alterations and additions for the total site, including first floor rear extensions and landscaping.

Several planning issues were raised in relation to the heritage status of the property, especially by way of part demolition, as well as proposed built form; bulk, scale, setbacks and landscaping. The present application was subsequently developed in response to Council concerns and the current proposal represents a consolidated application for all three properties as a joint development.

Proposal

At ground floor:

Retention of the shops and shop fronts; Part demolition of the rear wings; Demolition of the garage; Internal reconfiguration at the rear; New toilets and kitchenettes to the non-residential tenancies at 51 and 53 Clovelly Road; New single-storey and two-storey additions to the rear of building.

At first floor:

Internal reconfiguration at rear; being conversion of the central bedrooms to bathrooms; New two storey additions to 49 and 51 Clovelly Road.

Each building's residential component will comprise three bedrooms (as existing), all at the first-floor level. All primary living rooms are at the rear of the ground floor level.

The extensions are built boundary to boundary at the ground floor with lightwells or passages at the primary form with the rear wing to 49 Clovelly Road also set to the side boundary at the lower level. The upper floors to 49 and 51 Clovelly Road are inset from the lower floor at the rear.

The extensions are of similar height to the rear wings and in a flat roof form set at the 'ridge' height of the current rear wings but separated from them by insets at the side passages. The lower brickwork is set to the height of the first-floor windowsills to the shops.

The extensions are face brick and durable fibro cladding to a contemporary detail, with flat roof set behind low parapets.

There is a dual use hardstand in 'stepping' pavers to 49 Clovelly Road utilising the slightly altered existing driveway and crossover from Gilderthorpe Avenue.

Provision of new 1.2m wide terraces to the rear of the ground floor additions with gardens with lawns and shrub plantings. The side passage to 49 Clovelly Road will also be landscaped.

Works to the Clovelly Road façade of each building are not proposed, nor are there works proposed to the café at 49 Clovelly Road.

Submission

The development proposal is accompanied by:

A full set of highly detailed drawings by Ben Giles Architect (Received by Council 12 July 2022)

An acceptable and professional Statement of Environmental Effects, prepared by Susan & Alan Byrnes c/- Ben Giles Architect (Received by Council 12 July 2022)

An acceptable professional Heritage Impact Statement, prepared by John Oultram Heritage & Design Level 2, 386 New South Head Road, Double Bay, NSW 2028 (Received by Council 12 July 2022)

A Schedule of External Materials and Finishes by Ben Giles Architect (Received by Council 12 July 2022)

Controls

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

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

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

Comments

The significance of the place is amply demonstrated in its primary form, its front elevation, and intact shopfronts. The shops are prominent in the local street and are an important element in the local streetscape. This aspect will remain largely unchanged since the proposed works are largely to the rear sections of the buildings.

The rear lightweight and substantially degraded section of the ground floor wings will be demolished. Similarly, the garage is a later structure, and its removal will allow for landscaping at the rear.

Internal reconfigurations are not extensive. They will have little impact on the significance of the place while considerably improving the contemporary amenity of the apartments and the ground floor commercial facilities. All key elements in the primary components of site, such as the existing stairs and fenestration will be retained.

The rear extensions are of appropriate setbacks, scale, style, form, and height, with clearly articulated separations from the existing wings and appropriate high quality and durable external fabric. The upper additions reference but remain subservient to existing design elements.

The new landscaping will improve the setting of the building at the rear and its relationship with the single storey houses along Gilderthorpe Avenue, while the proposed fencing in combinations of timber and brick and is complementary to the general streetscape.

Overall, the proposal is a high-quality architectural resolution of site and will have a very limited and acceptable impact on the heritage item, or on Heritage Items in the immediate or wider vicinity.

1.2. Development Engineer

Parking Comments/Issues

49 Clovelly Road has a garage in its rear yard fronting Gilderthorpe Ave, which partially encroaches into the rear yard of No 51 Clovelly Road. The garage has an internal length of approximately 5.20m - 5.40m.

The application shows the demolition of the existing garage and replacing it with an off-street car space.

It appears the proposed off-street car space does not satisfy the required absolute minimum length of 5.00m and thus the applicant is to either:

- a) Amend the plans to show the car space has an minimum internal length of 5.00m, at any point.*

Note: this may require the extended boundary wall between No 49 & 51 at the rear of the site to be setback further from the Gilderthorpe Ave frontage so as to provide the 5.00m requirement

- b) Amend the plans to either retain or delete the existing garage.*

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

Alterations and Additions (FSR Cl. 4.6 Submission) • 49, 51 & 53 Clovelly Road, Randwick

30 November 2022

3.0 ASSESSMENT OF THE PROPOSED VARIATION

3.1 Is the proposed development in the public interest because it is consistent with the objectives for development in the zone and the objectives of the particular standard?

3.1.1 Objectives of the zone

As stated at Clause 2.3 of LEP 2012, the objectives of the R2 Low Density Residential zone are:

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

The site may be developed with the stated variations to the FSR standard. Consistency is not readily quantifiable in absolute numerical terms. The proposal despite its departure from the FSR standard is consistent with the stated objectives of the R2 Low Density Residential zone and is considered to be a suitable and appropriate redevelopment of the site as it:

- does not propose works to the existing café at 49 Clovelly Road which provides a daily service to locals and visitors alike;
- maintains existing approved small scale business uses in existing mixed use buildings;
- maintains existing approved non-residential land uses that provide facilities and services to meet the daily needs of residents and the community in general;
- undertakes works to the non-residential tenancies that do not adversely or unreasonably reduce the amenity of neighbouring and nearby properties and the surrounding public domain;
- the site's heritage significance has been retained, including its primary Clovelly Road streetscape presentation, where no works are proposed;
- is located on a site (overall and each individually) of sufficient size to appropriately accommodate the altered built form notwithstanding the departure to the FSR standard;
- the rear additions are well scaled and retain the primary form and detail of the shops and are set well below the primary parapet. The new works is contemporary in form and detail and are not visually intrusive or bulky when viewed from the surrounding public domain;
- provides an altered built form (overall and individually) that is not incompatible considering the locality's existing or desired future built form character (see later);
- does not impact housing affordability or the continued provision of low density residential housing on nearby land;

- enables the provision of improved housing close to public transport, employment opportunities and services, which will provide good quality accommodation that is suitable for the intended occupants. The dwellings have been designed to cater for a diversity of occupants. This enriches residential diversity. A well-designed and socially responsive development will always attract a socially diverse mix of people and in turn improve and enhance for a much richer community life in the area;
- there are no unreasonable amenity impacts to neighbouring and nearby properties and the surrounding public domain. The environmental amenity of the neighbours has been preserved; and
- the occupants of the dwellings can work from home as/if required.

3.1.2 Objectives of the FSR standard

The objectives of the FSR standard are expressly stated at Clause 4.4(1) of LEP 2012. Despite the existing and proposed departures (individually for each property and overall for the entire site) from the FSR standard, the proposal is nonetheless consistent with the stated objectives of the FSR standard and therefore provides an appropriate planning outcome for the following reasons:

Generally

- The FSR standard departure and the development generally is not inconsistent with the relevant objectives of the FSR standard because it does not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor does it alter the buildings' compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances given the overall lack of adverse impacts to neighbouring properties and the surrounding public domain.

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

As expressed by the current planning controls and zoning, the locality's desired future character near the site includes:

- to the north:
 - land on the opposite side of Gilderthorpe Avenue is primarily zoned R3 Medium Density Residential. It is subject to a 0.9:1 FSR between Market Street and Park Avenue and an FSR of 0.75:1 further north;
 - although zoned R3 Medium Density Residential, dwelling houses and semi detached dwellings are subject to a maximum FSR of 0.75:1. The maximum FSR is based on the lot size, however, if a lot has an area less than 300m² there is no applicable FSR standard;
 - land to the site's north west on the opposite side of Market Street is primarily zoned R2 Low Density Residential and is subject to a maximum FSR of 0.75:1. The maximum FSR is based on the lot size, however, if a lot has an area less than 300m² there is no applicable FSR standard;
 - built form to the site's north comprises a mixture of single and two storey dwellings (including two terrace houses) interspersed with multi storey residential flat buildings. Most dwellings (other than the terrace houses) appear as single storey to Gilderthorpe Avenue, however, due to the fall of the land are two storeys at their rear. Lot sizes for dwellings are typically less than 300m² and are greater if a more medium density land use is situated on that property;

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- to the south:
 - land to the site's south on the eastern side of Clovelly Road is zoned R2 Low Density Residential and is subject to a maximum FSR of 0.75:1. The maximum FSR is based on the lot size, however, if a lot has an area less than 300m² there is no applicable FSR standard.
 - to the site's south are two x two storey inter war residential apartment building comprising four units within each building at 55 and 57 Clovelly Road. This land use and lot size is incongruent with the prevailing character. Further south is a mixture of single and two storey dwelling houses beyond. Lot sizes for these properties are typically less than 300m²;
- to the west:
 - land to the site's west is primarily zoned R3 Medium Density Residential and is subject to a maximum FSR of 0.9:1;
 - although zoned R3 Medium Density Residential dwelling houses and semi detached dwellings are subject to a maximum FSR of 0.75:1. The maximum FSR is based on the lot size, however, if a lot has an area less than 300m² there is no applicable FSR standard;
 - built form to the site's west comprises a mixture of community uses (the two storey heritage listed literary institute building), 3-4 storey residential apartments buildings and elevated two storey plus dwelling houses to Clovelly Road;
 - immediately opposite 49 Clovelly Road is Blessed Mark Mackillop Place a park zoned RE1 Public Recreation. Beyond the park is SP2 Infrastructure (Education) St Margaret Mary's Catholic Primary School and SP2 (Seniors Housing Infrastructure) for The Little Sisters of the Poor St Joseph's Home. These properties are not subject to an FSR standard;
- to the east:
 - land to the site's east and with frontage to the southern side of Gilderthorpe Avenue is zoned R2 Low Density Residential. It is subject to a maximum FSR of 0.75:1 for a dwelling house or semi detached dwelling. The maximum FSR is based on the lot size, however, if a lot has an area less than 300m² there is no applicable FSR standard; and
 - built form to the site's east predominantly comprises single storey Edwardian period dwelling houses. Lot sizes vary, however, are typically less than 300m². Multi storey residential flat buildings are also within the site's visual catchment.

In addition to the above, the Randwick Comprehensive Planning Proposal (RCPP) has been considered and endorsed by Council on 6 September 2022 for formal approval and gazettal. It is therefore technically a matter for consideration in the assessment of the DA as it contains future provisions relating to neighbourhood zones reform and the site specifically.

The Randwick LGA has numerous currently zoned neighbourhood centres which cater to more localised needs. They range from intimate dining precincts to beachside villages and smaller clusters of shops. Many of these smaller centres have developed to incorporate a mix of housing, retail and commercial uses together with recreational opportunities. Smaller centres make a significant contribution to enhancing local amenity by meeting the convenience needs of the local community. They provide important community hubs but face strong competition from nearby larger centres. One of the characteristics of traditional neighbourhood centres is that they have a distinct identity and offer services on a more intimate level. This

form of retailing promotes contact between shopkeepers and shoppers/local residents and creates a more personal shopping experience.

In addition to those neighbourhood centres currently zoned for such a purpose, the overall site forms part of a cluster of shops / businesses that is currently zoned residential and which is to be rezoned to a neighbourhood centre zoning under the RCPP. The site is known as the Clovelly Road Cluster 2 which also includes 1 Gilderthorpe Avenue to the site's north. It is proposed to consolidate existing B1 Neighbourhood Centres and B2 Local Centre zoned land into a new E1 Local Centre zone. The strategic intent of the proposed (future) E1 Local Centre zone is to provide centres of all sizes and scales that offer:

- a diversity of retail, business, office, community, accommodation and entertainment uses to the community;
- a focus for active vibrant communities to come together;
- employment opportunities in accessible locations; and
- where available, a focus for public transport.

Whilst not gazetted, the proposed future objectives of the E1 Local Centre zone are:

- *to provide a range of retail, business and community uses that serve the needs of people who live, work or visit the area.*
- *to encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *to enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *to encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *to facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*
- *to minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*
- *to facilitate a safe public domain.*
- *to maximise public transport patronage and encourage walking and cycling.*

It is acknowledged the RCPP does not propose to change the existing height and FSR standards that apply.

Considering the locality's desired future character (as existing and as proposed) as described above, the altered built form (overall for the site and each property individually) nonetheless is not incompatible with that desired future character despite the existing and proposed departure to the FSR standard as:

- The height, bulk and scale of the proposal is characterised by the desired future character for the area. A compatible mixed use development is maintained / proposed. The height, bulk and scale of the altered mixed use development does not influence or set a precedent for future buildings on neighbouring or nearby properties. Rather the altered building is not incompatible considering the site's wider visual context as viewed from the surrounding public domain.
- The maintained / proposed land use (mixed use development) is not incompatible with the existing and likely future land uses surrounding the site. An active ground floor level, street front non-residential land

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use serving the needs of local residents / community is maintained to Clovelly Road with appropriately altered residential accommodation (attached dwellings) at the rear of each building that will add to a vibrant and active local neighbourhood and maintain passive surveillance of the surrounding public domain.

- Each building's design at the rear is highly articulated with varying façade treatments, setbacks, materials and openings and a significantly improved landscape condition. A contextually appropriate massing is proposed. The elevations are articulated in response to the form and size of each dwelling. The proposed design is re-interpreting established roof shapes and slopes (to the rear), whilst integrating contemporary materials and a superior architectural aesthetic. There is no adverse visual impact and the rear extensions to the existing attached dwellings are clearly not incompatible with its existing and likely future built form context. The altered built form will clearly maintain a positive streetscape contribution.
- The site is suitably located to provide additional floorspace above that permitted. It is within walking distance of existing infrastructure (public transport, shops, parks, amenities and facilities) which will be able to cope with any perceived increase in demand. Additional car parking is not possible, however, the overall density will not result in any adverse traffic generation impact that would lead to the unacceptable performance of the surrounding road network or infrastructure, given the availability of public transport in proximity to the site.
- The design is of a high quality and is complementary to nearby development. Furthermore, the building provides an appropriate design response that is consistent with other redeveloped properties within the surrounding locality that provide similar accommodation within the same land use zone or a land use zone that enables higher and more dense development.
- The building's bulk and scale will not set an undue precedent and will not preclude appropriate redevelopment of other neighbouring and nearby properties. The overall built form's architecture provides an appropriate height and mass relationship to the locality's existing and likely future character and maintains a special and positive urban character within a neighbourhood mixed use cluster.
- The resultant FSR of each property within the site, is a function of their small lot size (<150m²), not the size of the altered built form in terms of GFA for each property. Modestly sized upgraded attached dwellings to meet required amenity standards are provided at the rear of the heritage listed mixed use development where the size of the existing non-residential tenancies providing a remains unaltered. The relative compatibility and modest nature of the altered built form is shown at **Figures 14 to 17** within the SEE.
- A modest increase of 27m² GFA is proposed for 49 Clovelly Road. This increase is distributed evenly over both the ground and first floor levels and to a highly articulated and visually interesting building, when viewed from the surrounding public domain. The additions are well scaled, subservient and are to the rear and retain parts of the existing rear wings that provide insets at the junctions.
- A modest increase of 32.7m² GFA is proposed for 51 Clovelly Road. The additional GFA is distributed evenly over each floor level. Being the 'middle' building, this additional GFA is not readily discernible from the public domain.
- Only an additional 2.5m² of GFA is proposed at 53 Clovelly Road. A clear curtilage to the southern neighbour, a residential flat building is proposed. The rear additions are only single storey in height with

a wall height of only 3.75m. This property is the largest of the three and is to be provided with the least GFA.

- Only two levels of habitable accommodation are maintained to each building, a desirable outcome. The rear extensions at 53 Clovelly Road are only single storey. The works at the rear of the buildings range in height from 7.025m to 8.45m and therefore comply with the LEP 2012 height standard.
- The site's overall permeability and provision of landscaped areas / deep soil permeable surfaces has improved from that existing. The increase varies over each property, however, cumulatively infiltration and absorption is proposed over areas that are currently hardstand, which promotes runoff and overflow. Further the useability and utility of each building's rear external courtyards is significantly increased from that of the existing, improving the amenity for the occupants, without unreasonably impacting in any way the amenity of the neighbours.
- The angled / staggered rear building lines maintain a consistent rear building alignment relationship with the neighbour to the south and a 900mm setback at the ground floor level is maintained for 53 Clovelly Road to its southern boundary. Clear sight lines and a curtilage is maintained. Zero side building alignments are expected for attached dwellings. They are sensibly maintained. To alleviate the potential for visual built form dominance to Gilderthorpe Avenue, a large central setback is proposed at 49 Clovelly Road and which also includes a deep soil zone. A brick screen to the proposed zero building alignment zone at the ground floor level breaks up the apparent visual mass. As demonstrated by Figures 14 to 17 within the SEE, the site is proportioned to allow the efficient realisation and internalisation of the impacts of the overall density, design, siting and scale.

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

- The site is developed in accordance with its environmental capacity given:
 - it provides an urban framework that supports the principles of ESD/environmental initiatives and is BASIX compliant;
 - limited site preparation works are required;
 - the site's permeability is increased from that existing. Additional areas of unrestricted deep soil landscaping are proposed which promotes infiltration and absorption as opposed to runoff. Additional complementary landscaping is also proposed within the rear courtyard of each property. In this regard the landscape design minimises the discharge of stormwater, by drainage or overland flow from the site. The works will not impact existing natural drainage patterns, adjacent built form or the locality's natural environment.
 - the retention of a large portion of the existing built form and materials enables ESD. Works are not required (nor proposed) to any of the existing ground floor level non-residential tenancies;
 - northerly openings are provided where possible;
 - generous floor to ceiling heights internally. Those within each ground floor level non-residential tenancy are not altered and where new accommodation is provided for the dwellings, the floor to ceiling height ranges from 2.75m to 3m at the ground floor level and 2.7m at the first floor level to habitable rooms;
 - natural light penetration is provided throughout each dwelling via the open floor plan and stair voids and the unaltered street front openings to the existing non-residential tenancies;

- provision of skylights to 51 and 53 Clovelly Road;
- provision of six rooftop photovoltaic solar panels to 49 and 51 Clovelly Road respectively;
- the retention of the ground floor breezeways to each building;
- windows and openings and the internal open floor plan enables solar exposure to all areas of the dwellings;
- shading devices will serve to protect the dwelling and its occupants from heating effect of solar radiation;
- primary living areas are connected to the external facades and glazing for solar heat gain at varying times;
- the design minimises reliance on artificial lighting and mechanical ventilation;
- each dwelling benefits from both cross and stack effect ventilation; and
- provision of operable doors and windows enables the use of natural ventilation.
- the internal reconfiguration of the dwellings enables rear open plan primary living rooms with direct connection to improved (relative to useability) external private open space. All outdoor private spaces are designed as extension of the living room to enhance and encourage outdoor and indoor living, while at same time acting as a transition space to modulate temperature within each apartment
- the occupants of each dwelling will enjoy good amenity through the separation of living, sleeping, and service zones;
- screening elements to elevations assist in both privacy and sun shading;
- high quality and durable finishes are proposed which positively contribute to the character and visual amenity of the locality and the site's overall heritage significance;
- the construction materials proposed provide high thermal mass to the south to minimise heating and cooling loads;
- the building is surrounded by private gardens and communal landscaped areas reducing its visual impact or visual connection with the surrounding public domain.
- The existing visually interesting and articulated built form to Clovelly Road is not altered. This maintains the site's heritage significance at its most prominent location. Each building's design at the rear is highly articulated with varying façade treatments, setbacks, materials and openings and a significantly improved landscape condition. A contextually appropriate massing is proposed. The elevations are articulated in response to the form and size of each dwelling. The proposed design is re-interpreting established roof shapes and slopes (to the rear), whilst integrating contemporary materials and a superior architectural aesthetic. There is no adverse visual impact and the rear extensions to the existing attached dwellings is clearly not incompatible with its existing and likely future built form context. The altered built form will clearly maintain a positive streetscape contribution.

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 site is an identified heritage item and is located within the vicinity of other heritage items, all with local significance. The site is not within a heritage conservation area. Considering this context, a heritage impact statement (HIS), by John Oultram Heritage & Design is submitted separately. Its key general findings are:

49-53 Clovelly Road is a good example of a two storey, Inter War period commercial/residential development with a well-detailed primary elevation. The rear forms are typical, skillion rear wings and the residential interiors are to a common Inter War detail. The significance of the place is amply demonstrated in the primary form, front elevation and intact shopfronts. The shops are prominent in the local street and are an important element in the local streetscape.

The proposed works are largely to the rear section of the buildings and the shops and shop fronts will remain largely as is.

- Relative to the heritage and conservation guidelines within Section B2 of DCP 2013, the HIS notes:
 - the rear additions are well scaled and retain the primary form and detail of the shops and are set well below the primary parapet. The new works is contemporary in form and detail;
 - the rear addition is well scaled and in a subservient form to the existing primary form and retains the articulation of the rear wings;
 - the addition is to a simple form and detail with only the inset angled window reveals providing modest articulation;
 - the additions are to the rear and retain parts of the existing rear wings that provide insets at the junctions;
 - no external works are proposed to the principal building form;
 - the doors and windows to the rear are to a contemporary detail and there are no new openings in the primary form;
 - the additions are in a simple, contemporary form that do not compete with the robustness of the primary elevations;
 - the rear addition sensibly adopts contemporary, contrasting materials to suit the design;
 - the hardstand space is to the rear and has a timber gate to the side street; and
 - the fences are to the rear gardens and are in a combination of timber and brick.
- The summary of the HIS states:

Overall, we consider that the proposals are a sensible and well-considered upgrade and development of good quality, two storey, Inter War style shop/residences. The works involve limited removal and alteration of original fabric and pay due regard to the current layout and the more significant features of the place.

The works retain the primary form as is and maintain the original shopfronts and detail to the main elevations.

The rear additions are well scaled and detailed in an appropriate contemporary form and will have a limited impact on the significance of the place. The additions are designed to be subservient to the

primary building form while providing for articulation in the retained rear wings and new links and the detail to the new facades.

In heritage terms, we would recommend that the proposals be approved.

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.

- Essentially, the objective of an FSR standard is to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity of the area. The maximum FSR that a site can achieve is determined by its environmental constraints. The site is proportioned to allow the efficient realisation and internalisation of the impacts of the proposed built form without an adverse visual impact or perceived built form dominance. The existing and proposed departure to the FSR standard (for each property and the site overall) has been arranged considering the site's existing built form and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at **Table 4** and Section 4.2 of the separately submitted SEE, the departing built form nonetheless preserves environmental amenity in relation to:
 - solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas from neighbouring and nearby properties and the public domain; and
 - visual impact and massing; and
 - parking or traffic generation.
- The existing and proposed departure to the FSR standard and the development generally is not inconsistent with the relevant objectives of the FSR standard because they do not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor do they alter the buildings' compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances given the overall lack of adverse impacts to neighbouring properties and the surrounding public domain.
- The resultant FSR of each property within the site and their large percentage variation (existing and proposed), is a function of their small lot size (<150m²), not the size of the altered built form in terms of GFA for each property. Modestly sized upgraded attached dwellings to meet required amenity standards are provided at the rear of the heritage listed mixed use development where the size of the existing non-residential tenancies providing a local daily service to residents remains unaltered. It is noted the existing and proposed FSR at 53 Clovelly Road remains unaltered. The relatively minor additional quantum of GFA for each property has been arranged in such a manner that does not result in adverse environmental or amenity related to neighbours or the public realm.
- The altered built form exhibits a high quality architectural design solution within an improved landscape condition that positively contributes to the locality's character and the site's overall heritage significance, a desirable outcome.
- The nature of such an urban environment is that all future development will seek to maximise levels of residential amenity and density through design. In this regard, the proposal represents an appropriate planning outcome without any adverse environmental impacts.

- The site is suitably located to provide additional floorspace above that permitted. It is within walking distance of existing infrastructure (public transport, shops, parks, amenities and facilities) which will be able to cope with any perceived increase in demand.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

A development at 49, 51 and 53 Clovelly Road, Randwick that complies with the 0.5:1 FSR standard is unreasonable or unnecessary given the following presented circumstances:

- The existing built form on each property and the overall site departs from the standard.
- Compliance with the standard would require demolition of each existing heritage listed built form. This is highly unlikely and furthermore undesirable and economically impractical given the relatively modest nature of the alterations and additions to the rear of the existing built form and their lack of impact, notwithstanding the extent of the departure to the FSR standard.
- The site's existing zoning and development controls relate more to a low density detached dwelling house built form typology. However, since 1926 each property and the site's overall built form has comprised attached shops with dwellings above and behind, a mixed use development more akin to a neighbourhood centre zoning and different planning controls. The existing and proposed built form typology is consistent with the proposed land use zoning.
- The resultant FSR of each property within the site and their large percentage variation (existing and proposed), is a function of their small lot size (<150m²), not the size of the altered built form in terms of GFA for each property. Modestly sized upgraded attached dwellings to meet required amenity standards are provided at the rear of the heritage listed mixed use development where the size of the existing non-residential tenancies providing a local daily service to residents remains unaltered. It is noted the existing and proposed FSR at 53 Clovelly Road remains unaltered. The relatively minor additional quantum of GFA for each property has been arranged in such a manner that does not result in adverse environmental or amenity related to neighbours or the public realm.
- The existing and proposed departure to the FSR standard and the development generally is not inconsistent with the relevant objectives of the FSR standard because they do not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor do they alter the buildings' compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances given the overall lack of adverse impacts to neighbouring properties and the surrounding public domain.
- Compliance with the LEP 2012 height standard is maintained for each building. Only two levels of habitable accommodation are proposed.
- The site's permeability is increased from that existing. Additional areas of unrestricted deep soil landscaping are proposed which promotes infiltration and absorption as opposed to runoff. Additional complementary landscaping is also proposed within the improved relative to useability, rear courtyard of each property. In this regard the landscape design minimises the discharge of stormwater, by drainage or overland flow from the site. The works will not impact existing natural drainage patterns, adjacent built form or the locality's natural environment.

- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the proposed built form without an adverse visual impact or perceived built form dominance. The existing and proposed departure to the FSR standard (for each property and the site overall) has been arranged considering the site's existing built form and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at Table 4 and Section 4.2 of the separately submitted SEE, the departing built form nonetheless preserves environmental amenity in relation to:
 - solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas from neighbouring and nearby properties and the public domain; and
 - visual impact and massing; and
 - parking or traffic generation.
- Numerous nearby buildings will also depart from the relevant FSR standard.
- Within this context, it is clear the site can accommodate the FSR proposed and the development is of an intensity and scale commensurate with the built form character and the prevailing urban conditions and capacity of the locality, including neighbouring and nearby properties.
- The scale of the proposal is characterised by the existing and proposed (likely future) desired future character for the area. The height, bulk and scale of the built form does not influence or set a precedent for future buildings on neighbouring or nearby properties. Rather the altered mixed use development is not incompatible considering the site's wider visual context as viewed from the surrounding public domain.
- The additional FSR does not result from excessive site disturbance or excavation. Minor site recontouring works are proposed and FFL's at the rear of the ground floor of each dwelling are typically consistent with those existing.
- The bulk and scale of each property's altered heritage listed built form will not set an undue precedent. A highly articulated built form is proposed. Following a rigorous merit based assessment, approval of a building envelope that relates to the locality's existing and likely future (as proposed by the RCPP) character but which exceeds the LEP 2012 FSR standard, will not set a precedent for other non-conforming applications.

In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. Those tests have been considered below.

Are the objectives of the standard achieved notwithstanding non-compliance with the standard?

See above detailed assessment of the proposal by reference to the objectives of the FSR standard. That assessment demonstrates that the objectives of the standard are achieved notwithstanding the existing and proposed departure to the standard. The altered built form will not be incompatible considering the site's existing locational built form context and that desired by the current and likely future planning controls.

On this occasion (and as demonstrated at Table 4 and Section 4.2 of the separately submitted SEE) the non-compliance better achieves the objectives by allowing for an architecturally altered heritage listed built form within an improved landscape condition that enables high (improved) internal amenity for the occupants

whilst reasonably preserving the environmental amenity (solar access, visual and aural privacy, views, vistas, outlook, natural daylight and ventilation) of the neighbours.

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary?

On this occasion LPDS does not believe that the underlying objective or purpose is not relevant to the development and therefore LPDS does not rely on this reason.

Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?

Compliance with the stated objective of the FSR standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason. Further compliance would require demolition of each heritage listed built form, which is highly unlikely and economically impractical given the relatively modest nature of the rear extensions to each building.

Each altered built form provides an unquestionable improvement of internal amenity for its occupants, whilst preserving the environmental amenity of the neighbours and the surrounding public domain, a desirable planning outcome. The site's heritage significance has been maintained and works to the primary Clovelly Road façade / streetscape presentation are not proposed.

Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

A review of Council's SEPP 1 and Clause 4.6 Variations Registers (January 2008 up to date), demonstrates that the FSR standard cannot said to be abandoned.

However, and notwithstanding the non-abandonment of the standard, there is numerous built form in the surrounding locality and throughout the Randwick LGA that are zoned R2 Low Density Residential that depart from the current FSR standard and others.

The resultant FSR of each property within the site and their large percentage variation (existing and proposed), is a function of their small lot size (<150m²), not the size of the altered built form in terms of GFA for each property. Modestly sized upgraded attached dwellings to meet required amenity standards are provided at the rear of the heritage listed mixed use development where the size of the existing non-residential tenancies providing a local daily service to residents remains unaltered.

Is the zoning of the land unreasonable or inappropriate?

Considering that proposed under the RCPP, Council considers the site's current land use zoning, R2 Low Density Residential to be inappropriate with a change to E1 Local Centre proposed. Refer to Section 3.1.2 for further information.

A range of built form / land use is found within the site's visual catchment.

3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

Although the term 'environmental planning ground' is not defined, it is commonly accepted that the objects of the Act constitute 'environmental planning grounds'. Regarding the proposed development at 49, 51 and 53 Clovelly Road, Randwick, there are sufficient environmental planning grounds to justify contravening the FSR standard being:

- The site's existing long term mixed use development better reflects Council's desired future character for the Clovelly Road Cluster 2 as proposed under the RCPP.
- The existing built form on each property and the overall site departs from the standard.
- Compliance with the standard would require demolition of each existing heritage listed built form. This is highly unlikely and furthermore undesirable and economically impractical given the relatively modest nature of the alterations and additions to the rear of the existing built form and their lack of impact.
- The resultant FSR of each property within the site and their large percentage variation (existing and proposed), is a function of their small lot size (<150m²), not the size of the altered built form in terms of GFA for each property. Modestly sized upgraded attached dwellings to meet required amenity standards are provided at the rear of the heritage listed mixed use development where the size of the existing non-residential tenancies providing a local daily service to residents remains unaltered.
- The existing and proposed FSR at 53 Clovelly Road remains unaltered. The relatively minor additional quantum of GFA for 49 and 51 Clovelly Road has been arranged in such a manner that does not result in adverse environmental or amenity related to neighbours or the public realm.
- The existing and proposed departure to the FSR standard and the development generally is not inconsistent with the relevant objectives of the FSR standard because they do not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor do they alter the buildings' compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances given the overall lack of adverse impacts to neighbouring properties and the surrounding public domain.
- The site is suitably located to provide additional floorspace above that permitted. It is within walking distance of existing infrastructure (public transport, shops, parks, amenities and facilities) which will be able to cope with any perceived increase in demand.
- Compliance with the LEP 2012 height standard is maintained for each building. Only two levels of habitable accommodation are proposed.
- The maintained / proposed land use (mixed use development) is not incompatible with the existing and likely future land uses surrounding the site. An active ground floor level, street front non-residential land use serving the needs of local residents / community is maintained to Clovelly Road with appropriately altered residential accommodation (attached dwellings) at the rear of each building that will add to a vibrant and active local neighbourhood and maintain passive surveillance of the surrounding public domain.
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the proposed built form without an adverse visual impact or perceived built form dominance. The existing and proposed departure to the FSR standard (for each property and the site overall) has been arranged considering the site's existing built form and the neighbouring and nearby context. In this regard and

as demonstrated by the DCP 2013 assessment at **Table 4** and Section 4.2 of the separately submitted SEE, the departing built form nonetheless preserves environmental amenity in relation to:

- solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas from neighbouring and nearby properties and the public domain; and
 - visual impact and massing; and
 - parking or traffic generation.
- The development provides for an appropriate environmental planning outcome and is not an overdevelopment of the site as follows:
 - the proposal satisfies the objectives of the R2 Low Density Residential zone;
 - the proposal satisfies the objectives of the FSR development standard;
 - the site’s overall mixed use development is consistent with Council’s desired future character for the Clovelly Road Cluster 2 as identified in the RCPP;
 - the altered built form is not incompatible considering the site’s wider visual context;
 - the nature of such an urban environment is that all future development will seek to maximise amenity and density through design. In this regard, the proposal represents an appropriate planning and heritage related outcome with any adverse environmental impacts;
 - within its context the site can accommodate the FSR proposed and the proposal generally is of an intensity and scale commensurate with the evolving character and the prevailing urban conditions and capacity of the locality; and
 - Appropriate environmental initiatives are proposed.

3.4 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application as the departure from the FSR standard relates to local and contextual conditions and the site’s existing built form. The variation sought is responding to the broad brush nature of the control applied across an area that supports a variety of built forms on varying allotment sizes and existing built form.

The proposal involves the desirable provision of an architecturally altered heritage listed mixed use development within an improved established landscape garden setting. The works enable high (improved) internal amenity for the occupants whilst reasonably preserving the environmental amenity (solar access, visual and aural privacy, views, vistas, outlook, natural daylight and ventilation) of the neighbours. Works to the primary Clovelly Road façade are not proposed, maintaining the overall site’s heritage significance.

The provision of a high quality mixed use development with associated amenities will assist in meeting the considerable housing and locational context demand. The site’s overall built form sits comfortably within its

established and desired future built form local context and it has excellent access to the day to day needs of residents, whether they are services, facilities or amenities.

Finally, LPDS is not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

3.5 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?

The relevant objects of the Act as specified in Section 1.3, are in our opinion, achieved by the proposed development in that it:

- promotes the social and economic welfare of the community;
- facilitates ESD;
- promotes the orderly and economic use and development of land;
- promotes the sustainable management of built and cultural heritage;
- promotes good design and amenity of the built environment; and
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

A strictly complying development would result in the demolition of each heritage listed built form, a highly unlikely scenario and in that sense, it may be said that compliance with the standard would hinder the attainment of the objects of section 1.3 of the Act. A strictly complying development would result in a poorer urban design response to the overall site and the area generally. The site's redevelopment and subsequent departure from the FSR standard does not preclude or isolate an adjacent property(s) from being appropriately redeveloped. The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3.

3.6 Is there public benefit in maintaining the development standard?

Generally, there is public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the FSR standard is not achievable given the existing departing built form and would serve no purpose other than to impose numerical inflexibility and economic impracticality. A rigid and inflexible compliance based approach to the standard forgoes the opportunity to provide altered heritage listed built form with a high quality and complementary architectural design solution and improved landscape condition. Further the amenity of the neighbours has been maintained.

It is known that Council has considered applications favourably which depart from the FSR standard. There are no reasons why it is not in the public interest and its refusal based on the standard's departure is not warranted. Under the presented circumstances the variation to the FSR standard is in the public interest because it is not inconsistent with the objectives of the FSR standard and neither is it inconsistent with the objectives for development in the R2 Low Density Residential zone or those proposed for the future E1 Local Centre zone. Therefore, it is argued that there is no public benefit in maintaining the adopted FSR planning control.

On balance the variation to the FSR standard is an appropriate use of the provisions of Clause 4.6 and the development is therefore capable of being granted consent.

3.7 Is the objection well founded?

For the reasons outlined in previous sections, it is considered the objection is well founded in this instance and granting an exception to the development can be supported given the presented circumstances of the case. The development does not contravene the objects specified at Section 1.3 of the Act.

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4.0 CONCLUSION

The proposed variation to the FSR standard is based on the reasons contained within this formal request for an exception to the standard. A development strictly complying with the numerical FSR standard would not significantly improve the amenity of surrounding properties or Council's desired future built form character as:

- the proposal satisfies and achieves the objectives of the R2 Low Density Residential zone;
- the proposal (and the site's long term existing mixed use development) would be consistent with the future objectives and strategic intent of the E1 Local Centre zone as expressed under the RCPP;
- the proposal satisfies and achieves the objectives of the FSR standard;
- the built form is generally anticipated and is therefore consistent with the desired future character of the area. The visual catchment contains several buildings that will present a similar bulk and scale and which set the character, whether existing or likely future; and
- the alterations and additions improve the amenity of each dwelling's occupants, enables an appropriately designed and sited rear extensions to each property, does not preclude the same on nearby properties, maintains the site's overall heritage significance, maintains active ground floor non-residential tenancies and preserves the environmental amenity of neighbours.

It is concluded that the objection:

- is well founded;
- demonstrates that compliance with the standard is both unnecessary and unreasonable;
- demonstrates that there are sufficient environmental planning grounds in which to support the proposal; and
- the concurrence of the Secretary is likely to be forthcoming because there is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard and there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

On that basis, the consent authority can be satisfied that the proposed development is in the public interest because it is consistent with the objectives for development in the zone (existing and as proposed) and the objectives of the standard. It therefore is appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2012.

Appendix 3: DCP Compliance Table

Section B General Controls

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--------------------------|---|--|------------------------------------|
| B1 Design | | | |
| 3.2 Site analysis | (i) Submit a site analysis with all DAs for a new building or external alterations or additions to an existing building. | A site analysis plan for the development has been submitted. | Yes |
| B2 Heritage | | | |
| 2.1 Design and Character | <p>All Development</p> <p>(i) Development must demonstrate how it respects the heritage values of the heritage item or the heritage conservation area.</p> <p>(ii) Common elements and features of the streetscape are to be identified in a streetscape analysis and incorporated into the design.</p> <p>(iii) New development should be consistent with important horizontal lines of buildings in the streetscape, in particular ground floor levels and eaves lines, where appropriate.</p> <p>(iv) Large blank areas of brick or rendered walls should be avoided. Where this is not possible in the design, contrasting materials and treatments must be used to break up the expanse of wall.</p> <p>Heritage Items and Contributory Buildings</p> <p>(v) Street elevations and visible side elevations must not be significantly changed. Additions must be located to the rear or to one side of the building to minimise impact on the streetscape.</p> <p>(vi) The design of any proposed additions or alterations must complement the existing building in its scale, form and detailing. However, it should be possible to distinguish the new work from the old, on close inspection, so that old and new are not confused or the boundaries/junctions blurred.</p> <p>(vii) All new work and additions must respect the proportions of major elements of significant existing fabric including doors, windows, openings and verandas.</p> | <p>A Heritage Impact Statement has been submitted alongside the proposed development. The proposed works sought to the site have been reviewed by Council's Heritage Officer who supports the proposal from a heritage perspective. Reference should be made to Appendix 1 for further comments.</p> | Yes |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|-------------------------|---|--|------------------------------------|
| 2.4 Siting and Setbacks | <ul style="list-style-type: none"> (i) Development must conform to the predominant front setbacks in the streetscape. (ii) Development must respect side setbacks and rear alignments or setbacks of surrounding development. (iii) Front and rear setbacks should be adequate to ensure the retention of the existing landscape character of the heritage item or conservation area and important landscape features. (iv) Any significant historical pattern of subdivision and lot sizes must be retained. Subdivision or site amalgamation involving heritage items or contributory buildings must not compromise the setting or curtilage of buildings on or adjoining the site. | <p>The proposed development seeks a rear extension to the ground and first floor of Nos. 49 and 51 Clovelly Road and the ground floor of No.53 Clovelly Road.</p> <p>Council's Heritage Officer notes that the rear extensions are of appropriate setbacks, scale, style, form, and height, with clearly articulated separations from the existing wings and appropriate high quality and durable external fabric. The upper additions reference but remain subservient to existing design elements.</p> | Yes |
| 2.5 Detailing | <p>All Development</p> <ul style="list-style-type: none"> (i) Only detailing which is known to have been original to your building is acceptable. Do not add what was never there. <p>Heritage Items and Contributory Buildings</p> <ul style="list-style-type: none"> (ii) Retain and repair original doors, windows, original sunhoods, awnings, gable detailing and other decorative elements to principal elevations. Original leadlight and coloured glass panes should be retained. (iii) Where original windows, doors and façade detailing have been removed and replaced with modern materials, consideration should be given to reconstructing original features. (iv) Authentic reconstruction is encouraged. Decorative elements must not be introduced unless documentary or physical evidence indicates the decorative elements previously existed. Undertake thorough research before attempting to reconstruct lost detail and elements. (v) Alterations and additions should incorporate new doors and windows which are compatible with the position, size, and proportions and detailing of | <p>No detailing is proposed.</p> <p>Original door openings and fenestrations have been retained.</p> <p>Council's Heritage Officer has reviewed the proposal and advised that the proposal is acceptable from a heritage perspective.</p> | <p>N/A</p> <p>Yes</p> |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---|--|---|---|
| | <p>original windows and doors.</p> <p>(vi) Alterations and additions should adopt a level of detailing which complements the heritage fabric and should be less elaborate than the original.</p> | | |
| 2.6 Materials, Finishes and Colour Schedules | <p>All Development</p> <p>(i) Materials for pathways and driveways must be consistent with the character of the heritage item or heritage conservation area.</p> <p>Heritage Items and Contributory Buildings</p> <p>(ii) Changes to materials on elevations visible from a public place are not favoured. Original face brickwork must not be rendered, bagged or painted. The removal of external brickwork skin is not supported.</p> <p>(iii) Matching materials must be used in repairing the fabric of external surfaces. In the case of new face brickwork, the colour and texture of the brick, the type of jointing and mortar colour should be carefully matched.</p> <p>(iv) New of replacement roof materials must match existing materials. Alternative materials may be considered appropriate to the architectural style of the building and the streetscape context, and must be submitted for approval.</p> <p>(v) Alterations and additions must use materials and colours similar to, or compatible with, the original material or colours.</p> | <p>Council's Heritage Officer has reviewed the proposal and advised that the proposed materials and finishes are acceptable from a heritage perspective subject to conditions of consent should the application be determined for approval.</p> | <p>Yes, subject to conditions if the application was determined for approval.</p> |
| 2.9 Garages, Carports, Car spaces and Driveways | <p>All Development</p> <p>(i) Existing rear lane access or side street access must be utilised for carparking in preference to front access.</p> <p>(ii) Carparking structures are to be located to the side, or preferably to the rear of the building. Garages and carports must not be located forward of the building line.</p> <p>(iii) Open hard stand carspaces may be provided forward of the building line, but must be located adjacent to a side boundary, and generally not be greater than</p> | <p>As the proposal seeks the removal of the existing detached garage, no parking facilities are proposed on site.</p> <p>Council's Heritage Officer has raised no objections to the removal of the garage, siting that the garage is a later structure.</p> | <p>Yes</p> |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|-------------|---|--|------------------------------------|
| | <p>single car width.</p> <p>(iv) Existing building fabric, including verandahs and balconies, must not be altered to allow for the provision of a carparking structure or an open stand carspace.</p> <p>(v) Open hard stand carspaces must not dominate the setting of the building in terms of loss of planting, fencing or retaining walls.</p> <p>(vi) Carparking structures are to be unobtrusive and must be of materials, form and details which harmonise with and do not obscure views of the building. They must not be made larger by the provision of a bulky pitched roof.</p> <p>(vii) Existing driveways constructed of two separate wheel strips contribute to the character of the streetscape and must be retained where possible.</p> <p>(viii) Large areas of concrete should be avoided and alternative materials such as pavers, gravel or permeable paving must be considered.</p> <p>(ix) Buildings housing original stables, coach houses and interwar motor garages should be retained and conserved wherever possible.</p> | | |
| 2.10 Fences | <p>All Development</p> <p>(i) New and replacement front fences must not obscure building facades. High solid front fences are not appropriate.</p> <p>(ii) New fence heights and form must be appropriate to the character of the heritage item, or to the heritage conservation area.</p> <p>(iii) Lych gates must not be provided unless there is evidence that they originally existed.</p> <p>(iv) Side fencing forward of the</p> | <p>The proposed fences along Gilderthorpe Avenue will consist of open timber slats, ensuring the built form is not obscured from the streetscape while maintaining a suitable privacy protection measures.</p> <p>As noted by Council's Heritage Officer, the new fencing is complementary to the general streetscape.</p> <p>None proposed.</p> <p>No side fencing is</p> | <p>Yes</p> <p>Yes.</p> <p>N/A.</p> |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--|---|---|------------------------------------|
| | <p>building line must be simple with a level of detail and of materials and height compatible with the heritage item, contributory building or heritage conservation area.</p> <p>(v) Side and rear boundary fences should be preferably of traditional timber construction or otherwise of masonry construction. Colorbond metal fences are not appropriate.</p> <p>Heritage Items and Contributory Buildings</p> <p>(vi) Retain, repair or reconstruct original fences and retaining walls where possible.</p> <p>(vii) Where an original fence has been lost, new fencing should try to match the original style.</p> | <p>proposed forward of the building line.</p> <p>The proposed fencing will be a mix of timber and masonry construction.</p> <p>The proposed new fencing will complement the existing timber and brick fencing.</p> | <p>N/A</p> <p>Yes</p> <p>Yes</p> |
| 2.11 Gardens, Garden Elements and Swimming Pools | <p>All Development</p> <p>(i) Significant trees and landscape elements such as pathways, garden beds and structures must be retained.</p> <p>(ii) Large areas of hard paving are to be minimised.</p> <p>(iii) Garden and ancillary structures must be appropriate to primary buildings in terms of scale, style and materials.</p> <p>(iv) Swimming pools must be located at the rear of the property and where possible should retain important trees and areas of soft landscaping. Swimming pools must not result in significant changes to ground levels on the site.</p> | <p>No significant trees or landscape features are currently located on the subject site.</p> <p>The proposed development will reduce the extent of hardscape area and incorporate new landscaped and garden areas that are of a scale and style appropriate for the context of the site.</p> <p>No swimming pools are existing or proposed,</p> | <p>Yes</p> <p>Yes</p> <p>N/A</p> |
| B4 Landscaping and Diversity | | | |
| 3.1 Existing Vegetation and Natural Features | <p>(i) Maximise the retention and protection of existing vegetation including trees, shrubs and groundcover vegetation.</p> <p>(ii) Retain and incorporate existing natural features, such as cliffs and rock outcrops into the landscape design where possible.</p> <p>(iii) Retain and stockpile topsoil for reuse in the landscaped area.</p> | <p>The existing street trees located along Gilderthorpe Avenue will be retained. No significantly sized trees are located within the boundaries of the site.</p> | <p>Yes</p> |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---|--|--|------------------------------------|
| 3.2 Selection and Location of Plant Species | <p>(i) Native species must comprise at least 50% of the plant schedule, incorporating a mix of locally indigenous trees, shrubs and groundcovers appropriate to the area and surrounds.</p> <p>(ii) Link, extend and enhance existing fauna and flora habitats through appropriate selection and location of plant species, where relevant.</p> <p>(iii) Where suitable, incorporate food growing areas as part of the landscape design.</p> <p>(iv) Select and locate plants to improve the environmental performance and living amenity.</p> | <p>80% (4 out of 5) of the new landscape species sought will be native species.</p> <p>Although the subject site is not located adjacent to any vegetation corridors, the proposed development provides for improved and enhanced landscaping by replacing existing hardscaped areas with new garden and lawn areas.</p> <p>The proposed development includes the planting of a new olive tree capable of reaching a height of 5m within each property.</p> <p>The proposed landscaping will be directly accessible from the proposed living room,</p> | Yes |
| B6 Recycling and Waste Management | | | |
| 4. On-going Operation | <p>(iv) Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street where possible.</p> <p>(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.</p> <p>(vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.</p> <p>(vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step-free and unobstructed access to the collection point(s).</p> <p>(viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to</p> | No change to the existing waste storage arrangement is proposed. | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--|---|---|--|
| | enable source separation. | | |
| B7 Transport, Traffic, Parking and Access | | | |
| 3.2 Vehicle Parking Rates | <p>Business and office premises in residential zone: 1 space per 100m² GFA.</p> <p>Attached dwellings: 2 spaces per dwelling with 3 or more bedrooms.</p> <p>Note: Parking calculations should be rounded to the nearest whole number. Where the fraction is 0.5, then the figure must be rounded up to the next whole number.</p> | <p>The proposal is required to provide six (6) residential parking spaces. No commercial parking spaces are required as parking calculations are rounded to the nearest whole number.</p> <p>The proposed application does not provide any off-street car parking spaces.</p> | Refer to part 9.1 of this report for comments. |
| 3.7 Parking Layout Configuration and Dimensions | <p>i) An off-street car space must be a minimum of 2.4m by 5.4m long and comply with AS 2890.1.</p> <p>ii) Small car spaces as provided for in the Australian Standard are not permitted for dwelling houses, terraces, semi detached dwellings or attached dwellings.</p> <p>iii) Motor cycle parking spaces must be a minimum 2.5m by 1.2m and clearly marked.</p> <p>iv) Motor cycle spaces are to be designed and located so they are not vulnerable to being struck by manoeuvring vehicles.</p> <p>v) Motor cycle spaces must be located on flat and even surfaces as they rely on side-stands to park.</p> <p>vi) In all development except dwelling houses, semi-detached dwellings, all vehicles must enter and exit in a forward direction.</p> <p>vii) Unless otherwise stated, development is to comply with the relevant Australian Standard and the RMS Guidelines for car parking layout, dimensions, aisle widths, grades, access requirements for different uses & users, driveway widths, service and delivery needs.</p> | The off-street parking space initially proposed has been removed from the plans as per the recommendation from Council's Development Engineer. | Yes |
| B8 Water Management | | | |
| 3 Stormwater Management | This section sets out objectives and controls relating to the management, collection and discharge of stormwater into the stormwater system. | The proposed alterations and additions sought will connect to the existing stormwater drainage system. | Yes |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---------|--|------------------------------------|
| | | Council's development engineer has reviewed the proposal and raised no objections. | |

3.2 Section C1 Low Density Residential

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|--|
| | Classification | Zoning = R2 | |
| 2 | Site planning | | |
| 2.3 | Site coverage | | |
| | Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% | 49 Clovelly Street: Max = 83.22m ² (60%) Existing = 101.58m ² (73.2%) Proposed = 96.9m ² (69.8%) 51 Clovelly Street: Max = 76.8m ² (60%) Existing = 82.32m ² (64.3%) Proposed = 100m ² (78%) 53 Clovelly Street: Max = 89.82m ² (60%) Existing = 89.25m ² (59.6%) Proposed = 94.8m ² (63.3%) | Refer to part 9.1 of this report for comments. |
| 2.4 | Landscaping and permeable surfaces | | |
| | i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones. | 49 Clovelly Street: Min = 27.74m ² (20%) Existing = 0m ² Proposed = 26.84m ² (19.35%) 51 Clovelly Street: Min = 25.6m ² (20%) Existing = 0m ² Proposed = 14.7m ² (11.4%) 53 Clovelly Street: Min = 29.94m ² (20%) Existing = 0m ² . Proposed = 25.63m ² (17.12%) | Refer to part 9.1 of this report for comments. |
| 2.5 | Private open space (POS) | | |
| | Dwelling Houses & Semi-Detached Dwellings | | |
| | Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m | 49 Clovelly Street: 5.5m x 4.6m. | Refer to part 9.1 of this report for comments. |

| DCP Clause | Controls | Proposal | Compliance |
|--------------|---|---|--|
| | 601sqm or above = 8m x 8m 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 | <u>51 Clovelly Street:</u> 4.5m x 4.2m. <u>53 Clovelly Street:</u> 5.2m x 5m. | |
| 3 | Building envelope | | |
| 3.1 | Floor space ratio LEP 2012 = 0.5:1 | All three properties seek to vary the 0.5:1 FSR standard which applies to the site. | Variation sought – Refer to key issues section and Clause 4.6 variation assessment in this report. |
| 3.2 | Building height | | |
| | Maximum overall height LEP 2012 = 9.5m | The proposed alterations and additions on each property comply with the 9.5m building height standard. | Yes |
| | i) The maximum external wall height is 7m. For steeply sloping sites, the maximum external wall height is 8m. The minimum floor-to-ceiling height for living areas, such as living room / lounge and dining room, is 2700mm. | With exception to the wall height of the existing building, the proposed alterations and additions sought have an external wall height of 7.7m. | Refer to part 9.1 of this report for comments. |
| 3.3 | Setbacks | | |
| 3.3.1 | Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> 900mm for allotments with primary frontage width of less than 7m 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front | The proposed development does not alter the existing front setback to Clovelly Road (primary frontage). The proposed rear addition to No.49 Clovelly Road aligns with the existing nil boundary secondary setback to Gilderthope Avenue. | Yes. |
| 3.3.2 | Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> Frontage less than 6m = merit Frontage b/w 6m and 8m = 900mm for all levels | The northern wall of No.53, southern wall of No.49 and both northern and southern walls of No.51 have been built with a nil-boundary side | Yes. |

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| DCP Clause | Controls | Proposal | Compliance |
|--------------|---|---|--|
| | | <p>setback, consistent with the existing built form on the site.</p> <p>The rear addition of No.53 Clovelly Road will be setback 900mm from the southern side boundary, consistent with the 900mm side setback control which applies to residential dwellings.</p> | |
| 3.3.3 | <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>49 Clovelly Street: Min = N/A (Rear setback control does not apply to corner allotments). Proposed = 4.59m – 7.9m.</p> <p>51 Clovelly Street: Min = 6.5m – 6.7m. Proposed = 2.8m – 4.5m.</p> <p>53 Clovelly Street: Min = 6.7m - 6.88m. Proposed = 5.7m to 7.58m.</p> | Refer to part 9.1 of this report for comments. |
| 4 | Building design | | |
| 4.1 | General | | |
| | <p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m | <p>The proposed alterations and additions integrate with the existing form and design of the building. The existing topography of the site will be retained.</p> <p>The proposed alterations</p> | Yes. |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|--|--|
| | <ul style="list-style-type: none"> encourage innovative design | and additions do not result in any walls that are more than 12m in length. | |
| 4.5 | Colours, Materials and Finishes | | |
| | <ul style="list-style-type: none"> i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) | Council's Heritage Officer has imposed conditions of consent in relation to the materials and finishes. | Yes, subject to conditions of consent. |
| 4.6 | Earthworks | | |
| | <ul style="list-style-type: none"> i) excavation and backfilling limited to 1m, unless gradient too steep (does not apply to swimming or spa pool structures). ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. | The proposed alterations and additions sought require minimal earthworks to facilitate the proposed development. The existing topography of the site will be retained. | Yes. |
| 5 | Amenity | | |
| 5.1 | Solar access and overshadowing | | |
| | Solar access to proposed development: | | |
| | <ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June | The proposed north-facing windows will receive the minimum 3 hours of direct sunlight. | Refer to part 9.1 of this report for comments. |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|--|
| | ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. | While the submitted shadow diagrams indicate that private open space will receive direct solar access during the winter solstice at 12pm, insufficient information has been provided to determine whether the proposal achieves a minimum of 3 hours of direct sunlight between 8am and 4pm. | |
| | Solar access to neighbouring development: | | |
| | i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. | While the submitted shadow diagrams indicate that neighbouring private open space will receive direct solar access during the winter solstice at 12pm, insufficient information has been provided to determine whether the proposal achieves a minimum of 3 hours of direct sunlight between 8am and 4pm. The north facing enclosed balcony windows of the adjoining development at No.55 Clovelly Road, will be overshadowed by the proposed development. | No. Refer to part 9.1 of this report for comments. |
| 5.2 | Energy Efficiency and Natural Ventilation | | |
| | i) Provide day light to internalised | All habitable rooms are | Yes. |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|------------|
| | <p>areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p> | <p>provided with natural light via windows and skylights.</p> <p>The proposed bathrooms of No.49 and 51 Clovelly Road include windows which will allow for natural light and ventilation to enter the bathroom.</p> <p>The proposed living room will include windows and doors which will allow for direct access to outdoor areas.</p> | |
| 5.3 | Visual Privacy | | |
| | Windows | | |
| | <p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p> | <p>The proposed windows to the rear additions have been offset from the windows of the adjoining residential dwellings. Additionally, the proposed façade design around the proposed first floor windows ensures that there is no direct line of site to neighbouring windows or private open space areas.</p> | Yes. |
| | Balcony | | |
| | <p>iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side)</p> <p>iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70%</p> | <p>No upper level balconies are existing or proposed.</p> | N/A. |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|------------|
| | 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. | | |
| 5.4 | Acoustic Privacy | | |
| | i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. | The proposed layout of the attached dwellings has been carefully considered to separate noise-generating areas and quiet areas. The proposed bedrooms sought do not share a wall with any noise generating rooms. | Yes. |
| 5.5 | Safety and Security | | |
| | i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access) | Existing access to the residential portion of the buildings at Nos. 51 and 53 Clovelly Road has been retained. A new building entrance to No.49 Clovelly Road is proposed to directly face Gilderthorpe Avenue. The proposed secondary boundary fence will consist of open vertical slats to ensure casual surveillance of Gilderthorpe Avenue is not obstructed. | Yes. |
| 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 | No significant views or vistas will be impacted by the proposed development. | Yes. |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|------------|
| | obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used) | | |
| 6 | Car Parking and Access | | |
| 6.1 | Location of Parking Facilities: | | |
| | i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. iv) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces) | No on-site car parking is proposed. During the assessment process, Council's Engineer recommended that the hard stand car parking space should be removed from the proposal as it did not satisfy the required absolute minimum length of 5m. | N/A. |
| 7 | Fencing and Ancillary Development | | |
| 7.1 | General - Fencing | | |
| | i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street | The proposed development includes a masonry and timber slat fence to the Gilderthorpe Avenue frontage. | Yes. |
| 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 | A 1.73m side fence is proposed. | Yes. |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|------------|
| | height once past the front façade alignment. iv) Both sides treated and finished. | | |
| 7.6 | Air conditioning equipment | | |
| | i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings. | Air conditioning units can be located within the boundaries of each building and away from the view of the streetscape. | Yes. |
| 7.8 | Clothes Drying Facilities | | |
| | i) Located behind the front alignment and not be prominently visible from the street | Clothes drying facilities can be accommodated within the rear setback of each building | Yes. |

Responsible officer: GAT & Associates, Town Planners

File Reference: DA/350/2022

Development Application Report No. D19/24

Subject: 34 Clovelly Road, Randwick (DA/252/2023)


Executive Summary

| | |
|-----------------------------|--|
| Proposal: | Interior alterations to the ground floor level, between the existing residence and commercial premises. Rear alterations to the existing ground floor level residence. Rear alterations and addition to the existing first floor level commercial premises |
| Ward: | North Ward |
| Applicant: | Ms K Etkin |
| Owner: | Yokeza Pty Ltd |
| Cost of works: | \$297,000.00 |
| Reason for referral: | Variation to FSR standard by more than 10% |

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the 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. 252/2023 for interior alterations to the ground floor level, between the existing residence and commercial premises and to the existing ground floor level residence. Rear alterations and additions to the existing first floor level commercial premises at No. 34 Clovelly Road, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (mixed-use) - DA/252/2023 - 34 Clovelly Road, RANDWICK NSW 2031 - DEV - Randwick City Council

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1. Executive summary

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

- The development contravenes the development standard for floor space ratio by more than 10%

The proposal seeks development consent for interior alterations to the ground floor level, between the existing (Class 4) residence and (Class 5) commercial premises, rear alterations to the existing ground floor level residence, rear alterations and addition to the existing first floor level commercial premises (Heritage Conservation Area and variation to FSR).

The key issues associated with the proposal relate to impacts on identified contributory item within the heritage conservation area, waste management and floor space ratio.

The proposal is recommended for approval subject to standard conditions of consent and additional conditions recommended by Council's engineer and heritage officer.

2. Site Description and Locality

The subject site is known as No. 34 Clovelly Road, Randwick and is legally described as Lot 1 in DP 430758. The site is 186.5m², is irregular in shape and has a 7.025m frontage to Clovelly Road to the north east. The site contains a 1 & 2 storey brick shop and residence.

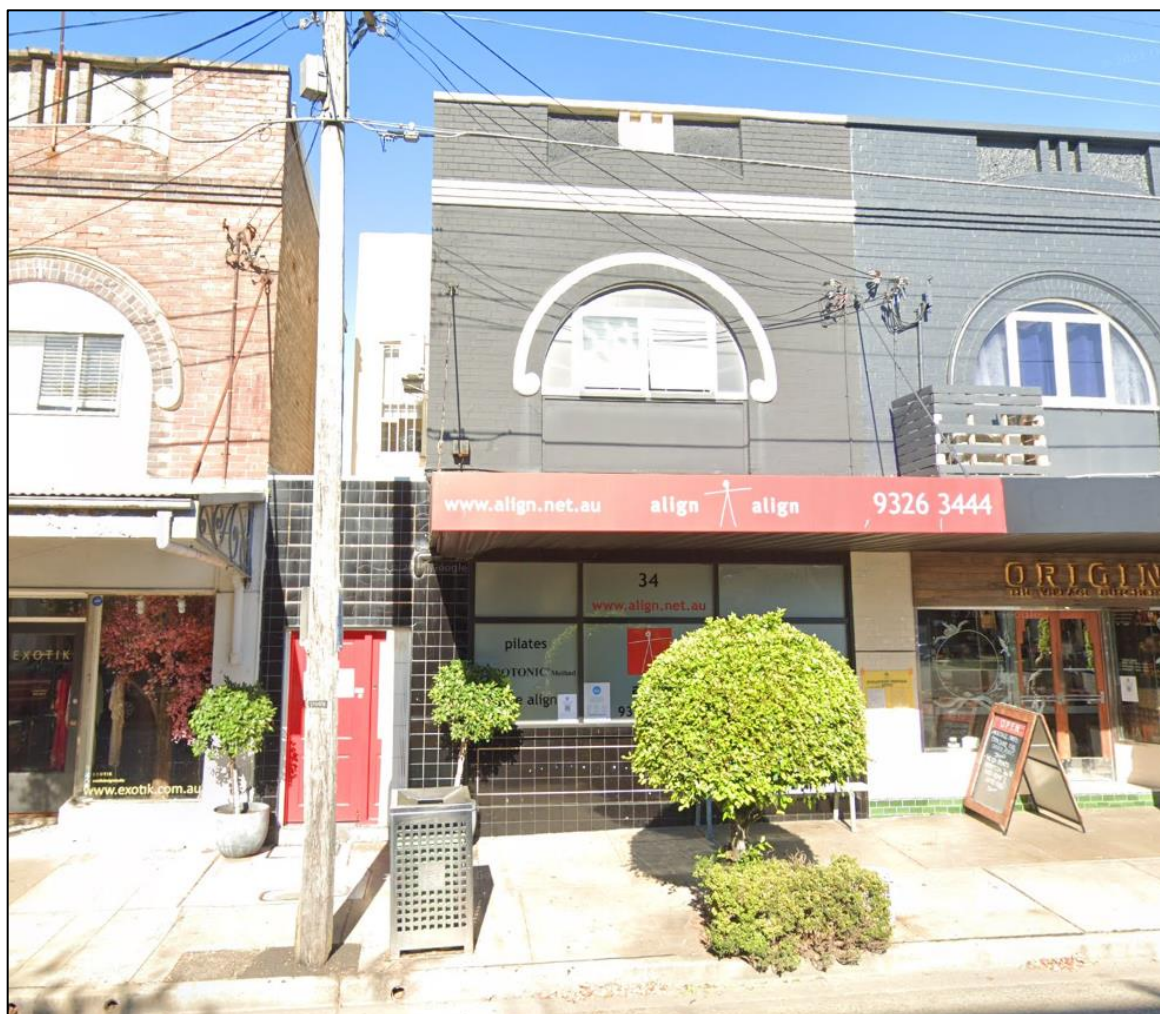


Figure 1 Subject Site

3. Relevant history

DA/385/2016 – Ground level alterations and additions to existing building, reconstruction of existing garage at rear to include ground level bathroom and first floor loft area with associated works. Approved on 5 August 2016.

DA/385/2016/A – Modification of approved development by deletion of Condition (2) relating to overall height of carport. Approved on 15 February 2017.

DA/51/2020 – Use of the garage fronting the rear right of way as a habitable room to be used ancillary to the existing dwelling, and alterations and additions to the existing dwelling. Approved on 13 August 2020.

4. Proposal

The proposal seeks development consent for interior alterations to the ground floor level, between the existing residence and commercial premises, rear alterations to the existing ground floor level residence and rear alterations and additions to the existing first floor level commercial premises.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No submissions were received.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned E1 Local Centre under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the ongoing viability of the centre whilst integrating residential development in a suitable manner that protects the amenity of the local residents.

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

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------------|----------------------|--|---------------------|
| Cl 4.4: Floor space ratio (max) | 1:1 (186.5sqm) | 1.23:1 (230.7sqm). Existing FSR = 1.1:1 (205.23sqm) | NO |
| Cl 4.3: Building height (max) | 9.5m | 8.26m | YES |

6.2.1. Clause 4.6 - Exceptions to development standards

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

6.2.2. Clause 5.10 - Heritage conservation

The site is located within the North Randwick Heritage Conservation Area (local and state significance). The application is accompanied by a heritage impact statement in accordance with the requirements of Clause 5.10.

Council's heritage planner provided comment on 10 July 2023. The proposal was found to have no impact on the wider HCA nor the immediate neighbourhood. There will be no impact on the building's front façade, or any aspect of its character or perceived relationship within the row of buildings on Clovelly Road. The proposed development is at the rear and subservient to the original building. The building's existing roof form, materials, colours, and finishes will be retained. All new metal roofing will match the existing palette.

Subject to appropriate conditions, the proposal is considered to satisfy the requirements of cl. 5.10.

6.2.3. Clause 6.4 - Stormwater Management

The proposed development would not increase the extent of impermeable surfaces at the site. The proposed alterations and additions would utilise existing stormwater management measures including gutters and drainage pipes.

The proposal meets the requirements of clause 6.4.

6.2.4. Clause 6.10 - Essential Services

All essential services are readily available at the site.

6.2.5. Clause 6.14 - Certain Residential Accommodation in Zones E1 and E2

Clause 6.14(3) requires the following.

- (3) *Development consent must not be granted to a dwelling house or a residential flat building on land to which this clause applies unless—*
- (a) *The development relates to a building that existed when this Plan commenced and was designed or constructed for the purposes of a dwelling house or a residential flat building, and*
 - (b) *The consent authority is satisfied that –*
 - (i) *The development will not detrimentally impact on the desired future character of the locality, and*
 - (ii) *The development will result in satisfactory residential amenity for its residents, and*
 - (iii) *The degree of modification to the footprint and façade of the building is minor.*

The existing building at the site was constructed about 1910. The building therefore predates the commencement of the *Randwick Local Environmental Plan 2012*.

Upon review of the application's accompanying architectural drawings, the proposal is unlikely to give rise to adverse impacts on the desired future character of the locality. All works are proposed at the rear of the principal building and would not change the building's presentation to Clovelly Road.

The proposed alterations and additions would provide enhanced internal amenity for residents through the provision of an expanded living room and additional bathroom.

The degree of modifications to the footprint of the building is relatively minor, with only 24.84sqm of additional floor space being added to the building. The front façade would not be altered.

Based on the above, the proposal meets the requirements of cl. 6.14.

6.2.6. *Clause 6.22 - Development in local centres*

Clause 6.22(3) requires the following.

- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered—*
- (a) *The impact of the development on –*
 - (i) *The amenity of surrounding residential areas, and*
 - (ii) *The desired future character of the local centre, and*
 - (b) *Whether the development is consistent with the hierarchy of centres.*

The proposed development is unlikely to adversely affect the amenity of the surrounding residential areas. The proposed alterations and additions are concentrated at the rear of the development and would not affect the streetscape of Clovelly Road. Temporary impacts relating to demolition and construction works can be managed by appropriate conditions of consent. The works are broadly compatible with the desired future character of the local centre.

The proposal maintains the existing configuration of land-uses at the site and would result in a minor increase in commercial floor space (+24.84sqm). The proposal would maintain the hierarchy of centres.

7. **Clause 4.6 exception to a development standard**

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

| Clause | Development Standard | Proposal | Proposed variation | Proposed variation (%) |
|------------------------------------|----------------------|-----------------------|------------------------------------|------------------------|
| Cl 4.4: Floor space ratio (max) | 1:1 (186.5sqm) | 1.23:1 (230.07sqm) | 43.57m ² (+24.84sqm) | 23% (+13%) |

| | | | | |
|--|--|--|--------------------|--|
| | | | from existing GFA) | |
|--|--|--|--------------------|--|

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

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

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

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

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

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

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

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

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

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the building's presentation to the street would not change as a result of the development and the provision of additional floor space at the site. The proposed development is noted to be consistent with similar recent developments in the area (such as the adjoining premises at No. 32 Clovelly Road) and therefore compatible with the desired future character of the locality.

The applicant's justification is acceptable, and it is agreed that the development meets the first objective of cl. 4.4 of the RLEP 2012.

- (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 will retain the building's rear secondary form and is designed with essential elements to make the building sustainable and efficient.

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

The applicant's justification is acceptable, and it is agreed that the development meets the second objective of cl. 4.4 of the RLEP 2012.

- (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 proposed alterations and additions are to the rear of the existing building and will have no impact on its character and presentation to the local streetscape, or its contribution to the heritage conservation area.

The applicant's justification is acceptable and it is agreed that the development meets the third objective of cl. 4.4 of the RLEP 2012.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed rear alterations and development will not adversely impact on the amenity of adjoining or neighbouring properties. Window placement to the upper-level addition will ensure that there is no loss to visual privacy to adjoining private open spaces. The submitted shadow diagrams indicate that the rear development does not create adverse overshadowing or loss to solar access.

The applicant's justification is acceptable and it is agreed that the development meets the fourth objective of cl. 4.4 of the RLEP 2012.

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

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

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

- The variation to the floor space ratio control is inconsequential as it has no impact to the adjoining streetscape and negligible impact to the amenity of neighbouring properties, whilst consistent with the extent of development in the locality.

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. It is also noted that the existing development already exceeds the maximum floor space permitted at the site, and that the proposed alterations and additions would only marginally increase the extent of non-compliance.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Floor Space Ratio standard and E1 Local Centre zone is provided below:

Assessment against objectives of floor space ratio standard

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

Assessment against objectives of E1 Local Centre zone

The objectives of *E1 Local Centre* zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*
- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*
- *To facilitate a safe public domain.*
- *To support a diverse, safe and inclusive day and night-time economy..*

Assessing officer's comment: The proposed development will:

- Provide enhanced residential facilities and commercial floor space at the site that serve the needs of people who live in, work in and/or visit the area;
- Provide additional local employment opportunities during the construction and operation of the development.
- Provide Suitable residential development that is compatible with the local centre and is consistent with Council's strategic planning for the area.
- Retain existing ground floor active use at the site.
- Provide additional commercial floor space in a highly accessible area, thereby promoting walking, cycling and public transport patronage.
- Be constructed using high quality materials and finishes that are compatible with the existing building and will contribute to achieving a sense of place for the local community.
- Not give rise to adverse amenity impacts (subject to suitable conditions of consent) due to the minor nature of the works.
- Not have any adverse impact on the safety of the public domain.
- Contribute to the local (day) economy.

The development is consistent with the objectives of the floor space ratio standard and the *E1 Local Centre* zone. Therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

| Section 4.15 'Matters for Consideration' | Comments |
|---|---|
| Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument | See discussion in sections 6 & 7. |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | Nil. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2. |
| Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement | Not applicable. |

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

10. Conclusion

That the application for interior alterations to the ground floor level, between the existing residence and commercial premises and to the existing ground floor level residence. Rear alterations and additions to the existing first floor level commercial premises be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the E1 Local Centre zone in that the proposed activity and built form will provide residential development that is well-integrated with, and supports the primary business function of the zone.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The proposed development will make a positive contribution to the local centre.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The Site

The subject site is located at 34 Clovelly Road Randwick on the south-west side of the street, near its intersection with Earl Street. It is one of a group of small shops on Clovelly Road, and the rear of the site is accessed *via* a small private lane off Earl Street. The legal land parcel is designated as Lot 1 in Deposited Plan 430758 with a site area of 186.5 m2.

This premises was constructed about 1910 and presents as a two-storey attached terrace brick building with metal roof. It shows such elements of Federation-Free-Style, as the arched parapet, semi-circular window with 'eyebrow' detailing and (originally) open verandas. Adjoining to the northwest and southeast are typical matching brick buildings (No's 30 & 32 Clovelly Road), and (No's 36 & 38 Clovelly Road) respectively. These have 'shop top' housing located either above or to the rear of the ground level retail frontage and this characteristic of the immediate precinct as it was commercially developed in the early twentieth century. As with numerous such commercial groups from that era, the subject premises now presents in painted brick.

The subject site is not an individually listed Heritage Item, nor is it in the vicinity of any listed Heritage Items. However, it is located within the North Randwick Heritage Conservation Area (C1) in which many of the commercial and residential buildings and streetscapes retain an essential period presentation. This site also falls within the considerations of the Clovelly Road Precinct Streetscape Master Plan which recognises an established village character, with important consideration for public domain presentation. Nevertheless, it is also acknowledged that in this precinct there have been substantial interior and rear alterations over time to adapt for purpose. This includes the opening of walls dividing what were originally smaller spaces, as well as the removal of period detailing.

Background

These interior moderations have continued into recent time and this subject building has had several DA approvals over the last two decades. These include: Adaptations for a Pilates and Physiotherapy Studio (Approval January 2004); Alterations to the existing rear ground floor for open plan living area with kitchen facilities (Approval August 2016); Alterations to existing rear outbuilding (garage) for new bathroom and laundry facilities, and loft addition above (Approval August 2016); Addition of a covered walkway link between the existing building (rear) and outbuilding (Approval February 2017); and conversion of the former garage to a habitable room (Approval August 2020).

Proposal

This Development Application seeks consent for:

- Interior alterations to the ground floor level, between the existing (Class 4) residence and (Class 5) commercial premises
- Rear alterations to the ground floor level (Class 4) residence to provide a new *en suite* to the existing bedroom
- Rear alterations and addition to the existing first floor level (Class 5) commercial premises

Submission

For the purposes of this development application the proposal is accompanied by the following documentation:

- A full set of architectural drawings prepared by *Ark Design Studio* dated as 25 March 2023 (and received by Council 16 June 2023)
- A professionally prepared Statement of Environmental Effects by *Ark Design Studio* May 2023 (and received by Council)
- A professionally prepared Statement of Heritage Impact, prepared by *Ark Design Studio* May 2023 (and received by Council 16 June 2023)

Controls

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

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

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

Comments

A careful examination of this proposal demonstrates the following considerations:

- The subject site is not an individually listed Heritage Item nor in the vicinity of any individually listed Items, nor a contributory building within the precinct
- However, the subject site is located within the North Randwick Heritage Conservation Area (C1) and it forms part of the commercial village character analysis of the Clovelly Road Precinct Streetscape Master Plan
- However, the proposed development will have no impact on the wider HCA, nor the immediate neighbourhood. There will be no impact upon the building's front façade, or any aspect of its character or perceived relationship within the row
- The proposed development is at the rear and subservient to the original building
- It is substantially within the interior of the subject site with no external impact on either primary or secondary streetscapes
- The building's existing roof form, materials colours, and finish will be retained. All new metal roofing will match existing palette
- The proposed development does not alter existing building to boundary setbacks
- The proposed development maintains an appropriate scale and form within the premises

Recommendation

The following conditions should be included in any consent:

The colours, materials and finishes of the external surfaces to the building are to be compatible with the existing building and surrounding buildings in the heritage conservation area and consistent with the architectural style of the building. The proponents shall submit a Materials Board schedule of colours and finishes to be approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

1.2. Development Engineer

An application has been received for alterations and additions to the existing residence and commercial premises at the above site.

This report is based on the following plans and documentation:

- Architectural Plans by Ark Design Studio dated 25-03-2023;
- Statement of Environmental Effects by Ark Design Studio dated May 2023
- Detail & Level Survey by John B Stephen dated 29-04-2022

General Comments

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

The only aspect of note to Development Engineering is the proposed additional 3rd Pilates studio on Level 1 which had the potential to add to the generated parking demand on the site however this has been negated by the reduction in the number of treatment rooms from 3 to 2 (see parking comments).

Parking Comments

The proposed 3rd Pilates studio on level 1 will have a floor area of approx. 20m². When adopting the DCP parking rate of 1 space per 25m² for indoor recreational facilities this will increase the generated parking demand on the site by 0.8 spaces.

The number of treatment rooms will however be reduced from 3 to 2 as a result of the proposed additions. Under the DCP parking rate for health consulting room of 2 spaces per consulting room this therefore reduces the parking demand by 2 spaces thereby negating any increase generated by the Pilates studio and technically resulting in a lower parking demand than pre-development although it is noted that this would still result in a shortfall overall.

No off-street parking is available on the site and there is currently no opportunity to provide any. Notwithstanding the proposed development should not result in any increased impacts in the availability of on-street parking and no objections are raised from a parking perspective.

Drainage Comments

Stormwater runoff from the (redeveloped portion) site shall be discharged to the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system).

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.

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

LOCATION OF PROPERTY

34 Clovelly Road Randwick NSW 2031
Lot 1 / DP 430758

DESCRIPTION OF WORK

- Interior alterations to the ground floor level, between the existing (Class 4) residence and (Class 5) commercial premises
- Rear alterations to the ground floor level (Class 4) residence to provide a new en suite to the existing bedroom
- Rear alterations and addition to the existing first floor level (Class 5) commercial premises to provide a Pilates studio space and physiotherapy treatment rooms

Refer to submitted Drawing No's: ARK871-5-1[A] to ARK923-5-9[A]

PLANNING INSTRUMENT

Randwick Local Environment Plan 2012 (2013 EPI 36)

ZONING

Zone E1 Local Centre Zone

ZONING OBJECTIVES

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*
- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*
- *To facilitate a safe public domain.*
- *To support a diverse, safe and inclusive day and night-time economy.*

The proposed development is permissible with consent and consistent with the objectives of the zone.

Specifically, it provides well-integrated residential development that supports the primary business function of the subject property within the zone. The proposed development, by virtue of its existing use, demonstrates that there is no adverse impact on the amenity of the adjacent residents or nearby residential areas.

LEP CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

PART 4 PRINCIPAL DEVELOPMENT STANDARDS

4.6 Exceptions to development standards

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

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

(5) *In deciding whether to grant concurrence, the Planning Secretary must consider:*

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

(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.*

Pursuant to Clause 4.6(2), development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. This clause applies to the **Floor space ratio** development standard.

In accordance with Clause 4.6(3), this written request seeks to justify contravention with the aforementioned development standard.

DEVELOPMENT STANDARD

PART 4 PRINCIPAL DEVELOPMENT STANDARDS

4.4 Floor space ratio

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

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

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the maximum floor space ratio for a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential is not to exceed -

- (a) if the lot is more than 300 square metres but not more than 450 square metres—0.75:1, or
- (b) if the lot is more than 450 square metres but not more than 600 square metres—0.65:1, or
- (c) if the lot is more than 600 square metres—0.6:1.

(2B) Despite subclause (2), there is no maximum floor space ratio for a dwelling house or semi-detached dwelling on a lot that has an area of 300 square metres or less.

Development Standard Performance Criteria

Site Area = 186.5 m²

Maximum permissible Gross Floor Area (GFA) calculated in accordance Clause (2) = 186.5 m² (FSR = 1:1)

Level of Non - Compliance with Development Standard

Based on the DA submitted floor plans and calculations, the proposed GFA = 230.07 m² (FSR = 1.23:1).

This exceeds the maximum permissible GFA by 43.57 m².

It should be noted that the existing GFA = 205.23 m²; therefore, the actual additional floor area = 24.84 m².

JUSTIFICATION OF PROPOSED VARIATION

Planning NSW (formerly the Department of Planning & Infrastructure) released a guide for varying development standards pursuant to Clause 4.6 of the Standard Instrument LEP for councils and the general public in August 2011. The provisions contained under Clause 4.6 were implemented to allow flexibility in the application of certain development standards to achieve better development and site outcomes where such standards would otherwise result in unnecessary and unreasonable barriers to suitable development types.

The proposed development at 34 Clovelly Road Randwick is a rationalisation of existing spaces to better utilise the available area to meet the demands of 21st century residential living conditions and standards, whilst improving the long-standing and successful business function of the subject property. The proposal achieves a better development and site outcome than if strict adherence to the numerical standard was adhered.

The aforementioned guide calls for applicants to justify the need to vary particular development standards by considering the following:

- whether strict compliance with the standard, in the particular case, would be unreasonable or unnecessary and why, and
- demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

The guide sets out a five-part test established by the NSW Land & Environment Courts (*Wehbe v Pittwater Council* [2007] NSWLEC 827), to be considered for all applications under Clause 4.6, addressed by applicants and considered by Councils. An assessment of the proposed floor space ratio variation against the five-part test considerations is provided below:

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

The objectives of the Floor Space Ratio development standard are as follows:

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

Comment: Notwithstanding the proposed non-compliance presented, it is considered that the overall FSR and development is consistent with the first objective of the development standard, in that the building's presentation to the street does not change nor adversely impacted by the additional floor space. The proposed development is consistent with similar recent developments in the area (such as the adjoining premises at No 32 Clovelly Road), and therefore compatible with the desired future character of the locality.

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

Comment: The proposed development will retain the building's rear secondary building form and is designed with essential elements to make the building sustainable and energy efficient.

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

Comment: As noted in response to the first objective, the proposed alterations are to the rear of the existing building and will have no impact on its character and presentation to the local streetscape, or its contribution to the C1 North Randwick Heritage Conservation Area.

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

Comment: The proposed rear alterations and development will not adversely impact on the amenity of adjoining or neighbouring properties. Window placement to the upper-level addition will ensure there is no loss to visual privacy to adjoining private open spaces. The submitted shadow diagrams indicate that the rear development

does not create adverse overshadowing or loss to solar access.

Refer also to comments under '*Consistency with the objectives of the standard*'.

2) *the underlying objectives or purpose of the standard is not relevant to the development and therefore compliance with the standard is unnecessary;*

Comment: The underlying objectives and purpose of the standard are relevant to the core residential and commercial use, and as a general statement reasonable; in this case the underlying objectives and purpose are satisfied. However, a development that strictly complies with the FSR standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The proposal is consistent with the objectives of the Floor Space Ratio development standard, and the objectives of the *E1 Local Centre* zone as outlined in section **Zoning**;
- The proposal will result in a built form that is consistent with the built form in the immediate and wider vicinity of the site, and that is of a bulk and scale that is equivalent or less than the majority of residential buildings in the immediate vicinity;
- The proposed variation will result in a density of development that is equal to or less than many buildings in the immediate vicinity and in that regard does not represent a development that is out of character with adjacent or neighbouring development.

3) *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unnecessary;*

Comment: Compliance does not defeat the underlying objectives of the development standard; however, compliance would prevent the approval of an otherwise supportable development. Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by Clause 4.6(1)(a) and (b).

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;*

Comment: The standard has not been abandoned or destroyed by the council's own actions. However, consents have been granted for numerous applications in the area which have similar (and in some cases larger) departures from the standard than what is proposed by this development. It is assumed that these consents were granted because the proposals met the objectives of the development standard and the desired future character of the area. It is considered that this development application also meets this criterion so that compliance with the development standard is unnecessary and unreasonable.

5) *the compliance with the development standard is unreasonable or inappropriate due to the existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Comment: The development standard is applicable and appropriate to the zone.

JURISDICTIONAL GUIDANCE

This application has been prepared in accordance with the NSW Department of Planning, Infrastructure and Environment (DPI&E) guideline Varying Development Standards: A Guide, August 2001, and has incorporated as relevant principles identified in the following judgements:

- Samadi Developments Pty Ltd v City of Sydney Council [2014] NSWLEC 1199
- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
- Wehbe v Pittwater Council [2007] NSWLEC 827;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1');
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2');
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 ('Four2Five No 3');
- Micaul Holdings Pty Limited v Randwick City Council (2015) NSWLEC 1386;
- Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC7;
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- RebelMH Neutral Bay v North Sydney Council [2019] NSWCA 130;
- Baron Corporation v The Council of the City of Sydney [2019] NSWLEC 61; and
- Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245.

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed, refer *Samadi Developments Pty Ltd v City of Sydney Council [2014] NSWLEC 1199*. Paragraph 27 of the said judgement stated four preconditions on the court in exercising the power to grant consent:

Consistency with zone objectives

Comment: It is considered that the proposed development will be consistent with the zone objectives and the desired future character of the surrounding locality, for the following reasons:

- The proposed development will enhance the existing business function of the premises and its contribution to the needs of the local community.
- The proposed development is an investment in the local area and will generate further employment opportunities and economic growth.
- The proposed ground floor level alterations will improve the existing residential development and will in turn contribute positively to local centre, consistent with the Council's strategic planning for residential development in the area.
- The proposal will retain the existing commercial use to the front of the building on the ground floor level, and supports a diverse, safe and inclusive day and night-time economy.
- The proposed alterations will retain the architectural character of the existing building and has endeavoured to minimise the impact of development, protecting the amenity of residents within the zone and in adjoining residential zones.

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum floor space ratio development standard, whilst maintaining consistency with the zone objectives.

Consistency with the objectives of the standard

Comment: Despite the variation to the floor space ratio development standard, the proposed alterations and additions to the existing building are considered to be in keeping with the bulk and scale of development in the local area and the desired future character of the locality.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Accordingly, it is considered that the proposal is consistent with the objectives of the development standard.

Consideration of a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Comment: It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of alterations and additions to an existing 'mixed use' building.

It is considered that the proposal achieves the Objectives of Clause 4.4 and that the development is justified in this instance for the following reasons:

- The proposed works are sited to the rear of the building, and therefore the building's presentation to the streetscape remains unchanged.
- The proposed alterations will not significantly increase the overall bulk and scale of the existing building, maintaining amenity and appropriate solar access for the subject site and neighbouring properties.

With respect to the above reasons, it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Comment: It is considered there are sufficient environmental planning grounds to justify a variation of the floor space ratio development standard.

In the judgement *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, the commissioner (Pearson C) outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case-by-case basis and is for the consent authority to determine for itself.

An appeal of *Micaul Holdings Pty Ltd v Randwick City Council* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2017 the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the floor space ratio and FSR development standard.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ... that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, in regards to the proposed development at 34 Clovelly Road Randwick, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The variation to the floor space ratio control is inconsequential as it has no impact to the adjoining streetscape and negligible impact to the amenity of neighbouring properties, whilst consistent with the extent of development in the locality.

The aforementioned environmental planning grounds are the circumstance which are particular to the development which merit a variation to the development standard.

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CONCLUSION

This development proposes a departure from the maximum floor space ratio standard, with the proposed alterations and additions to the existing building resulting in a floor space ratio of 1.23:1.

This variation occurs as a result of the siting and extent of the existing development on site.

This objection to the maximum floor space ratio specified in Clause 4.4(2) of the Randwick LEP 2012 adequately demonstrates that the objectives of the standard will be met and the development is appropriate for the site and locality.

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the floor space ratio development standard, and
- c) that having regard to (a) and (b) above, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- d) that given the design quality of the development, and the development's ability to comply with the zone and development standard objectives, approval would not be antipathetic to the public interest, and
- e) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, it is considered that there is no statutory or environmental planning impediment to the granting of variation to the floor space ratio development standard, and strict compliance would be unreasonable and unnecessary in the circumstances of this case.

Appendix 3: DCP Compliance Table**3.1 Section B1 Design**

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|-------------------------------------|--|------------------------------------|
| 3. | DA Requirements | | |
| 3.2(i) | Submit a site analysis with all DAs | Site analysis submitted in accordance with council requirements. | Yes |

3.2 Section B2 Heritage

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|--|------------------------------------|
| 2. | Development Controls | | |
| 2.2(i) | Development must demonstrate how it respects the heritage values of the heritage item or the heritage conservation area (as detailed in the statements of significance and key characteristics outlined in this section of the DCP). | Application is accompanied by a heritage impact statement prepared by Ark Design Studio dated May 2023. | Yes |
| 2.2(ii) | Common elements and features of the streetscape are to be identified in a streetscape analysis and incorporated into the design (e.g. view corridors, built form, fencing styles, extent of soft landscaping, significant trees and driveway locations). | No work/impact on streetscape. | N/A |
| 2.2(iii) | New development should be consistent with important horizontal lines of buildings in the streetscape, in particular ground floor levels and eaves lines, where appropriate. | Horizontal lines of the principal façade of the building will remain unaltered. | Yes |
| 2.2(iv) | Large blank areas of brick or rendered walls should be avoided. Where this is not possible in the design, contrasting building materials and treatments must be used to break up the expanse of wall. | Complies. | Yes |
| 2.2(v) | Street elevations and visible side elevations must not be significantly changed. Additions must be located to the rear or to one side of the building to minimise impact on the streetscape. | Alterations and additions are concentrated at the rear of the site with no streetscape impact. | Yes |
| 2.2(vi) | The design of any proposed additions or alterations must complement the existing building in its scale, form and detailing. However, it should be possible to distinguish the new work from the old, on close inspection, so that old and new are not confused or the boundaries/junctions blurred. | Proposal would result in only a minor increase to the built form of the existing development at the site. Compatible materials and finishes are used to distinguish new additions upon close inspection. | Yes |
| 2.2(vii) | All new work and additions must respect the proportions of major elements of significant existing fabric including doors, windows, openings and verandas. | Condition recommended that requires the proponent to use colours, materials and finishes that are consistent with | Conditioned. |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|--|------------------------------------|
| | | the architectural style of the building. | |
| 2.3(iv) | Additions must not visually dominate, compete with or conceal the original form and massing of the existing buildings. | The form and massing of the principal building would remain largely intact and unaffected when viewed from Clovelly Road. | Yes. |
| 2.4(i) | Development must conform to the predominant front setbacks in the streetscape. | No change proposed to existing front setback. | Yes |
| 2.4(ii) | Development must respect side setbacks and rear alignments or setbacks of surrounding development. | Proposal maintains existing rear setbacks. The upper floor addition would maintain the existing side boundary setback. | Yes |
| 2.5(i) | Only detailing which is known to have been original to your building is acceptable. Do not add what was never there. | No additional detailing is proposed. | Yes |
| 2.5(ii) | Alterations and additions should incorporate new doors and windows which are compatible with the position, size, and proportions and detailing of original windows and doors. | New windows are compatible with the size, position and proportion of existing windows at the site. | Yes |
| 2.5(vi) | Alterations and additions should adopt a level of detailing which complements the heritage fabric and should (in general) be less elaborate than the original. | Minimal detailing is proposed. | Yes |
| 2.6(iv) | New or replacement roof materials must match existing materials. Alternative materials may be considered appropriate to the architectural style of the building and the streetscape context, and must be submitted for approval. | Condition recommended that requires the proponent to use colours, materials and finishes that are consistent with the architectural style of the building. | Conditioned. |
| 2.6(v) | Alterations and additions must use materials and colours similar to, or compatible with, the original material or colours. | Condition recommended that requires the proponent to use colours, materials and finishes that are consistent with the architectural style of the building. | Conditioned. |

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3.3 Section B3 Ecologically Sustainable Development

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|--|------------------------------------|
| 2. | Building Materials and Finishes | | |
| 2.2(ii) | Rainforest timbers or timbers cut from old growth forest must not be used | Can be conditioned. | Conditioned |
| 3. | Energy and Water Efficiency | | |
| 3.2(i) | Buildings are to be oriented and designed to achieve optimum solar access and natural ventilation where practical. | Additional windows provided on upper floor tenancy for natural light | Yes. |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|--|------------------------------------|
| | | and ventilation. | |
| 3.2(ii) | On site renewable energy systems (e.g. solar energy, heat pump technology and the like) are to be installed where practical and effectively integrated to complement the overall building design | No on-site renewable energy system proposed. | N/A |
| 3.2(x) | Internal walls and partitions are to be positioned to provide cross flow ventilation through the building. | Cross flow ventilation available on upper floor from windows facing Clovelly Road through to the rear of the site. | Yes |

3.4 Section B6: Recycling and Waste Management

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|---|------------------------------------|
| 2. | Recycling and Waste Management Plan | | |
| (i) | Submit a Waste Management Plan. | Waste management plan provided. | Yes |
| (ii) | Prepare the Waste Management Plan in accordance with Council's Waste Management Guideline and the template plan in Appendix B6-1. | | Yes |
| 3. | Demolition and Construction | | |
| (i) | Identify in the Waste Management Plan, the type and estimated volume of waste to be generated during demolition and construction and respective recycling, reuse and disposal methods. | Complies. | Yes |
| (ii) | Illustrate on the DA plans/drawings: a) the location and space allocated for the storage of demolition and construction waste or materials; b) waste collection point(s) for the site; and c) path of access for collection vehicles | Details not shown on plans. Condition of consent can be made requiring that such details be provided to principal certifier prior to issue of CC. | Conditioned. |
| (iii) | Provide separate bins or storage areas for materials to be reused, recycled and directed to landfill. | Condition of consent can be made requiring that such details be provided to principal certifier prior to issue of CC. | Conditioned. |
| (iv) | Storage areas must be easily accessible for collection vehicles, clearly signposted indicating purpose and content and managed appropriately to prevent stormwater pollution, damage to vegetation and odour and health risks. | Condition of consent can be made requiring that such details be provided to principal certifier prior to issue of CC. | Conditioned. |
| (v) | Demonstrate in the Waste Management Plan the use of second hand building materials and recycled building products during building design and construction. | Complies. | Yes |
| (vi) | Retain records (including receipts) on site demonstrating recycling and lawful disposal of waste. | Can be conditioned. | Conditioned. |
| 4. | Ongoing Operation | | |
| (ii) | Identify in any required Waste | Details provided on | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|---|------------------------------------|
| | Management Plan: a) estimated volume of general waste, recyclables, garden waste and bulky waste likely to be generated on the premise; b) required type, size and number of bins and space for storage of bins and bulky waste; and d) details of on-going management arrangements, including responsibility for cleaning, transfer of bins between storage facilities and collection points and maintenance of the storage facilities. | accompanying waste management plan. | |
| (iii) | Illustrate on the DA plans/drawings: a) storage space and layout for bins; b) storage room for bulky waste; c) waste collection point(s) for the site; d) path of access for users and collection vehicles; and e) layout and dimensions required to accommodate collection vehicles when on-site collection is required. | No change to existing waste management on site. | N/A |

3.5 Section B: Transport, Traffic, Parking and Access

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---|--|--|------------------------------------|
| 3. Parking & Service Delivery Requirements | | | |
| | <p>Car parking requirements:</p> <p>Dwelling house: 1 space per dwelling house with up to 2 bedrooms.</p> <p>Indoor recreation facility: 1 space per 25 sqm GFA or transport assessment study.</p> | <p>No parking spaces are proposed on-site. The alterations and additions would enlarge the existing dwelling but would not increase the quantity of bedrooms. The additions to the Pilates studio would not increase floor space by more than 25 sqm – therefore, additional on-site parking would not be required.</p> <p>In this regard, the existing shortfall of parking is being maintained and will not be exacerbated under the proposal.</p> | Yes |

3.6 Section D6: Neighbourhood Centres

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|---|------------------------------------|
| 2. | Site Planning | | |
| 2.3(i) | Maximum height limit of 2 storeys in neighbourhood centres with a 9.5m maximum height limit. | Two storeys maintained across the site. | Yes |
| 2.3(iii) | Minimum floor to ceiling height for ground | The upper floor addition | Yes |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|--|------------------------------------|
| | floor is 3.3m. Upper floor(s) is 2.7m. | maintains the existing floor to ceiling height of 2.99m. | |
| 2.4 | Front setback: 0m (minimum) Rear setback: 1m (minimum – for ancillary development) Side setback: 0m (minimum) | Proposal maintains existing ground floor setbacks. The principal building's upper floor rear setback is decreased but maintains compliance. | Yes |
| 3. | Building Design | | |
| 3.1(i) | Where a development has two street frontages, each façade treatment must respond to the buildings in those streets. | No change to front façade. Minor changes proposed to rear façade, in keeping with the architectural character of the building and laneway. | Yes |
| 3.1(iv) | Distinguish residential entries from commercial/retail entries in the case of mixed use development. | Alternative access arrangement proposed. Existing dwelling can be accessed through commercial shop front and rear laneway. Proposed works would result in access to the dwelling being provided from the rear laneway only. | Yes |
| 3.2(ii) | Provide flat roofs where these prevail across the centre, unless the site conditions justify an alternative roof form (e.g. Corner sites). | Proposed upper floor extension includes matching roof extension comprising custom-orb metal roofing to match existing. Roofing will be relatively flat to match the pitch of the existing roof. | Yes |
| 3.4(i) | Utilise high quality and durable materials and finishes which require minimal maintenance. | Suitable materials and finishes have been selected and shown on the accompanying plans. | Yes |
| 5. | Amenity | | |
| 5.1(i) | Commercial and mixed use development are not to reduce sunlight to adjacent dwellings below a minimum of 3 hours of sunlight on a portion of the windows of the habitable rooms between 8am and 4pm on 21 June. | The application's accompanying shadow diagrams demonstrate only minor additional overshadowing arising from the proposed development. No surrounding properties will receive less than 3 hours sunlight as a result of the proposal. | Yes |
| 5.2(i) | Developments are to be designed to minimise noise transmission by: 1. Locating busy noisy areas next to each other and quieter areas next to each other; 2. Locating bedrooms away from busy roads and other noise sources; | The proposed development includes the expansion of the main bedroom at the rear of the site, away from the commercial use and street. | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|--|------------------------------------|
| | 3. Using storage or circulation areas within a dwelling to buffer noise from adjacent apartments, mechanical services or corridors/lobbies. 4. Avoid locating wet areas, such as toilets, laundries and kitchens, adjacent to bedrooms of adjoining dwellings. | | |
| 5.2(iv) | Operating hours must be submitted with the DA | No change is proposed to the operating hours of the commercial use of the building: Monday-Friday: 6am-8pm Saturday: 6am to 5pm Sunday: closed. | Yes |

D19/24

Responsible officer: Weir Phillips Heritage and Planning, Philip North

File Reference: DA/252/2023

**Draft Development Consent Conditions
(Mixed use)**

| | |
|------------------------|--|
| Folder /DA No: | DA/252/2023 |
| Property: | 34 Clovelly Road, RANDWICK NSW 2031 |
| Proposal: | Interior alterations to the ground floor level, between the existing (Class 4) residence and (Class 5) commercial premises. Rear alterations to the existing ground floor level residence. Rear alterations and addition to the existing first floor level commercial premises |
| Recommendation: | Approval |

Development Consent Conditions**GENERAL CONDITIONS**

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

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

Approved Plans & Supporting Documentation

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

| Plan | Drawn by | Dated | Received by Council |
|--|------------------------------|--------------|----------------------------|
| ARK871-5-1 (Rev A) - Specifications | ARK Design Studio Pty Ltd | 25.03.2022 | 16.06.2023 |
| ARK871-5-2 (Rev A) - Site Plan | ARK Design Studio Pty Ltd | 25.03.2022 | 16.06.2023 |
| ARK871-5-7 (Rev A) - Proposed Ground Floor Plan | ARK Design Studio Pty Ltd | 25.03.2022 | 16.06.2023 |
| ARK871-5-8 (Rev A) - Proposed First Floor Plan | ARK Design Studio Pty Ltd | 25.03.2022 | 16.06.2023 |
| ARK871-5-9 (Rev A) - Proposed Roof Plan | ARK Design Studio Pty Ltd | 25.03.2022 | 16.06.2023 |
| ARK871-5-10 (Rev A) - Proposed Southeast Side Elevation | ARK Design Studio Pty Ltd | 25.03.2022 | 16.06.2023 |
| ARK871-5-11 (Rev A) - Proposed Front and Rear Elevations | ARK Design Studio Pty Ltd | 25.03.2022 | 16.06.2023 |
| ARK871-5-12 (Rev A) - Proposed Section Elevation A-A | ARK Design Studio Pty Ltd | 25.03.2022 | 16.06.2023 |

| BASIX Certificate No. | Dated | Received by Council |
|------------------------------|--------------|----------------------------|
| A496281 | 09.05.2023 | 16.06.2023 |

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

3. The colours, materials and finishes of the external surfaces to the building are to be compatible with the existing building and surrounding buildings in the heritage conservation area and consistent with the architectural style of the building. The proponent shall submit a materials board and schedule of colours & finishes to be approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.
4. Rainforest timbers or timbers cut from old growth forests must not be used in 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 \$297,000 the following applicable monetary levy must be paid to Council: **\$2,970.00**.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Long Service Levy Payments

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

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

Security Deposits

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

- \$5,000.00 - Damage / Civil Works Security Deposit

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

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

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

Sydney Water Requirements

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

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

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

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

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

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Building Code of Australia & Relevant Standards

9. 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

10. Access, facilities and car parking for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Registered Certifier for the development. Details of the required access, facilities and car parking for people with disabilities are to be included in the construction certificate for the development.

BASIX Requirements

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

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

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

Stormwater Drainage

12. Surface water/stormwater (from the redeveloped portion of the site) must be drained and discharged to the existing stormwater system on the site to the satisfaction of the Certifier and details of the proposed stormwater drainage system are to be included in the construction certificate details for the development.

Details of any works proposed to be carried out in or on a public road/footway are to be submitted to and approved by Council prior to commencement of works.

Waste Management

13. Plans illustrating the location and space allocated for the storage of demolition and construction waste or materials, the waste collection point for the site, and the path of access for collection vehicles must be submitted to the principal certifier prior to the issue of a construction certificate.
14. Records (including receipts) demonstrating recycling and lawful disposal of waste must be kept on-site throughout the duration of the approved demolition and construction works.

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

15. 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

16. 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

17. 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

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

Demolition Work Plan

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

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

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

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

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

Construction Noise & Vibration Management Plan

20. 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.

Public Liability

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

Public Utilities

22. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Site Signage

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

Building & Demolition Work Requirements

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

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

| | |
|---|--|
| | <ul style="list-style-type: none"> 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

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

Temporary Site Fencing

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

Notes:

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

Overhead Hoardings

27. An overhead ('B' class) type hoarding is required is be provided to protect the public (unless otherwise approved by Council) if:

- goods or materials are to be hoisted (i.e. via a crane or hoist) over a pedestrian footway
- building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment
- it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or adjoining land
- as may otherwise be required by SafeWork NSW, Council or the Principal Certifier.

Site Management

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

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

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

Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

Site Access

29. A temporary timber, concrete crossing or other approved stabilised access is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council throughout the works, unless access is via an existing suitable concrete crossover.

Any damage caused to the road, footpath, vehicular crossing or nature strip during construction work must be repaired or stabilised immediately to Council's satisfaction.

Removal of Asbestos Materials

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

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

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

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

Dust Control

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

Dust control measures and practices may include:

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

Excavations & Support of Adjoining Land

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

Complaints Register

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

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

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

Survey Requirements

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

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

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

Building Encroachments

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

Post-construction Dilapidation Reports

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

The dilapidation report shall detail whether:

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

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

Occupation Certificate

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

Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Fire Safety Certificate

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

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

Structural Certification

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

Sydney Water Certification

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

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

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

BASIX Requirements & Certification

41. 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.

Waste Management

42. Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.

Trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to Council prior to commencing operation of the business.

The operator of the business must also arrange for the recycling of appropriate materials and make the necessary arrangements with an authorised waste services contractor accordingly.

Noise Control Requirements & Certification

43. The use and operation of the development (including all plant and equipment) shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and *Regulations*.

OPERATIONAL CONDITIONS

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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.

Operational Hours

44. The hours of operation of business and commercial premises are restricted to 6am-8pm Monday to Friday, & 6am to 5pm Saturday (unless otherwise specifically approved in a separate development consent).

Fire Safety Statement

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

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

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

Development Application Report No. D20/24

Subject: 18/9-15 William Street, Randwick (DA374/2022/A)

Executive Summary

| | |
|-----------------------------|---|
| Proposal: | Section 4.55(2) - Modifications to the approved open awning roof terrace installing small bathroom, increase height by 50mm at southern and 300mm at northern elevation and new roof skylight |
| Ward: | West Ward |
| Applicant: | Anthony Betros |
| Owner: | The Owners Strata Plan 77504 |
| Cost of works: | \$95,672.5 |
| Reason for referral: | The proposal seeks to modify a development previously approved by the Randwick Local Planning Panel |

Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. 374/2022 for modifications to the approved open awning roof terrace installation of a bathroom, increase height by 50mm at southern and 300mm at northern elevation and new roof skylight at No. 18/9-15 William Street Randwick, in the following manner:

- **Amend Condition 1 to read:**

Approved Plans & Supporting Documentation

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

| <i>Plan</i> | <i>Drawn by</i> | <i>Dated</i> |
|-----------------------------|------------------------|---------------------|
| A101 Site Plan | Superdraft | 18 August 2022 |
| A102 Floor Plan Rev 2 | Superdraft | 10 October 2021 |
| A106 Roof Plan & Elevations | Superdraft | 18 August 2022 |

EXCEPT where amended by:

- **Council in red on the approved plans; and/or**
- **Other conditions of this consent; and/or**
- **the following Section 4.55 plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.55 plans and detailed in the Section 4.55 application:**

| <i>Plan</i> | <i>Drawn by</i> | <i>Dated</i> |
|-----------------------------------|------------------------|---------------------|
| A101 Site Plan Rev 3 | Superdraft | 8 September 2023 |
| A102 Floor Plan Rev 3 | Superdraft | 8 September 2023 |
| A106 Roof Plan & Elevations Rev 3 | Superdraft | 8 September 2023 |

- **Amend Condition 2 to read:**

Amendment of Plans & Documentation

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

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- a. Privacy screens having a height of 1.6m (measured above finished floor level) shall be provided to the southern side of the awning structure.

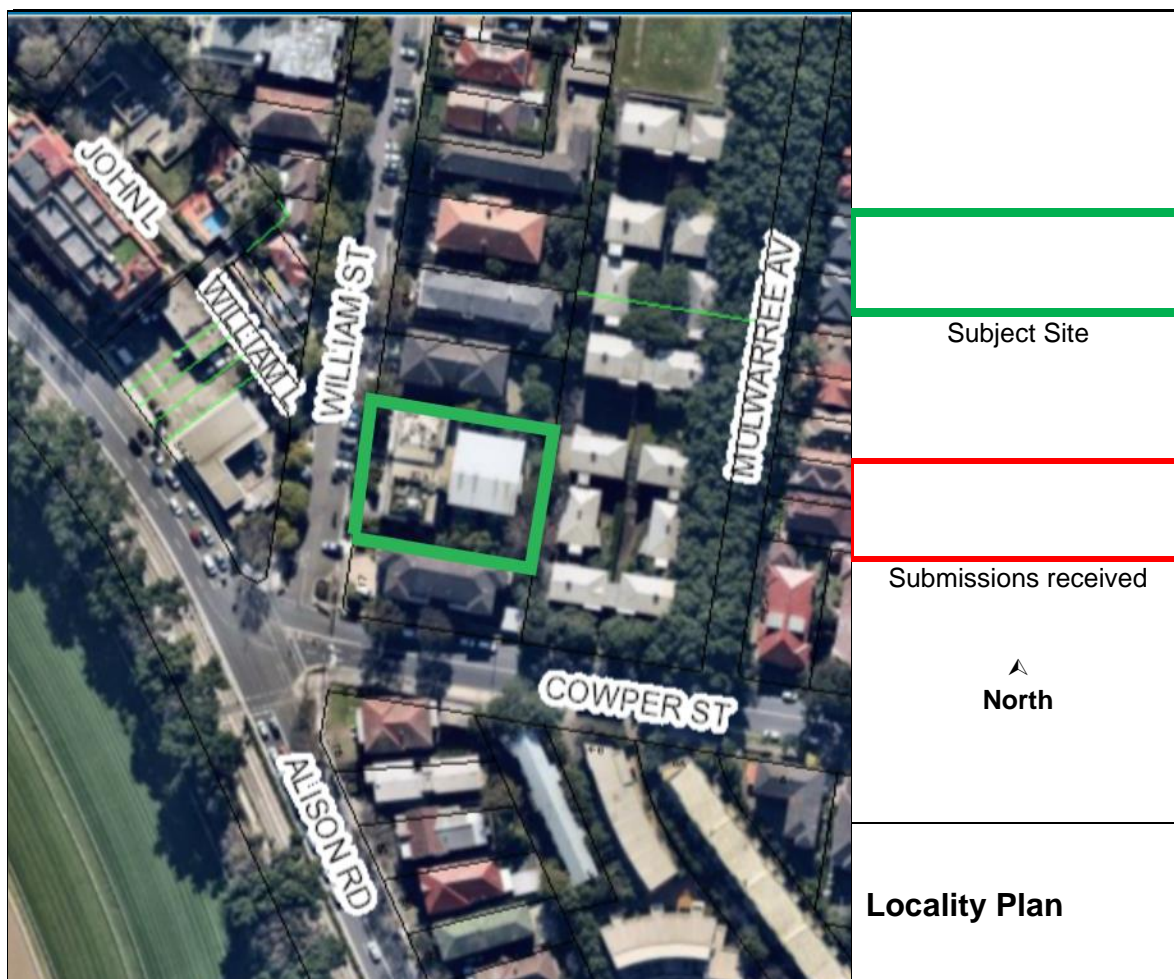
Privacy screen/s must be constructed with either:

- Fixed lattice/slats with individual openings not more than 30mm wide;
- Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.

Detailed plans of the privacy screens must be submitted to Council's Manager Development Assessment for approval.

Attachment/s:

Nil



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1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) because:

- It is made under Section 4.55(2) of the Environmental Planning and Assessment Act (1979) and seeks to modify a development previously approved by the Panel.

The original development application was referred to the RLPP because:

- The development contravenes the development standard for building height by more than 10% and is subject to SEPP 65.

2. Site Description and Locality

The subject site is known as 9-15 William Street Randwick and is legally described as Lot 18 in SP 77504. The site is 1,698.3m², regular in shape and has a 36m frontage to William Street to the south. The site is occupied by three interconnected residential flat buildings (RFBs). The proposal relates to the roof terrace to Unit 18 on the top floor of the southern building module. The subject roof terrace is accessed internally from Unit 18 via a stairwell.

An extract of the Strata Plan (SP77504) shows the roof terrace is on title (PT18) (refer to **Figure 1**). The Development Application lodgment form includes landowner consent signed by the Secretary of the Strata Plan SP77504 with a common seal affixed.

The existing roof terrace contains a gazebo structure, timber decks, sink, bar fridge, outdoor furniture, timber screens and planter boxes. Council's records indicate that the existing structures on the roof have not been approved.

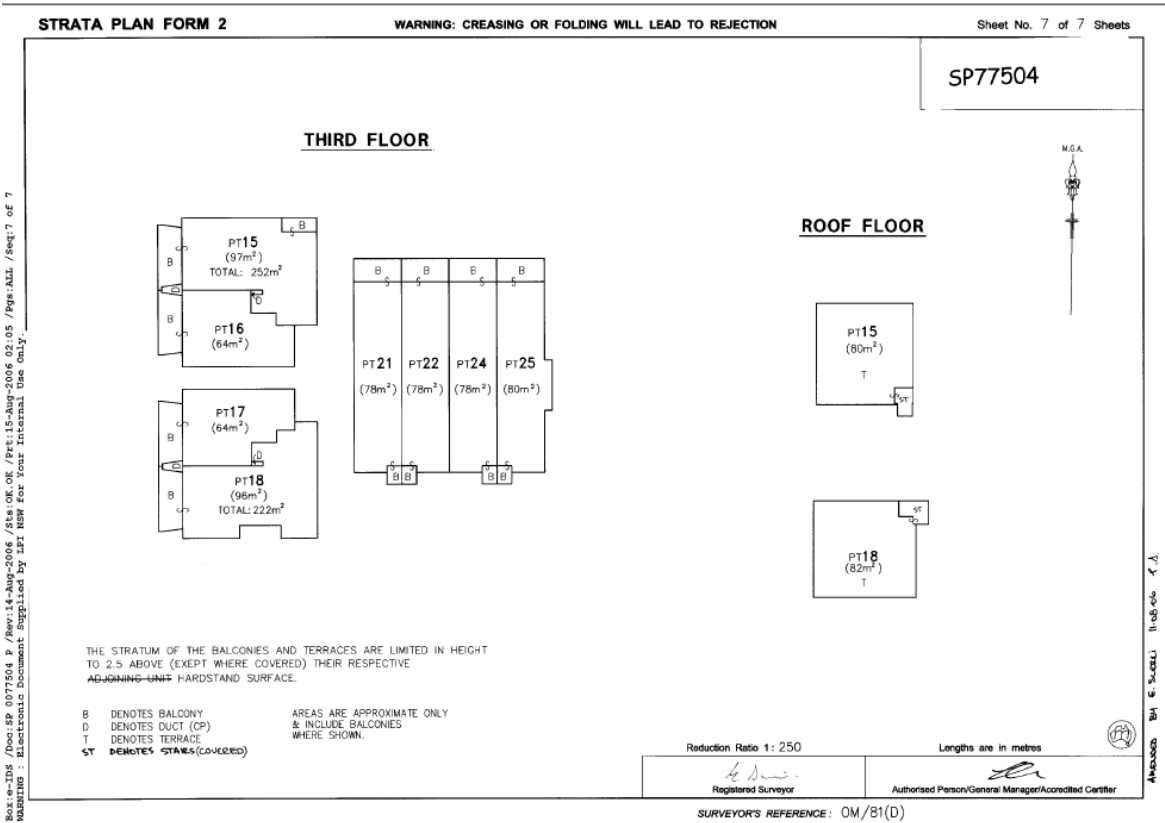




Figure 3 - Existing terrace looking south

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Figure 4 - Existing gazebo structure



Figure 5 – Stairwell to apartment 18 below

D20/24



Figure 6 – View showing open terrace on top of the building to the north

3. Background

On 17 December 2004, Council approved demolition of the existing buildings and construction of a 4 storey multi-unit housing development containing for 25 dwellings and basement parking for 38 vehicles (DA/646/2004). The original planning report pertaining to the construction of the existing building notes *“the height to the underside of the top floor ceiling of Buildings A and B fronting William Street is RL 49.00 and to the top of the balcony (equivalent in effect to a parapet) at the front of Buildings A and B is RL 50.06.”*

On 10 June 2021, the RLPP refused a Development Application (DA) for alterations and additions to the existing roof terrace, including a new enclosed room and addition of roof to the terrace area (DA/10/2021). The reasons for refusal primarily related to the variations to the built form, density and amenity requirements under SEPP 65, and the departures to the FSR and Building Height development standards under RLEP 2012. Extracts of the refused plans are shown in **Figure’s 7 and 8**.

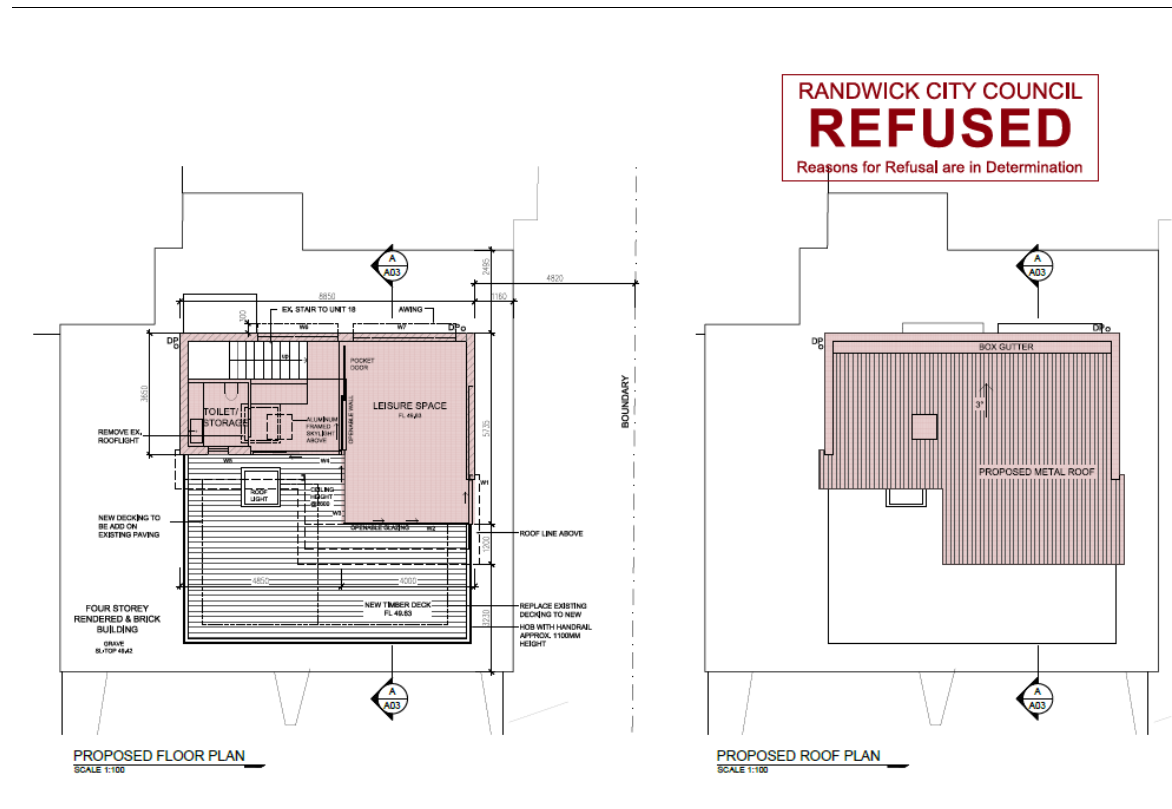


Figure 7 – Floor plan and Roof plan

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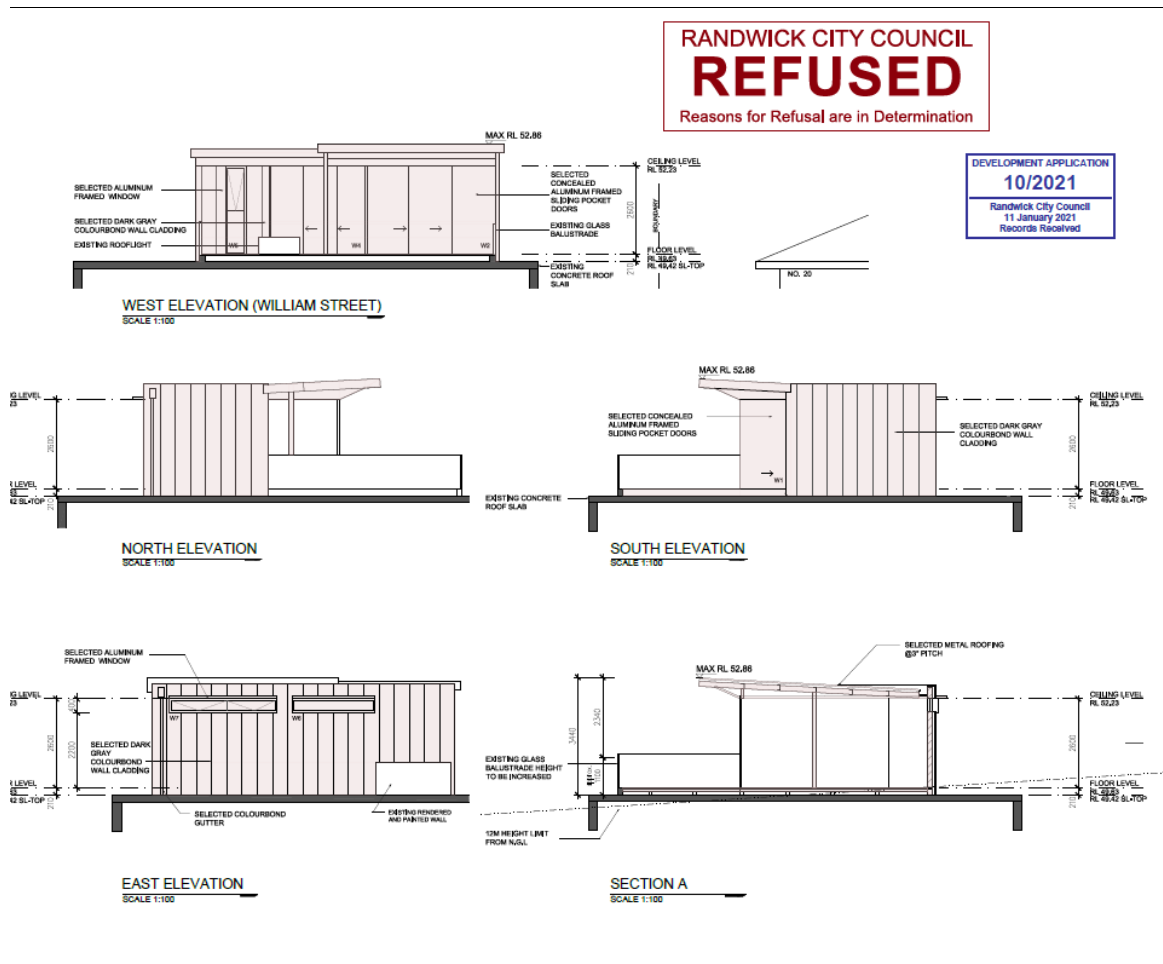


Figure 8 – Elevations and Section plans

On 1 December 2021, the applicant lodged a Section 8.2 Review application with amendments to the design of the proposal. However, the review application was withdrawn by the Applicant because the prescribed statutory review period had lapsed, and Council was therefore unable to determine the application. A new DA was lodged as described below.

4. Details of Current Approval

The original development application was determined by the Randwick Local Planning Panel (RLPP) on 8 September 2022 (DA/374/2022). The approved development comprises a new open awning structure, including a sink and BBQ area and planter boxes at the perimeter. Extracts of the approved plans are shown in **Figures 9 and 10**.

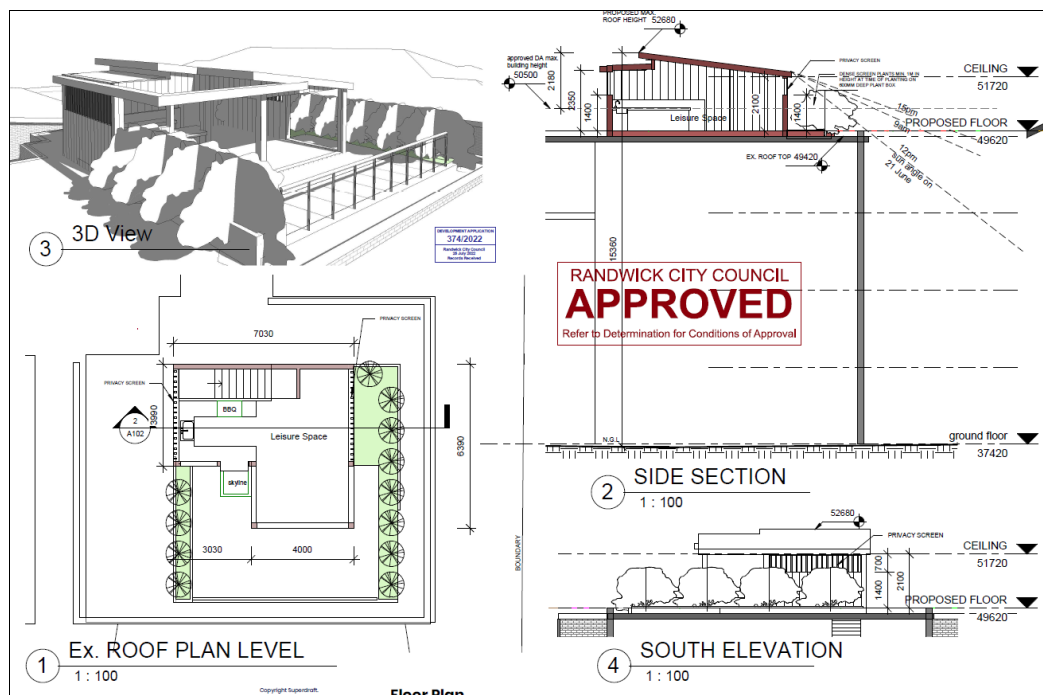


Figure 9 – 3D view, Elevation and Plan

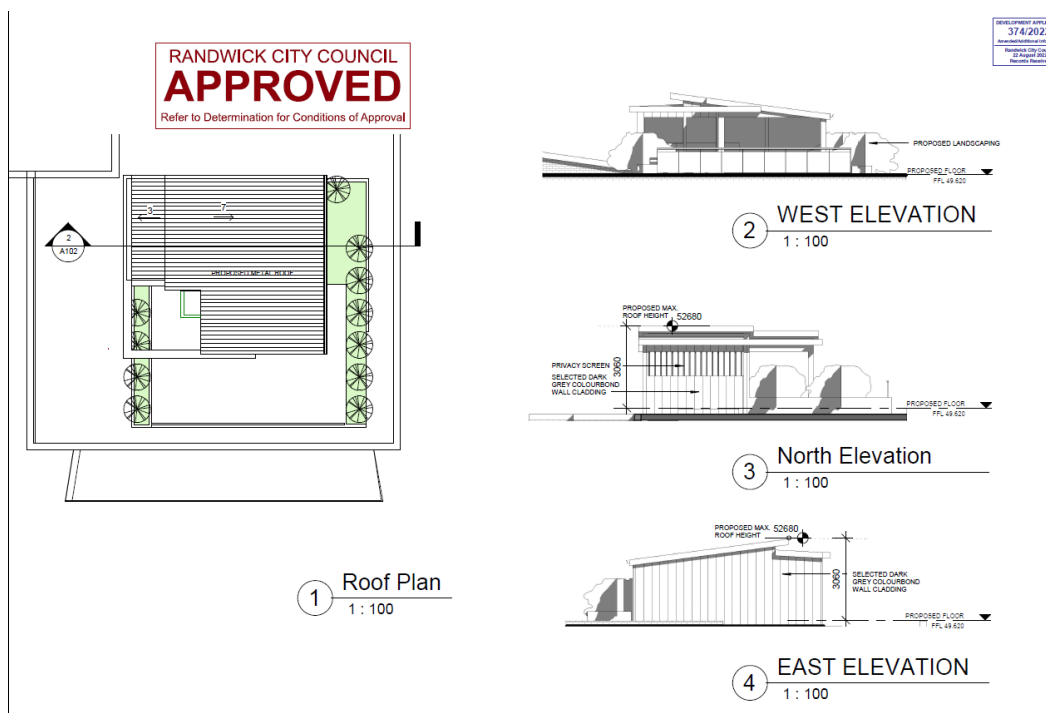


Figure 10 – Roof and Elevation Plans

5. Proposal

The proposal is for modifications to the approved open awning roof terrace, including:

- addition of a bathroom to the northeast corner (adjacent to the stairwell) and replacement of the open privacy screen with wall cladding and a window
- enclosure of the northeast corner of the open roof with louvres (openable)
- addition of a skylight to the eastern portion of the roof
- increased external wall height at southern elevation by 300mm from 2.1m to 2.4m and the northern elevation by 50mm from 2.35m to 2.4m.

Condition 2 of the existing development consent requiring a privacy screen along the northern and southern sides is also requested to be deleted. However, the proposed enclosed wall only relates to the northern elevation and as such the approved privacy screen will be retained along the southern elevation.

Refer to extracts of the proposed modified plans at **Figures 11 and 12**.

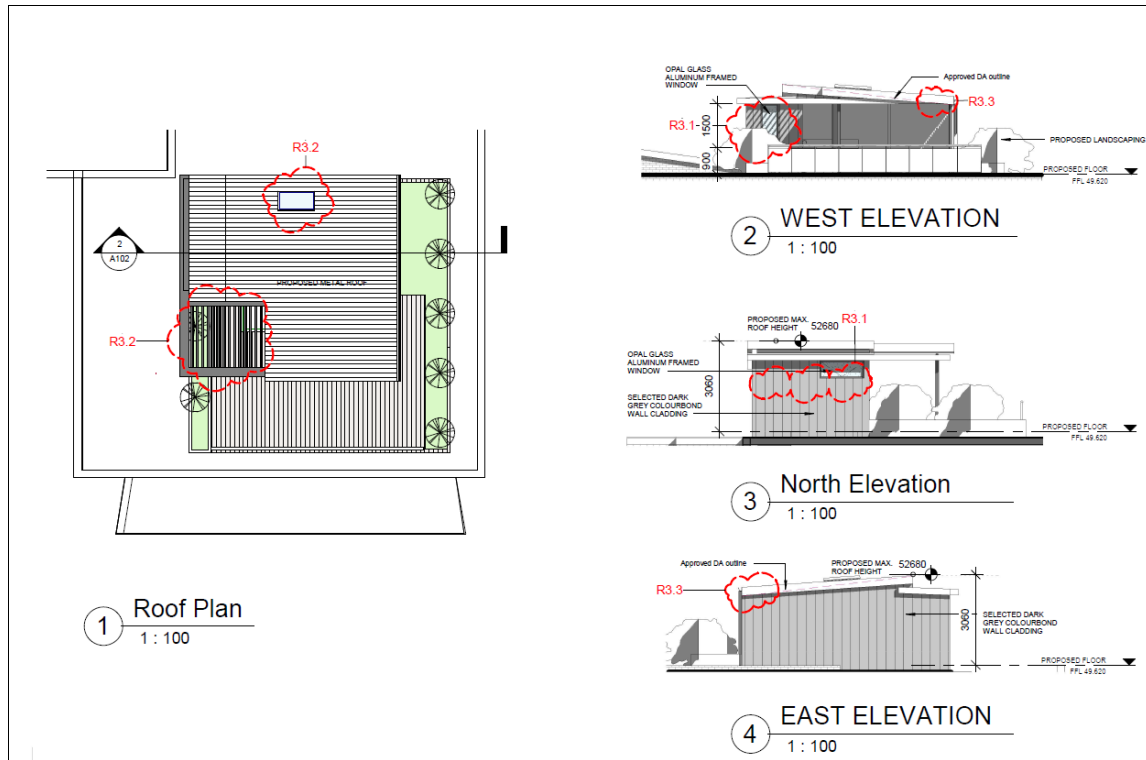


Figure 11 – Proposed Roof and Elevation Plans

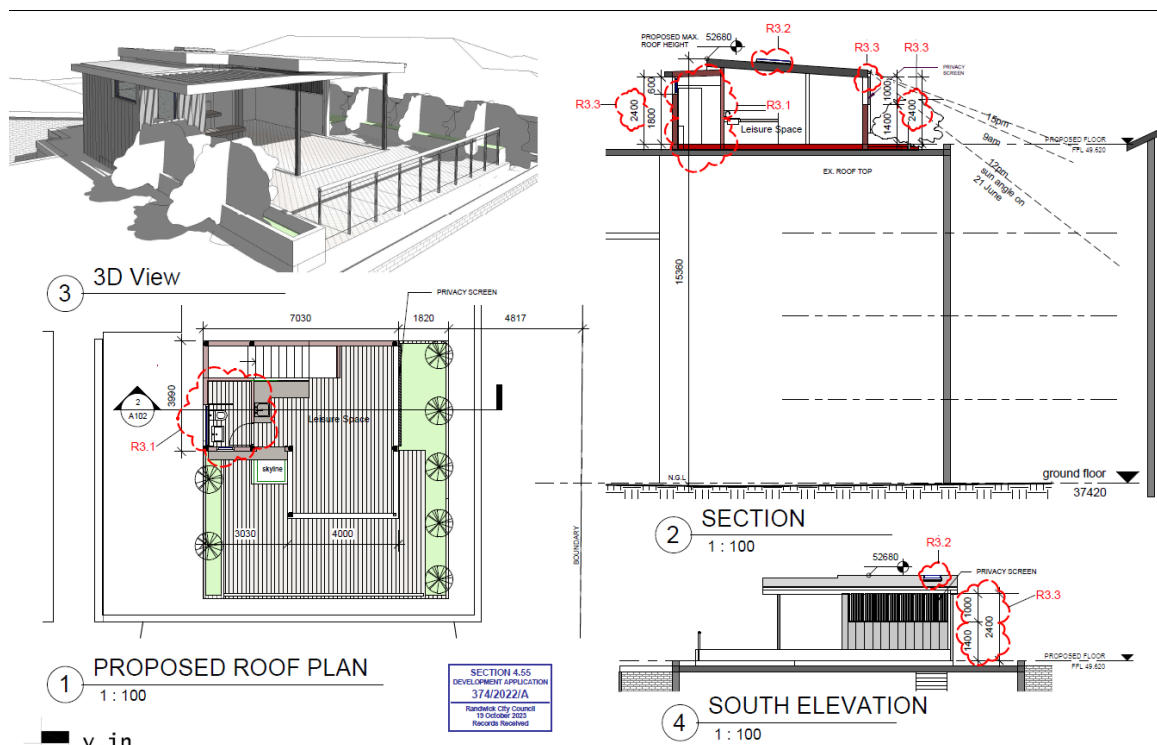


Figure 12 – Proposed 3D view, Section and Elevation

6. Section 4.55 Assessment

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, Council may only agree to a modification of an existing Development Consent if the following criteria have been complied with:-

1. it is satisfied that the development to which the consent as modified relates is *substantially the same development* as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
2. it has consulted with any relevant public authorities or approval bodies, and
3. it has notified the application & considered any submissions made concerning the proposed modification.

An assessment against the above criteria is provided below:

1. *Substantially the Same Development*

The proposed modifications are not considered to result in a development that will not fundamentally alter the originally approved development, noting the amendments correlate with the approved roof addition.

2. *Consultation with Other Approval Bodies or Public Authorities:*

The development is not integrated development or development where the concurrence of another public authority is required.

3. *Notification and Consideration of Submissions:*

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

7. Key Issues

Floor Space Ratio

A maximum Floor Space Ratio (FSR) of 0.9:1 applies to the site in accordance with Randwick Local Environmental Plan (RLEP) 2012. The existing building has a GFA of 2,105.89m², which equates to an FSR of 1.24:1 and a departure to the FSR development standard of 27%. The originally approved open terrace structure did not count as GFA and there was no change to the existing FSR.

The proposed modification application seeks to amend the approved development by enclosing the northern portion of the terrace to provide a bathroom. The proposed modification will increase the GFA by 3.6m² equating to a total GFA of 2,109.49m² and an FSR of 1.24:1. There will be no change to the approved FSR due to the minor increase in GFA.

However, the approved open terrace structure will become more enclosed under the proposed modification not only because of the proposed bathroom, but also due to the replacement of the approved open screen along the northern elevation with a solid wall and highlight window and the installation of operable louvres above the open northwest corner of the roof. The approved open terrace structure would effectively become enclosed on three sides with only one side remaining open that could be easily enclosed with glazing.

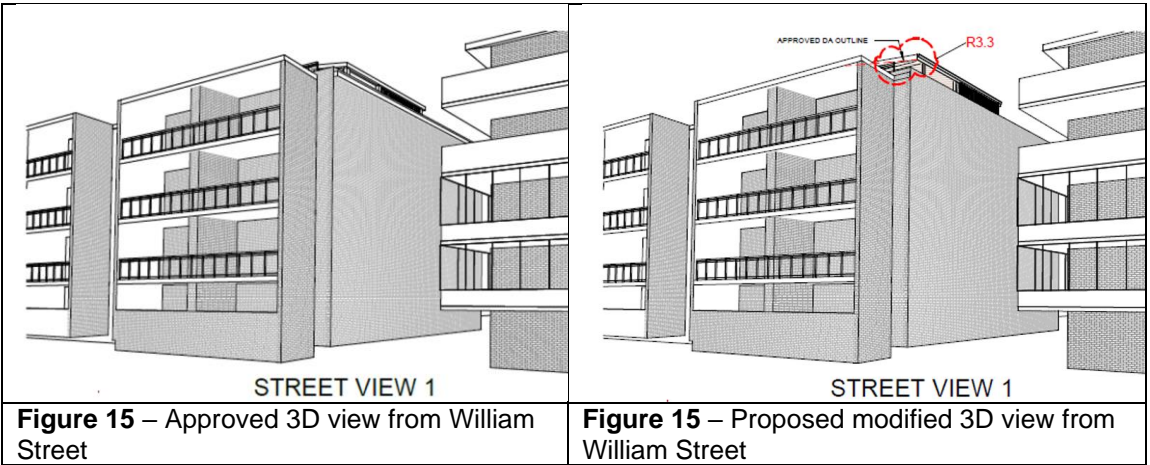
Whilst the subject minor design changes are relatively insignificant when considered in isolation and would not contravene the original reasons for the Panel's support of the proposal in DA/374/2022. Notwithstanding, any future modification application seeking further design changes that result in

the approved open structure becoming a predominantly enclosed structure and that increase the approved FSR beyond 1.24:1, similar to that originally refused by the RLPP would not be supportable.

Visual Bulk and Scale

The proposal includes an increase to the external wall height at the southern elevation by 300mm from 2.1m to 2.4m and the northern elevation by 50mm from 2.35m to 2.4m. The overall building height of the approved structure to the top of the roof at RL52.68 will not change as a result of the proposed increase to the external wall height.

The proposed modified structure would be visible from the primary street frontage and the upper level northern facing windows and balconies of the residential flat building at 17 William Street, adjoining to the south. Whilst the proposed modified development will be more visible compared to the approved development, it would not add any significant additional bulk and scale to the existing building. The additional height of the proposed structure would not be readily visible from adjoining properties and the public domain. The modified proposal is appropriate in terms of its visual bulk and scale.



Overshadowing

The proposed modified development will result in some minor additional overshadowing to the northern elevation of the residential flat building adjoining to the south at 17 William Street between 9:00am and 3:00pm at the winter solstice. Based on the shadow diagrams submitted with the application, the additional shadow falls on the external wall and window frames and does not impact the glazing or balconies. In any event, the additional shadow cast is negligible and the proposal would not result in any unreasonable overshadowing impacts to the apartments to the south.

Visual Privacy

The proposed modified development maintains the same footprint and setbacks to the building edge below compared to the approved development. The approved planter boxes also provide a visual screen at the perimeter of the terrace to mitigate potential privacy impacts. The future use of the modified terrace is not expected to generate any additional visual privacy impacts to the adjoining properties beyond what has already been approved by Council.

Acoustic Privacy

The proposed modified development will not result in any additional acoustic privacy impacts to the adjoining residential properties. The existing development consent includes conditions in relation to the use of the terrace and noise to safeguard the amenity of the adjoining properties. These conditions will remain on any modified consent granted.

8. Section 4.15 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 | <p>State Environmental Planning Policy (Housing) 2021</p> <p><i>Chapter 4 Design of Residential Apartment Development</i></p> <p>The proposed works are confined to a single apartment on the roof and would not result in a significant departure from the environmental functionality as assessed within the original application DA/646/2004. The visual bulk and scale of the building is consistent with the existing built form character of the area (refer to Section 7 of this report). The proposal is consistent with the built form design quality principles. There are no relevant requirements applicable to the proposal in the Apartment Design Guide (ADG).</p> <p>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</p> <p>Standard conditions of consent requiring the continued compliance of the development with the SEPP: BASIX were included in the original determination.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.</p> <p>Clause 4.4 establishes a maximum FSR of 0.9:1. The proposed development will result in an additional 3.6m² of gross floor area, resulting in an FSR of 1.24:1, which does not comply with the maximum FSR development standard. Refer to the Key Issues section of this report.</p> <p>Clause 4.3 establishes a maximum 12m building height. The existing RFB has a maximum height of 13m, which exceeds the Building Height development standard. The roof of the approved structure is at RL52.68. The proposed modification will not change the approved building height.</p> <p>The building height is measured from the top of the proposed awning roof at RL52.68 to the ground floor at RL37.42 as shown on Side Section Plan submitted with the approved DA.</p> |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | Nil. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013. |
| Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement | Not applicable. |

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| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15(1)(a)(iv) – Provisions of the regulations | The relevant clauses of the Regulations have been satisfied. |
| Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality. |
| Section 4.15(1)(c) – The suitability of the site for the development | <p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore, the site remains suitable for the modified development.</p> |
| Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation | No submissions were received. |
| Section 4.15(1)(e) – The public interest | The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest. |

9. Conclusion

The application is recommended for approval for the following reasons:

- a) The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- b) The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.

Responsible officer: Thomas Mithen, Environmental Planner

File Reference: DA/374/2022/A

Development Application Report No. D21/24

Subject: 1 Wolseley Road, South Coogee (DA/602/2022)

Executive Summary

| | |
|-----------------------------|--|
| Proposal: | Substantial alterations and additions to the existing dwelling house including new rear ground and lower ground floor additions, front double garage with gym and store room below, new copper roof cladding, associated site and landscaping works. |
| Ward: | East Ward |
| Applicant: | Mr K W Kerridge |
| Owner: | Mr K W Kerridge |
| Cost of works: | \$1,704,543.00 |
| Reason for referral: | Variation to building height over 10%. |

Recommendation

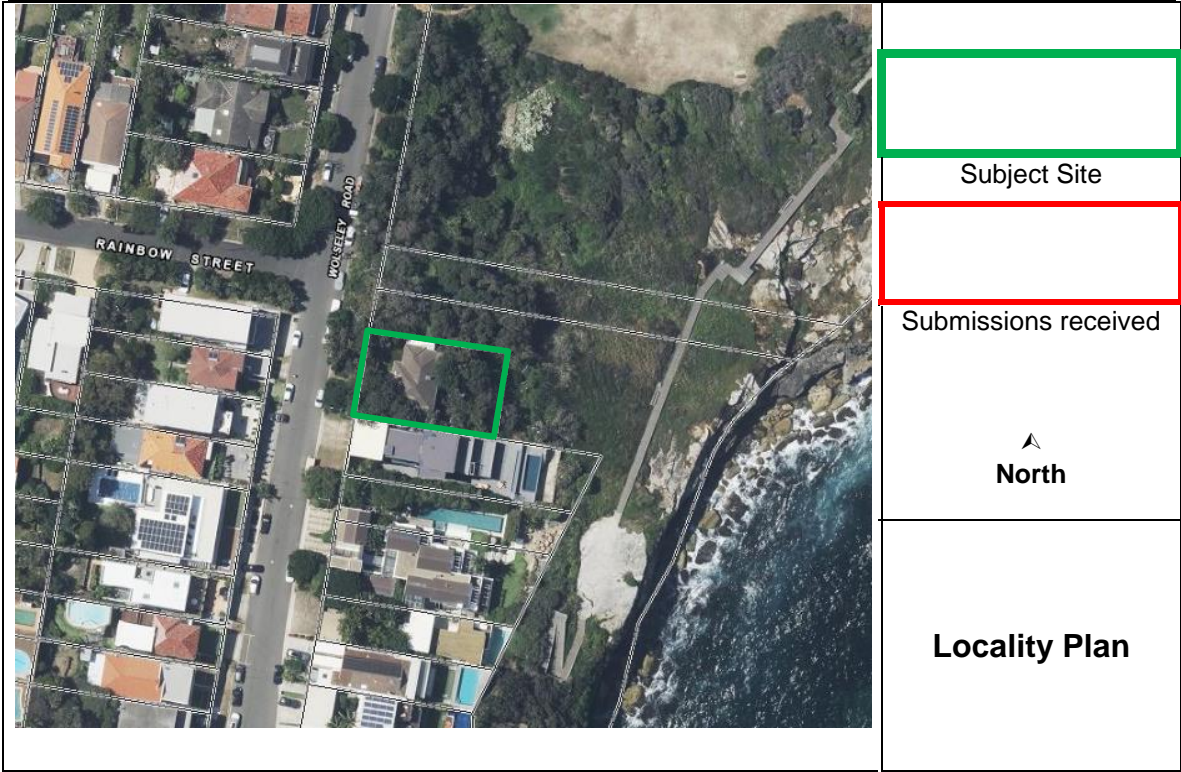
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the building height development standard in Clause 4.3 of Randwick Local Environmental Plan 2012. The concurrence of the Planning Secretary has been assumed.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 602/2022 for Substantial alterations and additions to the existing dwelling house including new rear ground and lower ground floor additions, front double garage with gym and store room below, new copper roof cladding, associated site and landscaping works, at No. 1 Wolseley Road South Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/602/2022

D21/24

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1. Executive summary

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

- The development contravenes the development standard for building height by more than 10%

The proposal seeks development consent for alterations and additions to the existing dwelling on 1 Wolseley Road, South Coogee including the provision of a lower ground floor level, double garage, and new deck

The key issues associated with the proposal relate to the maximum building height and privacy.

The proposal is recommended for approval subject to non-standard conditions that require the provision of a privacy screen on the south side of the proposed deck. A unique condition is also recommended to ensure the copper roof and awning are treated or textured to reduce reflectivity.

2. Site Description and Locality

The subject site is known as 1 Wolseley Road, South Coogee and is legally described as Lot 1 in DP 650490. The site is 624.6m², is rectangular in shape and has a 19.81m frontage to Wolseley Road to the west. The site currently contains a two storey dwelling of rendered brick and tile roof construction concrete path access from the street to the first floor and steps down to the ground floor entrance.

The site slopes approximately 10m from the southwest/front corner to the northeast/rear corner of the site.



Figure 1: View of the site from the Council verge along Wolseley Road.

The locality consists of detached dwellings of various heights with three and four storey dwellings with multiple steps down in floor level responding to the topography. The south adjoining site contains a part three, part four storey dwelling with stepped terraces, inground swimming pools with glass balustrades. To the north of the site is the Trenerry Reserve park and to the east is the South Coogee Wetlands and the South Pacific Ocean. The site is also in proximity to Wedding Cake Island located northeast of the site.

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of the Council's records did not reveal any recent or relevant applications for the site.

The subject application was lodged with the Council on 23 November 2022. The application was notified from 29 November 2022 to 1 February 2023 in which time no submissions were received.

The preliminary assessment of the proposal and site inspection was conducted on 23 November 2023. Additional information was requested from the applicant in a Request for Further Information (RFI) sent on 19 December 2023 on the following matters:

- Submit an additional cross section to show the maximum building height
- Submit a clause 4.6 variation addressing the additional building height above the 9.5m maximum building height under RLEP 2012.

Additional information including cross section C and a clause 4.6 variation was provided by the applicant on 21 December 2023. Following a review of the clause 4.6 statement, a request for further information was sent to the applicant on 19 January 2024 requesting a more detailed clause 4.6 variation. In response, an amended clause 4.6 statement was received on 24 January 2024. Assessment of the additional information provided found that matters raised have been sufficiently addressed. As such a recommendation has been made for approval of the application, subject to conditions of consent.

4. Proposal

The proposal seeks development consent for alterations and additions to the existing dwelling which consist of the following:

Site works:

- Removal of 12 trees
- Planting of 12 replacement trees
- New landscaping
- Excavation and retaining walls for new steps on the north side of the existing building

Lower Ground Floor:

- Bathroom
- Open plan dining and rumpus room
- Alfresco area accessed from the rumpus room
- Lift access from the lower ground floor to the first floor
- Staircase access and lift to upper levels
- Access to rear yard

Ground Floor:

- Removal of internal walls
- Retention of existing dining, living, kitchen and sunroom
- Replacement of living room windows for sliding door access to the new decking
- Window replacement for the existing sunroom
- Walk-in Pantry
- Open study
- Bathroom
- Stairs and Lift access from the lower ground floor to the first floor
- Gym
- Attached tool shed
- Removal of the stairs access from the north side setback area to the existing decking
- New rear deck with access from the kitchen and living room

First Floor:

- Dwelling entry with cloakroom
- Double garage accessed from Wolseley Road
- Two (2) x bedrooms with built-in wardrobes
- One (1) master bedroom with a walk-in wardrobe and bathroom
- Bathroom
- Stairs and lift access to the lower levels

Roof level:

- Replacement of existing roof in copper
- Provision of parapet walls in front of the double garage
- New Canopy roof over part of the new decking in the rear setback
- Installation of twenty-three (23) x solar panels

The proposed development is illustrated in Figures 2 to 8.

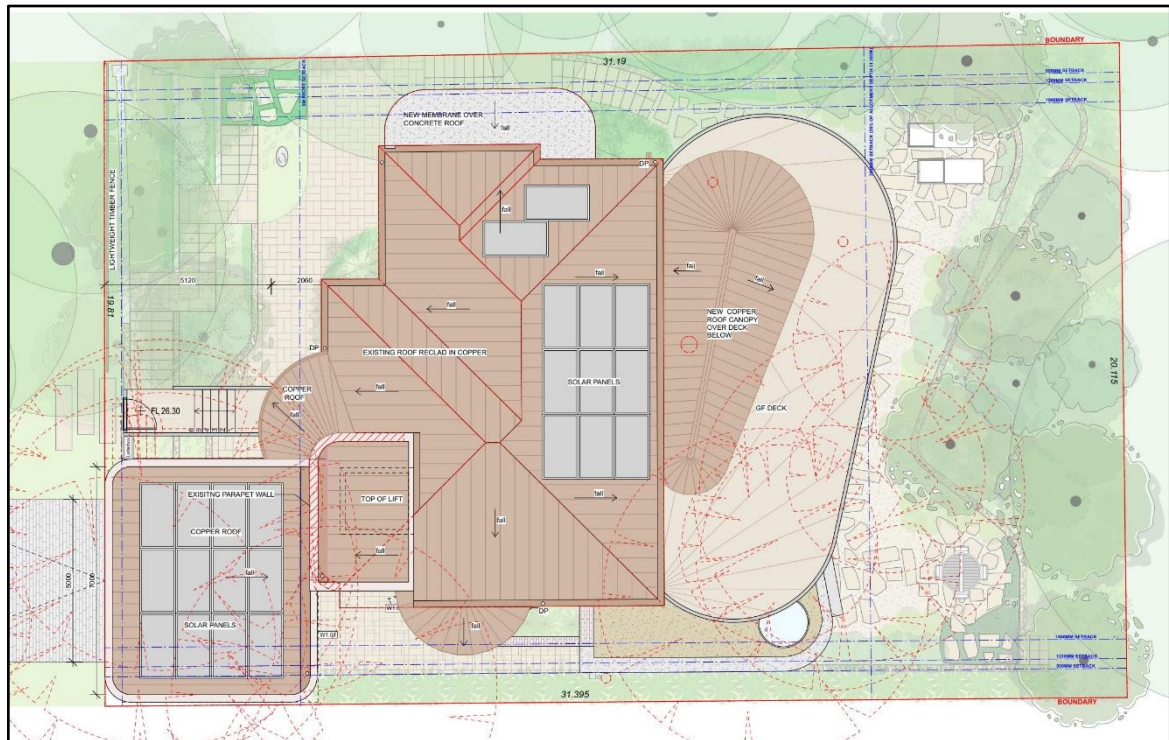


Figure 2: Site Plan

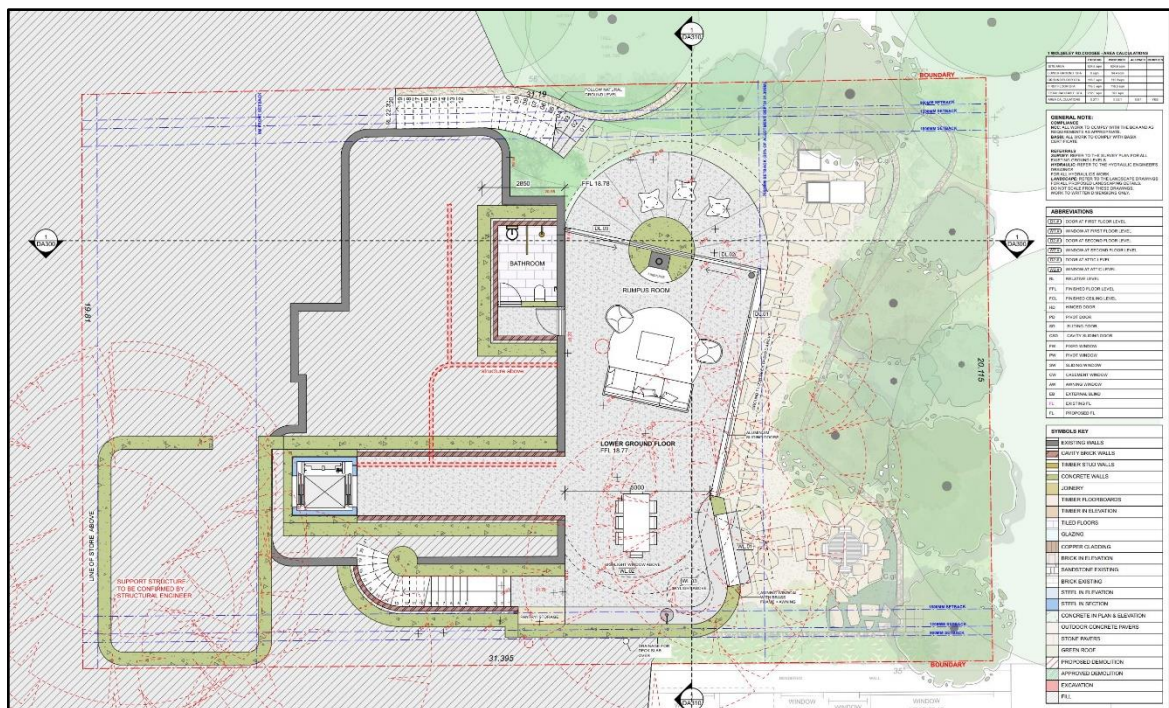


Figure 3: Lower Ground Floor Plan

[illegible]

Architectural site plan for a residential development. The plan shows a large, irregularly shaped lot with a proposed building footprint. The building footprint includes a main house with a large central hall, several bedrooms, bathrooms, and a living area. A large, curved driveway or walkway is shown on the right side of the lot. The plan is overlaid with a grid system with dimensions. Various annotations and notes are present, including "NEW CORREL. BRICK CANOPY OVER DECK BELOW" and "NEW CORREL. BRICK CANOPY OVER DECK BELOW". The plan is surrounded by a boundary line. A north arrow is located in the upper right corner. A legend is located in the lower right corner, listing various materials and colors used in the plan.

GENERAL NOTE:
 1. ALL DIMENSIONS ARE TO CENTER OF WALLS UNLESS OTHERWISE NOTED.
 2. ALL DIMENSIONS ARE TO CENTER OF WALLS UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO CENTER OF WALLS UNLESS OTHERWISE NOTED.
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ABBREVIATIONS:
 (C) CEMENT
 (F) FIBERGLASS
 (G) GROUT
 (H) HATCH
 (I) INSULATION
 (J) JOINT
 (K) KEY
 (L) LATH
 (M) MASONRY
 (N) NAIL
 (O) OIL
 (P) PAVEMENT
 (Q) QUARTZ
 (R) RAIL
 (S) SAND
 (T) TILE
 (U) URETHANE
 (V) VINYL
 (W) WOOD
 (X) XPS
 (Y) YIELD
 (Z) ZONE

FINISHES KEY:
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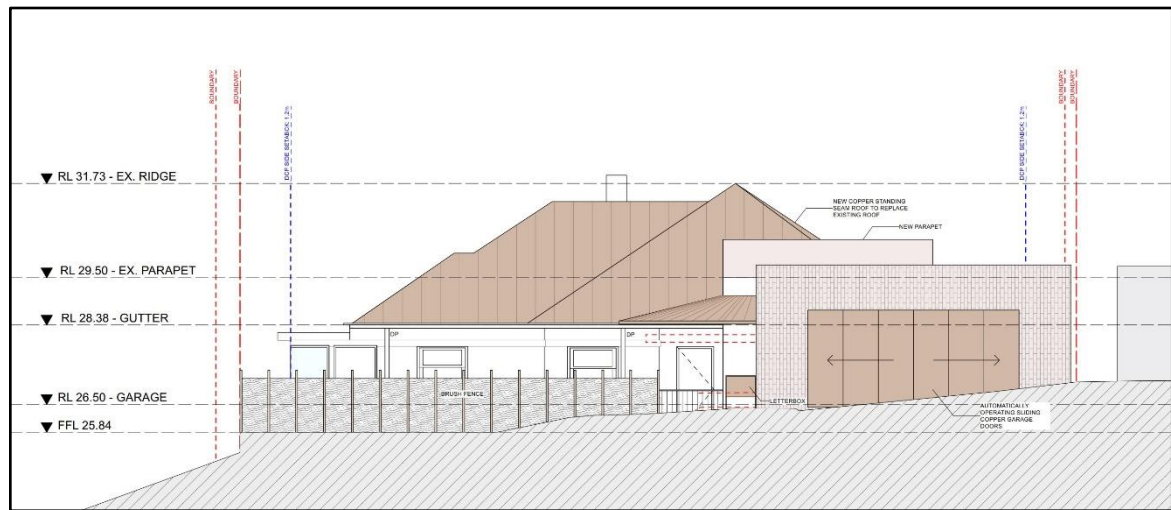


Figure 6: Street Elevation

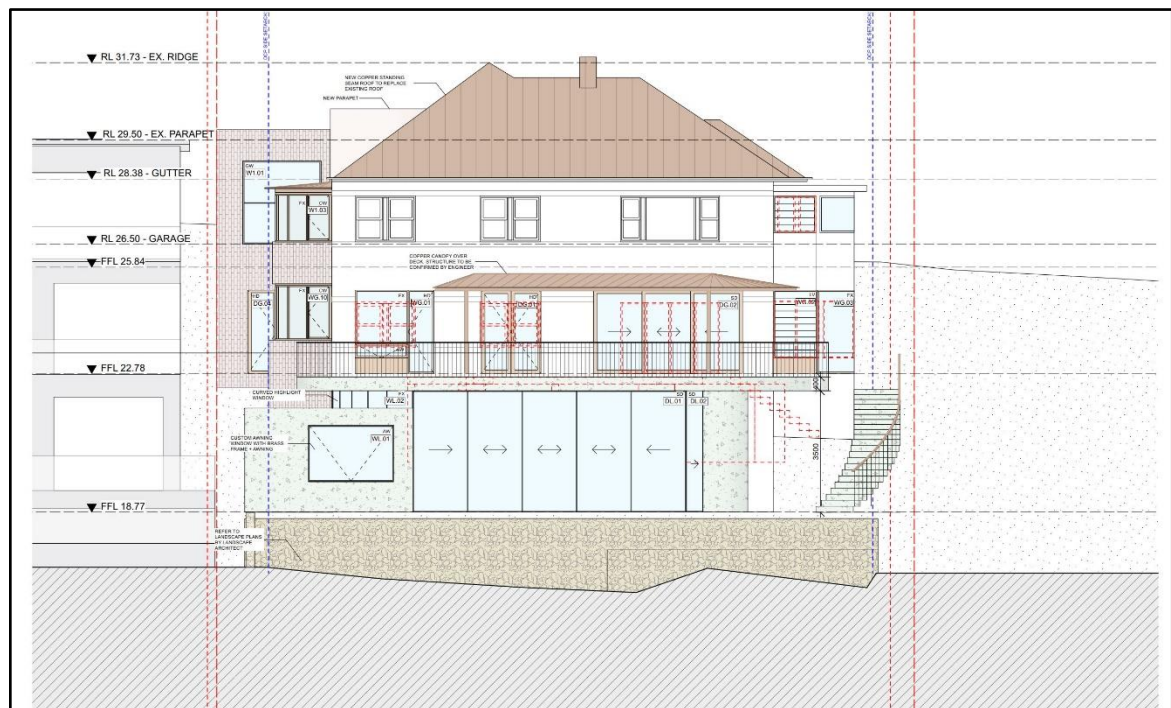


Figure 7: East (Rear) Elevation

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Figure 8: North Elevation

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No submissions were received.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

The application was submitted on November 2022 prior to the Sustainable Buildings SEPP taking effect on 1 October 2023. Therefore, the Building Sustainability Index SEPP 2004 applies.

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

6.2. SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

Chapter 2 of SEPP (Resilience and Hazards) aims to manage and control development in the coastal zone. This chapter has established development controls for four (4) coastal management areas, known as:

- Coastal wetland and littoral rainforests area;
- Coastal vulnerability area;
- Coastal environment area;
- Coastal use area;

The subject site is mapped in land identified as a coastal use area as well as a coastal environment area therefore, the provisions in Chapter 2 of the SEPP apply and require the Council to be satisfied the development is sited and designed to avoid adverse impacts. The application was referred to Councils' development engineers, landscaping officers and Bushland supervisor due to proximity to Trenerry Park. The referral comments are in support of the proposal subject to conditions of consent as discussed in further detail in Appendix 1 of this report.

Chapter 4 - Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) 2021 relates to the remediation of land. Clause 4.6 of the SEPP states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and, if it is contaminated, the consent authority is satisfied that the land is suitable for the purpose. If the land requires remediation to be undertaken to make the land suitable for the proposed use, the consent authority must be satisfied that the land will be remediated before the land is used for that purpose.

It is not considered that the land is contaminated, as the subject site has a history of residential land use. In addition, the surrounding area does not contain any known contaminating land uses that could impact the site. Therefore, as per Chapter 4 of SEPP (Resilience and Hazards), it can be concluded that the subject land is suitable for continued residential use.

6.3. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|------------------------------|--|---|---------------------------------|
| Floor Space Ratio (Maximum) | CL 4.4A 0.6:1 (374.76m ²) | 0.558:1 (348.8m ²) | Yes |
| Height of Building (Maximum) | 9.5m | 9.4m-11.04m, existing roof level | No, see discussion of 4.6 below |
| Lot Size (Minimum) | 275m ² | 624.6m ² (no subdivision proposed) | Yes |

6.3.1. Clause 4.6 - Exceptions to development standards

The non-compliance with the height of building development standard is discussed in section 7 of this report.

6.3.2. Clause 5.10 - Heritage conservation

The site does not contain a heritage item, is not in proximity to a heritage item and is not located within a heritage conservation area.

6.3.3. Clause 6.7- Foreshore scenic protection area

The subject site is mapped within the Foreshore Scenic Protection Area. Consideration of a development's impacts on foreshore views is required under Clause 6.7 of the RLEP. Part C1 of the Randwick DCP (Low Density Residential), section 5.6 refers to the planning principles relating to sharing views as per *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

View Sharing – View Loss Impacts

In *Tenacity v Warringah*, Paragraphs 26-29, Roseth SC adopts a four-step assessment to assess whether view sharing is reasonable as discussed below:

P26: '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 North Head) are valued more highly than views without icons. Whole views are valued more highly

than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscure.'

The views in proximity to the site include water views of the South Pacific Ocean east of the site, natural land views north to Trenerry Reserve and partial views to Wedding Cake Island northeast.

P27: 'The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.'

Natural views and partial water views through the vegetation are obtained from the north side setback areas as shown in Figure 9 below.



Figure 9: Northeast view from the north side setback of the site to the South Pacific Ocean. Increased partial water views are obtained from the decking in the rear setback of the site as seen in Figure 10 below. Partial views of Wedding Cake Island are obtained from the east/rear decking through vegetation northeast as shown in Figure 11 below.



Figure 10: East view from the rear setback north of the existing decking to the South Pacific Ocean



Figure 11: Northeast view from the existing deck to partial views of Wedding Cake Island
Regarding the south adjoining views from 3 Wolseley Road, increased water views to the east are obtained from the terraces and decking on the east/rear of the site. It is additionally noted that the south adjoining allotment has a larger variable depth between 51m-55m compared to the subject

site depth of 31m. As such, the terraces on 3 Wolseley Road extend further east beyond the rear boundary of the subject site as shown in Figure 12 below.



Figure 12: West/rear elevation of the site and south neighbour 3 Wolseley Road which extends further east compared to the subject site.

P28: *'The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.'*

The alterations and additions to the dwelling predominantly involve internal wall removal, room reconfiguration and provision of lower ground floor level habitable area. The lower ground floor includes an outdoor seating area accessed from the proposed rumpus room providing lower seating with natural views. The additions do not reduce views from the habitable rooms on the site.

The new decking proposed increases the deck area in the rear setback area from 49.7m² to 95.4m². The angled deck extends approximately 3m north and south compared to the existing deck (highlighted blue below) while reducing a portion of the existing decking on the southeast corner as highlighted green in the ground floor plan below:

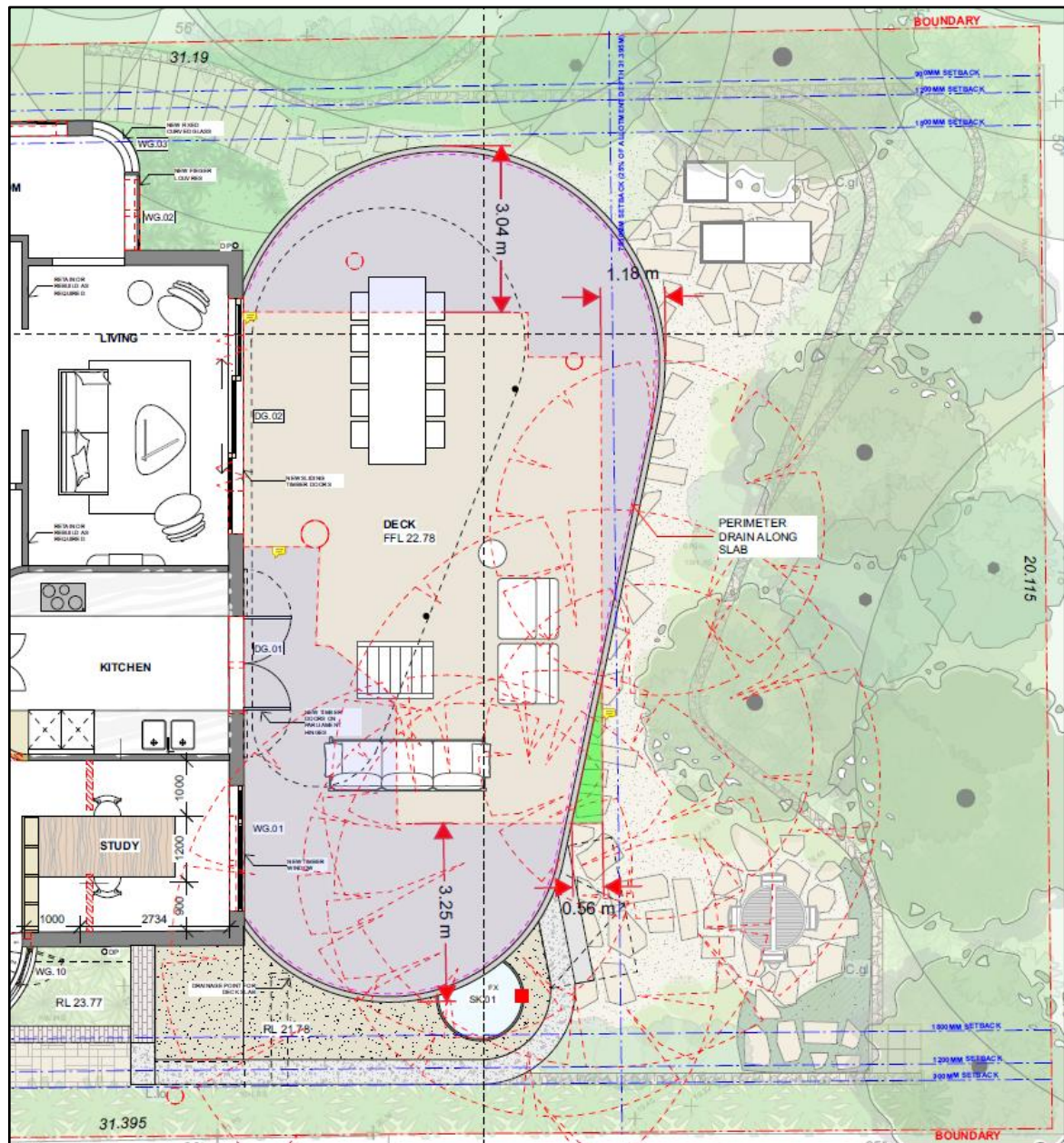


Figure 13: Ground floor plan, additional decking compared to the existing is highlighted blue and the reduced decking area is highlighted in green.

The extent of impact from the proposed decking is considered minimal due to the proposed angle of the decking and greater site depth of the south adjoining allotment as previously discussed. Furthermore, terraced floor levels of 3 Wolseley Road as shown in Figure 12 closely reflect the character of dwellings on the east side of Wolseley Road. Given the site depths and the northeasterly/easterly views of the ocean and Wedding Cake Island, the south neighbouring dwellings in Figure 14 are not affected by the proposed additions.

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Figure 14: West/rear elevation of the site, 3 Wolseley and 5-9 Wolseley Road (right to left).

Partial water views from neighbours on the western side of Wolseley Road will not be impacted by the proposed additions. The garage is proposed at ground level with a low/flat parapet wall at a lower height than the existing roof. The dwellings on the western side of Wolseley Road have multiple steps in floor levels responding to the topography and feature balconies above garage level that provide views over dwellings on the eastern side of Wolseley Road as shown in Figure 15 below.



Figure 15: dwelling houses with front balconies along the western side of Wolseley Road.

P29: *'The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.'*

The proposed alterations and additions are considered reasonable due to the siting and careful design of the proposed decking on the east/rear of the building. While there are variations to the DCP site coverage and rear setback controls, the variations as discussed in Appendix 3 do not impact views to and from the site, from the south adjoining allotment or the properties located on the western side of Wolseley Road, and are therefore considered reasonable in this context.

7. Clause 4.6 exception to a development standard

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

| Clause | Development Standard | Proposal | Proposed variation | Proposed variation (%) |
|-------------------------------|----------------------|--|--------------------|------------------------|
| Cl 4.3: Building height (max) | 9.5m | Existing = 9.4m - 10.24m Proposed = 10.24m-11.04m | Max 1.54m | Max 16.21% |

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

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

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

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

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

is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

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

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

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

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

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

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

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

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

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

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

Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular

PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6 (subject to the conditions in the table in the notice).

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

7.1. Exception to the Height of Buildings development standard (CI 4.3)

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

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

The applicant's written request seeks to justify the contravention of the height of buildings 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 height of building standard are set out in Clause 4.3 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

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

"The proposed alterations and additions, by extending the outdoor space and by increasing area below ground result in maintaining the existing roof height and hence amenity to neighbours and surroundings. The size and scale of this development is therefore compatible with the desired future character of the locality."

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

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

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

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

- *"The proposed alterations and additions will result in minimal change to the existing views and visual outlook from neighbouring properties and the public domain. The proposed additions, where they extend above the 9.5m maximum building height do not materially encroach into existing views from the public domain or private property.*
- *The proposed development, at the height and configuration proposed, has a minimal and satisfactory impact on visual outlook, views, privacy and solar access of neighbouring properties.*
- *As demonstrated in the SEE and the shadow diagrams, the proposal results in no increase in overshadowing of neighbouring residential properties. The additional building height above 9.5m does not cast shadows over any solar access sensitive areas of neighbouring residential properties, public reserves or other public areas.*

- *The proposed alterations and additions will have minimal impact on neighbour privacy compared to the existing dwelling. The re-configured dwelling does not create opportunities for increased overlooking of privacy sensitive areas"*

Assessing officer's comment: In conclusion, the applicant's written request has adequately demonstrated that compliance with the height of buildings 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 height of buildings development standard as follows:

- *"The numerical height non-compliance arising from the proposed alterations and additions results in no increase in environmental, heritage, amenity or other impact compared to the existing dwelling and offers the benefit of facilitating alterations and additions which provide for a contemporary design for the re-configured dwelling, taking optimal advantage of expansive views and providing substantially improved internal amenity and disabled access.*
- *The reconfiguration of the house is designed to provide a more functional layout, with disabled access included to all three levels.*
- *The proposed alterations and additions result in maintaining the existing roof height and hence amenity to neighbours and surroundings. The size and scale of this development is therefore compatible with the desired future character of the locality.*
- *Importantly, requiring strict numerical compliance would create a less desirable planning outcome. To delete the non-complying section would result in no material benefit in terms of perceived bulk, scale and height, compared to the proposed layout and preclude disabled access to the lower levels."*

Assessing officer's comment:

The environmental planning grounds provided in the applicant's written request outline the overall benefits of providing additional floor area on the lower ground floor that does not impact upon adjoining amenity. The alterations and additions do not increase the height of the topmost roof which is existing. Due to the site topography, a review of the existing elevations and sections calculates the existing building height to range from 9.4m to 10.24m with an existing variation to building height on the site. The parapet wall and lift overrun will comply with the maximum 9.5m building height development standard. The alterations include the provision of lift access to ensure the additions including the lower ground level increase accessibility to the site.

Assessment of the shadow diagrams indicate the increase in shadows does not result from the portion of the building above the 9.5m height limit. The additions include the lower ground floor and replacement of the east/rear decking with no change to the first floor windows therefore, the portion of the dwelling above the 9.5m height limit does not result in overlooking to the adjoining private open space.

As discussed in Section 6.3.3 of this report above, the alterations and additions do not impact on water views achieved from the south adjoining allotment or view achieved from dwellings on the western side of Wolseley Road.

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 height of buildings standard and R2 Low Density Zone is provided below.

Assessment against objectives of height of buildings standard

For the reasons outlined in the applicant's written request, the development is consistent with the objectives of the height of buildings standard as outlined below:

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

Assessing officer's comment: The current character of the locality consists of single-storey, two-storey and three-storey dwellings with varying heights that step down in response to the topography of the area sloping west to east. The provision of additional area as a lower ground floor area and an increased decking area has allowed the first floor level and roof to remain as is. Stepping floor levels with the site topography is not dissimilar to neighboring dwellings south of the site. Therefore, the additions maintain a size and scale of development compatible with the character of the locality.

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

Assessing officer's comment: The site does not contain a heritage item, does not adjoin a heritage item and is not located within a heritage conservation area.

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

The assessment that must be made is whether or not the development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

- Visual bulk: The development presents as a single storey dwelling from Wolseley Road due to the site topography sloping from the southwest/front corner of the site to the northeast/rear corner of the site. An additional habitable area is proposed through a lower ground floor level and does not increase visual bulk compared to the existing building.
- Loss of privacy: A detailed assessment of privacy impacts is provided in Appendix 3 (Item 5.3 – Visual Privacy). Subject to compliance with the recommended condition 2 (b), the proposed development will not result in any unreasonable adverse privacy impacts.
- Overshadowing: A detailed assessment of the overshadowing impacts is provided in Appendix 3 (Item 5.1 – Solar access and overshadowing). This assessment shows Shadows cast onto the south adjoining site result from the proposed garage and not the portion of the dwelling over 9.5m in height. Notwithstanding this, the neighbouring north facing windows will receive over 3 hours solar access.
- Views: A detailed view loss assessment is provided in section 6.3.3. This assessment shows that the proposed additions do not result in loss of view sharing from the south adjoining dwelling and dwellings on the western side of Wolseley Road.

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

The development is consistent with the objectives of the height of buildings standard.

Assessment against objectives of the R2 Low Density Residential zone

The objectives of the R2 Low Density residential zone are:

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

Assessing officer's comment: The proposal will continue to provide for the housing needs of the community. The proposal conforms to the low-density scale of surrounding dwellings that step in ground levels in response to the site topography.

The proposed additions recognise the built form which characterizes the streetscape of Wolseley Road. In particular the addition incorporates additional habitable area and open space on the eastern side of the site.

The proposal protects adjoining amenity by providing additional floor area at the lower ground floor. The replacement of the existing roof does not increase the height of the topmost part of the roof. The proposed change in shadows results from the proposed garage which complies with the 9.5m height and allows 3 hours solar access therefore, the proposal will retain adjoining amenity.

The amenity of residents on the site is enhanced by providing off street parking and bin storage in the proposed garage. Long term amenity for residents is provided through the lift access proposed.

The development is consistent with the objectives of the floor space ratio standard and the R2 Low Density Residential zone. Therefore, the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have been satisfied and that development consent may be granted for development that contravenes the height of buildings 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.

During the assessment process, the Randwick Comprehensive Planning Proposal was enforced with amendments made to Part C1 Low Density Residential of the Randwick DCP on 1 September 2023. However, as the application was formally lodged prior to the new DCP coming into effect, the application has been assessed under the Randwick DCP provisions that applied at the time of lodgment.

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

9. Environmental Assessment

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

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

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| | the locality. Accordingly, the proposal is considered to be in the public interest. |

9.1. Discussion of key issues

Privacy Impacts – Deck

The proposal includes removal of the existing deck and provision of a new deck with access from the kitchen and living room on the ground floor. The site currently does not feature fencing along the south side boundary between the site and No.3 Wolseley Road. The existing and proposed decking therefore currently have a line of sight to the neighbouring north window at the same level as the deck as highlighted on the ground floor plan below.

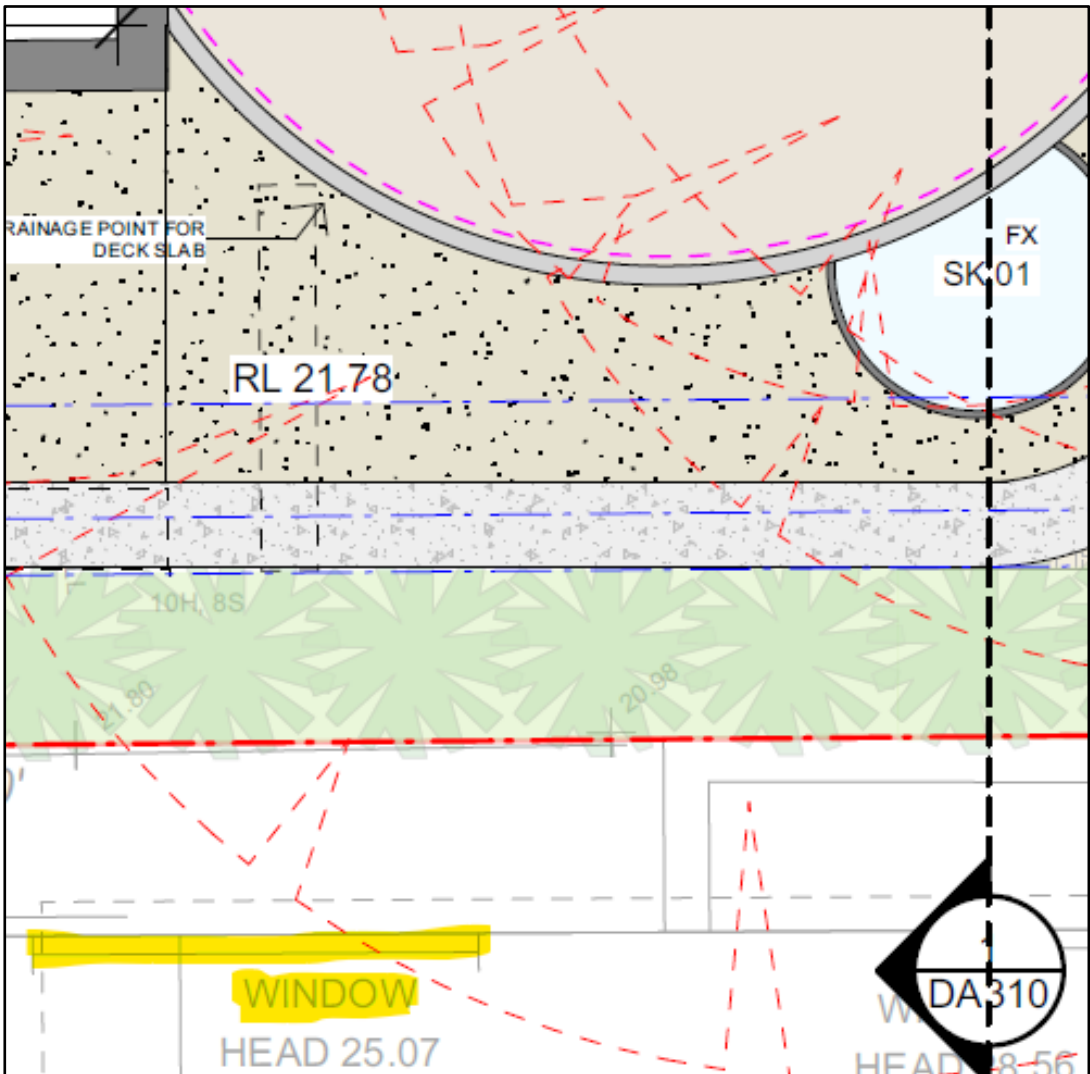


Figure 16: extract of ground floor plan with neighbouring ground floor window highlighted.

The proposal does incorporate landscaping along the southern boundary of the site however, landscaping as a main safeguard against overlooking is to be given minor weight as established in the planning principles for Privacy by Roseth SC in *Super Studio v Waverly* [2004] NSWLEC 91 [P6]. Therefore, other measures to prevent overlooking are required. A condition of consent has been recommended to provide a privacy screen on the southern portion of the deck.

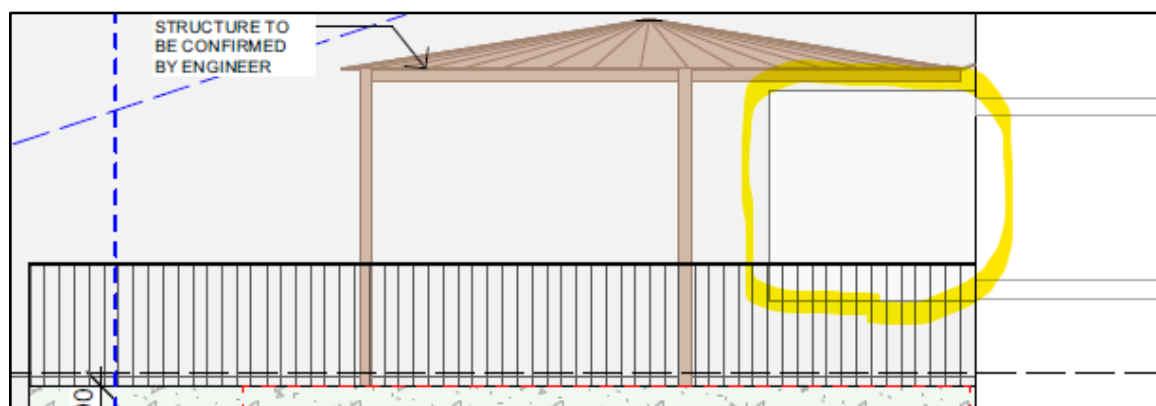


Figure 17: Extract of north side elevation highlighting the window view which is recommended to be screened.

In conclusion, the privacy issue raised by potential overlooking is to be resolved through conditions of consent.

Roof and Awning Reflectivity

The proposal includes replacement of the existing roof and the new awning roof to be constructed of copper. Due to the potentially reflective nature of the material chosen a condition of consent is recommended that will require an amended materials and finish schedule to specify a treatment or texture to the copper roof and awning that reduces reflectivity to prevent potential impact to neighbours through glare.

10. Conclusion

That the application for '*substantial alterations and additions to the existing dwelling house including new rear ground and lower ground floor additions, front double garage with gym and store room below, new copper roof cladding, associated site and landscaping works*' be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The overall bulk, scale, massing, and design of the proposed development are considered contextually appropriate and responsive to the unique setting and constraints of the site and surrounding properties. In general, the proposal is considered to be suitable for the location and is a built form that is compatible with the desired future character of the locality.

It is recommended that the following requirements be incorporated in the consent as part of Condition 2, as follows:

Condition 2 - Amendment of Plans & Documentation

Privacy screen

Due to the potential views from the proposed deck to a south adjoining window as discussed above, a condition of consent prior to the issue of a construction certificate is recommended. The condition requires submission of amended plans and elevations that provide a privacy screen on the south side of the deck to maintain privacy to the north facing window on the same level as the deck.

External materials

Prior to the issue of a construction certificate, an amended colours, materials and finishes schedule will be required that incorporate treatments/texturing to the copper roof and awning which will result in low reflectivity.

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Appendix 1: Referrals

1. External referral comments:

1.1. Ausgrid

- The subject site is located within 15m of a power pole along Wolseley Road.
- Conditions of consent has been recommended for the undergrounding of power to the site .

2. Internal referral comments:

2.1. Landscape planner

- No objections are raised subject to conditions of consent.

2.2. Development Engineer

- No additional information is requested.
- Conditions of consent recommend alterations to the proposed garage slab level and relocation of the stormwater headwall and discharge point with amended drainage plans prior to the issue of a construction certificate.

2.3. Bushland

- No objections are raised subject to conditions of consent.
- Additional details for the proposed scour system are to be submitted to Council for consultation with the Bushland Supervisor prior to the issue of a construction certificate.

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

1.Introduction

Clause 4.6 of Randwick City Council Local Environment Plan 2012 (RLEP2012) allows for flexibility in the application of certain development standards to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The existing dwelling at 1 Wolseley Rd extends to a maximum height of 9.4m above existing ground level. The existing dwelling is located on the eastern part of a steeply sloping site, with a 35% slope down from Wolseley Street. As a consequence, there is minimal impact to Wolseley Street itself.

The proposed reconfiguration of the building and provision of a lift requires a variation to the 9.5m height control prescribed in Clause 4.3 of RLEP. This is necessary in order to enable the development to proceed.

The height of the existing building is not increasing . The ground plane is being lowered to increase usability of outside building spaces. There have been no complaints from neighbours after viewing the plans. Structural engineers drawings will be prepared to ensure all changes to levels comply with building regulations.

This document is the Applicants request to vary the height control prescribed by clause 4.3 of the LEP 2012.

2. The relevant development standard.

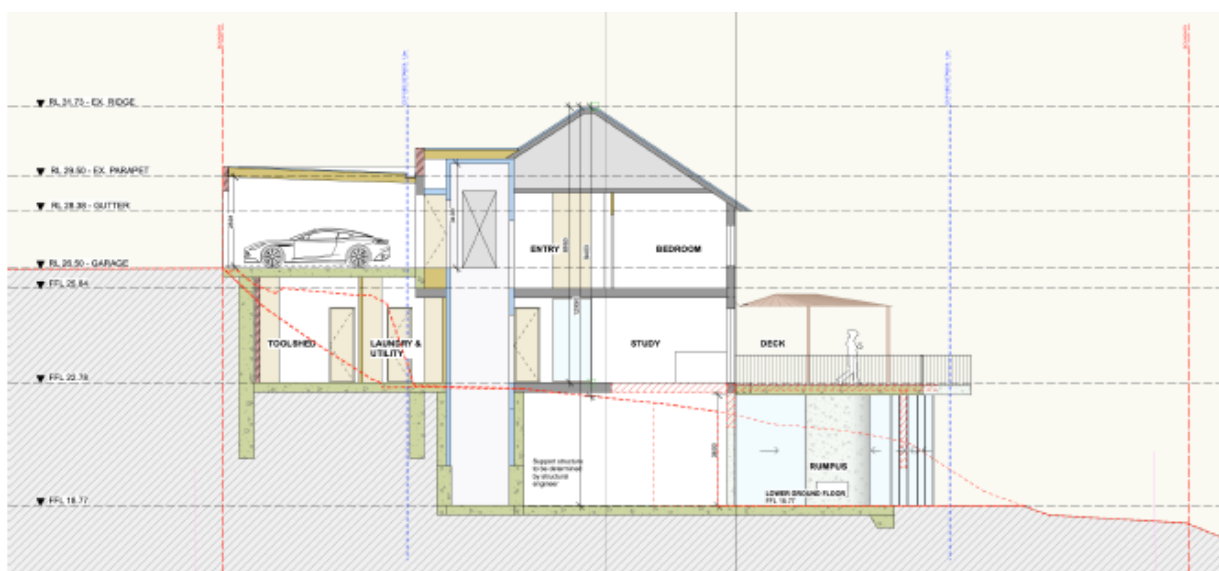
Clause 4.3 of RSLEP 2012 sets out requirements in relation to height of buildings. Sub-clause 4.3(2) requires that a building on any land is not to exceed the maximum height shown for land on the Height of Buildings Map. The maximum building height for the subject land, as shown on this Map is 9.5m. Building height is measured as height above existing ground level, to the highest point of the building.

3. Requested variation to the standard

The proponent seeks a 3.55m variation of 9.5m maximum building height due to cutting into the site for lift access to lower level. The maximum height from the proposed lower rumpus level is 12.95 however from existing ground level is only 9.4m

The development application plans include elevation and section drawings illustrating the extent of height encroachments at the various sections of the building.

The section attached shows the various heights discussed and as requested.



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4. Requirements of clause 4.6 – Exceptions to development standards

The objectives of clause 4.6 are as follows:

“(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”

Clause 4.6(3) requires that a request to contravene the control, to demonstrate:

“(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.”

In considering whether to grant consent for a development that contravenes a development standard, a consent authority must be satisfied that:

“(i) the applicant’s 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 to be carried out, and

(iii) the concurrence of the Secretary has been obtained.

These matters are addressed below in Sections 5 and 6.

5. Compliance with the development standard is unreasonable or unnecessary

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The proposal achieves the objectives of the height control.

The objectives of the control are noted and commented upon below: The objectives for the height control are as follows:

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

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

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

The proposal achieves the above objectives as detailed in the following assessment.

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

The proposed alterations and additions, by extending the outdoor space and by increasing area below ground result in maintaining the existing roof height and hence amenity to neighbours and surroundings. The size and scale of this development is therefore compatible with the desired future character of the locality

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

There is a significant variation in building heights in the locality, ranging from part 1 part 2 and part 3 storey dwellings. Building height is characterised by variety, rather than consistency.

Both the existing dwelling on the site and the building after the proposed alterations and additions, will remain compatible with the highly varied building heights in the locality, including several much taller buildings.

The proposed development maintains the established varied built-form character of the locality and presents an appropriate scale and density within the locality.

The owner has chosen to preserve the existing building even though it is not heritage listed thereby maintaining the scale and character of this conservation area.

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

The proposed alterations and additions will result in minimal change to the existing views and visual outlook from neighbouring properties and the public domain. The proposed additions,

where they extend above the 9.5m maximum building height do not materially encroach into existing views from the public domain or private property.

The proposed development, at the height and configuration proposed, has a minimal and satisfactory impact on visual outlook, views, privacy and solar access of neighbouring properties.

As demonstrated in the SEE and the shadow diagrams, the proposal results in no increase in overshadowing of neighbouring residential properties. The additional building height above 9.5m does not cast shadows over any solar access sensitive areas of neighbouring residential properties, public reserves or other public areas.

The proposed alterations and additions will have minimal impact on neighbour privacy compared to the existing dwelling. The re-configured dwelling does not create opportunities for increased overlooking of privacy sensitive areas.

Lack of impact

As noted in the above discussion, despite the numerical height non-compliance, the portion of the building that extends above 9.5m has no impact on the environmental, heritage or visual qualities of the locality, or the streetscape, compared to the existing built form.

The amenity of surrounding properties will be maintained to substantially the same extent as existing. The extent of the non-compliance is not excessive when compared to the existing dwelling. In circumstances where development sites are steeply sloping, and alterations and additions to an existing dwelling result in no material increase in building bulk and no increase in height above the existing maximum building height on the maximum building, height controls should be applied with some degree of flexibility.

6. There are sufficient environmental planning grounds to justify contravening the development standard

The numerical height non-compliance arising from the proposed alterations and additions results in no increase in environmental, heritage, amenity or other impact compared to the existing dwelling and offers the benefit of facilitating alterations and additions which provide for a contemporary design for the re-configured dwelling, taking optimal advantage of expansive views and providing substantially improved internal amenity and disabled access.

In determining to support a variation to a development standard, the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard, and the objectives for development within the zone in which the development is to be carried out. This clause 4.6 submission has demonstrated that the proposal is consistent with the objectives of the height standard and with the objectives of the R2 Zone.

The R2 Low Density Residential zone requires

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

This proposal provides for the housing needs of the community by providing a 3 bedroom house on Wolseley Rd South Coogee. This provides necessary accommodation in the area.

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

The current parking and garbage bins are on the street. The bins are currently quite unruly and not attractive on the streetscape. This proposal takes both off street enabling greater amenity and a more desirable streetscape. Two cars will be housed in the proposed garage and thereby taken off the street hence increasing amenity to neighbours and visitors.

- *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.*

The owner has chosen this site due to the native trees and proximity to bush. He has an interest in maintaining these and planting more hence also enhancing amenity for all. Where trees are being removed, he plans to plant replacement trees elsewhere.

The proposed alterations and additions result in maintaining the existing roof height and hence amenity to neighbours and surroundings. The size and scale of this development is therefore compatible with the desired future character of the locality

- *To protect the amenity of residents.*

The amenity will increase due to parking and garbage being taken off the street. Minimal development beyond the extent of the upper level will maintain visual amenity.

- *To encourage housing affordability.*

Not applicable

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

Not applicable

It is in the public interest to support a variation to a development standard where it is consistent with the objectives of the development standard and the zone objectives, in circumstances where a development achieves a better planning outcome.

Also, in acting in the Secretary's concurrence role, Council 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 Director-General before granting concurrence.*

In relation to (a), the proposed contravention of the height standard does not increase the existing height above ground level and does not raise any matter of State or regional significance.

In relation to (b), there is no public benefit from maintaining strict numerical compliance with the development standard as there is no adverse impact on the environment, public domain, streetscape, neighbourhood character or neighbour amenity arising from the requested height variation. The proposal is generally consistent with other relevant planning controls and a better planning outcome is achieved.

Building height standards should be applied with some degree of flexibility in circumstances where land is steeply sloping, and where alterations and additions are proposed to an existing dwelling and the proposed works result in no material increase in bulk and scale. Such an approach is in the interest of orderly and efficient development of land.

In relation to (c), there are no other matters that require consideration.

Conclusion

The proposed building form and height is generally consistent with the existing dwelling on the site and the proposed alterations and additions result in a 3.55m increase in maximum building height from finished lower floor level but no extra overall height from existing natural ground level, compared to the existing dwelling. The proposal achieves the objectives of the building height control and the objectives of the R2 Residential Zone, notwithstanding the numerical height non-compliance of the overall height. The reconfiguration of the house is designed to provide a more functional layout, with disabled access included to all three levels.

The development, in the form proposed, provides for an appropriate building typology and density, with no material environmental impacts and is consistent with the objects of the *Environmental Planning & Assessment Act*. Requiring compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit and in relation to architecture, urban design or amenity.

Importantly, requiring strict numerical compliance would create a less desirable planning outcome. To delete the non complying section would result in no material benefit in terms of perceived bulk, scale and height, compared to the proposed layout and preclude disabled access to the lower levels. The public interest is served by supporting the requested variation to the maximum building height standard and with respect to the height .

Some degree of flexibility with respect to the application of maximum building height standards should be applied when dealing with steeply sloping sites and an existing building and where the proposed works result in no material increase in bulk and scale and reduced impact within the streetscape of Warung Street.

Flexible application of the building height control development standard for the proposed development provides for an improved planning, architectural and amenity outcome, in a manner that is more responsive to the steeply sloping character of the land, with no material impact on neighbour amenity, streetscape, neighbourhood character, heritage or the environment. The requested variation to the 9.5m maximum building height standard is appropriate and worthy of support.

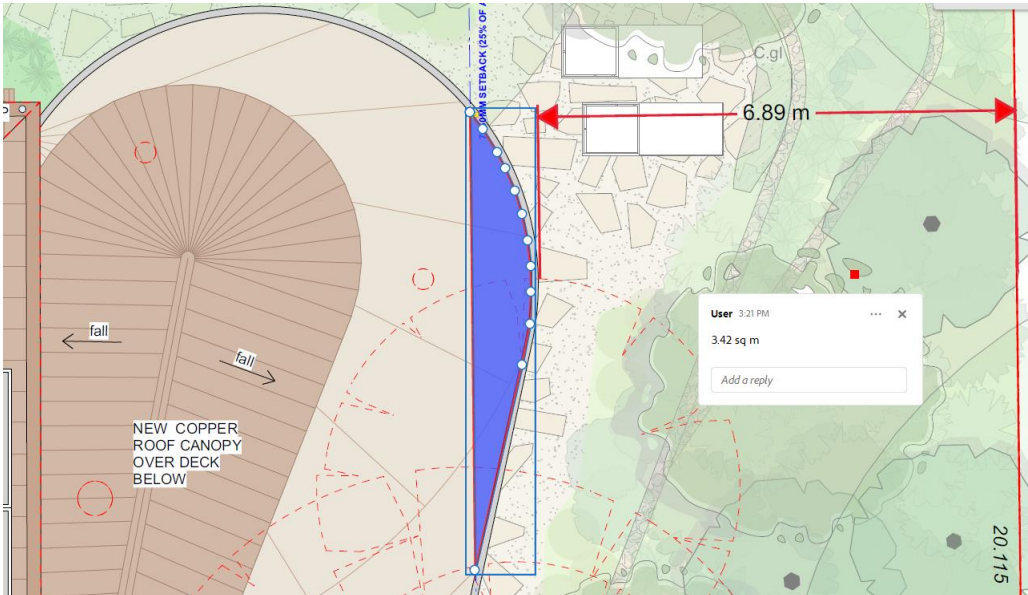
Appendix 3: DCP Compliance Table**3.1 Section C1: Low Density Residential**

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|--|
| | Classification | Zoning = R2 Low Density Residential | Yes |
| 2 | Site planning | | |
| 2.1 | Minimum lot size and frontage | | |
| | Minimum lot size (RLEP): <ul style="list-style-type: none"> R2 = 400sqm R3 = 325sqm | 624.6m ² No subdivision | Yes. No subdivision proposed |
| | Minimum frontage | | |
| | i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m | Min = 12m Existing = 19.81m, no change proposed | Yes, No change in site width proposed |
| 2.2 | Layout Detached dual occupancy | | |
| | i) Detached dual occupancies may be developed only if: <ul style="list-style-type: none"> Dual frontage Secondary access Street frontage of at least 18m in width. | No dual occupancy proposed | N/A, Alterations and additions only |
| | Minimum separation: <ul style="list-style-type: none"> Dual frontage = 10m min. Secondary access: Merit assessment Detached in R2 = 1800mm min. (18m minimum frontage) | No dual occupancy proposed | N/A, Alterations and additions only |
| | 900mm minimum footpath at rear lane Note: N/A to corner allotment. | No dual occupancy proposed | N/A, Alterations and additions only |
| 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 = 624.6m ² Proposed = 272m ² (43.35%) | Yes |
| 2.4 | Landscaping and permeable surfaces | | |
| | i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones. | Site = 624.6 Proposed = 220.6m ² (35.32%) | Yes |
| 2.5 | Private open space (POS) | | |
| | Dwelling & Semi-Detached POS | | |

| DCP Clause | Controls | Proposal | Compliance |
|--|---|--|--|
| | 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 = 624.6m ² Existing = 48.96m ² Proposed = 95.43m ² rear decking | Yes |
| | Dual Occupancies (Attached and Detached) POS | | |
| | 451 to 600 sqm = 5m x 5m each 601sqm or above = 6m x 6m each ii) POS satisfy the following criteria: <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 | N/A, Application is for alterations of a single dwelling | N/A, Application is for single dwelling alterations |
| 3 | Building envelope | | |
| 3.1 | Floor space ratio LEP 2012 = 0.6:1 (cl4.4A)(3) | Site area = 624.6m ² Existing FSR = 0.37:1 (232.6m ²) Proposed FSR = 0.558:1 (348.8m ²) | Yes |
| 3.2 | Building height | | |
| | Maximum overall height LEP 2012 = 9.5m | Existing = 9.4m - 10.24m Proposed = 10.24m-11.04m | Complies on merit. Refer to cl 4.6 discussion in Section 7.1 of this report. |
| | i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded | Existing = 8m Proposed = 9.5m | Complies on merit as discussed below. |
| The proposal additions are predominantly internal with the wall height increasing on the north side due to site topography and proposal of the lower ground floor that is not dissimilar to dwellings south of the site. The proposal does not increase the wall height or roof/ridge RL above the existing level. Therefore, the proposed wall height is consistent with the objectives of Section 3.2 as the development does not impact on adjoining amenity and is designed with respect to the site topography. | | | |
| 3.3 | Setbacks | | |
| 3.3.1 | Front setbacks | | |
| | i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary Street frontage: <ul style="list-style-type: none"> 900mm for allotments with primary frontage width of less than 7m 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front | Minimum = Consistent with average setbacks of the adjoining dwellings. Existing = 6.28m Proposed = 0m setback to garage with 6.3m to the | Complies on merit, the setbacks on the east side of Wolseley Road consist of building configurations of zero-setback garages and buildings set behind the garage including the |

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| DCP Clause | Controls | Proposal | Compliance |
|--|---|---|--|
| | | building line behind the garage | south neighbouring 3 Wolseley Road shown below, as well as the properties at 5 to 19 Wolseley Road. |
|  <p>23 Nov 2023 10:17:30 am 84° E Wolseley Road South Coogee, City of Randwick 2034</p> | | | |
| 3.3.2 | Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings | Minimum = 1.2m ground floor and 1.8m first floor Existing = 1.3m north side, 3.4m south side Proposed = 1.3m north side unchanged, south side zero setback for the garage and 1.8m for the dwelling | Complies on Merit. The additions proposed with a lower setback is for the proposed garage in front of the dwelling. No windows are proposed on the south side to prevent any overlooking. |
| 3.3.3 | Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and | Minimum 25% of site depth = 7.85m Existing = 8.14m Proposed = 6.85m | Complies on Merit discussed below. |

| DCP Clause | Controls | Proposal | Compliance |
|--|---|---|------------|
| | <p>private)</p> <ul style="list-style-type: none"> - protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p> | | |
| <p>The portion of the new deck less than 7.85m setback accounts for only 3.42m² of the deck and a width of 1m as highlighted blue in the site plan below.</p>  | | | |
| <p>The addition extends to the northeast further away from the south adjoining private open space. The siting of the addition and landscaping prevents overlooking into the south adjoining private open space. It is noted during the site inspection that the current and proposed deck has views to windows on the south adjoining dwelling therefore, privacy screening is to be provided on the south side of the deck through conditions of consent to improve adjoining privacy.</p> <p>As discussed in the View analysis as per clause 6.7 of RLEP discussed above, the variation to the DCP does not result in loss of views from the south adjoining private open space due to the site depth of 3 Wolseley Road. Therefore, the variation to the DCP control is consistent with Section 3.3 objective 'to enable a reasonable level of view sharing between a development and the neighbouring dwelling and the public domain.'</p> | | | |
| 4 | Building design | | |
| 4.1 | General | | |
| | <p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape | <p>The building provides articulation</p> | <p>Yes</p> |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|---|
| | <ul style="list-style-type: none"> stepping building on sloping site, no side elevation greater than 12m encourage innovative design | addressing the street and steps down with slope in response to the site topography | |
| 4.2 | Additional Provisions for symmetrical semi-detached dwellings | | |
| | i) Enhance the pair as coherent entity: <ul style="list-style-type: none"> behind apex of roof; low profile or consistent with existing roof new character that is first floor at front only after analysis streetscape outcome ii) Constructed to common boundary of adjoining semi iii & iv) avoid exposure of blank party walls to adjoining semi and public domain | The dwelling is a detached dwelling, not semi-detached | N/A |
| 4.3 | Additional Provisions for Attached Dual Occupancies | | |
| | Should present a similar bulk as single dwellings i) Garage for each dwelling shall have a single car width only ii) Articulate and soften garage entry iii) Minimise driveway width iv) Maximum 2m setback of front entry from front façade v) Maximise landscape planting at front | The proposal is for dwelling additions only. | N/A |
| 4.4 | Roof Design and Features | | |
| | <i>Rooftop terraces</i> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <i>Dormers</i> iii) Dormer windows don't dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <i>Celestial windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties. | Decking is proposed above the lower ground floor additions. The additions propose parapet walls over the garage and a skylight on the southeast corner to increase sunlight to the lower ground floor. | Yes |
| 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 | A Schedule of materials is submitted with the plans. The schedule proposes a mix of brick, concrete and timber windows to | Proposed roof and garage door reflectivity can comply through conditions of consent for non-reflective roof treatment/texture |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|--------------------|
| | deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) | provide variation to the existing rendered brick. The replacement roof and garage door are proposed of copper. | |
| 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. | Cut is proposed to provide the lower ground floor rooms noting a steep slope to the rear. The cut for the new steps on the north side setback include a retaining wall to follow the existing ground level. | Complies on merit. |
| 5 | Amenity | | |
| 5.1 | Solar access and overshadowing | | |
| | Solar access to proposed development: | | |
| | i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. | The north facing windows will receive over 3 hours solar access in the morning. The rear decking will receive more than 3 hours solar access. | Yes |
| | Solar access to neighbouring development: | | |
| | i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: | A portion of the adjoining north facing windows receive 4 hours solar access in the morning. The adjoining private open space is not affected by the additions due to the site depth of the adjoining allotment. | Yes |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|--|--|------------|
| | <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. | | |
| 5.2 | Energy Efficiency and Natural Ventilation | | |
| | <p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p> | <p>Alterations and additions include replacement of existing north facing windows thereby retaining daylight to internal areas.</p> <p>The lower floor additions include glass sliding doors on the lower ground floor facing north for solar access. One skylight is proposed to provide additional daylight to the south side of the lower ground floor.</p> | Yes |
| 5.3 | Visual Privacy | | |
| | Windows | | |
| | <p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> windows are offset or staggered minimum 1600mm window sills Install fixed and translucent glazing up to 1600mm minimum. Install fixed privacy screens to windows. Creating a recessed courtyard (minimum 3m x 2m). <p>ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p> | <p>New ground floor windows will face the north (open space) and east(south pacific ocean). South facing windows are proposed for the staircase only (non-habitable area)</p> | Yes |
| | Balcony | | |
| | <p>iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side)</p> | The new ground floor level deck provides | Yes |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|---|
| | 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. | additional decking space to the northeast/rear of the site away from the south neighbouring private open space., nor from properties on the western side of Wolseley Road. | |
| 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. | Quiet habitable rooms (study, laundry and garage) are proposed on the south side of the building | Yes. |
| 5.5 | Safety and Security | | |
| | i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access) | The dwelling entrance remains from the footpath to the first floor. Letterbox proposed in the front adjoining the proposed front gate. | Yes |
| 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 additions to provide the lower ground floor level and new decking do not impact on Ocean views from the site or the south adjoining private open space, nor from properties on the western side of Wolseley Road. | Yes, View-sharing analysis is provided in LEP clause 6.7 discussed above. |
| 6 | Car Parking and Access | | |
| 6.1 | Location of Parking Facilities: | | |
| | i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the | A double garage is proposed in front of the building façade | Complies on merit discussed below. |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|--|--|--------------------|
| | <p>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></p> <p>iv) Single width garage/carport if frontage <12m; Double width if:</p> <ul style="list-style-type: none"> - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. <p>v) Minimise excavation for basement garages</p> <p>vi) Avoid long driveways (impermeable surfaces)</p> | and discussed in DCP section 6.2 below. | |
| 6.2 | Parking Facilities forward of front façade alignment (if other options not available) | | |
| | <p>i) The following may be considered:</p> <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage <p>ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where:</p> <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) | <p>The site is noted to contain a significant slope to the rear. Consideration is also made to neighbouring dwellings south of the site which provide their garages in front of the building line due to the site topography. The position of the garage does not result in overlooking or overshadowing and is consistent with the streetscape.</p> | Complies on merit. |
| 6.3 | Setbacks of Parking Facilities | | |
| | <p>i) Garages and carports comply with Sub-Section 3.3 Setbacks.</p> <p>ii) 1m rear lane setback</p> <p>iii) Nil side setback where:</p> <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing | <p>Section 3.3 requires consistency with adjoining setbacks. The south adjoining sites include garages with zero setback to the front property boundaries.</p> | Yes |
| 6.4 | Driveway Configuration | | |
| | <p>Maximum driveway width:</p> <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m <p>Must taper driveway width at street boundary and at property boundary.</p> | <p>5m double driveway provided</p> | Yes |
| 6.5 | Garage Configuration | | |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|---|
| | i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1 | 5m garage door width proposed. 6m garage length by 7m garage width proposed. 2.3m garage door clearance | Yes |
| 6.6 | Carport Configuration | | |
| | i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to dwelling iii) 3m maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) front gate allowed (minimum 30% open) viii) Gate does not open to public land | No carport proposed | N/A |
| 6.7 | Hardstand Car Space Configuration | | |
| | i) Prefer permeable materials in between concrete wheel strips. ii) 2.4m x 5.4m minimum dimensions | Garage is proposed up to the front boundary | N/A |
| 7 | Fencing and Ancillary Development | | |
| 7.1 | General - Fencing | | |
| | i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street | A lightweight brush fence with timber posts is proposed for a portion of the front setback, north of the proposed gate | Complies through conditions of consent from Landscaping |
| 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</i> | The front height ranges from 0.8m to 1.25m as the front boundary slopes down from the southwest to northwest corner of the site | Yes |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|------------|
| | <p><i>combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> <p>iv) 150mm allowance (above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p> | <p>The top of fence height is within the 150mm allowance.</p> <p>Front gate opens to the council verge in front of Wolseley Road.</p> | |
| 7.3 | Side and rear fencing | | |
| | <p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p> | Vegetation hedging is proposed for the south side boundary | Yes |
| 7.4 | Outbuildings | | |
| | <p>i) Locate behind the front building line.</p> <p>ii) Locate to optimise backyard space and not over required permeable areas.</p> <p>iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height)</p> <p>iv) Nil side and rear setbacks where:</p> <ul style="list-style-type: none"> - finished external walls (not requiring maintenance; - no openings facing neighbours lots and - maintain adequate solar access to the neighbours dwelling <p>v) First floor addition to existing may be considered subject to:</p> <ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades; - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. <p>vi) Must not be used as a separate business premises.</p> | No outbuildings proposed | N/A |
| 7.5 | Swimming pools and Spas | | |
| | <p>i) Locate behind the front building line</p> <p>ii) Minimise damage to existing tree root systems on subject and adjoining sites.</p> | No swimming pool proposed | N/A |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|---|
| | <ul style="list-style-type: none"> 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. | | |
| 7.6 | Air conditioning equipment | | |
| | <ul style="list-style-type: none"> i) Minimise visibility from the street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings. | No change to air condition unit location proposed | Yes |
| 7.7 | Communications Dishes and Aerial Antennae | | |
| | <ul style="list-style-type: none"> i) Max. 1 communications dish and 1 antenna per dwelling. ii) Positioned to minimise visibility from the adjoining dwellings and the public domain, and must be: <ul style="list-style-type: none"> - Located behind the front and below roof ridge; - minimum 900mm side and rear setback and - avoid loss of views or outlook amenity iii) Max. 2.7m high freestanding dishes (existing). | No change to antennas location proposed, the proposal includes replacement of roof materials. | Yes, installation can comply though conditions of consent |
| 7.8 | Clothes Drying Facilities | | |
| | <ul style="list-style-type: none"> i) Located behind the front alignment and not be prominently visible from the street | Clothes drying area is noted on the lower ground level behind the gym | Yes |
| 8 | Area Specific Controls | | |
| 8.1 | Development in Laneways | | |
| | <ul style="list-style-type: none"> i) Max. 6m height. Max. 4.5m external wall height. Mass and scale to be secondary to primary dwelling and upper level contained within roof form (attic storey). ii) 1 operable window to laneway elevation (casual surveillance) iii) Aligns with consistent laneway setback pattern (if no consistent setback then 1m rear setback). (Refer to Sub-Section 6 for controls relating to setback to garage entry.) iv) Nil side setback allowed subject to: <ul style="list-style-type: none"> - adjoining building similarly constructed - no unreasonable visual, privacy and | The site does not adjoin a laneway | N/A |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|----------|------------|
| | overshadowing impacts v) Screen or match exposed blank walls on adjoining properties (i.e. on common boundary). | | |

3.2 Section B7: Transport, Traffic, Parking and Access

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|--|------------|
| 3.2 | Vehicle Parking Rates | | |
| | 1. Space per dwelling house with up to 2 bedrooms 2. Spaces per dwelling house with 3 or more bedrooms Note: Tandem parking for 2 vehicles is allowed. | 2 spaces proposed with the double garage | Yes |

3.3 Section B11: Development in Laneways Nominated for Road Widening

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---------------------------------|------------|
| | Notwithstanding the minimum allotment size provisions of the RLEP and the minimum frontage width requirements of this DCP, the subdivision of land for a dwelling house fronting a nominated laneway may be permitted having regard to the following criteria: i) The merits of the proposal and compliance with the objectives of this DCP; and ii) The dedication to Council of a strip of land 4.57m in depth along the frontage of the lane for road widening purposes. | No subdivision of land proposed | N/A |

3.4 Section B10: Foreshore Scenic Protection Area

| 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) Outbuildings and ancillary structures integrated 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 | The proposed additions when viewed from the public paths east of the site will be consistent with the south adjoining dwellings which feature open view terraces with multiple steps in response to the topography. Open metal balustrades are proposed for the rear deck. Open metal balustrades are proposed for the rear deck. The landscape plans propose removal and tree replacement to screen the lower ground floor while allowing views from the decking to the ocean. The proposal presents a | Yes |

| | | | |
|--|--|--|--|
| | 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. | double garage accessed from Wolseley Road that is not dissimilar to dwellings south of the site such as the neighbouring 3 Wolseley Road, 5 to 19 Wolseley Road. Conditions of consent are recommended to ensure the proposed copper roof and awning are treated or textured to reduce reflectivity. | |
|--|--|--|--|

D21/24

Responsible officer: GAT & Associates, Town Planners

File Reference: DA/602/2022

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Development Consent Conditions



| | |
|------------------------|---|
| Folder /DA No: | DA/602/2022 |
| Property: | 1 Wolseley Road, SOUTH COOGEE NSW 2034 |
| Proposal: | Substantial alterations and additions to the existing dwelling house including new rear ground and lower ground floor additions, front double garage with gym and storeroom below, new copper roof cladding, associated site and landscaping works. |
| Recommendation: | Approval |

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

| Plan | Drawn by | Dated | Received by Council |
|---|------------------------------------|--------------|----------------------------|
| Proposed Site plan, DWG No.DA100, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Proposed lower ground floor plan, DWG No.DA110, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Proposed ground floor plan, DWG No. DA120, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Proposed first floor plan, DWG No. DA130, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Proposed roof plan, DWG No.DA140, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Proposed elevation Street, DWG No. DA200, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Proposed elevation west, DWG No. DA210, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Proposed elevation north, DWG No. DA220, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Proposed elevation east, DWG No. DA230, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Proposed elevation south, DWG No. DA240, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |

| | | | |
|---|------------------------------------|------------|------------|
| Section A, DWG No. DA300, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Section B, DWG No. DA310, Rev.A | Virgina Kerridge Architect Pty Ltd | 21.12.2023 | 23.11.2022 |
| Section C, DWG No. DA311, Rev.B | Virgina Kerridge Architect Pty Ltd | 21.12.2023 | 21.12.2023 |
| Materials and Finishes, DWG No. DA500, Rev.A | Virgina Kerridge Architect Pty Ltd | 22.11.2022 | 23.11.2022 |
| Cover Sheet, DWG No.C-DA000, Rev.P3 | JHA Consulting Engineers | 07.11.2022 | 23.11.2022 |
| Roof Drainage Plan, DWG No.C-DA100, Rev.P3 | JHA Consulting Engineers | 07.11.2022 | 23.11.2022 |
| First Floor Drainage Plan, DWG No.C-DA101, Rev.P3 | JHA Consulting Engineers | 07.11.2022 | 23.11.2022 |
| Ground Floor Drainage Plan, DWG No.C-DA102, Rev.P3 | JHA Consulting Engineers | 07.11.2022 | 23.11.2022 |
| Lower Ground Floor Drainage Plan, DWG No.C-DA103, Rev.P3 | JHA Consulting Engineers | 07.11.2022 | 23.11.2022 |
| Catchment Analysis, DWG No.C-DA200, Rev.P3 | JHA Consulting Engineers | 07.11.2022 | 23.11.2022 |
| Details Sheet, DWG No. C-DA300, Rev.P3 | JHA Consulting Engineers | 07.11.2022 | 23.11.2022 |
| Erosion and Sediment Control plan and details, DWG No.C-DA500, Rev.P3 | JHA Consulting Engineers | 07.11.2022 | 23.11.2022 |
| Landscape Plan | Spirit Level Pty Ltd | 07.11.2022 | 23.11.2022 |

| BASIX Certificate No. | Dated | Received by Council |
|------------------------------|--------------|----------------------------|
| A410574 | 27.10.2022 | 23.11.2022 |

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
 - a. A privacy screen having a minimum height of 1.6m (measured above the deck FFL 22.78m AHD) shall be provided to the southern side of the ground floor level deck to provide privacy to the north-facing windows of No.3 Wolseley Road.

Privacy screen/s must be constructed with either:
 - Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
 - Fixed lattice/slats with individual openings not more than 30mm wide;
 - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
 - b. An amended materials and finishes schedule shall be provided:
 1. The copper roof and awning must be constructed with a treated, textured or matte finish that results in reduced reflectivity.

2. The copper roof and awning cannot have a polished or buffed finish.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

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

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

Section 7.12 Development Contributions

5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,461,782.00 the following applicable monetary levy must be paid to Council: \$14,618.72.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Long Service Levy Payments

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

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

Security Deposits

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

- \$3,000.00 - Damage / Civil Works Security Deposit

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

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

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

Sydney Water Requirements

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

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

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

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

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

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Regulations, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Building Code of Australia & Relevant Standards

9. 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

10. 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.

Excavations & Support of Adjoining Land

11. Details of proposed excavations and support of the adjoining land and buildings are to be prepared by a professional engineer and be included in the construction certificate, to the satisfaction of the appointed Certifier.

12. A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details the methods of support for any buildings located on the adjoining land, to the satisfaction of the *Principal Certifier*:

- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or other building that is located on the adjoining land;
- when undertaking demolition work to a wall of a dwelling or other substantial structure that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
- when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land; and
- as otherwise may be required by the Certifier for the development.

The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the *Principal Certifier*.

Design Alignment levels

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

Garage Slab Level – RL 26.60m AHD

Pedestrian Entrance Level – RL 26.40m AHD

Refer to Survey Plan by Bee & Lethbridge P/L dated 08/02/21 for Reference Mark/Benchmark.

It should be noted that the above issued levels are 100mm above the levels shown on the submitted plans. The issued levels are so as to reduce possible stormwater from Council property entering the subject site.

The design alignment levels at the property boundary as issued by Council must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

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

Driveway Design

15. 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.

The height of the building must not be increased to satisfy the required driveway gradients.

Stormwater Drainage

16. Surface water/stormwater from the site must be drained and discharged in general accordance with the submitted *Drainage Plans by JHA Engineers dated 7.11.22, Job No: 220457, Drwg No's C-DA000 – C-DA500, Rev P3.*

Note: Due to the Presence of rock in the area a 5sqm infiltration pit in the rear yard (as shown on the submitted plans) is not required.

The details of the proposed stormwater drainage system are to be included in the construction certificate details for the development.

Landscape Plan Amendment

17. The Landscape Plan by Spirit Level Designs dated 7/11/2022, (Dwg L101A) must be amended to now comply with the following requirements:
 - a) Removal of trees, **T25,26,27 & 30** *Banksia integrifolia* (Coastal banksia) **T29** *leptospermum laevigatum* (Coastal tea tree) wholly in the northern aspect of the neighbouring reserve, being **deleted/replaced** with an alternative species that complies with this requirement.
 - b) Indicative plant schedule - In reference to the indicative plant schedule provided in the DAs Landscape Concept Plan (Dwg L101A), *Pennisetum alopecuroides* 'Nafray' has a weedy potential and should be removed from the list, this species should be replaced with more suitable grass species:
 - *Dichelachne crinita* / Native plume grass
 - *Rytidosperma* (syn. *Austrodanthonia*) sp. / Wallaby grasses
 - *Themeda triandra* (syn. *australis*) / Kangaroo grass

Other species can be proposed, any other changes to the indicative plant schedule must be in consultation and approved by council's Bushland Supervisor, all other species listed in the schedule are appropriate for use in landscaping and approved by the Bushland Supervisor.

18. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the AMENDED scheme submitted for the Construction Certificate complies with the requirements specified above, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.

Removal of Street & Reserve Trees

D21/24

19. The applicant must submit a payment of **\$13,720.50 (GT inclusive)** to cover the following costs that includes: **(Part 7, 10 & 11 in this report)**
- Being the cost for Council to remove, stump-grind and dispose of the existing street trees specimens, **T1**, mature *Syzygium smithii* (Lilly Pilly) & **T2**, mature *Syzygium smithii* (Lilly Pilly) **T3**, *Banksia integrifolia* (Coastal banksia) **T6**, mature *Capaniopsis anacardioides* (Tuckeroo) within the northeast aspect of the council's verge.
 - Being the cost for Council to remove, and dispose of the existing reserve tree specimens, to show **T25,26,27 & 30** *Banksia integrifolia* (Coastal banksia) an **T29** *leptospermum laevigatum* (Coastal tea tree) being **deleted/replaced** with an alternative species that complies with this requirement.
20. Being the cost for Council to supply, plant and maintain subject to the planting of
- 2 x 25** litre street trees on the Wolseley Road verge.
 - 5 x 25 litre** *Banksia integrifolia* (Coastal banksia) and **1 x 25 litre** *leptospermum laevigatum* (Coastal tea tree) broad canopied replacement trees (not palms) within the adjacent reserve site, the species selected shall be those that will attain a minimum height of 6 metres at maturity:

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

The applicant must contact Council's Landscape Development Officer on 9093-6633 (quoting the receipt number) and giving at least four working weeks' notice (allow longer for public holidays or extended periods of rain) to arrange for removal of the street tree prior to the commencement of site works, as well as upon completion, to arrange for planting of the replacement street tree.

After this, any further enquiries regarding scheduling/timing or completion of works are to be directed to Council's South/North Area Tree Preservation & Maintenance Coordinator on 9093-6728.

Street Tree Protection Measures

21. To ensure retention of **T4 & T5** Coastal Banksia (*Banksia Integrifolia*) on Council's verge in front of this site, both in good health, the following measures are to be undertaken.
- All documentation submitted for the Construction Certificate application must show their retention, with the position and diameter of their trunks, canopy's, TPZ and Tree Identification Numbers as taken from the Arborist Report (Graham Brooks Tree Care, pages 5,6 & 7) and Landscape Plan (Dwg L101 A) to be clearly and accurately shown on all plans in relation to the proposed works.
 - Prior to the commencement of any site works, the Principal Certifier must ensure that an AQF Level 5 Consulting Arborist (who is eligible for membership with a nationally recognized organization/association) has been engaged as *'the Project Arborist'* for the duration of works and will be responsible for both implementing and monitoring these conditions of development consent, the Tree Protection/Management Plan/Recommendations/Specification any other instructions issued on-site.
 - The Project Arborist must be present on-site at the relevant stages of works and must keep a log of the dates of attendance and the works performed, which is to be presented as a *'Final Compliance Report'* for the approval of the Principal Certifier, prior to any Occupation Certificate.
 - Prior to the commencement of any site works, the trunk of each trees is to be

physically protected by wrapping layers of geo-textile, underfelt, carpet, hessian or similar, from ground level to a height of 2m, to which, 2m lengths of 50mm x 100mm hardwood timbers, spaced at 150mm centres shall be placed around its circumference, and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.

- e) **T4** tree is to be physically protected by the installation of 1.8-metre-high steel mesh/Chainwire fencing panels, which shall be located a minimum distance of 2 metres from its trunk, matching up with the back of the proposed front aspect wooden brush fence, to completely enclose the tree, for the duration of works.
T5 tree is to be also physically protected by the installation of 1.8-metre-high steel mesh/Chainwire fencing panels, which shall be located a minimum distance of 2 metres from its trunk, in line with the public footpath, to completely enclose tree for the duration of works.
- f) This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: **"TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER"**
- g) Where roots with a diameter of less than 50mm are found which are in direct conflict with the approved works, and permission is given for their pruning, they may be cut cleanly using hand-held tools only, with the affected area to then be backfilled with clean site soil as soon as practically possible.
- h) Where there is a difference in level between this site and an adjoining property, and the soil level where the trees are growing is higher than the subject site, if the soil profile is to be exposed for any period of time, temporary shoring must be provided along the common boundary so as to prevent failure of the soil and trees, with a suitable system to be approved by the PCA, prior to installation.
- i) In order to prevent soil/sediment being washed over the root system, erosion control measures must be provided at ground level around the perimeter of the TPZ's.
- j) Within the TPZ, there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble
- k) The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during works and prior to any Occupation Certificate.

The applicant is not authorised to perform any other works to this public tree and must contact Council's Landscape Development Officer on 9093-6633 should clearance pruning or similar be needed. If approval is given, it can only be performed by Council, wholly at the applicants cost, **GIVING UP TO SIX WEEKS NOTICE**, with payment to be received prior to pruning or any Occupation Certificate.

The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.

Reserve & Tree Protection Measures

22. The following items shall be installed to the satisfaction of Council's Bushland Supervisor prior to commencement of any works, including, but not limited to, surveying, demolition, earthworks, or construction:

- a) Protection fencing, as described in the Bushland Conditions.

- b) Silt fencing, as described in the Bushland Conditions.
- c) Protection signage, as described in the Bushland Conditions.

Provision of buffer

23. A buffer, of adequate width and appropriate design, shall be provided between the bushland and the development so as to:
- a) Decrease the deleterious effects of the development on the bushland, both in the short-term during demolition, earthworks, and construction and in the long term due to existing and new land uses.
 - b) Allow natural processes in the bushland to continue uninterrupted.
 - c) Protect and enhance wildlife habitat and corridors.

Access

24. There shall be no access to the bushland without the written authorisation of the Applicant's Project Manager or Council. The only exceptions to this shall be:
- a) No temporary or permanent placement or storage of any items of plant, materials, tools, equipment, vehicles, etc. shall occur within the bushland.
 - b) No disturbance to, or removal of, any vegetation or original soils shall occur within the adjacent bushland as a result of the proposed development, the only exceptions to this shall be:
 - installation of protection fencing.
 - installation of silt fencing.
 - installation of protection signage.
 - installation of erosion, siltation and run-off controls.
 - installation of retaining walls.
 - removal of foreign matter.
 - weed control works.

All described in the Bushland Conditions.

In the case of these exceptions, access shall be avoided whenever possible. In the case of installation of protective fencing, silt fencing, protection signage and retaining walls, access shall be restricted to **within 2 metres** of the edge of bushland. In the case of the other points above, access is described elsewhere in the Bushland Conditions.

- c) All earthmoving machinery, vehicles, plant, tools, materials, equipment, shall be washed down to the satisfaction of the Bushland Supervisor so that no soils, fill, plant propagules, or other foreign matter, are introduced to the bushland from any other location.
- d) No foreign matter, including, but not limited to, litter, cement wash, concrete, fill, soils, mulch, building materials, chemicals, petroleum-based products, paint, etc., shall be disposed of in, or placed in, or where they may enter, the bushland, in all instances where such substances have been disposed of in, have been placed in, or have entered, the bushland, all affected areas shall be immediately repaired to their state prior to commencement of development, as far as possible, to the satisfaction of Council's Bushland Supervisor.
- e) **Silt fencing** such as plastic poly woven fabric shall be attached along the full length of the protection fencing and shall be maintained so as to ensure that no foreign matter, including, but not limited to, sediment, concrete, fill, soils, mulch, etc. passes

the protection fence at any time, silt fencing shall be attached within 24 hours of any given section of the protection fence being installed.

- f) **Warning signs** shall be permanently attached to the protection fence at a **maximum of 10 metre** intervals and shall be immediately repaired and replaced as necessary, the design and wording of the warning signs shall be to the satisfaction of Council's Bushland Supervisor.

Warning signs shall then be attached within 24 hours of any given section of the protection fence being installed, all signs shall include at least all the following information:

- Presence and significance of the bushland.
 - No disturbance to, or removal of, bushland shall occur.
 - No temporary or permanent placement or storage of any items of plant, materials, tools, equipment, vehicles, etc. shall occur within the bushland.
 - No foreign matter, including, but not limited to: water, litter, cement wash, concrete, fill, soils, mulch, building materials, chemicals, petroleum-based products, paint, etc., shall be disposed of or placed in or where they may enter the bushland.
 - **Maximum penalties for unauthorised actions which affect the bushland;** relevant contact numbers, including the Applicant's Project Manager and Council's Bushland Supervisor.
 - Contravention of any of the above shall be reported immediately to the Applicant's Project Manager or Council's Bushland Supervisor.
- g) Erosion, siltation and run-off control within the bushland shall consist of;
- Synthetic material erected vertically and be installed appropriately.
 - Siltation and run-off control within the bushland shall **not include** use of plant matter, including, but not limited to, hay bales, direct seeding or hydro mulching with seed, so as to avoid introduction of weed propagules into the bushland.
 - Siltation and run-off control within the bushland shall **not include** use of any methods which cover the ground surface, including, but not limited to, wood chip mulching, hydro mulching or natural or non-natural fibre matting, so as to avoid hindrance to natural regeneration of native plant species.
 - Only be installed to the satisfaction of Council's Bushland Supervisor.
 - Be installed as directed, at any time, by Council's Bushland Supervisor, **within 3 days.**
 - Consist only of synthetic materials.
 - Be located and installed so as to avoid damage to, and removal and covering of, and minimise shading of, any existing native plants, including seedlings.
- h) No planting, transplanting, direct seeding or other introduction of plants or plant propagules shall occur within the bushland, the bushland shall be allowed to survive via natural regeneration.

- i) No species, which may spread from where they are planted into the local environment at any time in the future, shall be used in landscaping, **a landscape plan shall be provided to Council for the Bushland Supervisor** to comment and make the necessary adjustments where required.
- j) No temporary or permanent lighting shall be installed which may be directed into the bushland, either in the short or long term, so as to avoid disturbance to native fauna.
- k) All contamination representing a risk to human health and the environment within the bushland shall be treated to Council's satisfaction.

In the case of these exceptions, access shall be avoided whenever possible, in the case of installation of protective fencing, silt fencing, protection signage and retaining walls, access shall be restricted to **within 2 metres** of the edge of bushland, in the case of the other points above, access is described elsewhere in the Bushland Conditions.

Stormwater Drainage Amendments

25. Prior to the issuing of a Construction Certificate the submitted Drainage Plans by JHA Engineers dated 7.11.22 shall be amended to show the following:

The head wall with scour control, which discharges stormwater at the rear of the site, is to be relocated so the discharge point is located approximately halfway along the width of the rear boundary so as to reduce the impact on vegetation located on Council property.

The Principal Certifier is to ensure compliance with the above requirement

Note: Due to the presence of rock in the area a 5sqm infiltration pit (as shown on the submitted drainage plans) is not required.

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

26. The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):

- a) a *Construction Certificate* must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

- b) a *Registered (Building) Certifier* must be appointed as the *Principal Certifier* for the development to carry out the necessary building inspections and to issue an *occupation certificate*; and
- c) a *principal contractor* must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with

the requirements of the *Home Building Act 1989*, and the *Principal Certifier* and Council must be notified accordingly (in writing); and

- d) the *principal contractor* must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the *Principal Certifier*; and
- e) at least two days notice must be given to the *Principal Certifier* and Council, in writing, prior to commencing any works.

Home Building Act 1989

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

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

Dilapidation Reports

28. 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

29. 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

30. A *Sediment and Erosion Control Plan* must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for *Managing*

Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.

Demolition Work Plan

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

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

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

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

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

Construction Noise & Vibration Management Plan

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

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

No works to commence prior to installation of protection measures and other works

33. The following items shall be installed to the satisfaction of Council's Bushland Supervisor prior to commencement of any works, including, but not limited to, surveying, demolition, earthworks or construction:
- protection fencing, as described in the Bushland Conditions;
 - silt fencing, as described in the Bushland Conditions; and
 - protection signage, as described in the Bushland Conditions.

Public Liability

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

Public Utilities

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

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Tree Management

37. Approval is granted for removal of the following trees from within this development site:
- Trees **T1,2,3 & 6** on the western aspect of this site, near Wolseley Road, adjacent the northern reserve.
 - Removal of **T7** on the southern frontage aspect of this site, adjacent No3 neighbouring property, where proposed driveway and garage is to be constructed.
 - Removal of trees **T8,9,10,11 & 12** within the lower, southern frontage of the subject site, adjacent No3 property, where proposed upper level garage is to be constructed.
 - Removal of trees **T13,14,15,16,17 & 18** all plotted on the lower south eastern aspect of the site, adjacent No 3 property
 - Removal of trees **T25,26,27 & 30** *Banksia integrifolia* (Coastal banksia) wholly in the northern aspect of the neighbouring reserve, being **deleted/replaced** with an alternative species that complies with this requirement.
 - Removal of tree **T29** *leptospermum laevigatum* (Coastal tea tree) wholly in the northern aspect of the neighbouring reserve, being **deleted/replaced** with an alternative species that complies with this requirement.

Stormwater Drainage

38. There shall be no change in the quantity of water entering the bushland/ wetland, including, but not limited to run-off, stormwater, water used to control dust, water from ponds or swimming pools, sprinklers, in-ground watering systems, etc., either temporarily or permanently.
- All stormwaters shall be managed to the specification provided by council.
 - All hard surfaces adjacent to the bushland shall be designed to fall away from the bushland.

Road / Asset Opening Permit

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

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

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

Ausgrid Power Feed Connection - Undergrounding of Site Power

40. Power supply to the development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Wolseley Road. 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.

Site Signage

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

Restriction on Working Hours

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

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

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

Noise & Vibration

43. 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

Construction Site Management

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

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

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

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

Notes:

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

Site Management

45. 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

46. 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.

Demolition Work & Removal of Asbestos Materials

47. 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.

Excavations & Support of Adjoining Land

48. 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

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

Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be

investigation, actioned and responded to and documented in a Complaints Register accordingly.

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

Survey Report

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

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

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

Building Encroachments

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

Reporting of Breaches of the Bushland Conditions

52. The Applicant shall provide a written report of any breaches of the Bushland Conditions to Council's Bushland Supervisor by the next business day after any breach has occurred. The report shall be signed and dated and information in the report shall include, but not necessarily be limited to:

- The time and date of the breach;
- The nature, extent and degree of the breach;
- The cause of the breach;
- All persons involved in the breach, including: full first and last names; contact number/s; organisation/s and reason/s for being present;
- All witnesses to the breach, including: full first and last names; contact number/s and organisation/s; and
- All plant, equipment, machinery, vehicles, substances, etc. involved in the breach.

Other information requested by Council shall likewise be provided within 24 hours. If Council becomes aware of a breach of the Bushland Conditions for which such a report has not been provided to Council, then Council may request such a report, which shall then be provided to Council within 24 hours of the request.

Wash Down

53. All earthmoving machinery, vehicles, plant, tools, materials, equipment, etc. shall be washed down to the satisfaction of the Bushland Supervisor so that no soils, fill, plant propagules, or other foreign matter, are introduced to the bushland from any other location.

No Disturbance to or removal of vegetation or original soils

54. No disturbance to, or removal of, any vegetation or original soils shall occur within the adjacent bushland as a result of the proposed development. The only exceptions to this shall be:

- installation of protection fencing, as described in the Bushland Conditions;
- installation of silt fencing, as described in the Bushland Conditions;
- installation of erosion, siltation and run-off controls, as described in the Bushland Conditions;
- removal of foreign matter, as described in the Bushland Conditions;
- weed control works, as described in the Bushland Conditions; and
- any contamination remediation works, as described in these Conditions.

In all instances where disturbance to, or removal of, vegetation or original soils has occurred within the bushland, all affected areas shall be immediately repaired to their state prior to commencement of development, as far as possible, to the satisfaction of Council's Bushland Supervisor.

No replacement or storage of items

55. No temporary or permanent placement or storage of any items of plant, materials, tools, equipment, vehicles, etc. shall occur within the bushland. The only exceptions to this shall be in relation to:

- installation of protection fencing, as described in the Bushland Conditions;
- installation of silt fencing, as described in the Bushland Conditions;
- installation of protection signage, as described in the Bushland Conditions;
- installation of erosion, siltation and run-off controls, as described in the Bushland Conditions;

In all instances where items have been placed or stored within the bushland, all affected areas shall be immediately repaired to their state prior to commencement of development, as far as possible, to the satisfaction of Council's Bushland Supervisor.

No introduction of foreign matter

56. No foreign matter, including, but not limited to, litter, cement wash, concrete, fill, soils, mulch, building materials, chemicals, petroleum-based products, paint, etc., shall be disposed of in, or placed in, or where they may enter, the bushland, in all instances where such substances have been disposed of in, have been placed in, or have entered, the bushland, all affected areas shall be immediately repaired to their state prior to commencement of development, as far as possible, to the satisfaction of Council's Bushland Supervisor.

Protection fencing

57. A continuous temporary 1800mm high chain wire protection fence shall be installed along the perimeter of the development site, to the satisfaction of Council's Bushland Supervisor and prior to the commencement of any demolition, earthworks or construction.

The fence shall be installed so as to restrict all unauthorised access to the bushland. The protection fence shall be immediately repaired, as necessary, to ensure no unauthorised access is possible.

Temporary protection fencing shall not be removed, prior to the completion of all works outside the fenced area nor without the prior authorisation of Council's Bushland Supervisor

Erosion, siltation and run-off control

58. Erosion, siltation and run-off control within the bushland shall consist of synthetic material erected vertically and be installed appropriately.

Erosion, siltation and run-off control within the bushland shall not include use of plant matter, including, but not limited to: hay bales, direct seeding or hydro mulching with seed, so as to avoid introduction of weed propagules into the bushland.

Erosion, siltation and run-off control within the bushland shall not include use of any methods which cover the ground surface, including, but not limited to: wood chip mulching, hydro mulching or natural or non-natural fibre matting, so as to avoid hindrance to natural regeneration of native plant species.

Erosion, siltation and run-off control within the bushland shall:

- only be installed to the satisfaction of Council's Bushland Supervisor;
- be installed as directed, at any time, by Council's Bushland Supervisor, within 3 days;
- consist only of synthetic materials; and
- be located and installed so as to avoid damage to, and removal and covering of, and minimise shading of, any existing native plants, including seedlings.

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

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

Council's Infrastructure & Vehicular Crossings

60. The applicant must meet the full cost for a Council approved contractor to:
- a) Construct a concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site to Council's specifications and requirements.
61. 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.
62. 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.

BASIX Requirements & Certification

63. 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

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

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

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

Stormwater Drainage

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

Ausgrid Power Feed Connection - Undergrounding of Site Power

66. Prior to the issuing of an Occupation 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 Wolseley Road, 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.

OPERATIONAL CONDITIONS

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

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

External Lighting

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

Waste Management

68. Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.

Plant & Equipment

69. The operation of all plant and equipment (including air conditioners and pool pumps or other equipment) on the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.

Use of parking spaces

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

D21/24

Development Application Report No. D22/24

Subject: 64 Knowles Avenue, Matraville (DA/36/2024)

Executive Summary

| | |
|-----------------------------|---|
| Proposal: | Strata subdivision of existing dual occupancy |
| Ward: | South Ward |
| Applicant: | Js Architects |
| Owner: | Mrs I Bjeletic Mr N Bjeletic |
| Cost of works: | Nil |
| Reason for referral: | Variation to the minimum subdivision lot size development standard by more than 10% |

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/36/2024 for Strata subdivision of exiting dual occupancy, at No. 64 Knowles Avenue, Matraville, for the following reasons:

- Pursuant to Section 4.15 (1)(a) of the EP&A Act 1979, the proposed development does not comply with the following relevant environmental planning instruments and development controls as follows:
 - Clause 4.6 of the Randwick Local Environmental Plan 2012.
 - The consent authority is not satisfied that the compliance with the development standard (under Clause 4.1A) is unreasonable or unnecessary in the circumstances.
 - The consent authority has identified that there are no sufficient environmental planning grounds to justify the contravention of the development standard (under Clause 4.1A).
 - Randwick Local Environmental Plan 2012 – Aims of the Plan – unable to satisfy the key aims (2)(c) and (2)(g).
 - The proposal fails to promote a subdivision form or arrangement that is appropriate to its context and that supports an efficient use of land.
 - The proposal does not encourage the provision of housing mix and tenure choice, including affordable housing.
 - Randwick Local Environmental Plan 2012 – the relevant objectives of the R2 Low Density Residential zone. The proposal results in a strata subdivision of land that reduces the ability of the area to meet the needs of the low density residential environment and will reduce housing affordability in the area. The proposal is therefore not consistent with the objectives of the zone.
 - Randwick Local Environmental Plan 2012 – Clause 4.1 – the proposed subdivision will result in a non-compliance with the minimum lot size development standard of 275m² to subdivide a dual occupancy (Strata or Torrens) adopted by Council in the Randwick Comprehensive Planning Proposal 2022.
 - Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Section 2.1 Minimum Lot Size. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the proposed subdivision fails to respect the predominant existing subdivision and development pattern of the locality; it does not ensure land subdivision creates allotments that have adequate site area.
- Pursuant to Section 4.15(1)(b) of the EP&A Act 1979, the proposal is likely to have adverse impacts on the following aspects on the environment: reduction of housing choice/diversity and affordability within the locality; and setting an undesirable precedence for subdivision of dual occupancy development to create undersized lots.

D22/24

3. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the subject site is not suitable for the proposal as it does not promote housing diversity/choice and affordability.
4. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979, the proposal is not considered to be in the public interest as it will set an undesirable precedence including endorsement of an unacceptable non-compliance to the minimum lot size provisions under Clause 4.1A.

Attachment/s:

Nil

D22/24



D222/24

1. Executive summary

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

The proposal seeks development consent for strata subdivision of an existing dual occupancy that results in a proposed variation to minimum lot size.

The key issue associated with the proposal relates to non-compliance with the minimum subdivision lot size of 275m² as specified in Clause 4.1A(4) of the *Randwick Local Environmental Plan 2012*.

The proposed strata title subdivision is not supported given the inconsistency of the subdivision with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the RLEP 2012, as well as the Comprehensive Planning Proposal 2022.

The applicant has failed to recognize that the proposed subdivision will result in an allotment that does not meet the minimum subdivision lot size development standard of 275m² to subdivide a dual occupancy (strata or Torrens) adopted by Council as part of the Randwick Comprehensive Planning Proposal 2022.

The proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as 64 Knowles Avenue, Matraville NSW 2036 and is legally described as Lot 1 in DP 1274326. The site is located on the Western side of Knowles Avenue, between Larose Avenue to the rear and Menin Road to the North.

The site is 499m², is irregular in shape and has a 15.73m frontage to Knowles Avenue. The subject site is zoned R2 Low Density Residential.

The site contains a two storey dual occupancy constructed under DA/234/2020, approved 4th of December 2020. The dual occupancy is predominantly a brick structure, metal roof, glazing and each dwelling containing separate vehicular crossings. The site is flat.

The surrounding area is characterised by low density residential development including detached houses and semi-detached dwellings. To the north of the subject site is adjoined by No. 62 Knowles Avenue which is a double storey brick dwelling. The other neighbouring dwelling to the South at 66 Knowles Avenue is a single storey brick dwelling.

There is no predominant subdivision pattern in the surrounding area. See Figure 2.

The site slopes approximately 1.0m in eastern direction from the frontage to the rear.



Figure 1: Approved Dual Occupancy – 64 Knowles Av. (Source: Nearmap)

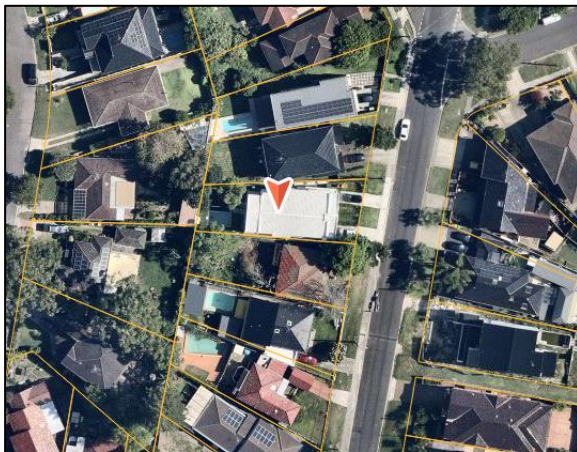


Figure 2: General subdivision pattern of immediate vicinity of site (Source: Nearmap)



Figure 3: Example of housing types and lot sizes on Knowles Avenue (Source: Google Images)

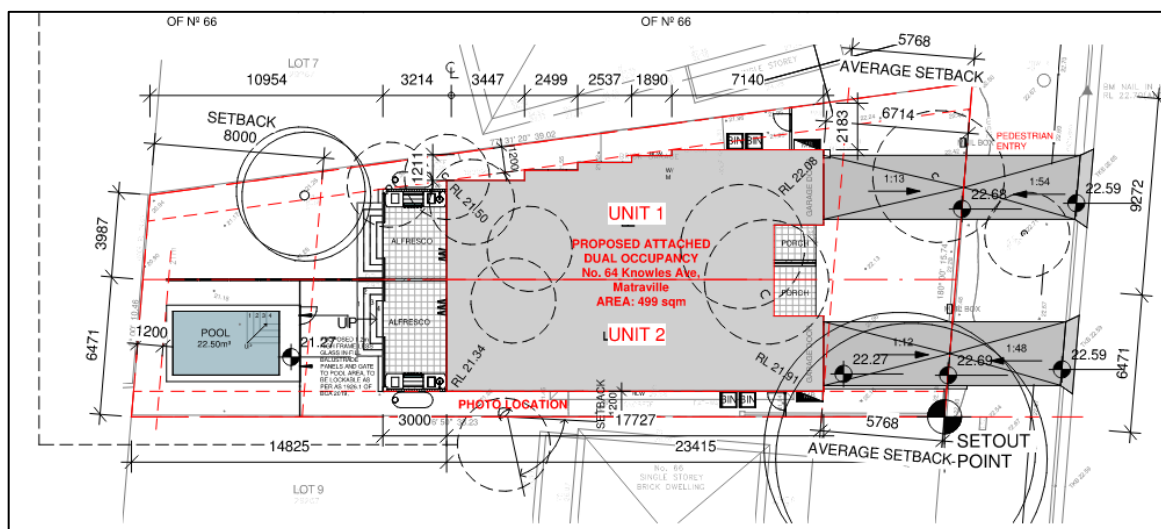


Figure 4: Approved Dual Occupancy Site Plan under DA/234/2020 – 64 Knowles Avenue

3. Relevant history

DA/234/2020 – Approved

Demolition and construction of attached dual occupancy. Building completed and Occupation Certificate issued.

DA/278/2023 – Refused

Proposed Torrens title subdivision of abovementioned dwelling and conversion to 2 (two) semi-detached dwellings. It was refused on the basis that it did not meet the minimum lot size, created inconsistency with the objectives of the R2 zone and does not meet the controls of the RDCP 2013.

The applicant has lodged a Class 1 appeal against Randwick City Council and is awaiting a verdict in the Land and Environment Court at the time of this assessment.

DA/278/2023 is fundamentally the same as what is being proposed in this application (DA/36/2024). The only difference is the titles of the resultant subdivision.

4. Proposal

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

| | Lot Size | Front Boundary | Rear Boundary | Side Boundary (North) | Side Boundary (South) |
|-------------|---------------------|----------------|---------------|-----------------------|-----------------------|
| Lot 1 (64) | 245.7m ² | 8.485m | 3.985m | 39.01m | 38.28m (Party Wall) |
| Lot 2 (64A) | 253.2m ² | 7.255m | 6.47m | 38.28m (Party Wall) | 39.01m |

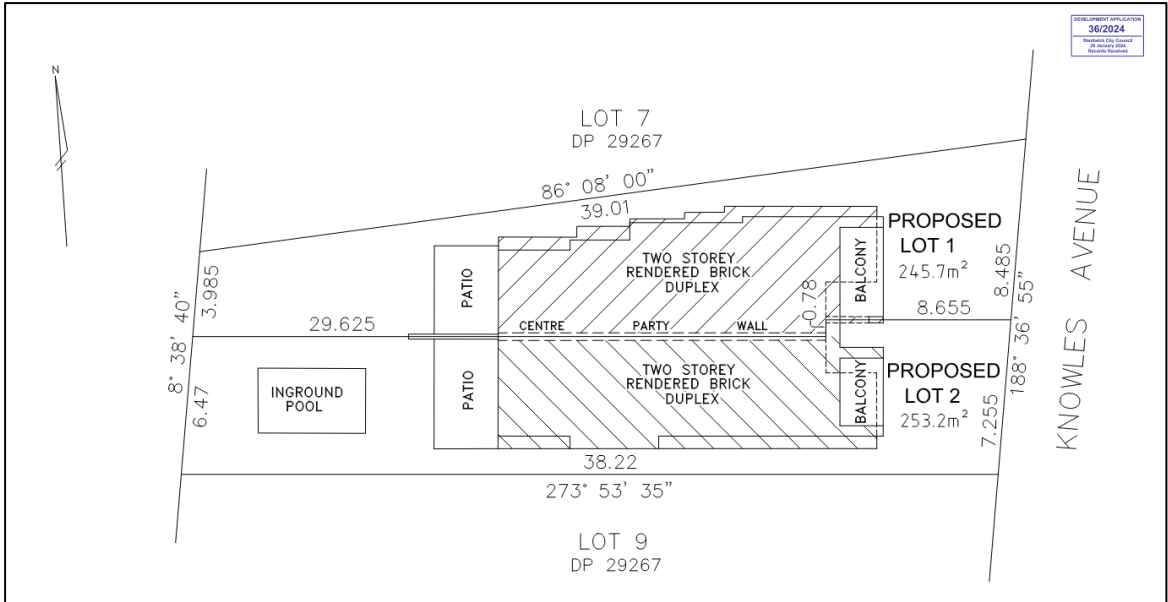


Figure 5: Proposed Strata Subdivision Plan – 64 Knowles Avenue (Source: Cooper and Richards Surveyors)

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No submissions were received.

6. Relevant Environment Planning Instruments

6.1. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

The subject site is zoned R2 Low Density Residential, however the consent for the dual occupancy was **not** granted prior to 6 July 2018. The dual occupancy was approved on 4th December, 2020. Council notes that the development site and proposed subdivision would be able to comply with the requirements of Part 6, Division 1, Section 6.2 of the *State Environmental Planning Policy (Exempt*

and Complying Development Codes) 2008. Notwithstanding, the criterion has not been met based on the timing of the issuing of the consent for DA/234/2020.

As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application, and the application is to be assessed under 4.1A of the RLEP 2012, of which the Application seeks to vary as discussed throughout this report.

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

R2 'Low Density Residential' Zone Objectives

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

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

The intention of dual occupancy developments is to provide housing diversity and affordability within the R2 zone. Dual occupancy developments allow additional housing choice, being smaller and more affordable occupancies than single dwellings or semi-detached dwellings. This is supported by the development standards and planning controls applicable to dual occupancy development which sets a maximum FSR of 0.5:1 and prevent subdivision of dual occupancies with a site area of less than 550m².

The applicant has stated that the proposal is consistent with the objectives of the R2 zone. From the justification provided in the clause 4.6 variation request (see **Appendix 2**), it is unclear how these objectives are met and how they are relevant to the proposal. The existing development approved under DA/234/2020 was assessed as meeting these objectives of the R2 zone, providing housing affordability and housing choice to the community. However, these objectives are not relevant to the proposal for Strata subdivision.

- *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.*

The proposal is not consistent with the objectives of the R2 Low Density Residential zone in that the proposal does not contribute to the desired future character of the area or protect the amenity of surrounding residents based on the variation proposed.

It is considered that imposition of minimum lot sizes pursuant to Clause 4 of the RLEP 2012 prevent the subdivision of development where the resultant lots are undersized and inappropriate. As such, establishing a minimum lot size ensures that the amenity of neighbouring residents and occupants of the development is maintained.

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

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|--|----------------------|-----------------------------|---------------------|
| CI 4.1A: Minimum Subdivision Lot Size for strata plan schemes in Zone R2 | 275m ² | Lot 1 = 245.7m ² | No |
| | | Lot 2 = 253.2m ² | No |

6.1.1. Clause 4.6 - Exceptions to development standards

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

7. Exception to minimum lot size development standard

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

| Clause | Development Standard | Proposal | Proposed Variation | Proposed Variation (%) |
|---|----------------------|-----------------------------|--------------------|------------------------|
| CI 4.1A: Minimum Subdivision Lot Size for strata plan schemes in Zone R2 | 275m ² | Lot 1 = 245.7m ² | 29.3m ² | 10.7% |
| | | Lot 2 = 253.2m ² | 21.8m ² | 7.9% |

The NSW Department of Planning and Environment (DPE) made amendments to clause 4.6 of the Standard Instrument which commenced on 1 November 2023. The changes aim to simplify clause 4.6 and provide certainty about when and how development standards can be varied.

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

3. *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard*

Pursuant to section 35B(2) of the *Environmental Planning and Assessment Regulation 2021*, a development application for development that proposes to contravene a development standard must be accompanied by a document (also known as a written request) that sets out the grounds on which the applicant seeks to demonstrate the matters of clause 4.6(3).

As part of the clause 4.6 reform the requirement to obtain the Planning Secretary's concurrence for a variation to a development standard was removed from the provisions of clause 4.6, and therefore the concurrence of the Planning Secretary is no longer required. Furthermore, clause 4.6 of the Standard Instrument no longer requires the consent authority to be satisfied that the proposed development shall be in the public interest and consistent with the zone objectives as consideration of these matters are required under sections 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979*, and clause 2.3 of RLEP 2012 accordingly.

Clause 4.6(3) establishes the preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

1. *The applicant has 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 has 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 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.

Additionally, in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065, Commissioner Dickson at [78] notes that the avoidance of impacts may constitute sufficient environmental planning grounds “as it promotes “good design and amenity of the built environment”, one of the objectives of the EPA Act.” However, the lack of impact must be specific to the non-compliance to justify the breach (*WZSydney Pty Ltd* at [78]).

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(3) have been satisfied for each contravention of a development standard. The assessment and consideration of the applicant’s request is also documented below in accordance with clause 4.6(4) of RLEP 2012.

Exception to the Minimum Lot Size development standard (CI 4.1 and CI 4.1A (4) (a))

The applicant’s written justification for the departure from the Minimum Lot Size standard is contained in Appendix 2.

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

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

The objectives of the Minimum Lot Size standard are set out in Clause 4.1 (1) of RLEP 2012. The objectives have not been satisfied in the written request.

- (a) *to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,*

Applicants response: *The proposed Strata Title subdivision of the existing dual occupancy does not include any physical works, ensuring that it will not result in any impacts on the amenity of residents of neighbouring properties.*

- (b) *to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,*

Applicants Response: The site:

- *Is not identified as being or adjoining an item of heritage significance nor located within a heritage conservation area under the RLEP 2012.*
 - *Is unlikely to contain aboriginal heritage sites or places due to being significantly disturbed; and*
 - *Does not have any significant views nor are any significant views known to be obtained across the site from dwellings in neighbouring properties.*
- (c) *to ensure that lot sizes are able to accommodate development that is suitable for its purpose.*

Applicants Response: The proposed Strata title subdivision of the existing dual occupancy follows the existing fence within the rear setback that separates the backyards of the northern and southern dwelling, continuing along the centerline of the party wall shared by both dwellings and extend to the site's Knowles Avenue frontage. Given its reliance on the existing fence and party wall, it will not have any impact on the capacity of each lot to accommodate each dwelling in the existing dual occupancy.

Assessing officer's comment:

The applicant's written request has failed to recognize that the proposed Torrens title subdivision to create two lots sized 252.4m² and 246.5m², will result in lots not meeting the proposed development standard. To achieve two lot sizes of at least 275sqm, a parent lot of 550sqm is required. At 499sqm, the subject lot falls 51sqm short of the parent lot size required for subdivision.

Council has undertaken extensive analysis and consultation, resulting in a position to not support any variations to proposed development standards within the Randwick Comprehensive Planning Proposal 2022.

Further, the Applicants written request has failed to demonstrate why compliance with the current, in force controls is unreasonable. The Applicant has not addressed the likely impacts of the strata subdivision on the amenity of neighbouring properties. The request has overlooked and not considered the objective because the application does not propose physical development. The applicant has failed to consider the future impacts of the strata subdivision on the lot size. The proposed strata subdivision will not cater for the protection of natural or potential cultural features in the future. The semi-fragmentation of lot size will result in a reduced ability to retain special features such as trees or views. Although no material works are proposed in relation to the strata subdivision, Council has concluded through thorough analysis and consultation that a lot size of 275m² is the minimum lot size that will accommodate development that is suitable for its purpose.

The planning control relating to minimum subdivision lot size of dual occupancies aim to ensure that the dwellings have sufficient size and configuration to maintain a reasonable level of amenity to both the subject site and surrounding properties. Additionally, the desired future character of the area is determined by the current planning controls and development standards applicable to the development.

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

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

The applicant has argued that the proposed Strata Title Subdivision of the existing dual occupancy will provide the housing needs of the existing residents of the each dwelling by allowing greater autonomy over their dwelling. Due to no physical works, it is considered that there will be no impacts to the existing streetscape or desired future character of the area. Again, it is argued that due to no physical works, no amenity of residents of neighbouring properties will be affected. The applicant states that the subdivision will encourage housing affordability.

Assessing officer's comment: The applicant has failed to recognize that the proposed strata title subdivision to create two lots sized 225.6m² and 294.2m², will result in an allotment that does not

meet the proposed development standard adopted by Council as part of the Randwick Comprehensive Planning Proposal 2022. Council has taken the position to not support any variations to proposed development standards within the Randwick Comprehensive Planning Proposal 2022.

The applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. Creating lots that will allow them to be sold separately and consequently provide the existing dwelling owners to have more ownership is not a relevant ground to justify the contravention. It is incorrect to state that a non-material subdivision will have negligible impact on the amenity of the residents. It is not explained how the subdivision will encourage housing affordability.

Conclusion

Given the above assessment, it is considered that the requirements of Clause 4.6(3) (a) and (b) have not been satisfied and the contravention of the development standard must not be supported.

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.

Council has commenced a comprehensive review of the existing Randwick Development Control Plan 2013. Stage 1 of the RDCP 2013 review has concluded, and the new RDCP comprising Parts B2 (Heritage), C1 (Low Density Residential), E2 (Randwick) and E7 (Housing Investigation) commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of the new RDCP 2023 are applicable to the proposed development, and the proposal shall be assessed against the new DCP.

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

9. Environmental Assessment

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

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument | See discussion in sections 6 & 7 and key issues below. |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | Nil. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The proposal does not satisfy the Randwick Development Control Plan 2013 in that it does not meet the minimum lot size requirement. See table in Appendix 3 . |
| Section 4.15(1)(a)(iiia) – Provisions of any Planning | Not applicable. |

D22/24

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| Agreement or draft Planning Agreement | |
| Section 4.15(1)(a)(iv) – Provisions of the regulations | The relevant clauses of the Regulations have been satisfied in relation to the overall assessment of this application. |
| Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed subdivision creates inconsistency with the objectives of the R2 zone, resulting in a strata subdivision of land that reduces the ability of the area to meet the needs of the low density residential environment, fails to integrate with the existing streetscape and subdivision pattern, will not protect the amenity of the nearby residents and will reduce housing affordability in the area. The proposal will result in detriment social and economic impacts on the locality. Accordingly, the proposed strata subdivision is not considered to be in the public interest.</p> |
| Section 4.15(1)(c) – The suitability of the site for the development | To achieve two lot sizes of at least 275m ² , a parent lot of 550m ² is required. At 499m ² , the subject lot falls 51m ² short of the parent lot size required for subdivision. Therefore, the site is considered not suitable for the proposed development. |
| Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation | No submissions were received. |
| Section 4.15(1)(e) – The public interest | The proposal does not promote the objectives of the zone and it will result in adverse social, environmental and economic impacts on the zone. Accordingly, the proposal is not deemed to be in the public interest. |

10. Conclusion

That the application to strata subdivision of existing dual occupancy (variation to minimum lot size), at No. 64 Knowles Avenue, Matraville be refused for the reasons set out in the recommendation of this report.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

An application has been received for strata subdivision of the of the recently constructed Dual Occupancy at the above site.

This report is based on the following plans and documentation:

- Draft Strata Plans by Cooper & Richards Surveyors P/L;
- Statement of Environmental Effects by OTM Planning

General Comments

The above site had an approved Dual Occupancy - DA/234/2020 with a Construction Certificate issued under CC/74/2021. **A Final Occupation Certificate has been issued for the site, dated 20/7/2022**

D22/24

D22/24



This Clause 4.6 Application provides the justification for the proposed variation to the minimum lot size development standard in accordance with the requirements of clause 4.6 of the RLEP 2012 and relevant caselaw. It is to be read in conjunction with the Plan of Subdivision prepared by Cooper & Richard Surveyors and Statement of Environmental Effects (SEE) prepared by OTM Planning.

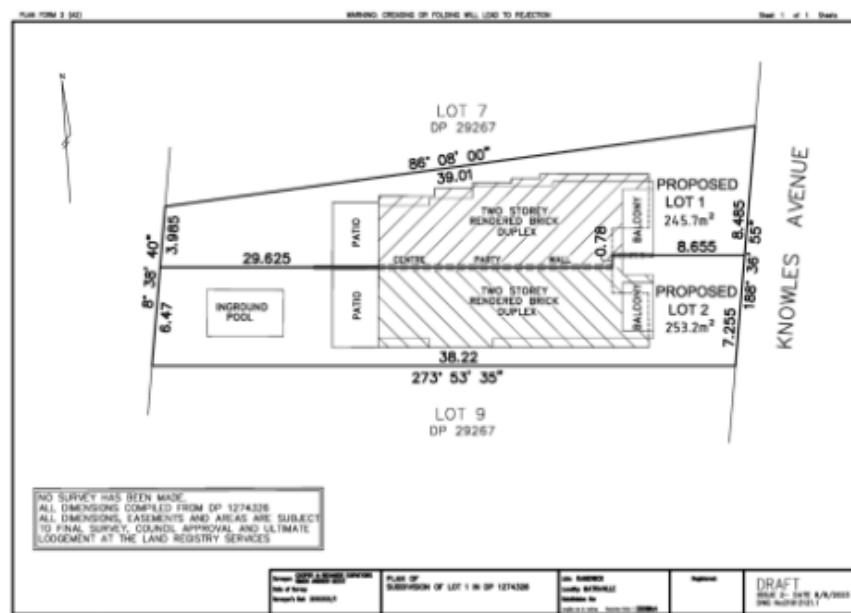


Figure 1: Plan of subdivision (Cooper & Richard Surveyors 2023, Dwg No. 21912121/1, Iss. 2)



| Clause 4.6 Exceptions to development standards | Comment: |
|---|---|
| (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and | The matters required to be demonstrated under subclause (3) are adequately addressed in Section 2.1 and Section 2.2 . ✓ |
| (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 | The proposed Strata title subdivision is considered in the context of the objectives of: <ul style="list-style-type: none"> ▪ The development standard in Section 2.1; and ▪ The land use zone in Section 2.2. ✓ |
| (b) the concurrence of the Planning Secretary has been obtained. | The concurrence of the Planning Secretary will be required in accordance with Planning Circular PS 20-002 on the basis that the extent of non-compliance marginally exceeds 10%. ✓ |
| (5) In deciding whether to grant concurrence, the Planning Secretary must consider— | |
| (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and | The proposed dwelling house does not raise any matters of significance for State or regional environmental planning. N/A |
| (b) the public benefit of maintaining the development standard, and | There is no public benefit in maintaining the development standard as the dual occupancy is existing and its proposed Strata title subdivision enables greater autonomy to the residents of the each dwelling, without resulting in any impacts to the local context, amenity of residents of neighbouring properties or the environment. ✓ |
| (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence. | There are no other known matters required to be taken into consideration. N/A |
| (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if— | The site is located within land Zone R2 Low Density Residential. N/A |
| (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or | |
| (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard. | |
| (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3). | Noted. ✓ |



2 Clause 4.6 Exceptions to Development Standards

The proposed development is considered in the context of the provisions of clause 4.6 of RLEP 2012 in **Table 1**.

Table 1: RLEP 2012 Clause 4.6 Provisions

| Clause 4.6 Exceptions to development standards | | Comment: |
|--|---|--|
| (2) The objectives of this clause are— | | |
| (a) | to provide an appropriate degree of flexibility in applying certain development standards to particular development, | Flexibility in the Strata title minimum lot size development standard is sought to a degree of 29.3m ² (10.7%) for Proposed Lot 1 and 21.8m ² (7.9%) for Proposed Lot 2. The degree of flexibility is appropriate in the unique circumstances of the case, being that the dual occupancy is existing and its proposed subdivision does not include any physical works, ensuring that it will not have any impacts on the context, amenity of residents of neighbouring properties or the environment. ✓ |
| (b) | to achieve better outcomes for and from development by allowing flexibility in particular circumstances. | The proposed Strata title subdivision of the existing dual occupancy achieves a better outcome for and from development by allowing residents of each dwelling in the dual occupancy greater autonomy over their respective dwelling. This is achieved without any impacts to residents of neighbouring properties or the environment as no physical works are proposed. ✓ |
| (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. | The minimum lot size development standard is not 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 | Refer to Section 2.1 . ✓ |
| (b) | that there are sufficient environmental planning grounds to justify contravening the development standard. | Refer to Section 2.2 . ✓ |
| (4) | Development consent must not be granted for development that contravenes a development standard unless— | |
| (a) | the consent authority is satisfied that— | |



| Clause 4.6 Exceptions to development standards | Comment: |
|--|--|
| (B) 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, | The proposed development does not relate to complying development. N/A |
| (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 <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> applies or for the land on which such a building is situated, | No variation to BASIX proposed. N/A |
| (c) clause 5.4, | The development is not of a type specified in clause 5.4. N/A |
| (caa) clause 5.5, | A secondary dwelling is not proposed. N/A |
| (ca) Clause 6.16(3)(b) | The site is not located within Area 1 as shown on the Key Sites Map. N/A |

2.1 Clause 4.6(3)(a) – Unreasonable or Unnecessary in the Circumstances of the Case

The five ways in which a SEPP 1 Objection (pre-standard instrument predecessor to the Clause 4.6 Application) may be well-founded (hence making compliance unreasonable or unnecessary in the circumstances of the case) is set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 as follows:

- the objectives of the development standard are achieved notwithstanding non-compliance with the standard
- the underlying objective or purpose of the standard is not relevant to the development
- the underlying objective or purpose would be defeated or thwarted if compliance was required
- the standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- the zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.

Comment: As demonstrated in **Table 2**, compliance with the Strata title minimum lot size development standard is unreasonable and unnecessary in the circumstance of the case in the first way (the objectives of the development standard are achieved notwithstanding non-compliance with the standard).

Table 2: RLEP 2012 Clause 4.1 Objectives

| Objectives: | Comment: |
|---|---|
| (a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties, | The proposed Strata title subdivision of the existing dual occupancy does not include any physical works, ensuring that it will not result in any impacts on the amenity of residents of neighbouring properties. ✓ |
| (b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views, | The site: <ul style="list-style-type: none"> Is not identified as being or adjoining an item of heritage significance nor located within a heritage conservation area under the RLEP 2012; ✓ is unlikely to contain Aboriginal heritage sites or places due to being significantly disturbed; and |



| Objectives: | Comment: |
|--|--|
| | <ul style="list-style-type: none"> Does not have any significant views, nor are any significant views known to be obtained across the site from dwellings in neighbouring properties. <p>The removal of all trees within the site was approved under DA/234/2020, with the exception of the single retained tree within the rear setback of the northern dwelling. The proposed Strata title subdivision of the existing dual occupancy does not include any physical works, ensuring that it will not have any further impact on any of the abovementioned features.</p> |
| (c) to ensure that lot sizes are able to accommodate development that is suitable for its purpose. | <p>The proposed Strata title subdivision of the existing dual occupancy follows the existing fence within the rear setback that separates the backyards of the northern and southern dwelling, continuing along the centreline of the party wall shared by both dwellings and extending to the site's Knowles Avenue frontage. Given its reliance on the existing fence and party wall, it will not have any impact on the capacity of each lot to accommodate each dwelling in the existing dual occupancy.</p> |

2.2 Clause 4.6(3)(b) – Sufficient Environmental Planning Grounds

Environmental planning grounds for the proposed variation to the Strata title minimum subdivision lot size development standard are demonstrated through consistency with the objectives of the land use zone. As demonstrated in **Table 3**, notwithstanding non-compliance with the development standard, the development remains consistent with the objectives of Zone R2 Low Density Residential applying to the site under clause 2.3 of RLEP 2012.

Table 3: RLEP 2012 Zone R2 Low Density Residential Objectives

| Objectives: | Comment: |
|---|---|
| <ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment. | <p>The proposed Strata title subdivision of the existing dual occupancy provides for the housing needs of the existing residents of each dwelling in the dual occupancy by allowing them greater autonomy over their respective dwelling. This is achieved without any impact on the low density residential environment as the proposed subdivision does not include any physical works.</p> |
| <ul style="list-style-type: none"> To enable other land uses that provide facilities or services to meet the day to day needs of residents. | <p>The proposed Strata title subdivision is of a lot occupied by an existing dual occupancy.</p> |
| <ul style="list-style-type: none"> 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. | <p>The proposed Strata title subdivision of the existing dual occupancy does not include any physical works, ensuring that it will not result in any impacts to the existing streetscape or desired future character of the area.</p> |
| <ul style="list-style-type: none"> To protect the amenity of residents. | <p>The proposed Strata title subdivision of the existing dual occupancy does not involve any</p> |



| Objectives: | Comment: |
|---|---|
| | physical works, ensuring that it will not result in any impacts to the amenity of residents of neighbouring properties. |
| ▪ To encourage housing affordability. | The proposed Strata title subdivision of the existing dual occupancy encourages housing affordability. ✓ |
| ▪ To enable small-scale business uses in existing commercial buildings. | The proposed Strata title subdivision is of a lot occupied by an existing dual occupancy. N/A |

Appendix 3: DCP Compliance Table

3.1 Section C1: Low – Density Residential

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) | | | | | | | | | |
|---|--|--|------------------------------------|--|--------------------------|------|------------|---------------------------|------------------------------|-----|--------|-----|
| 2.1 Minimum Lot Size | R2 = 275m ² | Proposed lot 1: 245.7m ² Proposed lot 2: 253.2m ² | No, see Section 7. | | | | | | | | | |
| 2.2 Lot Frontage | <table><tr><th colspan="3">Minimum lot primary street frontage widths for dual occupancy development</th></tr><tr><th>Low density housing type</th><th>Zone</th><th>Parent lot</th></tr><tr><td>Dual occupancy (attached)</td><td>R2, R3 and where permissible</td><td>15m</td></tr></table> | Minimum lot primary street frontage widths for dual occupancy development | | | Low density housing type | Zone | Parent lot | Dual occupancy (attached) | R2, R3 and where permissible | 15m | 15.74m | Yes |
| Minimum lot primary street frontage widths for dual occupancy development | | | | | | | | | | | | |
| Low density housing type | Zone | Parent lot | | | | | | | | | | |
| Dual occupancy (attached) | R2, R3 and where permissible | 15m | | | | | | | | | | |

Responsible officer: Max Crowe, Student Environmental Planning Officer

File Reference: DA/36/2024

Development Application Report No. D23/24

Subject: 1 Abbott Street, Coogee (DA/183/2023)


Executive Summary

| | |
|-----------------------------|---|
| Proposal: | Alterations and additions to an existing residential flat building including the addition of a fourth level for one (1) new unit and lift. |
| Ward: | East Ward |
| Applicant: | Brewer Architects Pty Ltd |
| Owner: | Morehead Investments Pty Ltd |
| Cost of works: | \$1,297,350.00 |
| Reason for referral: | The development contravenes the development standards for floor space ratio and building height by more than 10% and the development is subject to SEPP 65. |

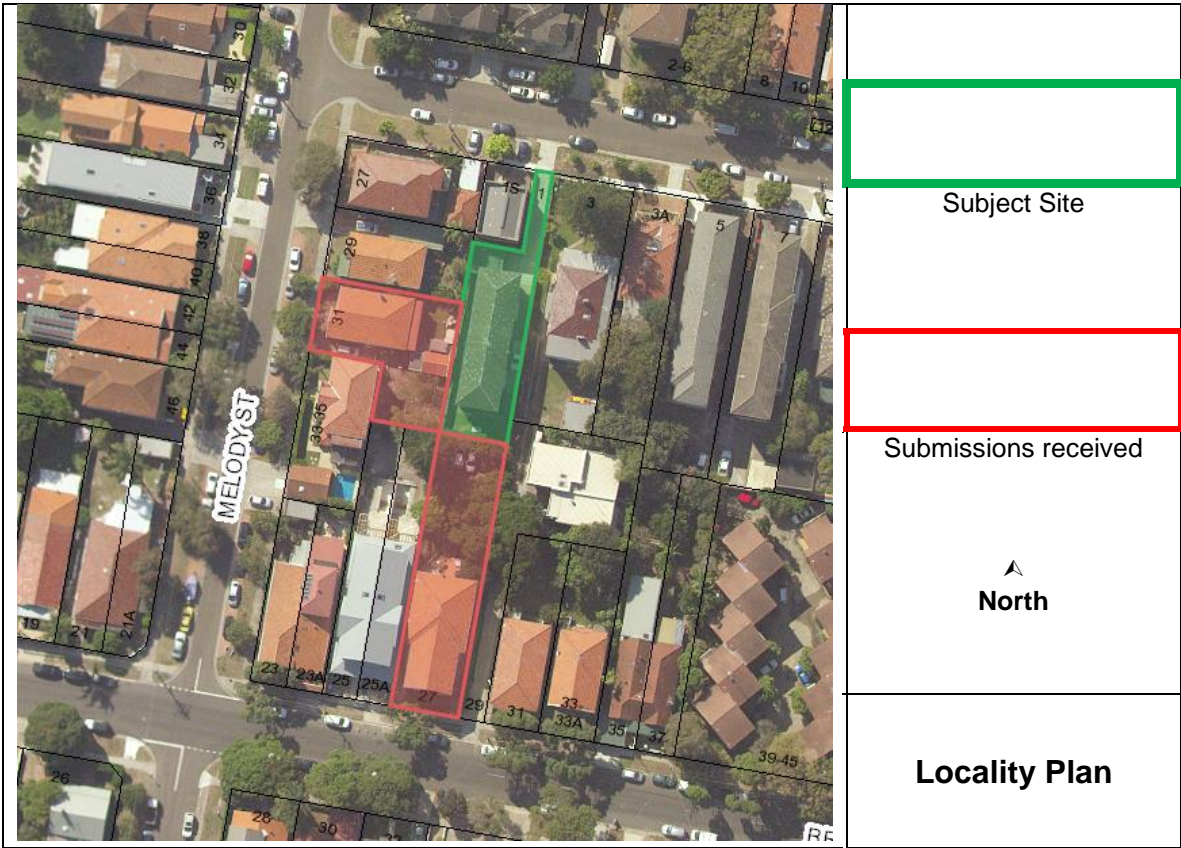
Recommendation

- 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 height of buildings and floor space ratio development standards in Clauses 4.3 and 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Planning Secretary has been assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/183/2023 for alterations and additions to an existing Residential Flat Building including the addition of a fourth level for one (1) new unit and lift, at No. 1 Abbott Street, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/183/2023 - 1 Abbott Street, COOGEE NSW 2034 - DEV - Randwick City Council

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standards for height of buildings and floor space ratio (FSR) by more than 10% and the development is subject to SEPP 65.

The proposal seeks development consent for alterations and additions to an existing residential flat building (RFB) including the addition of a fourth level (comprising 1 x two (2) bedroom unit), a new lift, and associated works.

The originally submitted application sought consent for the addition of two (2) new units at the upper level. In response to comments from Council’s Design Excellence Advisory Panel (DEAP), the design scheme was revised to comprise one (1) unit only.

The key issues associated with the proposal relate to non-compliance with the height of buildings and FSR development standards pursuant to clauses 4.3 and 4.4 of RLEP 2012. The proposed variations are supported as the proposal is consistent with the objectives of the height of buildings development standard, FSR development standard, and the R3 zone. The applicant’s written requests have adequately addressed the matters for consideration pursuant to clause 4.6.

The proposed development is supported given its consistency with Council’s *Design Ideas for Rejuvenating Residential Flat Buildings*. In accordance with this policy, the proposal seeks to increase the availability and diversity of housing stock within the locality. The adaptive reuse of the existing building is supported as a sustainable means of redeveloping the site. The proposed upper addition is well integrated with the existing building and will not adversely impact the amenity of neighbouring properties.

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The subject site is known as 1 Abbott Street, Coogee and is legally described as Lot 2 in DP 230581. The site is not strata subdivided. The site is 491m² in area, is generally rectangular in shape (with battle-axe driveway access), and has a 3.5m frontage to Abbott Street to the north.

Existing on the site is a three (3) storey residential flat building (RFB) with at-grade car parking and rear communal open space. The RFB comprises five (5) residential units (refer Figures 1-3).



Figure 1: Subject site, viewed from Abbott St – NB: substation at No. 1S in front of subject site (Source: Council officer)



Figure 2: Existing RFB, viewed to south from access handle/driveway (Source: Domain)

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Figure 3: Existing rear communal open space area at subject site (Source: Council officer)

The surrounding locality is characterised by low-medium density residential development including dwelling houses, multi-dwelling housing, and residential flat buildings. Surrounding development ranges from one (1) to four (4) storeys in height (refer Figures 4 and 5).



Figure 4: Neighbouring four (4) storey RFBs at Nos. 7 (left) and 5 (right) Abbott St (Source: Applicant's SEE)



Figure 5: Neighbouring development at No. 25 Melody St (left) and No. 2-6 Abbott St (right) (Source: Applicant's SEE)

To the north of the site, at No. 1S Abbott Street, is an Ausgrid substation. As shown in Figure 1, the existing RFB is setback from the street and is partially screened from view by way of the Ausgrid substation. Further to the north, on the opposite side of Abbott Street, is a three (3) storey townhouse development (25 Melody Street) and a four (4) storey RFB (2-6 Abbott Street).

Adjoining the site to the east, at No. 3 Abbott Street, is a two (2) storey RFB of rendered construction. Further to the east, at Nos. 5 and 7 Abbott Street, are four (4) storey RFBs of brick and rendered construction. To the south (rear), at No. 27 Bream Street, is a two (2) storey residential flat building.

The following properties adjoin the site to the west:

- 27 Melody Street – two (2) storey dwelling house;
- 29 Melody Street – single storey dwelling house; and
- 31 Melody Street – single storey dwelling house (NB: listed under Schedule 5 of RLEP 2012 as a local heritage item).

3. Relevant history

The land has been used for residential purposes for an extended period of time. Development Application No. DA/2326/1964 was approved on 20 October 1964 for the construction of a three (3) storey RFB with five (5) units.

Request for Information

On 13 September 2023, Council requested additional information from the Applicant relating to comments from Council's Design Excellence Advisory Panel and Development Engineer. Amended plans were submitted by the Applicant on 13 October 2023 and 02 November 2023.

Following a meeting with Council's Manager Development Assessment on 31 January 2024, amended plans were submitted by the Applicant on 22 February 2024.

4. Proposal

The proposal seeks development consent for alterations and additions to the existing RFB (refer Figures 6 and 7). Specifically, the proposed works include:

- Addition of 1 x storey (Level 3) comprising 1 x two (2) bedroom unit;
- Addition of bicycle parking spaces, bin storage area, and rainwater tank at ground level;
- Addition of new internal lift (NB: for access to Level 3 only);
- Minor reconfiguration of existing common internal stairs between ground and first floors;
- Addition of solar panels to roof; and
- Replacement of existing footpath with decomposed granite.



Figure 6: Proposed east elevation (Source: Brewer Architects)

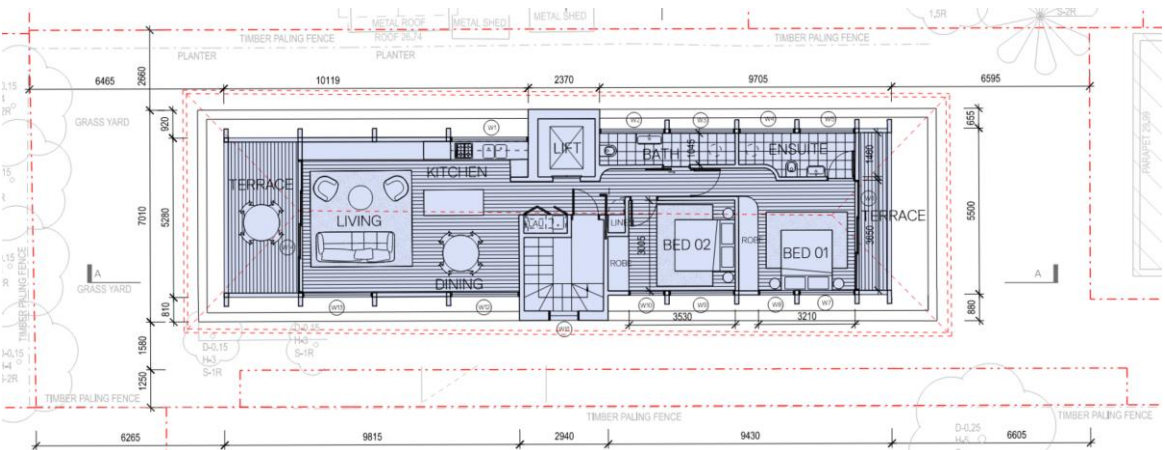


Figure 7: Proposed third floor plan (Source: Brewer Architects)

5. Notification

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

- 2/27 Bream Street, Coogee;
- 3/27 Bream Street, Coogee;
- 4/27 Bream Street, Coogee;
- 31 Melody Street, Coogee; and
- Anonymous.

| Issue | Comment |
|--|---|
| Overshadowing and solar access impacts | Refer to discussion at Key Issues section of this report. |

| Issue | Comment |
|---|--|
| Visual privacy impacts | Refer to discussion at Key Issues section of this report. |
| Acoustic privacy impacts | The proposed terraces are oriented away from sensitive uses (i.e. adjoining bedroom windows) and are unlikely to generate significant adverse noise impacts beyond that associated with the existing use of the site as an RFB. No change is proposed to the existing use of the site for residential purposes, which is not considered a noise generating use. For these reasons, the proposal is considered satisfactory in this regard. |
| Non-compliant building height | Council supports the applicant's request to vary the height of buildings development standard under clause 4.6 of RLEP 2012. The proposal is considered to uphold the objectives of the height standard, zoning, and considerations in clause 4.6 of RLEP 2012. Refer to discussion in Section 7 of this report. |
| View impacts | There are no significant views currently afforded to surrounding properties in the locality. Existing views and vistas from neighbouring dwellings and the public domain will be maintained. This is consistent with the view sharing principles in RDCP 2013. |
| Non-compliant FSR | Council supports the applicant's request to vary the FSR development standard under clause 4.6 of RLEP 2012. The proposal is considered to uphold the objectives of the FSR standard, zoning, and considerations in clause 4.6 of RLEP 2012. Refer to discussion at Section 7 of this report. |
| Affordable housing contributions should be paid | The proposal has been assessed against the Housing SEPP. Refer to discussion at Section 6.1 of this report. |
| Lack of car parking | Refer to discussion by Council's Development Engineer at Appendix 1. Council's Engineer has confirmed the proposed on-site parking arrangement satisfies the relevant provisions in RDCP 2013. |
| Adverse impacts to local character and streetscape | <p>The proposal is not considered to result in any significant adverse visual or streetscape impacts. Noting that the existing RFB is a battle-axe allotment, the building (as existing and proposed) will not be highly visible from the street or the surrounding public domain.</p> <p>The proposal is considered to respond appropriately to the context of the site and is compatible with the desired future character of the locality, which comprises development of varying scale, architectural style, and typology. Importantly, the proposed four (4) storey development is consistent with the four (4) storey form of nearby RFBs at Nos. 2-6, 5, and 7 Abbott Street.</p> |
| Property at 31 Melody St not referred to or considered in submitted SEE | The property at 31 Melody Street has been considered in Council's assessment. Sufficient information has been provided to enable an assessment of the application. |

In accordance with Council's Community Engagement Strategy, renotification of the amended plans was not required in this instance as the amendments have a lesser or the same effect as the originally notified application.

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 (Housing SEPP) seeks to deliver more affordable and diverse forms of housing, including co-living housing and independent living units.

The subject site is currently occupied by a three (3) storey RFB containing comprising 5 x two (2) bedroom units. The existing building has not previously been subdivided and is currently held in single ownership.

Chapter 2, Part 3 of the Housing SEPP applies to existing affordable housing in the form of low-rental residential buildings. Consideration of this Part is required to determine whether the proposal will result in a reduction in affordable rental housing, and therefore whether a monetary contribution might be considered to substitute any loss.

The Housing SEPP defines a low-rental residential building as follows:

“low-rental residential building means a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that –

- (a) is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or
- (b) was used as a residential flat building containing a low-rental dwelling or as a boarding house, but the use has been changed unlawfully to another use, or
- (c) is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.”

The Housing SEPP defines a low-rental dwelling as follows:

“low-rental dwelling means a dwelling that was let at a rental level no greater than the median rental level, as specified in the Rent and Sales Report, during the relevant period in relation to a dwelling –

- (a) of the same type, and
- (b) with the same number of bedrooms, and
- (c) in the same local government area.”

The relevant period is defined as “the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.”

Table 1 below provides the median rent for two (2) bedroom units over the relevant period (i.e. previous five (5) year period) for the Randwick Local Government Area (LGA). The data has been sourced from the quarterly Rent and Sales Report published by the NSW Department of Communities and Justice.

| Quarter | Median Rent – 2 Bed Unit (Randwick LGA) |
|----------------|---|
| June 2018 | \$650 |
| September 2018 | \$650 |
| December 2018 | \$650 |
| March 2019 | \$630 |
| June 2019 | \$630 |
| September 2019 | \$610 |
| December 2019 | \$630 |
| March 2020 | \$630 |
| June 2020 | \$580 |
| September 2020 | \$560 |
| December 2020 | \$550 |
| March 2021 | \$550 |
| June 2021 | \$560 |
| September 2021 | \$590 |
| December 2021 | \$600 |
| March 2022 | \$600 |
| June 2022 | \$640 |
| September 2022 | \$680 |
| December 2022 | \$750 |
| March 2023 | \$800 |

Table 1: Quarterly Rent and Sales Report – Randwick LGA (Source: NSW Department of Communities & Justice)

Table 2 below provides the details of median rent received for the existing building in the previous five (5) year period, as provided by the Applicant.

It is noted that the current owner has owned the property since March 2021 and has been unable to access rental records prior to this time.

| Median Rent | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Low-Rental |
|---------------------|-------|-------|-------|--------------|----------------|--------------|------------|
| <i>Randwick LGA</i> | \$650 | \$625 | \$580 | \$575 | \$667.5 | \$800 | |
| Unit 1 | N/A | N/A | N/A | \$625 | \$600 | \$650 | Yes |
| Unit 2 | N/A | N/A | N/A | \$625 | \$637.5 | \$650 | Yes |
| Unit 3 | N/A | N/A | N/A | \$600 | \$630 | \$740 | Yes |
| Unit 4 | N/A | N/A | N/A | \$533 | \$550 | \$625 | Yes |
| Unit 5 | N/A | N/A | N/A | \$575 | \$600 | \$640 | Yes |

Table 2: Median rent received in the 5 year period prior to DA lodgement (*Source: Applicant*)

As shown in Table 2, at some point in the previous five (5) years, the median rent of all five (5) units has been below the median rent for a two (2) bedroom unit in the Randwick LGA. On this basis, all five (5) units are low-rental dwellings.

6.1.1. Section 46 – Buildings to which Part applies

Pursuant to subsection (1) of section 46, Part 3 of the Housing SEPP applies to low-rental residential buildings on land in the Greater Sydney Region. Pursuant to subsection (2), Part 3 does not apply to a building approved for subdivision under the *Strata Schemes Development Act 2015*, or for which development consent has been granted under Part 5 of the Housing SEPP, or that is owned by, or under the care, control and management of, a social housing provider.

Noting that the existing RFB is a low-rental residential building, has not been strata subdivided, is not housing for seniors or people with a disability, and is not owned/managed by a social housing provider, consideration is given to Part 3 of the Housing SEPP.

6.1.2. Section 47 – Reduction of availability of affordable housing

The criteria established under section 47 in determining whether to grant development consent for the strata subdivision of the building is addressed as follows:

(a) whether the development will reduce the amount of affordable housing in the area

Assessing officer's comment: The proposed works to the existing units relate only to the addition of bicycle parking spaces, bin storage area, and rainwater tank, and the replacement of the existing footpath with decomposed granite. These works were included within the DA at the specific request of Council's Development Engineer and Design Excellence Advisory Panel and are unlikely to affect the affordability of the existing five (5) units.

The proposed addition of one (1) residential unit is unlikely to affect the affordability of existing units. The proposed lift will service the new unit only (Level 3) and no lift openings will be provided to the existing units. In this regard, the proposal is unlikely to reduce the amount of affordable housing in the area.

(b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation

Assessing officer's comment: Noting that the proposed development is unlikely to reduce the amount of affordable housing in the area, analysis of compatible accommodation is not necessary in this instance.

- (c) *whether the development is likely to result in adverse social and economic effects on the general community*

Assessing officer's comment: The proposed development is unlikely to result in adverse social and economic effects. Rather, the proposed works seek to improve accessibility for residents of the RFB and increase the availability of housing stock within the locality.

- (d) *whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation*

Assessing officer's comment: Noting that the existing five (5) units are proposed to be retained, the existing residents are unlikely to be displaced. Hence, arrangements do not need to be made to assist in finding comparable accommodation.

- (e) *the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area.*

Assessing officer's comment: The proposal is unlikely to result in the loss of affordable housing.

- (f) *whether the building is structurally sound, including (i) the extent to which the building complies with relevant fire safety requirements, and (ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements.*

Assessing officer's comment: There are no structural or fire safety upgrade works required and/or proposed.

- (g) *whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development*

Assessing officer's comment: Noting that the proposed development is unlikely to result in the loss of affordable housing, the imposition of an affordable housing condition is not necessary in this instance.

- (h) *for a boarding house—the financial viability of the continued use of the boarding house*

Assessing officer's comment: Not applicable as the proposal does not relate to a boarding house.

6.2. State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 of the Biodiversity and Conservation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW. The proposal does not involve the removal of any significant trees on the site, and as such, no further consideration of the SEPP is required.

6.3. State Environmental Planning Policy (Transport and Infrastructure) 2021

Section 2.48 of the Transport and Infrastructure SEPP applies to a development carried out immediately adjacent to an electricity substation. Noting that the subject site directly adjoins a substation, this section is applicable.

Pursuant to subsection 2.48(2), the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given.

The application was referred to Ausgrid and no objection was raised, subject to conditions.

6.4. State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of the Resilience and Hazards SEPP applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land. Clause 4.6 of the SEPP requires

the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

The application involves alterations and additions to an existing RFB. Noting that the site has historically been used for residential purposes, the possibility of contamination is unlikely, and the site is considered suitable for the proposed development.

6.5. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

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

6.6. State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

SEPP 65 was repealed on 14 December 2023 and the relevant provisions were transferred to Chapter 4 of the Housing SEPP.

However, noting that the subject DA was lodged prior to 14 December 2013 and that the proposal relates to a four (4) storey RFB comprising seven (7) units, SEPP 65 remains applicable.

Section 28(2) of SEPP 65 states:

“(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and*
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) the Apartment Design Guide.”*

Assessing officer's comment: The development was referred to Council's Design Excellence Advisory Panel (DEAP). The advice provided by the DEAP has been considered (refer to **Appendix 1**) and the design scheme has been revised accordingly. An assessment has also been carried out against the Design Criteria of the Apartment Design Guide (ADG) (refer to **Appendix 4**).

The comments provided by the Panel been adequately addressed in the amended plans, as detailed in the table below:

| DEAP Comments | Applicant Response | Council Comments |
|--|---|---|
| 1. Context and Neighbourhood Character The site is in a dense residential neighborhood, characterised by one and two-storey single family residences, and a mixture of old, renovated and new 2 to 4-storey apartment blocks. Most of these are characteristic of the local typology, exhibiting a monolithic block form, with almost uniform site coverage defined by minimum setbacks. | N/A | N/A |
| 2. Built Form and Scale The proposal seeks to add a new level to the roof of the existing building, almost completely to the extents of | <i>As discussed already, we have been able to achieve this for the area facing the street but had difficulty achieving this for the area on</i> | The upper addition has been setback from all boundaries and has been setback from the north to minimise the |

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| | | |
|--|---|---|
| <p>the existing building envelope on all sides (setbacks are proposed from the existing perimeter wall of 600mm on the eastern side, and of 500mm on the south and north sides, with no setbacks on the western side). The new balconies extend to within 1250mm of the eastern boundary. The proposal exceeds the height control by 2.5 metres (26% variation), the wall height by 4 metres, and the FSR by over 80 m2 (21% variation) – not “minor increases,” as suggested in the documents.</p> <p>Though described as a “mansard roof,” the new addition is simply a rectangular box built almost entirely on the perimeter wall envelope of the building below. Perhaps the exceedance of the controls to such an extreme degree might be considered, if any and all mitigating concerns – overshadowing, privacy and view loss – could be illustrated as having no impacts. However, much more three-dimensional nuance and design resolution is required, so that the building is an improvement on the existing, rather than simply an extrusion aimed at maximising floor space.</p> <p>Consideration could be given to setting the new volume back, to increase internal amenity, mitigate impacts, address privacy concerns and create a genuine aesthetic drive by a lightweight roof form atop the existing masonry volume. Despite stated claims, the proposed addition would be perceptible, both from the street, and surrounding properties – it should be designed with this reality in mind.</p> | <p><i>the southern side of the building. We believe the resulting design achieves the intention of this request from the Panel.</i></p> | <p>visual bulk as viewed from the street.</p> <p>The tapered design of the raked timber roof form will also minimise the perceived bulk of the addition. The proposed balconies are wholly contained within the building envelope and don't extend beyond the footprint of the building below.</p> <p>The roof form and materiality have also been amended to minimise the perceived bulk of the addition and provide for a more nuanced design.</p> <p>A privacy study and shadow diagrams have been submitted. Refer discussion at Key Issues section of this report.</p> |
| <p>3. Density The setbacks are those of the existing building, which do not comply with current controls.</p> | <p><i>As discussed already, we have been able to achieve this for the area facing the street but had difficulty</i></p> | <p>The upper addition has been setback from all boundaries and has been setback from the north to minimise the</p> |

| | | |
|---|--|--|
| <p>This further suggests a considered approach be adopted to setting back the proposed upper level. It may result in a single generous unit on the top floor with increased amenity, rather than two small units.</p> | <p><i>achieving this for the area on the southern side of the building. We believe the resulting design achieves the intention of this request from the Panel.</i></p> | <p>visual bulk as viewed from the street.</p> <p>The tapered design of the raked timber roof form will also minimise the perceived bulk of the addition. The proposed balconies are wholly contained within the building envelope and don't extend beyond the footprint of the building below.</p> |
| <p>4. Sustainability A new rooftop addition presents an opportunity to significantly upgrade the environmental performance of the building, and the site. Rainwater should be harvested, collected, treated and re-used, in toilets, laundries and garden areas. Solar PV panels should be installed on the new roof. Both initiatives should have the benefit of lowering utility prices for all the units overall.</p> | <p><i>We have included solar panels on the roof and a rainwater tank behind the garages.</i></p> | <p>Solar panels and a rainwater tank have been incorporated into the proposal.</p> |
| <p>5. Landscape The development does not comply with the controls for landscape open space, deep soil landscape and communal open space – these are all products of the existing building footprint and extensive hardscape. If the redevelopment cannot increase the size of these areas, then any proposal should make legible improvements to the existing spaces, as well as find opportunities to reduce the amount of hardscape in favour of permeable surfaces.</p> | <p><i>We have replaced the concrete path with decomposed granite to contribute to the area of deep soil on the site.</i></p> | <p>The concrete path is proposed to be replaced with decomposed granite.</p> |
| <p>6. Amenity The existing site configuration presents challenges, with access and entry only possible along the vehicle driveway. Where possible, this space should be improved to create a more amenable pedestrian experience. Given the notional rental demographic, bike storage should be provided – this may be more valuable than car spaces that do not comply with minimum sizes.</p> | <p><i>We have provided seven bicycle parking spots.</i></p> <p><i>We have included a Privacy Study showing the views out of each window on the third floor to ensure that the privacy of the neighbouring buildings is maintained.</i></p> | <p>Seven (7) bicycle parking spaces are provided.</p> <p>A privacy study has been submitted. Refer to discussion at Key Issues section of this report.</p> |

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| | | |
|---|--|---|
| A detailed privacy study should be prepared, to ensure that whatever balcony is eventually proposed on the upper level does not impact on neighbouring properties. Potential view loss also needs to be documented. | | |
| 7. Safety No safety issues. | N/A | N/A |
| 8. Housing diversity and Social Interaction The Panel supports the retention of low-cost housing wherever possible. In this instance, suggested changes to the upper storey may result in a more generous single unit, instead of two very small units. This adds diversity to the types on site, and a more expensive offering may allow required additional improvements without severely impacting the rental metrics of the existing units. | <i>We now have only one three-bedroom apartment on the third floor, instead of two two-bedroom apartments.</i> | The proposed two (2) units have been replaced with one (1) unit only, which complies with the minimum requirements for apartment size and balcony size. |
| 9. Aesthetics The single notable aspect of the existing building is the series of brick corbels at ground floor that cantilever out, supporting the upper levels of the structure. These elements could offer some inspiration in creating a series of additional forms that are both responsive to the existing fabric, while also creating a new addition that is distinct from the original building. | <i>We have used the raked brickwork around the carspaces as a reference for the raked timber portal frames as the third floor structure. We have flipped and reversed the rake to suit the intended use.</i> | The raked brickwork has been used as a reference for the proposed raked timber portal frames at the upper level. |

Section 30 of SEPP 65 provides standards that cannot be used as grounds to refuse development consent, which include:

“(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters—

(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide”

Assessing officer's comment: The proposal does not seek any change to the existing car parking arrangement. 6 x car parking spaces are provided, including one (1) small car space.

“(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide”.

Assessing officer's comment: The proposed two (2) bedroom apartment has an internal area of 83.1m² which complies with the minimum ADG requirement.

“(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.”

Assessing officer's comment: The proposed third floor level provides a ceiling height of 2.7m which complies with the minimum ADG requirement.

“(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and*
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.*

Assessing officer's comment: Based on comments provided by Council's DEAP, adequate regard has been given to the SEPP 65 design quality principles and the ADG design criteria (refer to **Appendix 4**). The Applicant has submitted a Design Verification Statement prepared by a qualified architect.

“(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and*
- (b) the design criteria specified in subclause (1) are standards to which section 4.15(2) of the Act applies.”*

Assessing officer's comment: Noted.

6.7. Randwick Local Environmental Plan 2012

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community whilst not impacting on the aesthetic character or amenity of local residents. Refer to the detailed assessment in Section 7 below.

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

| Clause | Development Standard | Existing | Proposal | Compliance (Yes/No) |
|---------------------------------|--------------------------------|--|---|---------------------|
| Cl 4.4: Floor space ratio (max) | 0.75:1 (368.25m ²) | 0.68:1 (approx. 334.5m ²) | 0.859:1 (421.9m ²) | No |
| Cl 4.3: Building height (max) | 9.5m | 10.86m (RL 34.2 ridge over RL 23.34 existing ground) | 12.09m (RL 35.43 ridge over RL 23.34 existing ground) | No |

Clause 4.6 - Exceptions to development standards

The non-compliances with the floor space ration and building height development standards are discussed in Section 7 of this report below.

Clause 5.10 - Heritage conservation

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

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

Whilst the subject site is not a heritage item and is not located within a heritage conservation area, the dwelling to the west of the site, at No. 31 Melody Street, is listed under Schedule 5 of RLEP 2012 as a heritage item. The proposal will not result in any adverse impacts to the heritage significance or qualities of the adjacent heritage item. Refer to the comments from Council's Heritage Officer at **Appendix 1**.

6.7.1. Clause 4.6 exception to a development standard

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

| Clause | Development Standard | Existing | Proposal | Proposed variation | Proposed variation (%) |
|---------------------------|-----------------------------------|----------------------------------|-----------------------------------|---------------------|------------------------|
| Cl 4.4: Floor space ratio | 0.75:1 (368.25m ²) | 0.68:1 (334.5m ²) | 0.859:1 (421.9m ²) | 53.65m ² | 14.56% |
| Cl 4.3: Building height | 9.5m | 10.86m | 12.09m | 2.59m | 27.26% |

The NSW Department of Planning and Environment (DPE) made amendments to clause 4.6 of the Standard Instrument which commenced on 1 November 2023. The changes aim to simplify clause 4.6 and provide certainty about when and how development standards can be varied.

These changes apply only to development applications lodged after 1 November 2023. Any development applications lodged but not determined on 1 November 2023 will continue to be assessed under the previous clause. On this basis and noting that the subject DA was lodged prior to 1 November 2023, the amended provisions of clause 4.6 are not applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.7.2. Exception to the Height of Buildings development standard (Cl 4.3)

The applicant's written justification for the departure from the Height of Buildings development standard is contained in **Appendix 2**.

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

The applicant's written request seeks to justify the contravention of the Height of Buildings 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 height of buildings development standard are set out in clause 4.3(1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

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

"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 R3 – Medium Density Residential which anticipates a medium density form. The development is compatible with the height, bulk and scale of the character of other buildings in the locality. The four-storey (or equivalent) built form matches that of other flat building on Abbott Street, notably Nos. 2-6, 5, 7 and 16-18 Abbott Street. All of these sites contain tall, four-storey (or equivalent) residential flat buildings indicating that this is a scale typical in the locality. As such, the development will not appear visually jarring. To the casual observer, the proposed additions are contained within a mansard style roof and setback from the street on a battle-axe allotment which will ensure the proposal appears as a visually recessive element. 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 SJD 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. 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. The “Design Ideas for Rejuvenating Residential Flat Buildings” policy contemplates variations to the applicable planning controls when rejuvenating existing residential flat buildings which also must be considered when determining the desired future character of the locality. That is, the desired future character is not specifically set by the applicable planning controls.

In terms of surrounding development that contribute to the desired future character, No. 26 Abbott Street was recently approved with a height of 10.425m, 0.925m greater than 9.5 maximum for this site. Furthermore, four-storey (or equivalent) built forms at Nos 2-6, 5, 7 and 16-18 Abbott Street would all breach the 9.5m height limit which demonstrates that the proposed development will not be out of scale or incompatible with surrounding development. These existing buildings, including the subject site, demonstrate that the character of the locality is not dominated by compliant built form which sets a different context and character in this locality. 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 Height of Buildings development standard.

Accordingly, the proposal meets objective (a).”

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

The Applicant’s written justification demonstrates that this objective is satisfied by noting that:

“The subject site is located within the vicinity of a heritage item namely, the heritage substation at 1S Abbott Street and a dwelling at No. 31 Melody Street.

In terms of the substation, the development will be located on the battle-axe allotment behind the substation and will not block any views to or from the item. In terms of No. 31 Melody Street, the subdivision pattern is such that the residential flat building will be located behind the heritage bungalow and will not impose or be visually dominant when viewed from the public domain. Furthermore, the proposed development will not block any views to or from the item. Accordingly the proposal will not have significant heritage impacts and meets objective (b).”

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

The Applicant’s written justification demonstrates that this objective is satisfied by noting that:

“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. Furthermore when viewed from the neighbouring properties, the proposal will appear within a mansard style roof form that replaces the existing pitched roof that does not impart any significant additional bulk and scale when compared to the compliant building.

In terms of privacy, the extent of privacy impacts caused by the height breach will have no greater impact on the privacy to the adjoining properties when compared to the existing built

form or a compliant built form. The proposed development will provide privacy screening to the windows and balconies that breach the height limit to satisfy the separation requirements of the ADG. The proposal also provides significantly better privacy outcomes when compared to the existing situation which contain no screening or privacy measures for the existing windows and balconies. The additional privacy impacts as a result of the height breach when compared to the existing development are insignificant.

With regards to overshadowing, the extent of the additional height creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope. The height 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 height would be insignificant and would not be noticeable to the owners of surrounding properties. Notwithstanding, the proposal has provided a mansard style roof design and centralised location which will still permit solar access over a portion of the windows and open space of adjoining properties.

In terms of views, the height breach will not result in any significant view loss. The proposed development will be 1.2m higher than the existing pitched roof and given the topography the additional variation is unlikely to result in any further significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant.

The examination of the height 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 (c)."

Assessing officer's comment: The applicant's written request has adequately demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case.

Noting that the building is located on a battle-axe lot, the non-compliant portion of the building will not be highly visible from the street or the surrounding public domain. The proposal is considered to respond appropriately to the context of the site and is compatible with the character of the locality, which comprises development of varying scale, architectural style, and typology. Importantly, the proposed four (4) storey development is consistent with the four (4) storey form of nearby RFBs at Nos. 2-6, 5, and 7 Abbott Street.

In addition, it is noted that the design of the proposed alterations and additions are restricted by the siting and form of the existing RFB, which is proposed to be maintained. The existing building has a height of 10.86m which exceeds the 9.5m standard by 1.36m (14.3%). The proposed development seeks a 1.23m increase to the ridge height of the existing RFB at the site. As such, the proposal is consistent with the neighbouring properties and immediate streetscape context. No significant adverse amenity or visual impacts to the neighbouring properties or the public domain are likely occur.

On this basis, compliance with the height of buildings 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 height of buildings development standard as follows:

"1. The height of the proposed development, including the variation, will be entirely compatible with the height and character of surrounding development. Nos. 2-6, 5, 7 and 16-18 Abbott Street are all four storey or equivalent buildings that do not comply with Clause 4.3 of HLEP 2013. Whilst these variations in themselves are not a sufficient reason to vary the development standard, the height variations in Abbott Street set a different context to one that is governed

by the permissible planning controls. That is, the existing development in Abbott Street does not demonstrate a high level of compliance with the height of buildings development standard and therefore height variations can be considered in the context of existing buildings. This is broadly consistent with *Preston CJ in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 at Para 62-63*. When considering the development in the context of the surrounding development, including existing non-compliant buildings, the proposal development, even with the height 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*).

2. The proposed development provides for the rejuvenation of an existing residential flat building that already exceeds the current height of buildings development standard (along with many other current controls). The “Design Ideas for Rejuvenating Residential Flat Buildings” notes the following:

While generally not encouraged, variations to existing controls may be considered where it can be demonstrated that the benefits in terms of Amenity, Environmental Performance and Streetscape Appearance, outweigh the impacts on the surrounding development.

Importantly, examples 1-3, 8-10 of the policy all provide for redevelopment of existing residential flat buildings which increase the height and FSR where Council reached a level of satisfaction that the variation permitted the rejuvenation of the existing residential flat building.

3. The proposed development will result in a variation to the height of buildings 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 additional apartments provided above the height of buildings development standard will generate funds to improve the existing building that will not be realised without the variation to the height of buildings development standard. Specifically, the height variation will facilitate larger internal areas for the occupants, larger private open space areas, equitable access through the provision of a lift, adaptable apartments on the third level and enhancement of the appearance of the existing building. These benefits are not possible without a height variation.

4. The proposed building is a superior design and out performs the existing residential flat building and surrounding residential flat buildings at Nos. 2-6, 5, 7 and 16-18 Abbott Street (which all breach the height plane), by providing greater access for internal occupants without adversely impacting the amenity of adjoining property owners. The proposed building envelope has been carefully considered with the additional apartment replacing the existing pitched roof with a mansard style roof design with raked timber portal frames. The proposed development is supported by other neighbouring and nearby developments with similar characteristics (including No. 26 Abbott Street), and provides a scale that is entirely compatible with that of surrounding properties when viewed from the public domain (where it is in fact visible).

5. The existing residential flat building is located on a battle-axe allotment with limited visibility from the public domain due to the setback, existing building form and landscaping. This is a better outcome than the properties at Nos. 2-6, 5, 7 and 16-18 Abbott Street which breach the height limit but have a frontage to Abbott Street.

6. It is considered that there is an absence of any significant material impacts attributed to the breach 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 height creates no adverse additional overshadowing impacts to adjoining properties when compared to the existing building. The height 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 height would be insignificant and would not be noticeable to the owners of surrounding properties.

- *The height breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the height breach will have no greater impact on the privacy to the adjoining properties when compared to the existing built form. The proposed development will provide privacy screening to the windows and balconies that breach the height limit to satisfy the separation requirements of the ADG. As such, the loss of privacy caused by the non-compliant elements would be insignificant; and*
- *The height breach will not result in any significant view loss. The proposed development will be 1.2m higher than the existing pitched roof and given the topography the additional variation is unlikely to result in any further significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant.*

7. The variation to the height of building standard will allow a lift to be provided to all levels of the building and the single 3 x bedroom apartment on the top floor will achieve equitable access which cannot be provided within the existing building and configuration. This provides for a more diverse range of housing in an accessible location and also provides for a positive social benefit that would not be achieved without a variation to the height of buildings development standard.

8. There is no planning purpose to be served by limiting the height to the 9.5m height limit given the absence of significant amenity related impacts, that compliance with the objectives of the development standard and zone is achieved regardless of the variation and that the height standard has already been exceeded by the existing development.

9. The proposal meets the objects of the R3 Zone and those of the Height of Buildings Standard.

10. The proposed development achieves the objectives in Section 1.3 of the EP&A Act, specifically:

- *The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c)); and*
- *The proposed development promotes good design and amenity of the built environment through a well-considered contemporary design which is responsive to its setting and context, providing a high quality residential flat building in an appropriate location (1.3(g)).*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development. The additional height enables the rejuvenation of an aging flat building and an increase in scale that is entirely compatible with developments in the locality. The proposed alteration and additions provides for an enhanced internal amenity for all apartments, a better design and streetscape outcome specific to the site and the development without having any 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 height breach."

Assessing officer's comment: The Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the height of buildings development standard. The overall height, bulk, and scale of the proposal is compatible with surrounding development and will not result in adverse amenity impacts to neighboring properties.

The upper addition has been setback from all boundaries and has been setback from the north to minimise the visual bulk as viewed from the street. The tapered design of the raked timber roof form will also minimise the perceived bulk of the addition. The proposed balconies are wholly contained within the building envelope and don't extend beyond the footprint of the building below.

In addition, it is noted that the design of the proposed alterations and additions are restricted by the siting and form of the existing RFB. This is proposed to be maintained. The existing building has a height of 10.86m which exceeds the 9.5m standard by 1.36m (14.3%). The

proposed development seeks a 1.23m increase to the ridge height of the existing RFB at the site. On this basis, there are sufficient grounds to justify the contravention of the development standard.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Height of Buildings standard and R3 zone is provided below:

Assessment against objectives of height of buildings standard

For the reasons outlined in the Applicant's written request (refer above), the development is consistent with the objectives of the height of buildings development standard.

Assessment against objectives of the R3 zone

The Applicant's written justification seeks to demonstrate that the objectives of the R3 zone are satisfied by noting that:

Clause 4.6 (4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the R3 Medium Density Residential zone and how the proposal meets is provided below:

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

The height variation will permit an additional 3 x bedroom apartment in a highly sought-after area and is therefore seen as meeting the housing need of the community.

- *To provide a variety of housing types within a medium density residential environment.*

The addition of a 3 x bedroom apartment will add to the diversity of housing types in the area as they will be adaptable dwellings and will now provide equitable access through the provision of a lift to all levels. The proposal will maintain the medium density character of the locality.

- *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 locality is undergoing a transition (slowly) to medium density residential flat buildings. The proposed addition is compatible with the character of the area given the height breach is limited to 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 apartment layout, private open space and a lift.

- *To encourage housing affordability.*

The addition of two new residential units will increase housing stock in the locality which in turn will aid in addressing housing affordability in the locality.

- *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 R3 zone, despite the non-compliance with the height of building development standard."

Assessing officer's comment: The proposal demonstrates consistency with the objectives of the R3 zone and will not result in significant adverse amenity impacts to adjoining residents. Rather, the proposed works seek to improve accessibility for residents of the RFB and increase the availability and diversity of housing stock within the locality.

The proposal will maintain the medium density character of the locality and is generally commensurate with the bulk and scale of development that is anticipated for the site. Surrounding development ranges from one (1) to four (4) storeys in height. The proposed four (4) storey development is consistent with the four (4) storey form of nearby RFBs at Nos. 2-6, 5, and 7 Abbott Street.

As demonstrated above, the proposed development is in the public interest because it is consistent with the objectives of the height of buildings development standard and the R3 zone. Furthermore, the proposal results in a satisfactory outcome in terms of impacts to neighbouring residents, privacy, solar access and views.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the maximum height of buildings 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 Height of Buildings development standard.

6.7.3. Exception to the Floor Space Ratio (FSR) development standard (Clause 4.4)

The applicant's written justification for the departure from the floor space ratio (FSR) development standard is contained in **Appendix 3**.

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

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

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

"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 R3 – Medium Density Residential which anticipates a medium density form. The development is compatible with the height, bulk and scale of the character of other buildings in the locality. The four-storey (or equivalent) built form matches that of other flat building on Abbott Street, notably Nos. 2-6, 5, 7 and 16-18 Abbott Street. All of these sites contain tall, four-storey (or equivalent) residential flat buildings indicating that this is a scale typical in the locality. As such, the development will not appear visually jarring. To the casual observer, the proposed additions are contained within a mansard style roof and setback from the street on a battle-axe allotment which will ensure the proposal appears as a visually recessive element.

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 SJD 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. 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. The "Design Ideas for Rejuvenating Residential Flat Buildings" policy contemplates variations to the applicable planning controls when rejuvenating existing residential flat buildings which also must be considered when determining the desired future character of the locality. That is, the desired future character is not specifically set by the applicable planning controls.

In terms of surrounding development that contribute to the desired future character, No, 26 Abbott Street was recently approved which sought to rejuvenate the existing residential flat building and replacing the roof form with built form, similar to the proposed development. The development at Nos. 293-297 Alison Road (to the north of the subject site) was approved with an FSR of 0.91:1 which exceeded the 0.75:1 maximum FSR on site. Finally, four-storey (or equivalent) built forms at Nos 5, 7 and 16-18 Abbott Street would all likely breach the 0.75:1 FSR development standard given the size of the buildings relative to the site area. This demonstrates that the proposed development will not be out of scale or incompatible with surrounding development. These existing buildings, including the subject site, demonstrate that the character of the locality is not dominated by compliant built form which sets a different context and character in this locality. 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 FSR development standard.

Accordingly, the proposal meets objective (a)."

(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 variation to the FSR development standard will still ensure that the proposed development is well articulated and responds to the environmental and energy needs of the future occupants. In this regard, the additional GFA will provide for an additional 2x bedroom apartment in lieu of the pitched roof which will have excellent access to solar access and cross ventilation to minimise the need for artificial heating and cooling. The proposed apartment will have excellent amenity.

The building will continue to be well articulated and will introduce a mansard style roof with raked timber portal frames and new materiality to rejuvenate the existing residential flat building. That is, the proposal is for a building that is better articulated than the existing 1970s residential flat building.

All apartments are cross ventilated with three external walls to permit natural light and ventilation and east facing private open space with will have access to the morning sun. The proposed development will achieve the relevant BASIX criteria in terms of energy and water use and thermal comfort. Overall, the proposed development will achieves a high level of sustainability.

Accordingly, the proposal meets objective (b)."

(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 scale and character is discussed in Objective (a) above. For the reasons discussed in objective (a), the proposed development represents a scale which is compatible with the character of the locality. The subject site is located within the vicinity of a heritage item namely, the heritage substation at 1S Abbott Street and a dwelling at No. 31 Melody Street.

In terms of the substation, the development will be located on the battle-axe allotment behind the substation and will not block any views to or from the item. In terms of No. 31 Melody Street, the subdivision pattern is such that the residential flat building will be located behind the heritage bungalow and will not impose or be visually dominant when viewed from the public domain. Furthermore, the proposed development will not block any views to or from the item. Accordingly the proposal will not have significant heritage impacts and meets objective (c)."

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

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

"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. Furthermore, when viewed from the neighbouring properties, the proposal will appear compatible with surrounding residential flat buildings with a mansard style roof form with raked timber portal frames that replaces the existing pitched roof. Given the location, increase height of 1.2m and the materiality, the additional GFA does not impart any significant additional bulk and scale when compared to the existing or compliant building.

In terms of privacy, 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 built form or a compliant built form. The proposed development will provide privacy screening to the windows and balconies proposed to satisfy the separation requirements of the ADG. The proposal also provides significantly better privacy outcomes when compared to the existing situation which contain no screening or privacy measures for the existing windows and balconies. Therefore, the additional privacy impacts as a result of the GFA breach when compared to the existing development are insignificant.

With regards to overshadowing, the extent of the additional GFA 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. Notwithstanding, the proposal has provided a mansard style roof design with raked timber portal frames and centralised location which will still permit solar access over a portion of the windows and open space of adjoining properties.

In terms of views, the GFA breach will not result in any significant view loss. The proposed development will be 1.2m higher than the existing pitched roof and given the topography the additional variation is unlikely to result in any further significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant.

The examination of the FSR 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)."

Assessing officer's comment: The applicant's written request has adequately demonstrated that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.

Noting that the building is located on a battle-axe allotment, the non-compliant portion of the building will not be readily visible from the street or the surrounding public domain. The proposal is considered to respond appropriately to the context of the site and is compatible with the character of the locality, which comprises development of varying scale, architectural style, and typology. On this basis, compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

"1. The height, bulk and scale of the proposed development, including the variation, will be entirely compatible with the height, bulk and scale of surrounding development. The surrounding buildings at Nos. 5, 7 and 16-18 Abbott Street are all four storey or equivalent buildings that would not comply with Clause 4.4 of HLEP 2013 relative to their site area. Whilst these variations in themselves are not a sufficient reason to vary the development standard, the scale of development in Abbott Street set a different context to one that is governed by the permissible planning controls. Therefore, the FSR variation can be considered in the context of existing buildings which is broadly consistent with Preston CJ in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 at Para 62-63. When considering the development in the context of the surrounding development, including existing non-compliant buildings, the proposal development, even with the FSR 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).

2. The additional GFA does not significantly alter the character or presentation of the existing development in terms of streetscape nor does it bring with it a form of development on the site that is noticeably larger than the surrounding development or the existing built form. Whilst the proposal may look different to the existing development, the essence of the development as a residential flat building will remain the same and will be entirely compatible with surrounding residential flat buildings at Nos. 5, 7 and 16-18 Abbott Street with four storey (or equivalent) buildings on elongated and narrow sites. The additional FSR on site is located within a mansard style roof and will not be readily perceptible from the public domain or have any adverse impact on the amenity of surrounding properties.

3. The proposed development provides for the rejuvenation of an existing residential flat building that already exceeds the current FSR development standard (along with many other current controls). The “Design Ideas for Rejuvenating Residential Flat Buildings” notes the following:

While generally not encouraged, variations to existing controls may be considered where it can be demonstrated that the benefits in terms of Amenity, Environmental Performance and Streetscape Appearance, outweigh the impacts on the surrounding development.

Furthermore:

Note: many older residential flat buildings exceed current floor space ratios (FSR). While generally not encouraged, minor FSR increases may be considered where the benefits outweigh the impacts on the surrounding development.

Importantly, examples 1-3, 8-10 of the policy all provide for redevelopment of existing residential flat buildings which increase the height and FSR where Council reached a level of satisfaction that the variation permitted the rejuvenation of the existing residential flat building.

4. The proposed development will result in a variation to the FSR 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 additional GFA will generate funds to improve the existing building via the provision of a lift that will not be realised without the variation to the FSR development standard. Specifically, the FSR variation will facilitate the provision of a lift and enhancement of the appearance of the existing building. These benefits are not possible without a FSR variation.

5. The proposed building is a superior design and provides greater amenity for internal occupants without adversely impacting the amenity of adjoining property owners. The proposed building envelope has been carefully considered with the additional GFA replacing the existing pitched roof with a mansard style roof design with raked timber portal frames. The proposed development is supported by other neighbouring and nearby developments with similar characteristics (including No. 26 Abbott Street). This assists with mitigating the scale of the additional GFA from the public domain where it is in fact visible.

6. The existing residential flat building is located on a battle-axe allotment with limited visibility from the public domain due to the setback, existing building form and landscaping. The proposed FSR variation will not be visually jarring or out of character with surrounding properties but will facilitate necessary improvements to the existing building stock. Of note, the residential flat building at Nos. 293-297 Alison Road (to the north of the subject site) which was approved with an FSR of 0.91:1 which exceeded the 0.75:1 maximum FSR on site.

7. It is considered that there is an absence of any significant material impacts attributed to the breach 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. 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.
- The FSR breach does not result in any adverse additional privacy impacts. 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 the existing built form. The proposed development will provide privacy screening to the windows and balconies that improves the privacy relationship and satisfies the separation requirements of the ADG. As such, the loss of privacy caused by the FSR variation elements would be insignificant; and

- *The FSR breach will not result in any significant view loss. The proposed development will be 1.2m higher than the existing pitched roof and given the topography the additional FSR variation is unlikely to result in any further significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant.*

8. *The variation to the FSR standard will allow a lift to be provided to all levels of the building and the additional 2 x bedroom apartment on the top floor with equitable access which cannot be provided within the existing building and configuration. This provides for a more diverse range of housing in an accessible location and also provides for a positive social benefit that would not be achieved without a variation to the height of buildings development standard.*

9. *There is no planning purpose to be served by limiting the FSR to 0.75:1 given the absence of significant amenity related impacts, that compliance with the objectives of the development standard and zone is achieved regardless of the variation and that the height standard has already been exceeded by the existing development.*

10. *The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (as further detailed in Section 8 below).*

11. *The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*

- *The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c)); and*
- *The proposed development promotes good design and amenity of the built environment through a well-considered contemporary design which is responsive to its setting and context, providing a high quality family home an appropriate location (1.3(g)).*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development. The additional GFA enables the rejuvenation of an aging flat building and an increase in scale that is entirely compatible with developments in the locality. The proposed alteration and additions provides for an enhanced internal amenity for all apartments, a better design and streetscape outcome specific to the site and the development without having any 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 FSR breach."

Assessing officer's comment: The Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the FSR development standard. The overall height, bulk, and scale of the proposal is compatible with surrounding development and will not result in adverse amenity impacts to neighboring properties.

The upper addition has been setback from all boundaries and has been setback from the north to minimise the visual bulk as viewed from the street. The tapered design of the raked timber roof form will also minimise the perceived bulk of the addition. The proposed balconies are wholly contained within the building envelope and don't extend beyond the footprint of the building below. On this basis, there are sufficient grounds to justify the contravention of the FSR 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 R3 zone is provided below:

Assessment against objectives of the FSR standard

For the reasons outlined in the Applicant's written request (refer above), the development is consistent with the objectives of the FSR standard.

Assessment against objectives of the R3 zone

The Applicant's written justification seeks to demonstrate that the objectives of the R3 zone are satisfied by noting that:

"Clause 4.6 (4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the R3 Medium Density Residential zone and how the proposal meets is provided below:

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

The GFA variation will permit an additional 2 x bedroom apartment in a highly sought-after area and is therefore seen as meeting the housing need of the community.

- *To provide a variety of housing types within a medium density residential environment.*

The addition of a 2 x bedroom apartment will add to the diversity of housing types in the area and will now provide equitable access through the provision of a lift to all levels. The proposal will maintain the medium density character of the locality.

- *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 locality is undergoing a transition (slowly) to medium density residential flat buildings. The proposed additions are compatible with the character of the area given the FSR breach is limited to ensure no adverse impact on the character of the streetscape.

- *To protect the amenity of residents.*

The FSR variation will not lead to any significant impacts in terms of overshadowing, view loss or privacy for neighbouring sites. The additional FSR improves amenity for occupants with the provision of improved apartment layout, private open space and a lift.

- *To encourage housing affordability.*

The addition of a 2 x bedroom apartment will increase housing stock in the locality which in turn will aid in addressing housing affordability in the locality.

- *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 R3 zone, despite the variation to the FSR development standard."

Assessing officer's comment: The proposal demonstrates consistency with the objectives of the R3 zone and will not result in significant adverse amenity impacts to adjoining residents. Rather, the proposed works seek to improve accessibility for residents of the RFB and increase the availability and diversity of housing stock within the locality.

The proposal will maintain the medium density character of the locality and is generally commensurate with the bulk and scale of development that is anticipated for the site. Surrounding development ranges from one (1) to four (4) storeys in height. The proposed four (4) storey development is consistent with the four (4) storey form of nearby RFBs at Nos. 2-6, 5, and 7 Abbott Street.

As demonstrated above, the proposed development is in the public interest because it is consistent with the objectives of the FSR development standard and the R3 zone.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the maximum FSR 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.

7. Development control plans and policies

7.1. Randwick Comprehensive Development Control Plan 2013

The Development Control Plan (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 5**.

8. Environmental Assessment

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

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument | Refer to discussion at Sections 6 & 7 of this report. |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | The Comprehensive Planning Proposal to update the Randwick Local Environmental Plan (RLEP) 2012 was publicly exhibited from the 31 May to the 12 July 2022 and the amended LEP commenced on 01 September 2023. |

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| | The subject application was lodged prior to this date and as such, the amended LEP provisions do not apply. Notwithstanding, the proposal would not be inconsistent with the amended LEP. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. Refer to Appendix 5 and discussion at Key Issues section of this report below. |
| Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement | Not applicable. |
| Section 4.15(1)(a)(iv) – Provisions of the regulations | The relevant clauses of the Regulations have been satisfied. |
| Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p> |
| Section 4.15(1)(c) – The suitability of the site for the development | The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development. |
| Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation | The issues raised in the submissions have been addressed in this report. |
| Section 4.15(1)(e) – The public interest | The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest. |

9. Discussion of Key Issues

Building Design

The proposed development has been designed in accordance with Council's '*Design Ideas for Rejuvenating Residential Flat Buildings*'. The adaptive reuse of the existing building is supported as a sustainable means of redeveloping the site and the proposed upper addition is well integrated with the existing building.

The Application was referred to the Design Excellence Advisory Panel (DEAP) and a meeting was held on 15 August 2023. The Panel's comments are detailed at **Appendix 1**.

In response to the Panel's comments, Council requested the several amendments. Amended plans were submitted by the Applicant, as detailed below:

- Increase the setbacks of the upper addition on all sides to minimise adverse amenity impacts to neighbouring properties and reduce the visual bulk of the addition when viewed from the street. The new balcony must be contained within the building envelope and must not extend beyond the setbacks of the existing building below.

Amended Plans: The upper addition has been setback from all boundaries and has been setback from the north to minimise the visual bulk as viewed from the street. The tapered design of the raked timber roof form will also minimise the perceived bulk of the addition. The proposed balconies are wholly contained within the building envelope and don't extend beyond the footprint of the building below.

- Delete one (1) of the proposed units so that the upper addition comprises one (1) unit only – the unit should comply with the minimum requirements for apartment size and balcony size.

Amended Plans: The proposed two (2) units have been replaced with one (1) unit only, which complies with the minimum requirements for apartment size and balcony size.

- Incorporate sustainability measures including solar PV panels and rainwater re-use.

Amended Plans: Solar panels and a rainwater tank have been incorporated into the proposal.

- Replace the concrete pedestrian path could with loose gravel or lawn to increase the quantum of deep soil/landscaped area.

Amended Plans: The concrete path is proposed to be replaced with decomposed granite.

- Provide on-site bicycle storage spaces.

Amended Plans: Seven (7) bicycle parking spaces are provided.

- Amend the design of the new addition to respond to the existing fabric, including the series of brick corbels at ground floor that cantilever out. These elements could offer some inspiration in creating a series of additional forms that are both responsive to the existing fabric, while also creating a new addition that is distinct from the original building.

Amended Plans: The raked brickwork has been used as a reference for the proposed raked timber portal frames at the upper level.

- Submit elevational shadow diagrams to demonstrate the extent of overshadowing impact.

Amended Plans: Elevational shadow diagrams have been submitted. Refer to discussion at Key Issues section of this report.

- Submit a detailed privacy study to demonstrate the extent of privacy impact.

Amended Plans: A privacy study has been submitted. Refer to discussion at Key Issues section of this report.

- Submit 3D height plane diagrams to demonstrate the extent of non-compliance with the building height control and external wall height control.

Amended Plans: A 3D height plane diagram has been submitted. Refer to discussion at Key Issues section of this report.

Council is satisfied that the amended plans satisfy the DEAP comments, and as such, re-referral to the Panel is not considered necessary.

Solar Access and Overshadowing

Objective 4A-1 of the ADG seeks to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space. Living rooms and private open spaces of at least 70% of apartments in a building should receive a minimum of two (2) hours of direct sunlight between 9am and 3pm midwinter.

Consistent with the ADG requirements, the proposed unit will receive in excess of three (3) hours of direct sunlight to habitable rooms and private open space.

Relative to the existing situation, the proposal will result in some additional minor overshadowing to the neighbouring properties, as follows:

- Minor portion of roof at No. 33-35 Melody St at 8am;
- Minor portion of rear yard at No. 27 Bream St and No. 3 Abbott St at 12 noon; and
- Minor portion of roof at No. 3 Abbott St at 4pm.

Notwithstanding, the eastern façade of No. 33-35 Melody Street will receive direct sunlight between 10am and 12 noon midwinter. Solar access to the open space areas at this property will be unchanged by way of the proposed development and comply with the relevant provisions.

Additionally, the rear open space area at No. 27 Bream St will receive sufficient sunlight between 9am and 12 noon midwinter. Solar access to the living room windows at this property will be unchanged by way of the proposed development.

The western façade of No. 3 Abbott Street will receive direct sunlight between 1pm and 3pm midwinter and the rear open space area at this property will receive direct sunlight between 9am and 1pm midwinter.

The eastern façade of Nos. 29 and 31 Melody Street will receive direct sunlight between 9am and 11am midwinter and the rear open space areas at these properties will receive direct sunlight between 11am and 2pm midwinter.

The proposal maintains sufficient sunlight access to habitable rooms, primary windows and private open space and is therefore consistent with Objective 4A-1 of the ADG.

Whilst it is noted that Part 4 of the ADG prevails over any DCP control, the proposal generally complies with Part C2, Section 5.1 of RDCP 2013, which requires a minimum of three (3) hours of sunlight to be provided to the living areas and to at least 50% of the private open space between 8am and 4pm midwinter.

Visual Privacy & Building Separation

Objective 3F-1 of the ADG seeks to ensure that adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. For buildings up to 12m (or 4 storeys), the minimum required separation distances from buildings to the side and rear boundaries is 6m for habitable rooms/balconies and 3m for non-habitable rooms.

The setbacks of the proposed upper floor level are as follows:

- North (front): 6.59m (to terrace)
- South (rear): 6.26m - 6.46m (to terrace)
- East (side): 2.85m (to stairwell), 3.64m - 3.67m (to habitable rooms)
- West (side): 2.66m (to lift shaft – NB: no windows), 3.32m - 3.58m (to habitable rooms)

Whilst the proposal does not comply with the minimum side separation distances pursuant to the ADG, it is noted that this is a continuation of an existing non-compliance. The proposed upper addition is wholly contained within the footprint of the existing building below. In order to maximise visual privacy and provide articulation, the upper addition is provided with greater setbacks than the level below to all boundaries, with the exception of the stairwell and lift shaft.

To the west elevation, windows W2, W3, W4, and W5 (to bathroom and ensuite) are provided with sill heights 1.6m above FFL. Overlooking from window W1 (to kitchen) will be limited due to the siting of the kitchen bench in front of the window. As shown in Figure 8, overlooking from this window will primarily be to the roof of the dwelling at No. 31 Melody St. Window W1 has a sill height of RL

33.27, which is 5.41m - 5.44m above the head height of east-facing windows at No. 31 Melody St (ranging from RL 27.83 to RL 27.86).

To the east elevation, windows W7, W8, W9, W10 (to bedrooms) have approximate sill heights of RL 33.53, which is 4.23m - 4.58m above the head height of west-facing windows at No. 3 Abbott St (ranging from RL 28.95 to RL 29.30 at upper level). On this basis, and as shown in Figure 8, the proposed east-facing windows are unlikely to directly overlook windows at No. 3 Abbott St.

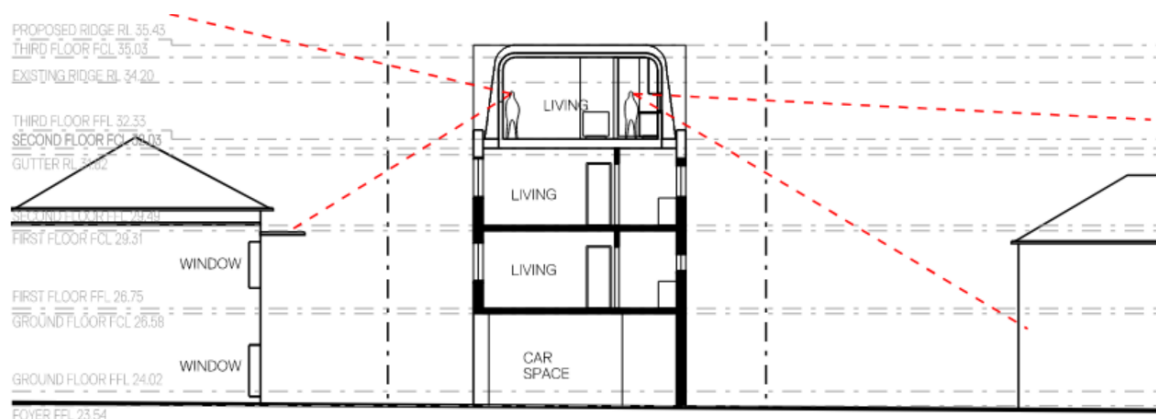


Figure 8: Privacy study (Source: Brewer Architects)

As shown in Figure 9, windows W12 and W13 (to living/dining room) and the eastern side of the rear terrace will only overlook the roof of No. 29 Bream St and the car parking areas at Nos. 3, 5, and 7 Abbott St. There will be no direct overlooking to habitable windows or POS areas from these windows. Further, as shown in Figure 10, the rear POS areas at No. 29 Bream Street are screened by way of existing tree planting. In this regard, there will be no direct overlooking from the eastern side of the proposed rear terrace.



Figure 9: Eastern drone view from location of rear terrace and windows W12 & W13 (Source: Brewer Architects)



Figure 10: Rear POS area at 1/29 Bream Street (Source: Brewer Architects)

As shown in Figure 11, the western side of the rear terrace will overlook the upper rear windows of the property at No. 33 Melody Street. A condition is included to ensure that a privacy screen (1.6m height) is provided to the western side of the terrace.



Figure 11: Western drone view from location of rear terrace (Source: Brewer Architects)

As shown in Figure 12, the southern side of the rear terrace will overlook the upper rear windows of Units 1 and 2 at No. 27 Bream Street. However, based on real estate photographs and floorplans, it is noted that the upper rear windows are to the kitchen of Units 1 and 2 only (not living rooms or bedrooms). Further, the property at No. 25-25A Bream Street is appropriately screened from view by way of an existing pine tree and the inset of the trafficable portion of the addition centrally within the roof form to predominantly obscure downward viewing angles. In this regard, there will be no direct overlooking from the southern side of the proposed rear terrace.

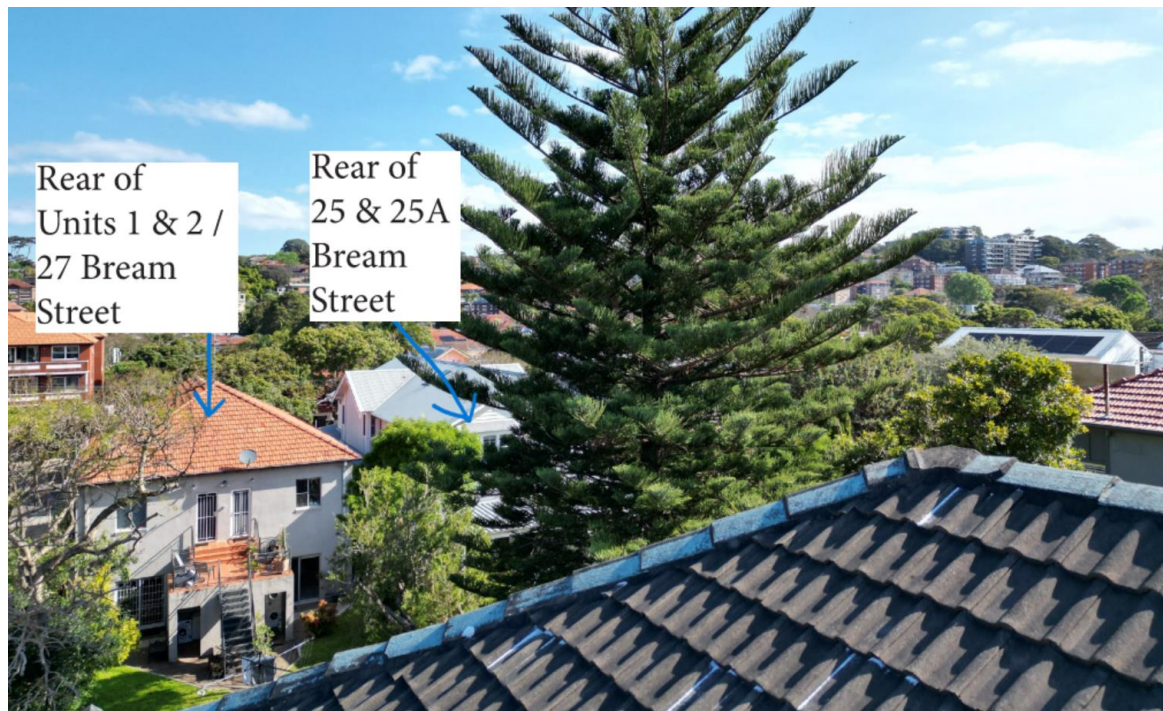


Figure 12: Southern drone view from location of rear terrace (Source: Brewer Architects)

Noting the above, the proposal is considered to achieve reasonable levels of external and internal visual privacy and is therefore consistent with Objective 3F-1 of the ADG.

External Wall Height

Part C2, Section 4.4 of RCDPCP 2013 prescribes a maximum external wall height of 8m for the site. The objectives of this Section seek:

- *To ensure that the building form provides for interesting roof forms and is compatible with the streetscape.*
- *To ensure ceiling heights for all habitable rooms promote light and quality interior spaces.*
- *To control the bulk and scale of development and minimise the impacts on the neighbouring properties in terms of overshadowing, privacy and visual amenity.*

The proposed development has a maximum external wall height of up to 12.09m, which exceeds the DCP control. Numeric non-compliance is considered acceptable in this instance. Noting the battle-axe arrangement of the site, the proposed development and non-compliant elements will not be readily visible from the street.

The proposed upper addition has incorporated staggered wall planes, a tapered roof form, window openings, and a mix of surface finishes, which will appropriately articulate the building façades and create visual interest. The raked brickwork around the existing carports have been used as a reference for the raked timber portal frames to the upper addition.

The proposed design scheme adopts a flat roof with tapered side elevations, which will minimise the overall building height. The selected materials for the upper addition (timber cladding, rendered brickwork, and glass balustrading) will also minimise the perceived bulk of the addition as it presents as a visually recessive element. These design measures will minimise the visual scale and bulk of the proposed building despite non-compliance with the building and external wall height controls. Overall, the architectural character and form of the proposal are considered to carry positive design merits.

A decrease to the overall building height to comply with the 8m wall height control and/or 9.5m building height control would result in poor internal amenity for the proposed unit and would not provide any benefit to the amenity of neighboring properties.

The building is compatible with the character of the locality and streetscape and will not result in significant adverse amenity impacts to neighbouring properties relative to overshadowing, privacy and visual amenity. Noting the above, the proposed development is consistent with the objectives of Part C2, Section 4.4 of RDCP 2013 and non-compliance with the external wall height control is acceptable.

10. Conclusion

That the application for alterations and additions to an existing residential flat building, including the addition of a fourth level for one (1) new unit and lift, be approved (subject to conditions) for the following reasons:

- Whilst the proposed development does not comply with the maximum building height and floor space ratio pursuant to clauses 4.3 and 4.4 of RLEP 2012, the proposal is generally consistent with the character and scale of surrounding built form within the site's locality.
- Compliance with the maximum height of buildings development standard is considered to be unreasonable or unnecessary in the circumstances of this case and there are environmental planning grounds that warrant variation to the development standard. As such, the written request pursuant to clause 4.6 of RLEP 2012 is well founded.
- Compliance with the maximum floor space ratio development standard is considered to be unreasonable or unnecessary in the circumstances of this case and there are environmental planning grounds that warrant variation to the development standard. As such, the written request pursuant to clause 4.6 of RLEP 2012 is well founded.
- The proposal is consistent with the specific objectives of the R3 zone in that it will provide for the housing needs of the community, provide a variety of housing types, contribute to the desired future character of the area, protect the amenity of residents, and encourage housing affordability.
- The proposal is generally consistent with the relevant objectives contained within RLEP 2012 and the relevant requirements of RDCP 2013.
- The proposal is generally consistent with the relevant standards and objectives of the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*, and the relevant criteria and objectives of the Apartment Design Guide.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

Appendix 1: Referrals

1. Design Excellence Advisory Panel comments:

The Application was referred to the Design Excellence Advisory Panel (DEAP) and a meeting was held on 15 August 2023. The Panel's comments are detailed below:

“INTRODUCTION

Additions and alterations to an existing 3-storey residential block, seeking to add a new level to the roof, incorporating two new apartments. The site is unusual, in that it is a virtually landlocked parcel in the middle of the greater street block, and separated from the street by an electrical substation building. The building is reached by a single lane driveway adjacent to the substation.

1. Context and Neighbourhood Character

The site is in a dense residential neighborhood, characterised by one and two-storey single family residences, and a mixture of old, renovated and new 2 to 4-storey apartment blocks. Most of these are characteristic of the local typology, exhibiting a monolithic block form, with almost uniform site coverage defined by minimum setbacks.

2. Built Form and Scale

The proposal seeks to add a new level to the roof of the existing building, almost completely to the extents of the existing building envelope on all sides (setbacks are proposed from the existing perimeter wall of 600mm on the eastern side, and of 500mm on the south and north sides, with no setbacks on the western side). The new balconies extend to within 1250mm of the eastern boundary. The proposal exceeds the height control by 2.5 metres (26% variation), the wall height by 4 metres, and the FSR by over 80 m² (21% variation) – not “minor increases,” as suggested in the documents.

Though described as a “mansard roof,” the new addition is simply a rectangular box built almost entirely on the perimeter wall envelope of the building below. Perhaps the exceedance of the controls to such an extreme degree might be considered, if any and all mitigating concerns – overshadowing, privacy and view loss – could be illustrated as having no impacts. However, much more three-dimensional nuance and design resolution is required, so that the building is an improvement on the existing, rather than simply an extrusion aimed at maximising floor space.

Consideration could be given to setting the new volume back, to increase internal amenity, mitigate impacts, address privacy concerns and create a genuine aesthetic drive by a lightweight roof form atop the existing masonry volume. Despite stated claims, the proposed addition would be perceptible, both from the street, and surrounding properties – it should be designed with this reality in mind.

3. Density

The setbacks are those of the existing building, which do not comply with current controls. This further suggests a considered approach be adopted to setting back the proposed upper level. It may result in a single generous unit on the top floor with increased amenity, rather than two small units.

4. Sustainability

A new rooftop addition presents an opportunity to significantly upgrade the environmental performance of the building, and the site. Rainwater should be harvested, collected, treated and re-used, in toilets, laundries and garden areas. Solar PV panels should be installed on the new roof. Both initiatives should have the benefit of lowering utility prices for all the units overall.

5. Landscape

The development does not comply with the controls for landscape open space, deep soil landscape and communal open space – these are all products of the existing building footprint

and extensive hardscape. If the redevelopment cannot increase the size of these areas, then any proposal should make legible improvements to the existing spaces, as well as find opportunities to reduce the amount of hardscape in favour of permeable surfaces.

6. Amenity

The existing site configuration presents challenges, with access and entry only possible along the vehicle driveway. Where possible, this space should be improved to create a more amenable pedestrian experience. Given the notional rental demographic, bike storage should be provided – this may be more valuable than car spaces that do not comply with minimum sizes.

A detailed privacy study should be prepared, to ensure that whatever balcony is eventually proposed on the upper level does not impact on neighbouring properties. Potential view loss also needs to be documented.

7. Safety

No safety issues.

8. Housing diversity and Social Interaction

The Panel supports the retention of low-cost housing wherever possible. In this instance, suggested changes to the upper storey may result in a more generous single unit, instead of two very small units. This adds diversity to the types on site, and a more expensive offering may allow required additional improvements without severely impacting the rental metrics of the existing units.

9. Aesthetics

The single notable aspect of the existing building is the series of brick corbels at ground floor that cantilever out, supporting the upper levels of the structure. These elements could offer some inspiration in creating a series of additional forms that are both responsive to the existing fabric, while also creating a new addition that is distinct from the original building.

SUMMARY AND RECOMMENDATIONS

The Panel feels that much more architectural refinement is required. Additionally, more consideration should be given to the entire site and building, before any exceedances of the controls can be considered as acceptable.”

Council is satisfied that the amended plans satisfy the DEAP comments, and as such, re-referral to the Panel is not considered necessary.

2. External referral comments:

2.1. Ausgrid

The Application was referred to Ausgrid and no concern was raised, subject to conditions, as detailed below:

“Ausgrid does not object to the proposed development.

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

Ausgrid Underground Cables are in the vicinity of the development

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

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

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

SafeWork Australia – Excavation Code of Practice.

Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables.

The following points should also be taken into consideration.

Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.

Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

Ausgrid Overhead Powerlines are in the vicinity of the development

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

The “as constructed” minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website at www.ausgrid.com.au.

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer's cost.

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances “Working Near Ausgrid Assets - Clearances”. This document can be found by visiting the following Ausgrid website: www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

For new connections or to alter the existing electrical connection to the property from the Ausgrid network, the proponent should engage an Accredited Service Provider and submit a connection application to Ausgrid as soon as practicable. Visit the Ausgrid website for further details: <https://www.ausgrid.com.au/Connections/Get-connected>.”

3. Internal referral comments:

3.1. Heritage Planner

The Application was referred to Council's Heritage Planner and no concern was raised, subject to conditions, as detailed below:

“The Site

The site is occupied by a three storey post war residential flat building comprising 3 storeys including car parking at ground floor level. The building occupies a battle-axe block and is screened from the street by an Interwar substation. Immediately to the west of the site at no.31 Melody Street is a Bungalow listed as a heritage item under Randwick LEP 2012. Some

distance to the east of the site is the Abbott Street sandstone retaining walls, also listed as a landscape heritage item.

Proposal

The application proposes alterations and additions including a fourth level comprising two apartments and installation of a lift in an area currently occupied by laundries.

Controls

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

Comments

The proposal will have no impact on the sandstone retaining walls to the east. As the building is separated from the Melody Street heritage item and the works are to occur within the existing building footprint, impact on physical fabric is unlikely.

The existing Abbott Street residential flat building is visible in the Melody Street streetscape. The proposal should be consistent with relevant floor space and height controls for the site to ensure that the proposal will not impact on the rear garden setting and liveability of the heritage item."

3.2. Development Engineer

In response to concerns by Council's Development Engineer, amended plans were submitted to address a lack of off-street parking and waste management planning.

The amended Application was referred to Council's Development Engineer and no concern was raised, subject to conditions, as detailed below:

"Parking Comments

Parking Requirements have been assessed as per the following applicable parking rates specified in Part B7 of Randwick Council's Development Control Plan 2013.

- 0.5 space per studio units
- 1 space per 1 bedroom unit
- 1.2 spaces per 2 bedroom
- 1.5 spaces per 3 bedroom unit
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

Existing Situation

The existing building currently comprises of 5 x 2-bedroom units

Parking required under DCP = (5 X 1.2) + 1 visitor
= 6 + 1
= 7 spaces

Parking currently provided = 6 spaces

Existing Parking Shortfall = 1 space

Five spaces have been provided within existing garages while a 6th space is provided on the hardstand area adjacent to the ground floor unit.

It is noted that most of the existing carspaces do not comply with Australian Standard 2890.1 in some measure. The spaces within the existing exterior garage and the middle of the carspaces within the building do not comply with the minimum width requirements by a significant degree while the aisle width adjacent to the garaged carspaces within the building

is also too narrow. There was therefore initial concern that the carspaces are impractical for use by a modern vehicle and that the development was impacting on the surrounding availability of on-street parking.

Upon site inspection on 5/10/2023 it was noted that the vehicle manoeuvring is likely not as restricted as initially thought due to the dividing walls of some of the carspaces being recessed and angled in, providing additional aisle width and manoeuvring room (see photos below). This was not immediately evident on the plans.



Although still somewhat restricted, Development Engineering is satisfied the spaces are being utilised by the existing residents and this aspect of the issues raised has been addressed.

Proposed Development

The proposed development will create an additional 1 x 2-bedroom unit on a new third floor resulting in a total of 6 x 2-bedroom units.

*Parking required under DCP = (6 X 1.2) + 1 visitor
= 7.2 + 1
= 8.2 spaces
= say 8 spaces*

Parking proposed = 6 spaces (no change)

Parking Shortfall = 2 spaces (increase of 1 space)

Discussion on Parking Shortfall

The proposed development will create an additional parking demand of approximately 1 space when adopting the DCP parking rates which has not been provided for with this application. The additional demand will further increase the existing parking shortfall and will be burdened by the surrounding street network. The impacts of this have not been fully addressed in the Statement of Environmental Effects. The site is located within a locality that is experiencing high parking pressures with only limited on-street parking available. The applicant was requested to reconsider the parking impacts and address the shortfall as much as possible.

In response the applicant provided amended plans that provided 2 new motorcycle spaces and 7 new bicycle spaces in addition to the existing 6 car spaces. The two motorcycle spaces were

however not supported as they were provided in a tandem arrangement behind a carspace and could not be accessed independently. These have subsequently been deleted in the latest version of the plan (revision H)

Development Engineering has assessed the parking shortfall and notes the following

- *Under the DCP only 1 bicycle space would be required for the proposed 1 additional unit however as 7 have been provided, this will assist in mitigating some of the vehicle parking shortfall.*
- *The site is located within 300m of bus stops on Bream Street to the south and Carrington Road to the west. These bus services include;*
 - *Route 374 & 374X Coogee to City Circular Quay*
 - *Route 313 Coogee to Bondi Junction*
 - *Various school bus services*
- *The site is located in close proximity to a number of carshare pods operated by GoGEt carshare with the two closest pods being at the corner of Abbott Street and Mount Street (170m to the east) and on Alison Road near the corner with Mount Street (360m to the north east).*
- *The site is geometrically constrained. It is not possible to provide additional vehicle parking on the site with the current building footprint.*

As there are a number of alternative transport options available, including a new provision for bicycle parking, it is considered the parking shortfall is not sufficient to warrant refusal of the application in this instance. Development engineering will not object to the application provided the bicycle parking is installed and that occupants are aware that no new parking permits will be issued for this development. Suitable conditions have been included in this report.

Waste Management Comments

The additional 1 unit (for a total of 6 units) will create demand for an additional 2 x 240L bins being a total of 8 x 240L bins comprising of 3 x 240L bins for garbage, 4 x 240L bins for recycling and at least 1 x 240L bin for FOGO. The plans have amended to indicate the provision of 8 x 240L bins."

3.3. Regulatory Building

The Application was referred to Council's Regulatory Building Officer and no concern was raised, subject to conditions, as detailed below:

"The applicant has provided a BCA review for Development Application No. DA/183/2023 prepared by Jensen Hughes Australia, received on 26 July 2023, in relation to the proposed works.

The Development Application (DA) seeks consent to carryout Alterations and additions to an existing Residential Flat Building including the addition of a fourth level for two (2) new units and lift.

No objection from the Compliance Section subject to compliance with the said Report prepared by Jensen Hughes Australia trading as BCA Logic."

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

Clause 4.6 variation statement – maximum height (clause 4.3)

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.1 Abbott Street, Coogee for alterations and additions to a residential flat building including a new level containing one (1) additional apartment. The subject application seeks consent to construct a new fourth level which will extend above permitted building height of 9.5m.

2. Height of Buildings Standard

Clause 4.3 of RLEP 2012 relates to the maximum height requirements and refers to the *Height of Buildings Map*. The relevant map identifies the subject site as having a maximum height of 9.5m. Building height is defined as:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

3. The Proposed Variation

The existing building is a maximum height of 10.8m which results in a maximum variation of 1.3m or 13.6%.

When measured in accordance with the above definition, the proposed third floor and roof is a maximum height of 12.09m, being a variation of 2.59m (27.2%) above the maximum height of building standard.

The extent of the variation at the southern elevation is shown in the figure below.





Figure 1 Extent of the variation to height of buildings standard (boxed red) with green line showing the existing ridge and height blanket

4. Clause 4.6 to Randwick LEP 2012

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) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
 - (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
 - (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone 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 Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
 - (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (ca) clause 6.16 (3) (b).

The development standard in clause 4.3 is not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted 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) and (4). 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 *Height of Buildings Map* nominates a maximum height of 9.5m for the site. It is hereby requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum height of 12.09m which equates to a numerical variation of 2.59m (27.2%).

5. Compliance with the standard is unreasonable or unnecessary

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 or 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

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. The following planning grounds are submitted to justify contravening the maximum building height:

1. The height of the proposed development, including the variation, will be entirely compatible with the height and character of surrounding development. Nos. 2-6, 5, 7 and 16-18 Abbott Street are all four storey or equivalent buildings that do not comply with Clause 4.3 of HLEP 2013. Whilst these variations in themselves are not a sufficient reason to vary the development standard, the height variations in Abbott Street set a different context to one that is governed by the permissible planning controls. That is, the existing development in Abbott Street does not demonstrate a high level of compliance with the height of buildings development standard and therefore height variations can be considered in the context of existing buildings. This is broadly consistent with Preston CJ in *Woolahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 at Para 62-63. When considering the development in the context of the surrounding development, including existing non-compliant buildings, the proposal development, even with the height 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).

2. The proposed development provides for the rejuvenation of an existing residential flat building that already exceeds the current height of buildings development standard (along with many other current controls). The "Design Ideas for Rejuvenating Residential Flat Buildings" notes the following:

While generally not encouraged, variations to existing controls may be considered where it can be demonstrated that the benefits in terms of Amenity, Environmental Performance and Streetscape Appearance, outweigh the impacts on the surrounding development.

Importantly, examples 1-3, 8-10 of the policy all provide for redevelopment of existing residential flat buildings which increase the height and FSR where Council reached a level of satisfaction that the variation permitted the rejuvenation of the existing residential flat building.

3. The proposed development will result in a variation to the height of buildings 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 additional apartment provided above the height of buildings development standard will generate funds to improve the existing building that will not be realised without the variation to the height of buildings development standard. Specifically, the height variation will facilitate larger internal areas for the occupants, larger private open space areas, equitable access through the provision of a lift, a 3 bedroom apartments on the third level for a mix of housing and enhancement of the appearance of the existing building. These benefits are not possible without a height variation.
4. The proposed building is a superior design and out performs the existing residential flat building and surrounding residential flat buildings at Nos. 2-6, 5, 7 and 16-18 Abbott Street (which all breach the height plane), by providing greater access for internal occupants without adversely impacting the amenity of adjoining property owners. The proposed building envelope has been carefully considered with the additional apartment replacing the existing pitched roof with a mansard style roof design with raked timber portal frames. The proposed development is

supported by other neighbouring and nearby developments with similar characteristics (including No. 26 Abbott Street), and provides a scale that is entirely compatible with that of surrounding properties when viewed from the public domain (where it is in fact visible).

5. The existing residential flat building is located on a battle-axe allotment with limited visibility from the public domain due to the setback, existing building form and landscaping. This is a better outcome than the properties at Nos. 2-6, 5, 7 and 16-18 Abbott Street which breach the height limit but have a frontage to Abbott Street.
6. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
 - o The extent of the additional height creates no adverse additional overshadowing impacts to adjoining properties when compared to the existing building. The height 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 height would be insignificant and would not be noticeable to the owners of surrounding properties.
 - o The height breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the height breach will have no greater impact on the privacy to the adjoining properties when compared to the existing built form. The proposed development will provide privacy screening to the windows and balconies that breach the height limit to satisfy the separation requirements of the ADG. As such, the loss of privacy caused by the non-compliant elements would be insignificant; and
 - o The height breach will not result in any significant view loss. The proposed development will be 1.2m higher than the existing pitched roof and given the topography the additional variation is unlikely to result in any further significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant.
7. The variation to the height of building standard will allow a lift to be provided to all levels of the building and the single 3 x bedroom apartment on the top floor will achieve equitable access which cannot be provided within the existing building and configuration. This provides for a more diverse range of housing in an accessible location and also provides for a positive social benefit that would not be achieved without a variation to the height of buildings development standard.
8. There is no planning purpose to be served by limiting the height to the 9.5m height limit given the absence of significant amenity related impacts, that compliance with the objectives of the development standard and zone is achieved regardless of the variation and that the height standard has already been exceeded by the existing development.
9. The proposal meets the objects of the R3 Zone and those of the Height of Buildings Standard.
10. The proposed development achieves the objectives in Section 1.3 of the EP&A Act, specifically:
 - o The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c)); and
 - o The proposed development promotes good design and amenity of the built environment through a well-considered contemporary design which is responsive to its setting and context, providing a high quality residential flat building in an appropriate location (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development. The additional height enables the rejuvenation of an aging flat building and an increase in scale

that is entirely compatible with developments in the locality. The proposed alteration and additions provides for an enhanced internal amenity for all apartments, a better design and streetscape outcome specific to the site and the development without having any 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 height breach.

It is noted that in *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 in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds 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 8 below). Clause 4.6(3)(b) is addressed in Section 6 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)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 8 and 9 below.



8. The development is consistent with Height of Buildings Standard

The objectives of the height of buildings standard are outlined in Clause 4.3(1) of the RLEP. The objectives are as follows:

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

How the proposal meets the objectives is 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 R3 – Medium Density Residential which anticipates a medium density form. The development is compatible with the height, bulk and scale of the character of other buildings in the locality. The four-storey (or equivalent) built form matches that of other flat building on Abbott Street, notably Nos. 2-6, 5, 7 and 16-18 Abbott Street. All of these sites contain tall, four-storey (or equivalent) residential flat buildings indicating that this is a scale typical in the locality. As such, the development will not appear visually jarring. To the casual observer, the proposed additions are contained within a mansard style roof with raked timber portal frames and setback from the street on a battle-axe allotment which will ensure the proposal appears as a visually recessive element. 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 SJD 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. 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. The "Design Ideas for Rejuvenating Residential Flat Buildings" policy contemplates variations to the applicable planning controls when rejuvenating existing residential flat buildings which also must be considered when determining the desired future character of the locality. That is, the desired future character is not specifically set by the applicable planning controls.

In terms of surrounding development that contribute to the desired future character, No. 26 Abbott Street was recently approved with a height of 10.425m, 0.925m greater than 9.5 maximum for this site. Furthermore, four-storey (or equivalent) built forms at Nos 2-6, 5, 7 and 16-18 Abbott Street would all breach the 9.5m height limit which demonstrates that the proposed development will not be out of scale or incompatible with surrounding development. These existing buildings, including the subject site, demonstrate that the character of the locality is not dominated by compliant built form which sets a different context and character in this locality. 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 Height of Buildings development standard.



Accordingly, the proposal meets objective (a).

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

The subject site is located within the vicinity of a heritage item namely, the heritage substation at 1S Abbott Street and a dwelling at No. 31 Melody Street.

In terms of the substation, the development will be located on the battle-axe allotment behind the substation and will not block any views to or from the item. In terms of No. 31 Melody Street, the subdivision pattern is such that the residential flat building will be located behind the heritage bungalow and will not impose or be visually dominant when viewed from the public domain. Furthermore, the proposed development will not block any views to or from the item. Accordingly, the proposal will not have significant heritage impacts and meets objective (b)

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

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. Furthermore, when viewed from the neighbouring properties, the proposal will appear within a mansard style roof form with raked timber portal frames that replaces the existing pitched roof that does not impart any significant additional bulk and scale when compared to the compliant building.

In terms of privacy, the extent of privacy impacts caused by the height breach will have no greater impact on the privacy to the adjoining properties when compared to the existing built form or a compliant built form. The proposed development will provide privacy screening to the windows and balconies that breach the height limit to satisfy the separation requirements of the ADG. The proposal also provides significantly better privacy outcomes when compared to the existing situation which contain no screening or privacy measures for the existing windows and balconies. The additional privacy impacts as a result of the height breach when compared to the existing development are insignificant.

With regards to overshadowing, the extent of the additional height creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope. The height 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 height would be insignificant and would not be noticeable to the owners of surrounding properties. Notwithstanding, the proposal has provided a mansard style roof design with raked timber portal frames and centralised location which will still permit solar access over a portion of the windows and open space of adjoining properties.

In terms of views, the height breach will not result in any significant view loss. The proposed development will be 1.2m higher than the existing pitched roof and given the topography the additional variation is unlikely to result in any further significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant.

The examination of the height 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 (c).

9. Objectives of the Zone

Clause 4.6 (4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the R3 Medium Density Residential zone and how the proposal meets is provided below:

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

The height variation will permit an additional 3 x bedroom apartment in a highly sought-after area and is therefore seen as meeting the housing need of the community.

- To provide a variety of housing types within a medium density residential environment.

The addition of a 3x bedroom apartment will add to the diversity of housing types in the area and will now provide equitable access through the provision of a lift to all levels. The proposal will maintain the medium density character of the locality.

- 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 locality is undergoing a transition (slowly) to medium density residential flat buildings. The proposed addition is compatible with the character of the area given the height breach is limited to 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 apartment layout, private open space and a lift.

- To encourage housing affordability.

The addition of an additional apartment will increase housing stock in the locality which in turn will aid in addressing housing affordability in the locality.

- 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 consistent with all the objectives of the R3 zone, despite the non-compliance with the height of building development standard.

10. Secretary's Concurrence

The issue of the concurrence of the Secretary of the Department of Planning and Environment is dealt with by Planning Circular PS 20-002 'Variations to development standards', dated 5 May 2020. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2000. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The circular provides for assumed concurrence.

Concurrence cannot be assumed for a request for a variation to a numerical standard by more than 10 per cent if the function is to be exercised by a delegate of the consent authority. This restriction does not apply to decisions made by local planning panels, who exercise consent authority functions on behalf of councils but are not legally delegates of the council. As such, it is anticipated that the development application will be determined by the local planning panel.

The Secretary can be assumed to have given concurrence to the variation.

11. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning

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

12. Public Benefit of Maintaining the Development Standard

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the building height standard. As such there is no public benefit in maintaining strict compliance with the development

standard. Whilst the proposed height exceeds the standard by 2.59m or 27.2%, the proposed development 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.

13. Conclusion

This written request has been prepared in relation to the proposed variation to the height of buildings development standard contained in RLEP. The request identifies that the maximum proposed variation is 2.59m or 27.2%. It is hereby requested that a variation to the 9.5m Height of Buildings development standard be granted pursuant to clause 4.6 so as to permit the proposed building height.

The request explains that, despite the proposed variation, the development satisfies the objectives of the standard and the objectives of R3 Medium Density Residential Zone. The request also explains that it is unreasonable or unnecessary to require strict compliance with the height of buildings development standard in circumstances where there are no significant adverse impacts from the variation and important planning goals are better achieved by allowing the variation.

In addition, the request demonstrates that there are sufficient site specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.

Appendix 3: Applicant's written request seeking to justify the contravention of the floor space ratio development standard

Clause 4.6 variation statement – FSR (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 Council in respect of 1 Abbott Street, Coogee for alterations and additions to a residential flat building including a new level containing one (1) additional apartment. The subject application seeks consent to vary the Floor Space Ratio development standard.

2. Floor Space Ratio Standard

Clause 4.4 of Randwick LEP (WLEP) 2012 prescribes the maximum FSR for the site and refers to the *Floor Space Ratio Map*. The relevant map identifies the subject site as having a maximum permitted FSR of 0.75:1.

Floor Space Ratio is defined in clause 4.5(2) of the RLEP as follows:

*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:

"...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 proposal seeks a variation to the development standard contained within Clause 4.4 of the RLEP which sets the maximum FSR for the subject site a 0.75:1, which allows a maximum gross floor area of 368.25sqm.

The development proposes a maximum GFA of 421.9sqm which translates to an FSR of 0.859:1 which represents a variation of 56.65sqm or 14.5%. This submission contends that strict compliance with the maximum FSR of 0.75:1 is unreasonable and/or unnecessary in the circumstances of the case and the variation sought can be supported that clause 4.6 exception to development standard should be upheld.

4. Clause 4.6 of the RLEP

That maximum Floor Space Ratio control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP which states the following:

- (1) The objectives of this clause are as follows—
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
- (a) that compliance with the development standard is **unreasonable or unnecessary** in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (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).

Objective 1(a) of clause 4.6 is satisfied by the discretion granted 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 0.75:1 for the site. It is hereby requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a FSR of 0.859:1 which equates to a numerical variation of 53.65sqm or 14.5%.

5. Compliance with the standard is unreasonable or unnecessary (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]):

- i. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
- ii. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- iii. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- iv. 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;
- v. 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. The following planning grounds are submitted to justify contravening the maximum FSR:

1. The height, bulk and scale of the proposed development, including the variation, will be entirely compatible with the height, bulk and scale of surrounding development. The surrounding buildings at Nos. 5, 7 and 16-18 Abbott Street are all four storey or equivalent buildings that would not comply with Clause 4.4 of RLEP 2013 relative to their site area. Whilst these variations in themselves are not a sufficient reason to vary the development standard, the scale of development in Abbott Street set a different context to one that is governed by the permissible planning controls. Therefore, the FSR variation can be considered in the context of existing buildings which is broadly consistent with Preston CJ in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 at Para 62-63. When considering the development in the context of the surrounding development, including existing non-compliant buildings, the proposal development, even with the FSR 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).
2. The additional GFA does not significantly alter the character or presentation of the existing development in terms of streetscape nor does it bring with it a form of development on the site that is noticeably larger than the surrounding development or the existing built form. Whilst the proposal may look different to the existing development, the essence of the development as a residential flat building will remain the same and will be entirely compatible with surrounding residential flat buildings at Nos. 5, 7 and 16-18 Abbott Street with four storey (or equivalent) buildings on elongated and narrow sites. The additional FSR on site is located within a mansard style roof with raked timber portal frames and will not be readily perceptible from the public domain or have any adverse impact on the amenity of surrounding properties.

3. The proposed development provides for the rejuvenation of an existing residential flat building that already exceeds the current FSR development standard (along with many other current controls). The "Design Ideas for Rejuvenating Residential Flat Buildings" notes the following:

While generally not encouraged, variations to existing controls may be considered where it can be demonstrated that the benefits in terms of Amenity, Environmental Performance and Streetscape Appearance, outweigh the impacts on the surrounding development.

Furthermore:

Note: many older residential flat buildings exceed current floor space ratios (FSR). While generally not encouraged, minor FSR increases may be considered where the benefits outweigh the impacts on the surrounding development.

Importantly, examples 1-3, 8-10 of the policy all provide for redevelopment of existing residential flat buildings which increase the height and FSR where Council reached a level of satisfaction that the variation permitted the rejuvenation of the existing residential flat building.

4. The proposed development will result in a variation to the FSR 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 additional GFA will generate funds to improve the existing building via the provision of a lift that will not be realised without the variation to the FSR development standard. Specifically, the FSR variation will facilitate the provision of a lift and enhancement of the appearance of the existing building. These benefits are not possible without a FSR variation.
5. The proposed building is a superior design and provides greater amenity for internal occupants without adversely impacting the amenity of adjoining property owners. The proposed building envelope has been carefully considered with the additional GFA replacing the existing pitched roof with a mansard style roof design with raked timber portal frames. The proposed development is supported by other neighbouring and nearby developments with similar characteristics (including No. 26 Abbott Street). This assists with mitigating the scale of the additional GFA from the public domain where it is in fact visible.
6. The existing residential flat building is located on a battle-axe allotment with limited visibility from the public domain due to the setback, existing building form and landscaping. The proposed FSR variation will not be visually jarring or out of character with surrounding properties but will facilitate necessary improvements to the existing building stock. Of note, the residential flat building at Nos. 293-297 Alison Road (to the north of the subject site) which was approved with an FSR of 0.91:1 which exceeded the 0.75:1 maximum FSR on site.
7. It is considered that there is an absence of any significant material impacts attributed to the breach 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. 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.
 - The FSR breach does not result in any adverse additional privacy impacts. 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 the existing built form. The proposed development will provide privacy screening to the windows and balconies that improves the privacy relationship and satisfies the separation requirements of the ADG. As such, the loss of privacy caused by the FSR variation elements would be insignificant; and

- The FSR breach will not result in any significant view loss. The proposed development will be 1.2m higher than the existing pitched roof and given the topography the additional FSR variation is unlikely to result in any further significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant.
- 8. The variation to the FSR standard will allow a lift to be provided to all levels of the building and the additional 2 x bedroom apartment on the top floor with equitable access that cannot be provided within the existing building and configuration. This provides for a more diverse range of housing in an accessible location and also provides for a positive social benefit that would not be achieved without a variation to the FSR development standard.
- 9. There is no planning purpose to be served by limiting the FSR to 0.75:1 given the absence of significant amenity related impacts, that compliance with the objectives of the development standard and zone is achieved regardless of the variation and that the height standard has already been exceeded by the existing development.
- 10. The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (as further detailed in Section 8 below).
- 11. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c)); and
 - The proposed development promotes good design and amenity of the built environment through a well-considered contemporary design which is responsive to its setting and context, providing a high quality family home an appropriate location (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development. The additional GFA enables the rejuvenation of an aging flat building and an increase in scale that is entirely compatible with developments in the locality. The proposed alterations and additions provides for an enhanced internal amenity for all apartments, a better design and streetscape outcome specific to the site and the development without having any 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 FSR breach.

It is noted that in *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 in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds 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 8 below). Clause 4.6(3)(b) is addressed in Section 6 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)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 8 and 9 below.

8. The development is consistent with Floor space ratio development standard

The objectives of Floor Space Ratio Standard are outlined in Clause 4.4(1) of the RLEP. The objectives 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.

How the proposed variation meets these objectives is 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 R3 – Medium Density Residential which anticipates a medium density form. The development is compatible with the height, bulk and scale of the character of other buildings in the locality. The four-storey (or equivalent) built form matches that of other flat building on Abbott Street, notably Nos. 2-6, 5, 7 and 16-18 Abbott Street. All of these sites contain tall, four-storey (or equivalent) residential flat buildings indicating that this is a scale typical in the locality. As such, the development will not appear visually jarring. To the casual observer, the proposed additions are contained within a mansard style roof with raked timber portal frames and setback from the street on a battle-axe allotment which will ensure the proposal appears as a visually recessive element.

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 SJD 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. 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. The "Design Ideas for Rejuvenating Residential Flat Buildings" policy contemplates variations to the applicable planning controls when rejuvenating existing residential flat buildings which also must be considered when determining the desired future character of the locality. That is, the desired future character is not specifically set by the applicable planning controls.

In terms of surrounding development that contribute to the desired future character, No. 26 Abbott Street was recently approved which sought to rejuvenate the existing residential flat building and replacing the roof form with built form, similar to the proposed development. The development at Nos. 293-297 Alison Road (to the north of the subject site) was approved with an FSR of 0.91:1 which exceeded the 0.75:1 maximum FSR on site. Finally, four-storey (or equivalent) built forms at Nos 5, 7 and 16-18 Abbott Street would all likely breach the 0.75:1 FSR development standard given the size of the buildings relative to the site area. This demonstrates that the proposed development will not be out of scale or incompatible with surrounding development. These existing buildings, including the subject site, demonstrate that the character of the locality is not dominated by compliant built form which sets a different context and character in this locality. 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 FSR development standard.

Accordingly, the proposal meets objective (a).

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

The variation to the FSR development standard will still ensure that the proposed development is well articulated and responds to the environmental and energy needs of the future occupants. In this regard, the additional GFA will provide for an additional 2x bedroom apartment in lieu of the pitched roof which will have excellent access to solar access and cross ventilation to minimise the need for artificial heating and cooling. The proposed apartment will have excellent amenity.

The building will continue to be well articulated and will introduce a mansard style roof with raked timber portal frames and new materiality to rejuvenate the existing residential flat building. That is, the proposal is for a building that is better articulated than the existing 1970s residential flat building.

All apartments are cross ventilated with three external walls to permit natural light and ventilation and east facing private open space with will have access to the morning sun. The proposed development will achieve the relevant BASIX criteria in terms of energy and water use and thermal comfort. Overall, the proposed development will achieves a high level of sustainability.

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 scale and character is discussed in Objective (a) above. For the reasons discussed in objective (a), the proposed development represents a scale which is compatible with the character of the locality. The subject site is located within the vicinity of a heritage item namely, the heritage substation at No. 1S Abbott Street and a dwelling at No. 31 Melody Street.

In terms of the substation, the development will be located on the battle-axe allotment behind the substation and will not block any views to or from the item. In terms of No. 31 Melody Street, the subdivision pattern is such that the

residential flat building will be located behind the heritage bungalow and will not impose or be visually dominant when viewed from the public domain. Furthermore, the proposed development will not block any views to or from the item. Accordingly, the proposal will not have significant heritage impacts and meets objective (c)

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. Furthermore, when viewed from the neighbouring properties, the proposal will appear compatible with surrounding residential flat buildings with a mansard style roof form with raked timber portal frames that replaces the existing pitched roof. Given the location, increase height of 1.2m and the materiality, the additional GFA does not impart any significant additional bulk and scale when compared to the existing or compliant building.

In terms of privacy, 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 built form or a compliant built form. The proposed development will provide privacy screening to the windows and balconies proposed to satisfy the separation requirements of the ADG. The proposal also provides significantly better privacy outcomes when compared to the existing situation which contain no screening or privacy measures for the existing windows and balconies. Therefore, the additional privacy impacts as a result of the GFA breach when compared to the existing development are insignificant.

With regards to overshadowing, the extent of the additional GFA 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. Notwithstanding, the proposal has provided a mansard style roof design with raked timber portal frames and centralised location which will still permit solar access over a portion of the windows and open space of adjoining properties.

In terms of views, the GFA breach will not result in any significant view loss. The proposed development will be 1.2m higher than the existing pitched roof and given the topography the additional variation is unlikely to result in any further significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant.

The examination of the FSR 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).

9. The development is consistent with the objectives of the R3 Zone

Clause 4.6 (4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the R3 Medium Density Residential zone and how the proposal meets is provided below:

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

The GFA variation will permit an additional 2 x bedroom apartment in a highly sought-after area and is therefore seen as meeting the housing need of the community.

- To provide a variety of housing types within a medium density residential environment.

The addition of a 2 x bedroom apartment in a different configuration to the apartments below will add to the diversity of housing types in the area and will provide equitable access through the provision of a lift. The proposal will maintain the medium density character of the locality.

- 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 locality is undergoing a transition (slowly) to medium density residential flat buildings. The proposed additions are compatible with the character of the area given the FSR breach is limited to ensure no adverse impact on the character of the streetscape.

- To protect the amenity of residents.

The FSR variation will not lead to any significant impacts in terms of overshadowing, view loss or privacy for neighbouring sites. The additional FSR improves amenity for occupants with the provision of an enhanced apartment layout, private open space and a lift.

- To encourage housing affordability.

The addition of a 2 x bedroom apartment will increase housing stock in the locality which in turn will aid in addressing housing affordability in the locality.

- 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 consistent with all the objectives of the R3 zone, despite the variation to the FSR development standard.

10. The concurrence of the secretary has been obtained (Clause 4.6(4)(b))

The issue of the concurrence of the Secretary of the Department of Planning and Environment is dealt with by Planning Circular PS 20-002 'Variations to development standards', dated 5 May 2020. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2000. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The circular provides for assumed concurrence.

Concurrence cannot be assumed for a request for a variation to a numerical standard by more than 10 per cent if the function is to be exercised by a delegate of the consent authority. This restriction does not apply to decisions made by local planning panels, who exercise consent authority functions on behalf of councils but are not legally delegates of the Council. As such, it is anticipated that the development application will be determined by the local planning panel.

The Secretary can be assumed to have given concurrence to the variation.

11. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning

Contravention of the FSR development standard proposed by this application does not raise any matters of significance for State or regional environmental planning.

12. 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 FSR variation. As such, there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposal exceeds the maximum FSR on the site by 14.5% (53.65sqm) the proposed development 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.



13. Conclusion

Having regard to all of the above, it is our opinion that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied, and the variation is worthy of support.



Appendix 4: SEPP 65 Compliance Table

| Clause | Design Criteria | Proposal | Compliance | | | | | | | | | | | | |
|--------------------------------|--|---|---|-------------------------|---------------------|---|----|-------------------------|----|----|----------------------|----|----|--|-----|
| Part 3: Siting the Development | | | | | | | | | | | | | | | |
| 3D-1 | Communal and Public Open Space | | | | | | | | | | | | | | |
| | Communal open space has a minimum area equal to 25% of the site. | Consistent with the existing arrangement, 51.3m ² (10.5%) of communal open space is provided at the rear of the site. Numeric non-compliance is acceptable noting that it is a continuation of an existing non-compliance. Sufficient private open space is provided to the proposed unit in excess of minimum ADG requirements. | On merit | | | | | | | | | | | | |
| | Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter). | <p>The communal open space area does not currently receive the minimum required two (2) hours of direct sunlight. The proposal does not result in any change to this existing arrangement.</p> <p>Consistent with the existing arrangement, approximately 30% of the communal open space area will receive direct sunlight between 1pm and 3pm.</p> | On merit | | | | | | | | | | | | |
| 3E-1 | | | | | | | | | | | | | | | |
| | <p>Deep soil zones are to meet the following requirements:</p> <table><tr><th>Site Area</th><th>Min. Dimension</th><th>Deep Soil Zone (% site)</th></tr><tr><td>< 650m²</td><td>-</td><td>7%</td></tr><tr><td>650–1,500m²</td><td>3m</td><td>7%</td></tr><tr><td>>1,500m²</td><td>6m</td><td>7%</td></tr></table> | Site Area | Min. Dimension | Deep Soil Zone (% site) | < 650m ² | - | 7% | 650–1,500m ² | 3m | 7% | >1,500m ² | 6m | 7% | Proposed = 139.59m ² (28.43%) | Yes |
| Site Area | Min. Dimension | Deep Soil Zone (% site) | | | | | | | | | | | | | |
| < 650m ² | - | 7% | | | | | | | | | | | | | |
| 650–1,500m ² | 3m | 7% | | | | | | | | | | | | | |
| >1,500m ² | 6m | 7% | | | | | | | | | | | | | |
| 3F-1 | Visual Privacy | | | | | | | | | | | | | | |
| | Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required | The setbacks of the proposed upper floor level are as follows: | On merit, refer to discussion at Key Issues | | | | | | | | | | | | |

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| Clause | Design Criteria | Proposal | Compliance | | | | | | | | | | | | |
|--------------------------------|---|---|--|---------------------|-----------------------|----|----|-------------------------|----|------|-----------------------|-----|----|--|------------------------|
| | <p>separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p> | Building Height | Habitable Rooms and Balconies | Non-habitable rooms | Up to 12m (4 storeys) | 6m | 3m | Up to 25m (5-8 storeys) | 9m | 4.5m | Over 25m (9+ storeys) | 12m | 6m | <ul style="list-style-type: none">North (front): 6.59m (to terrace)South (rear): 6.26m - 6.46m (to terrace)East (side): 2.85m (to stairwell), 3.64m - 3.67m (to habitable rooms)West (side): 2.66m (to lift shaft – NB: no windows), 3.32m - 3.58m (to habitable rooms) | section of this report |
| Building Height | Habitable Rooms and Balconies | Non-habitable rooms | | | | | | | | | | | | | |
| Up to 12m (4 storeys) | 6m | 3m | | | | | | | | | | | | | |
| Up to 25m (5-8 storeys) | 9m | 4.5m | | | | | | | | | | | | | |
| Over 25m (9+ storeys) | 12m | 6m | | | | | | | | | | | | | |
| 3J-1 | Bicycle and Car Parking | | | | | | | | | | | | | | |
| | <p>For development in the following locations:</p> <ul style="list-style-type: none">on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; oron land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street</p> | <p>Not applicable – the site is located more than 800m from a railway station and/or light rail stop.</p> | N/A | | | | | | | | | | | | |
| Part 4: Designing the Building | | | | | | | | | | | | | | | |
| 4A | Solar and Daylight Access | | | | | | | | | | | | | | |
| | <p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid Winter.</p> | <p>Refer to discussion at Key Issues section of this report.</p> | <p>On merit, refer to discussion at Key Issues section of this report.</p> | | | | | | | | | | | | |
| | <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p> | <p>The proposed unit will receive compliant direct sunlight</p> | <p>Yes</p> | | | | | | | | | | | | |

| Clause | Design Criteria | Proposal | Compliance |
|-----------|--|---|------------|
| | | between 9am and 3pm midwinter. | |
| 4B | Natural Ventilation | | |
| | At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed | The proposed unit is naturally cross ventilated. | Yes |
| | Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. | Not applicable – no cross-over apartments are proposed. | N/A |
| 4C | Ceiling Heights | | |
| | <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable – 2.4m Attic spaces – 1.8m at edge with min 30 degree ceiling slope Mixed use areas – 3.3m for ground and first floor <p>These minimums do not preclude higher ceilings if desired.</p> | The proposed third floor level has a ceiling height of 2.7m. | Yes |
| 4D | Apartment Size and Layout | | |
| | <p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> Studio - 35m² 1 bedroom - 50m² 2 bedroom - 70m² 3 bedroom - 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m² each.</p> | Proposed = 83.1m ² (2 bedroom unit) | Yes |
| | Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. | Habitable rooms to the proposed unit are provided with a window of suitable size. | Yes |
| | Habitable room depths are limited to a maximum of 2.5 x the ceiling height. | Habitable rooms to the proposed unit are more than 6.75m in depth. | Yes |
| | In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. | The open plan living room to the proposed unit is less than 8m in depth. | Yes |

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| Clause | Design Criteria | Proposal | Compliance | | | | | | | | | | | | | | | |
|---------------|---|--|---|---------------|--------|------------------|---|-----------|------------------|----|-----------|-------------------|----|------------|-------------------|------|--|-----|
| | Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space). | Bedrooms to the proposed unit are greater than 10m ² . | Yes | | | | | | | | | | | | | | | |
| | Bedrooms have a minimum dimension of 3m (excluding wardrobe space. | Bedrooms to the proposed unit have minimum dimension of 3m. | Yes | | | | | | | | | | | | | | | |
| | Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments | The open plan living room to the proposed unit has a width of 4.4m | Yes | | | | | | | | | | | | | | | |
| | The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts. | Not applicable – no cross-over apartments are proposed. | N/A | | | | | | | | | | | | | | | |
| 4E | Private open space and balconies | | | | | | | | | | | | | | | | | |
| | <div>All apartments are required to have primary balconies as follows:</div> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4 m²</td><td>-</td></tr><tr><td>1 bedroom</td><td>8 m²</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10 m²</td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12 m²</td><td>2.4m</td></tr></table> <div>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</div> | Dwelling type | Minimum area | Minimum depth | Studio | 4 m ² | - | 1 bedroom | 8 m ² | 2m | 2 bedroom | 10 m ² | 2m | 3+ bedroom | 12 m ² | 2.4m | Proposed = 11.5m ² with 2.3m depth (rear terrace) | Yes |
| Dwelling type | Minimum area | Minimum depth | | | | | | | | | | | | | | | | |
| Studio | 4 m ² | - | | | | | | | | | | | | | | | | |
| 1 bedroom | 8 m ² | 2m | | | | | | | | | | | | | | | | |
| 2 bedroom | 10 m ² | 2m | | | | | | | | | | | | | | | | |
| 3+ bedroom | 12 m ² | 2.4m | | | | | | | | | | | | | | | | |
| | For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m. | Not applicable – the proposed works do not relate to ground level apartments. | N/A | | | | | | | | | | | | | | | |
| 4F | Common Circulation and Spaces | | | | | | | | | | | | | | | | | |
| | The maximum number of apartments off a circulation core on a single level is eight. | A maximum of one (1) unit is proposed off the new lift. | Yes | | | | | | | | | | | | | | | |
| | For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40. | Not applicable – building is four (4) storeys in height | N/A | | | | | | | | | | | | | | | |
| 4G | Storage | | | | | | | | | | | | | | | | | |
| | <div>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</div> <ul style="list-style-type: none">Studio apartments - 4m³1 bedroom apartments - 6m³2 bedroom apartments - 8m³3+ bedroom apartments - 10m³ <div>At least 50% of the required storage is to be located within the apartment.</div> | The submitted plans do not indicate the quantum of storage area provided. A condition is included to ensure that the minimum storage requirements are met. | Capable of complying, subject to condition. | | | | | | | | | | | | | | | |

Appendix 5: DCP Compliance Table**5.1 Section B7: Transport, Traffic, Parking and Access**

| DCP Clause | Control | Proposal | Compliance |
|---|---|---|--|
| 3. Parking & Service Delivery Requirements | | | |
| | Car parking requirements: <ul style="list-style-type: none"> 1 space per 2 studios 1 space per 1-bedroom unit (over 40m²) 1.2 spaces per 2-bedroom unit 1.5 spaces per 3 or more bedroom unit 1 visitor space per 4 dwellings | The proposal does not seek any change to the existing car parking arrangement. 6 x car parking spaces are provided for 6 x two (2) bedroom units. Refer to discussion by Council's Development Engineer at Appendix 1. | On merit, refer to discussion by Council's Development Engineer at Appendix 1. |
| | Motor cycle requirements: 5% of car parking requirement | Suitable space is available in the existing garages for motor cycle storage. | Generally, and acceptable |
| 4. Bicycles | | | |
| | Residents: <ul style="list-style-type: none"> 1 bike space per 2 units Visitors: <ul style="list-style-type: none"> 1 per 10 units | The proposal provides an undercover bike storage area for 7 x bicycles | Yes |

5.2 Section C2: Medium Density Residential

| DCP Clause | Control | Proposal | Compliance |
|---|---|--|------------|
| 2. Site Planning | | | |
| 2.2 Landscaped open space and deep soil area | | | |
| 2.2.1 Landscaped open space | | | |
| | A minimum of 50% of the site area is to be landscaped open space. | 139.59m ² (28.43%) of landscaped area is provided. Numeric non-compliance is acceptable noting that it is a continuation of an existing non-compliance. In order to maximise landscaped areas at the site, the proposal seeks to replace the existing concrete footpath with decomposed granite. This results in a 33.99m ² increase in landscaped and deep soil area relative to the existing arrangement. | On merit |
| 2.2.2 Deep soil area | | | |
| | (i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to | Proposed = 139.59m ² (28.43%) | Yes |

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| DCP Clause | Control | Proposal | Compliance |
|--------------|---|---|------------|
| | accommodate trees and significant planting. | | |
| | (ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures. | Deep soil areas are located at ground floor level and are consistent with the DCP requirements. | Yes |
| | (iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting. | Deep soil areas comprise a variety of small trees, shrubs, and understorey planting. | Yes |
| | (iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes. | Deep soil areas are not located on structures or facilities. | Yes |
| | (v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties. | Consistent with adjoining properties, the deep soil zone is located in the rear yard. | Yes |
| 2.3 | Private and communal open space | | |
| 2.3.1 | Private open space | | |
| | Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas. | The proposed unit is provided with a terrace which is directly accessible from the living area. Adequate privacy has been achieved (refer discussion at Key Issues section of this report). | Yes |
| | For residential flat buildings: (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m ² and a minimum dimension of 2m. | The proposed unit is provided with a terrace which is directly accessible from the living area. The front terrace has an area of 11.5m ² with 2.3m depth. | Yes |
| 2.3.2 | Communal open space | | |
| | Communal open space for residential flat buildings is to be: (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. | No change is proposed to the existing quantum or arrangement of communal open space which is provided at the rear of the site. | N/A |

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| | (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures. | | |
| 3. | Building Envelope | | |
| 3.3 | Building depth | | |
| | For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units. | Consistent with the existing building, the proposed third floor level has a depth of 18.3m (from front to rear glazing line), which is considered acceptable noting that suitable ventilation and sunlight will be provided to the unit. The unit comprises the whole of the upper level and has openings to all aspects. No adverse visual or amenity impacts to neighbouring properties are envisaged with regards to overshadowing, solar access and views. | On merit |
| 3.4 | Setbacks | | |
| 3.4.1 | Front setback | | |
| | <p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p> | 6.59m to the property at No. 1S Abbott St (substation) | Yes |
| 3.4.2 | Side setback | | |
| | <p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - Site frontage width less than 12m: On merit | East: 2.85m (to stairwell), 3.64m - 3.67m (to habitable rooms) | Yes |

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| | <ul style="list-style-type: none"> - Site frontage width between 12m and 14m: 2m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p> | <p>West: 2.66m (to lift shaft – NB: no windows), 3.32m - 3.58m (to habitable rooms)</p> | |
| 3.4.3 | Rear setback | | |
| | For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater. | <p>Control = 5.27m (15% lot depth)</p> <p>Proposed = 6.26m - 6.46m</p> | Yes |
| 4. | Building Design | | |
| 4.1 | Building façade | | |
| | <p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p> | <p>No change is proposed to the orientation of the existing building.</p> <p>The building elevations to the proposed upper storey are articulated by way of window openings, terraces, and varying materiality.</p> <p>The raked brickwork around the existing carports have been used as a reference for the raked timber portal frames at the proposed upper level.</p> | Yes |

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| | (vi) Conceal building services and pipes within the balcony slabs. | | |
| 4.2 | Roof design | | |
| | <p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not | <p>The proposed roof form is a suitable design solution and relates to the form and façade composition of the building. There are no terraces or trafficable areas proposed to the roof.</p> <p>Surrounding development comprises a variety of roof forms.</p> | Yes |

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| | adversely increase the visual bulk of the building. (viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan. | | |
| 4.4 | External wall height and ceiling height | | |
| | (ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies. | Proposed = 12.09m Refer to discussion at Key Issues section of this report. | No, refer to Key Issues |
| | (iii) The minimum ceiling height is to be 2.7m for all habitable rooms. | Proposed = 2.7m | Yes |
| 4.5 | Pedestrian Entry | | |
| | (i) Separate and clearly distinguish between pedestrian pathways and vehicular access. | No change is proposed to the existing pedestrian and vehicular access. | N/A |
| 4.6 | Internal circulation | | |
| | (i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. | Circulation spaces will remain of suitable amenity and safety. | Yes |
| | (iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units. | Only one (1) unit will be provided off a single lift core. No lift access will be provided to the existing units. | Yes |
| 4.7 | Apartment layout | | |
| | (i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. | Suitable natural lighting and ventilation will be provided to the proposed unit, which comprises the whole of the upper level and has openings to all aspects. | Yes |

| DCP Clause | Control | Proposal | Compliance |
|------------|---|--|------------|
| | - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation. | | |
| | (ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements. | Complies | Yes |
| | (iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development. | Complies | Yes |
| | (iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry. | Complies | Yes |
| 4.8 | Balconies | | |
| | (i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments. | Proposed = 11.5m ² rear terrace with 2.3m depth | Yes |
| 4.9 | Colours, materials and finishes | | |
| | (i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. (v) Avoid the following materials or treatment: <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts (vi) Use materials and details that are suitable for the local climatic | The proposed third storey comprises rendered brickwork and timber cladding. The colours, materials, and finishes submitted with the application are suitable. | Yes |

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| | conditions to properly withstand natural weathering, ageing and deterioration. (vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used. | | |
| 5. Amenity | | | |
| 5.1 | Solar access and overshadowing | | |
| | Solar access for proposed development | | |
| | (i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June. | Refer to discussion at Key Issues section of this report. | On merit, refer to discussion at Key Issues section of this report |
| | (ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June. | Refer to discussion at Key Issues section of this report. | On merit, refer to discussion at Key Issues section of this report |
| | (iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building. | The proposed unit has openings to all aspects. | Yes |
| | Solar access for surrounding development | | |
| | (i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June. | Refer to discussion at Key Issues section of this report. | On merit, refer to discussion at Key Issues section of this report |
| | (ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June. | | |
| | (iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further. | | |
| 5.2 | Natural ventilation and energy efficiency | | |
| | (i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls. | Suitable natural lighting and ventilation will be provided to the proposed unit, which comprises the whole of the upper level and has openings to all aspects. | Yes |
| | (ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building. | Complies | Yes |
| | (iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or | Complies | Yes |

| DCP Clause | Control | Proposal | Compliance |
|------------|--|---|--|
| | clerestory windows for natural lighting and ventilation is not acceptable. | | |
| | (iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms. | Complies | Yes |
| | (v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required. | Complies | Yes |
| | (vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows. | Complies | Yes |
| | (vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms. | Complies | Yes |
| 5.3 | Visual privacy | | |
| | <ul style="list-style-type: none"> (i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences. (iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection. | Refer to discussion at Key Issues section of this report. | On merit, refer to discussion at Key Issues section of this report |
| 5.4 | Acoustic privacy | | |

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|------------|--|---|------------|
| | (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors | The proposed terraces are oriented away from sensitive uses (i.e. adjoining bedroom windows) and are unlikely to generate significant noise. No change is proposed to the existing use of the site for residential purposes, which is not considered a noise generating use. | Yes |
| 5.5 | View sharing | | |
| | (i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. | There are no significant views currently afforded to surrounding properties in the locality. Existing views and vistas from neighbouring dwellings and the public domain will be maintained. | Yes |
| 5.6 | Safety and security | | |
| | (i) Design buildings and spaces for safe and secure access to and within the development. | Complies | Yes |
| | (iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor. | Complies | Yes |
| | (iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient. | Complies | Yes |
| | (v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development. | No change to existing. | N/A |
| | (vi) Resident car parking areas must be equipped with security grilles or doors. | No change to existing. | N/A |
| | (vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems. | No change to existing. | N/A |
| | (viii) Provide adequate lighting for personal safety in common and access areas of the development. | No change to existing. | N/A |
| | (ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces | Complies | Yes |

| DCP Clause | Control | Proposal | Compliance |
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| | and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks. | | |
| | (x) External lighting must be neither intrusive nor create a nuisance for nearby residents. | No change to existing. | N/A |
| | (xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development. | No change to existing. | N/A |
| 7. Fencing and Ancillary Development | | | |
| 7.6 | Storage | | |
| | (i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling. (ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles. (iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: (a) Studio apartments – 6m ³ (b) 1-bedroom apartments – 6m ³ (c) 2-bedroom apartments – 8m ³ (d) 3 plus bedroom apartments – 10m ³ | The submitted plans do not indicate the quantum of storage area provided. A condition is included to ensure that the minimum storage requirements are provided for the proposed unit. | Capable of complying, subject to condition. |
| 7.7 | Laundry facilities | | |
| | (i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit. | Suitable space is available to the rear of the site for clothes drying facilities. | Yes |
| | (ii) Provide internal laundry for each dwelling unit. | The proposed unit is provided with an internal laundry. | Yes |

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/183/2023

D23/24

Development Consent Conditions (Medium Density Residential)



| | |
|------------------------|--|
| Folder /DA No: | DA/183/2023 |
| Property: | 1 Abbott Street, COOGEE NSW 2034 |
| Proposal: | Alterations and additions to an existing Residential Flat Building including the addition of a fourth level for one (1) new unit and lift. |
| Recommendation: | Approval |

Development Consent Conditions

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

| Plan | Drawn by | Dated | Received by Council |
|----------------------------------|-------------------|--------------|----------------------------|
| A013, Rev. H – Ground Floor Plan | Brewer Architects | 23/10/23 | 22/02/24 |
| A014, Rev. F – First Floor Plan | Brewer Architects | 25/07/23 | 22/02/24 |
| A015, Rev. F – Second Floor Plan | Brewer Architects | 25/07/23 | 22/02/24 |
| A016, Rev. M – Third Floor Plan | Brewer Architects | 22/02/24 | 22/02/24 |
| A017, Rev. G – Roof Plan | Brewer Architects | 22/02/24 | 22/02/24 |
| A018, Rev. G – Elevations | Brewer Architects | 22/02/24 | 22/02/24 |
| A019, Rev. F – Elevations | Brewer Architects | 22/02/24 | 22/02/24 |
| A020, Rev. G – Elevations | Brewer Architects | 22/02/24 | 22/02/24 |
| A021, Rev. F – Elevations | Brewer Architects | 22/02/24 | 22/02/24 |
| A022, Rev. F – Sections | Brewer Architects | 22/02/24 | 22/02/24 |
| A023, Rev. F – Sections | Brewer Architects | 22/02/24 | 22/02/24 |
| A024, Rev. G – Sections | Brewer Architects | 22/02/24 | 22/02/24 |

| BASIX Certificate No. | Dated | Received by Council |
|------------------------------|--------------|----------------------------|
| 1391814M_02 | 07/11/23 | 08/11/23 |

Amendment of Plans & Documentation

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

- a. A privacy screen having a height of 1.6m (measured above finished floor level) shall be provided to the western side of the rear terrace.

The privacy screen must be constructed with either:

- Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
- Fixed lattice/slats with individual openings not more than 30mm wide;
- Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.

- b. In addition to kitchen cupboards and bedroom wardrobes, at least 10m³ of storage is to be provided for the proposed unit.

Existing Units

3. No approval is granted for any internal upgrade works or refurbishment to the existing units at the subject premises.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

5. The colours, materials and finishes of the external surfaces are to be consistent with the existing building and adjacent development to maintain the integrity and amenity of the building and the streetscape.
6. Any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare.
7. Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.

Section 7.12 Development Contributions

8. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,297,350 the following applicable monetary levy must be paid to Council: \$12,973.50.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer

Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone **9093 6000** or **1300 722 542** for the indexed contribution amount prior to payment.

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

Council's Development 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

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

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

Security Deposits

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

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

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

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

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

Sydney Water Requirements

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

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

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Building Code of Australia

12. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 69 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).
13. The works are to be carried out in accordance with the 'Jensen Hughes Australia trading as BCA Logic report' (inclusive of any required performance solution report), dated 26 July 2023 (revision No. 1177355-BCA-r1). Details of compliance is to be provided to the Principal Certifier's satisfaction prior to Occupation Certificate.
14. All new building work (including alterations, additions, fit-out work and fire safety works are to be carried out in accordance with the relevant provisions of the Building Code of Australia (BCA) and details are to be included in the Construction Certificate, to the satisfaction of the Certifying Authority.

Access & Facilities

15. Access and/or facilities for people with disabilities must be provided to all new building work in accordance with any relevant provisions of the Building Code of Australia Disability (Access to Premises - Buildings) Standards 2010, to the satisfaction of the Certifying Authority and details are to be provided with the Construction Certificate application.

BASIX Requirements

16. 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

17. 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.

Waste Management

18. The garbage room/storage area shall be sized to contain a total of 8 x 240 litre bins (comprising 3 garbage bins, 4 recycle bins and 1 FOGO bin) and with adequate provisions for access to all bins. Details showing compliance are to be included in the construction certificate.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS

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

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

Building Certification and Associated Requirements

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

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

Home Building Act 1989

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

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

Dilapidation Reports

21. A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified independent person, in the following cases:
- excavations for new buildings, additions to buildings and other substantial structures which are proposed to be located within the *zone of influence* of the footings of a building located upon an adjoining premises;
 - buildings sited up to shared property boundaries (e.g. terraced or attached buildings or walls built to a boundary);
 - excavations for new buildings, additions to existing buildings which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises;
 - as otherwise may be required by the *Principal Certifying Authority*.

The dilapidation report shall include details of the current condition and status of any building or other substantial structure located upon the adjoining or nearby

premises and shall include relevant photographs of the structures, to the satisfaction of the *Principal Certifying Authority*.

The dilapidation report must be submitted to the Council, the *Principal Certifying Authority* 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).

Noise & Vibration Management Plan

22. Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents and the relevant provisions of the *Protection of the Environment Operations Act 1997* must be satisfied at all times.

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

A *Construction Noise and Vibration Management Plan*, prepared in accordance with the DECC Construction Noise Guideline, by a suitably qualified person is to be developed and implemented throughout the works, to the satisfaction of the Council. A copy of the plan must be provided to the Council and Principal Certifying Authority prior to the commencement of site works.

Construction Site Management Plan

23. 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

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

Demolition Work & Removal of Asbestos Materials

25. Demolition work must be carried out in accordance with the following requirements:

- a) Demolition work must be carried out in accordance with Australian Standard, AS2601 (2001) - The Demolition of Structures and a Demolition Work Plan is required to be developed and implemented to the satisfaction of the Principal Certifying Authority prior to commencing any demolition works.
- b) The demolition, removal, storage and disposal of any materials containing asbestos must be carried out in accordance with the relevant requirements of WorkCover NSW, Council's Asbestos Policy and the following requirements:

- A licence must be obtained from WorkCover 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"
- A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist) upon completion of the asbestos removal works, which is to be submitted to the Principal Certifying Authority and Council prior to issuing an Occupation Certificate.

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

Public Liability

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

Construction Traffic Management

27. An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Council's Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Abbott Street for the duration of the demolition & construction works.

The 'Works Zone' must have a minimum length of 12m. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.

The requirement for a Works Zone may be varied or waived only if it can be demonstrated to the satisfaction of Council's Traffic Engineers that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.

Demolition & Construction Waste

28. A *Demolition and Construction Waste Management Plan (WMP)* must be developed and implemented for the development, to the satisfaction of Council.

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

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's website at https://www.randwick.nsw.gov.au/__data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf or contact Council Development Engineer on 9093-6881/9093-6923.

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

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Site Signage

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

Building & Demolition Work Requirements

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

| Activity | Permitted working hours |
|---|---|
| All building, demolition and site work, including site deliveries (except as detailed below) | <ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted |
| Excavating or sawing of rock, use of jack-hammers, driven-type piling or shoring work or the like | <ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm (maximum) As may be further limited in Noise & Vibration Management Plan Saturday - No work permitted Sunday & public holidays - No work permitted |
| Additional requirements for all development (except for single residential dwellings) | <ul style="list-style-type: none"> Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted |

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

Noise & Vibration

31. Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the *Construction Noise & Vibration Management Plan*, prepared for the development and as specified in the conditions of consent.

Construction Site Fencing

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

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

Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land and excavations must be properly guarded to prevent them from being dangerous to life or property.

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

Notes:

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

Site Management

33. Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:
- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
 - b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
 - c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
 - d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.

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

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

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

- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) 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.

Dust Control

34. 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.*

Site Accessway

35. 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

36. 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.

Excavations & Support of Adjoining Land

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

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

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

Retaining walls, shoring, or piling must be designed and installed in accordance with appropriate professional standards and the relevant requirements of the Building Code of Australia and Australian Standards. Details of proposed retaining walls, shoring or piling are to be submitted to and approved by the Principal Certifying Authority for the development prior to commencing such excavations or works.

Complaints Register

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

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

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

Survey

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

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

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

Building Encroachments

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

Building Inspection Requirements

41. The works must be inspected by the *Principal Certifying Authority*, in accordance with sections 109 E (3) of the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

Construction Site Management

42. Public health, safety and convenience must be maintained at all times during demolition and building works and the following requirements must be complied with at all times:

- a) A sign must be provided and maintained in a prominent position throughout the works, which contains the following details:
- name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable)
 - name, address and telephone number of the *Principal Certifying Authority*,

- a statement stating that "unauthorised entry to the work site is prohibited".
- b) The roadway, footpath and nature strip must be maintained in a good, safe condition and free from any obstructions, trip hazards, materials, soils or debris at all times. Any damage caused to the road, footway or nature strip must be repaired immediately, to the satisfaction of Council.
- c) Building materials, sand, soil, waste materials, construction equipment or other materials or articles must not be placed upon the footpath, roadway or nature strip at any time and the footpath, nature strip and road must be maintained in a clean condition and free from any obstructions, soil and debris at all times.
- d) Bulk bins, waste containers or other articles must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container or other articles in a public place can be made to Council's Building Services section.
- e) During demolition and construction, sediment laden stormwater run-off shall be controlled using the sediment control measures outlined in the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom.

Details of the proposed sediment control measures are to be detailed in the *site management plan* which must be submitted to the Principal Certifying Authority and Council prior to the commencement of any site works. The sediment and erosion control measures must be implemented prior to the commencement of any site works and be maintained throughout construction. A copy of the plan is to be maintained on-site and be made available to Council officers upon request.

- f) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding (having a minimum height of 1.5m) is to be provided to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible. If necessary, an overhead (B Class type) hoarding may be required to protect the public or occupants of the adjoining premises from falling articles or materials.

If it is proposed to locate any site fencing, hoardings or items upon any part of the footpath, nature strip or any public place, a Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services department beforehand. Details and plans are to be submitted with the application, together with payment of the weekly charge in accordance with Council's adopted Pricing Policy.

- g) 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.

Road / Asset Opening Permit

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

requirements contained in the Road / Asset Opening Permit must be complied with.

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

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

Post-construction Dilapidation Report

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

The dilapidation report shall detail whether:

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

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

Occupation Certificate Requirements

45. An Occupation Certificate must be obtained from the Principal Certifying Authority prior to any occupation or use of the development encompassed in this development consent (including alterations, additions and 'fit-out' work to existing buildings), in accordance with the relevant provisions of the *Environmental Planning & Assessment Act 1979*.
46. An Occupation Certificate must not be issued for the development if the development is inconsistent with the development consent. The requirements of the Environmental Planning & Assessment Act 1979 and conditions of development consent must be satisfied prior to the issuing of an occupation certificate.

Fire Safety Certificate Requirements

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

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

Structural Certification

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

Sydney Water Certification

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

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

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

BASIX Requirements & Certification

50. 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.

Noise Emissions - Certification

51. Where plant and equipment is installed in the premises (e.g. air-conditioners, mechanical ventilation/exhaust systems or refrigeration motors etc), a written report or statement must be obtained from a suitably qualified and experienced consultant in acoustics.

The report/statement must demonstrate and confirm that noise and vibration from the development satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Office of Environment & Heritage/Environment Protection Authority Noise Control Manual & Industrial Noise Policy, Council's conditions of consent (including any relevant approved acoustic report and recommendations), to the satisfaction of Council. The assessment and report must include all relevant fixed and operational noise sources and a copy of the report/statement must be provided to Council prior to the issue of an occupation certificate.

Street and/or Sub-Address Numbering

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

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

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

Bicycle Parking

53. The proposed bicycle spaces must be fully installed in accordance with Australian Standard 2890.3 prior to the issuing of a full or part occupation certificate.

Council's Infrastructure, Vehicular Crossings & Road Openings

54. Prior to issuing a final occupation certificate or occupation of the development (whichever is sooner), the owner/developer 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.
55. Any 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.

Waste Management

56. The owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the additional bins to be provided for the new units.

OPERATIONAL CONDITIONS

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

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

Use of parking spaces

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

Residential Parking Permits

58. All prospective owners and tenants of the building must be notified that Council will not issue any new residential parking permits to occupants/tenants of this development.
59. A notice shall be placed in the foyer/common areas of the building advising tenants/occupiers that they are in a building which does not qualify for any on-street resident parking permits.

Fire Safety Statements

60. A single and complete Fire Safety Statement (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2021*.

The *Fire Safety Statement* must be provided on an annual basis, each year following the issue of the *Fire Safety Certificate* and other period if any of the fire safety measures are identified as a *critical fire safety measure* in the *Fire Safety Schedule*.

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

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

Environmental Amenity

61. The use and operation of the premises shall not give rise to an environmental health or public nuisance, cause a vibration nuisance or, result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations.
62. The proposed use and operation of the premises (including all plant and equipment) must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.
63. In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background (L_{A90}), 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed as an $L_{Aeq, 15 \text{ min}}$ and adjusted in accordance with the NSW Office of

Environment & Heritage/Environment Protection Authority Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).

Waste Management

64. Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.

Any trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to the Principal Certifying Authority and Council prior to commencing operation of the business.

The operator of the business must also arrange for the recycling of appropriate materials and make the necessary arrangements with an authorised waste services contractor accordingly.

Development Application Report No. D24/24

Subject: 22 Young Street, Randwick (DA/75/2023)



Executive Summary

| | |
|-----------------------------|--|
| Proposal: | Alterations and additions to existing dwelling including rear extension (Heritage Item & Heritage Conservation Area) |
| Ward: | West Ward |
| Applicant: | Ms Rachel Bentley |
| Owner: | Mr E G Schulz and Mrs V Scheffer-Schulz |
| Cost of works: | \$1,486,671.00 |
| Reason for referral: | The works involve partial demolition and alterations and additions to a Heritage Item |

Recommendation

- A. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 75/2023 for alterations and additions to existing dwelling including rear extension, at No. 22 Young Street, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/75/2023 - 22 Young Street, RANDWICK
 NSW 2031 - DEV - Randwick City Council

D24/24

D24/24

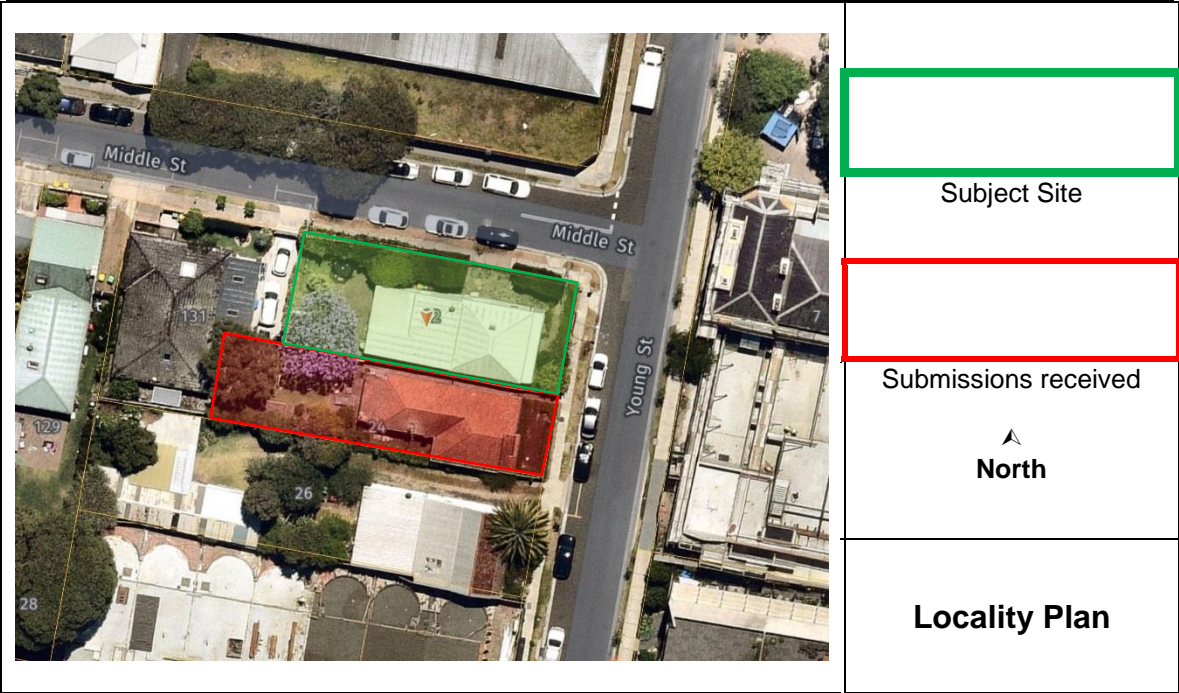


Figure 1: 22 Young Street, Randwick. October 2023 (Source: Nearmap)

1. Executive summary

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

- The development involves alterations and additions and partial demolition of a heritage item.

The proposal seeks development consent for the demolition of part of the rear of the dwelling and construction of a ground floor and upper-level addition including internal floor plan reconfiguration of the rear portion of the dwelling.

The key issues associated with the proposal relate to the impact that the works may have upon the significance of the building which is listed under Schedule 5 of the RLEP as a Heritage Item.

In terms of the planning considerations, the proposal generally complies with the objectives and controls of the LEP and DCP, however the key issues relate to the bulk, massing, and resultant privacy concerns to adjoining neighbours. See the Key Issues section of the report for related discussion.

The proposal is recommended for approval subject to non-standard conditions in relation to heritage conservation and subject to the following:

- Windows W16 and W15 must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be provided with translucent, obscured, frosted, or sandblasted glazing below this specified height.
- Window W06 and W08 must be provided with translucent, obscured, frosted, or sandblasted glazing to the whole opening.
- Any new gates addressing Middle Street must feature materials/colours that match or are compatible with the existing northern boundary fencing.
- Increase the setback of the entire ground and first floor western elevation to the minimum 1.2m requirement from the boundary adjoining 131 Middle Street, pursuant to Clause 3.3.2(i) of RDCP 2013 for frontages 12m and above.

- The colours, materials and finishes of the external surfaces to the extension are to be in accord with the proposal submission as detailed in the External Finishes and Material Specifications prepared by Schulz Residence and Bentley Design and received by Council on 24 May 2022. They are to remain compatible with the existing built character of surrounding buildings and presented in a generally neutral format.
- In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act.

2. Site Description and Locality

The subject site legally described as Lot 2 within DP545098 and is located on the south-western corner of the Young Street and Middle Street intersection, Randwick. The site itself is rectangular in shape with an east to west orientation, having an east-facing frontage to Young Street measuring 12.19m, and a north-facing frontage of 30.175m to Middle Street. The site area is 367.9m² by survey.

Overall, the site is relatively level, with a minor level difference of no more than 500mm across the length of the site. The subject site is presently occupied by a single storey timber clad cottage with metal roof, attached timber clad skillion roof extension and covered timber deck, and a fibro shed within the main garden area adjacent the western boundary.

The site, although within an R2 zone of which is characterised by single and two storey residential development, is also surrounded by R1, RE1, E1, and SP2 zones, and so is also surrounded mixed development types including a childcare centre opposite and several contemporary multi-level developments to the south.

The dwelling is listed as a heritage item of local significance (I457) and located within the 'Struggletown' Heritage Conservation Area (HCA) (refer to Fig.2), and within the vicinity of several individually listed heritage items (refer to Referral Section in Appendix 1).



Figure 2: Subject item 'I457' located within the 'Struggletown' HCA.

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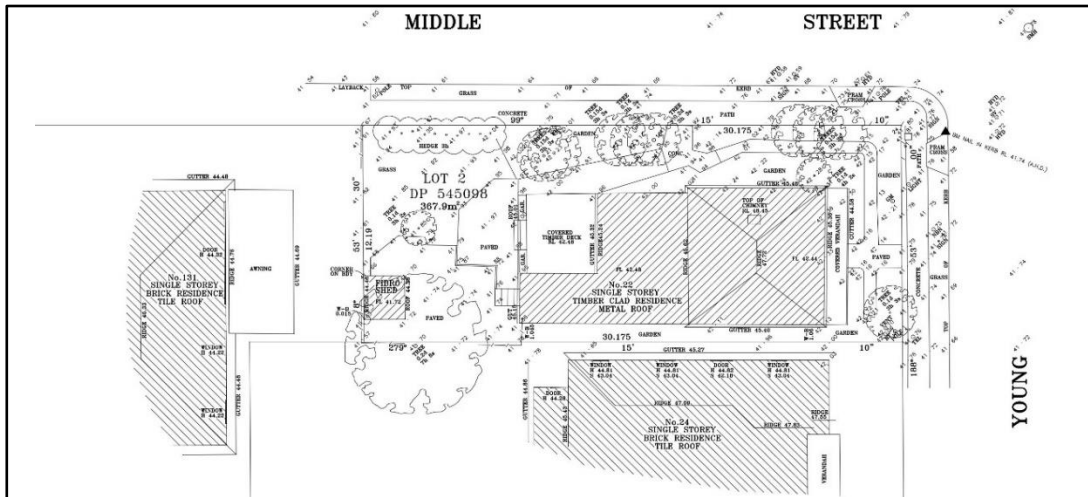


Figure 3: Survey Plan, 27.10.2021 (Prepared by G.K. Wilson & Associates)



Figure 4: Oblique aerial view (north), May 2023 (Source: Nearmap)



Figure 5: Oblique aerial view (east), May 2023 (Source: Nearmap)



Figure 6: Young Street frontage, October 2023



Figure 7: Middle Street frontage, October 2023

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D24/24



Figure 8: Middle Street (northern) setback



Figure 9: Existing rear of dwelling

3. Relevant history

DA/260/2022 – it is noted a previous Development Application was prepared by Bentley Design on behalf of Errol Schulz and Viktoria Scheffer-Schulz for the same proposal described as “alterations and additions to existing residence including rear extension”. DA/260/2022 was lodged with Council on 24 May 2022, however, was withdrawn.

Assessor’s comment: The assessing officer at the time requested a flood assessment report be provided, and issued a recommendation for the withdrawal of the application should the report not be provided within seven (7) days. Following this correspondence the applicant advised of withdrawal of the application, recorded on 21 September 2022 (TRIM Doc D04728142).

It is noted the subject Development Application is accompanied with a Flood Risk Management Report prepared by Stellen Civil Engineering, dated 16/03/2023, which has been assessed by Development Engineering (Refer Appendix 1, item 2 for Development Engineering comments)

Aside from the above, the land has been used for residential purposes for an extended period of time. A search of Council's records did not reveal any other recent or relevant applications for the site.

4. Proposal

Development Application DA/171/2023 submitted under the provisions of the *Environmental Planning and Assessment Act 1979* seeks approval for "alterations and additions to existing dwelling including rear extension (Heritage Item & Heritage Conservation Area)". Specifically involving:

Demolition works:

- Demolition of existing skillion roofed addition at the rear of the dwelling.
- Removal of existing rear shed

New Ground Floor works to include:

- Convert existing Bed 2 to WIR and Ensuite
- New addition to comprise: an open plan Kitchen, Lounge and Dining areas; Family Bathroom; Pantry; Laundry; Guest WC, and rear Living Room
- Stairwell
- Covered BBQ deck area
- Carport

New First Floor works to include:

- Stairwell and associated circulation zones
- Master Bedroom with Walk-in Robe and Ensuite
- Study Room

Associated site/external works to include:

- Proposed layback and cross over at the Middle Street frontage
- New driveway access
- General upgrade of landscaped areas – paving, augmentation of planting and the like

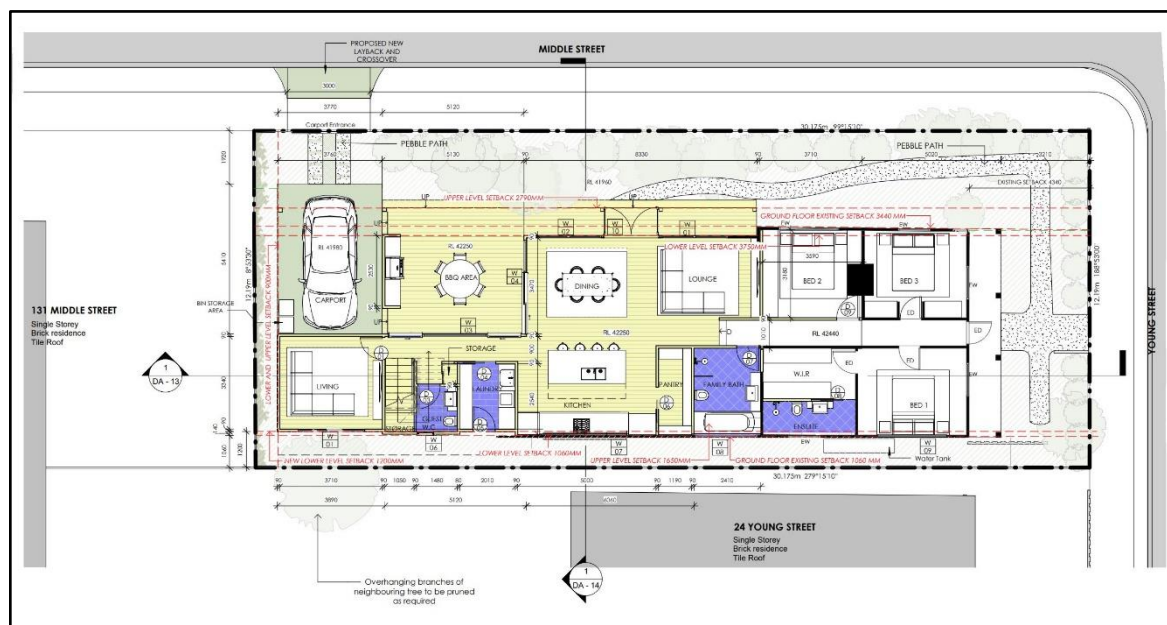


Figure 10: Proposed Ground Floor Plan. (Source: Bentley Design)

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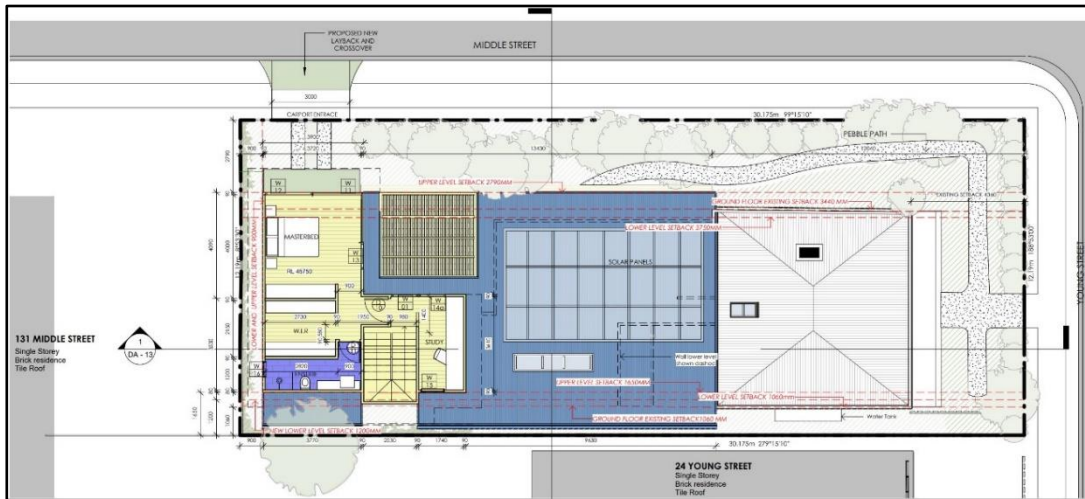


Figure 11: Proposed First Floor Plan. (Source: Bentley Design)

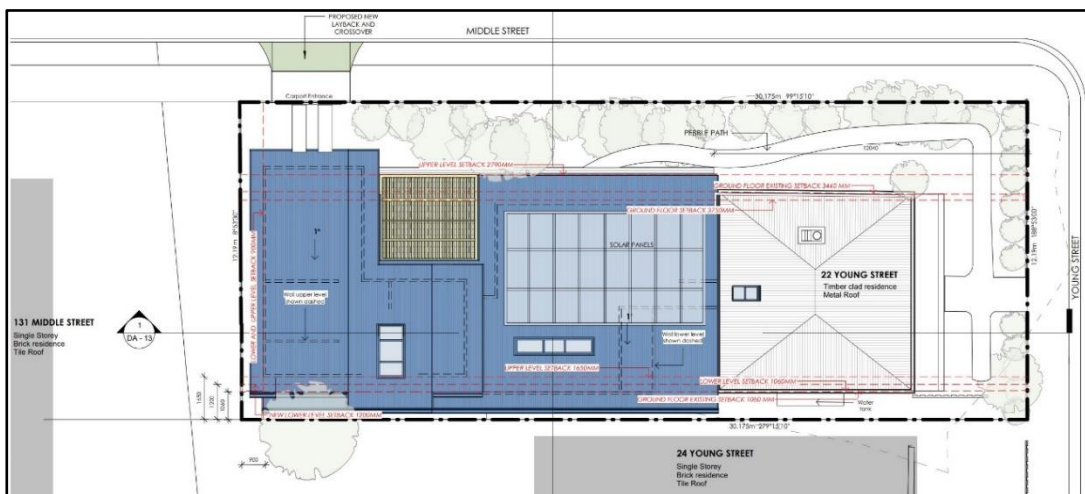


Figure 12: Proposed Roof Plan. (Source: Bentley Design)

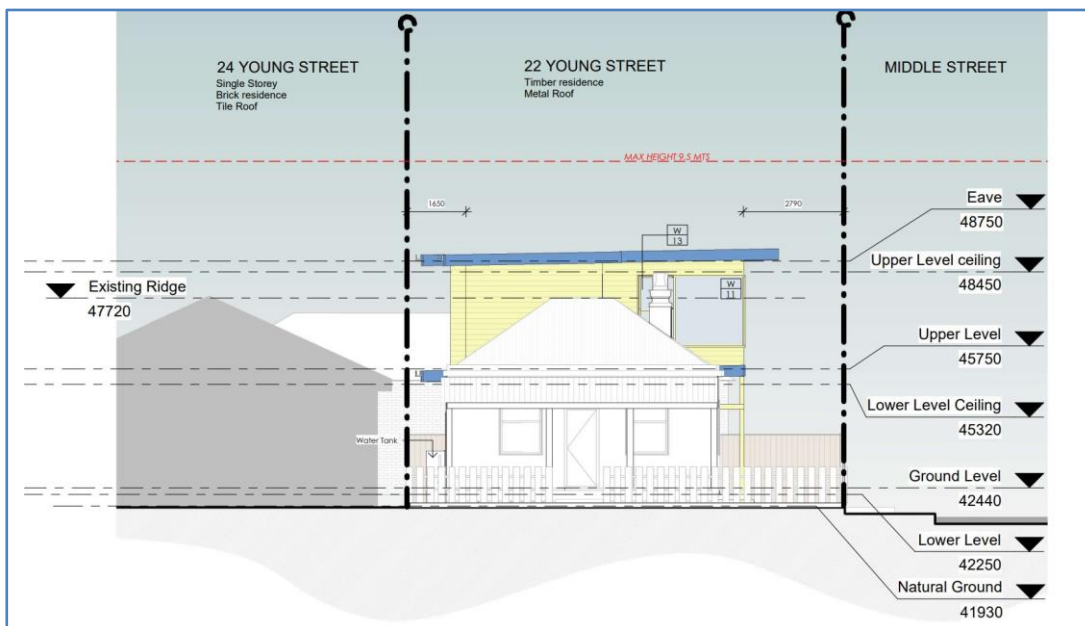


Figure 13: Proposed East Elevation. (Source: Bentley Design)



Figure 14: Proposed North Elevation. (Source: Bentley Design)



Figure 15: Proposed South Elevation. (Source: Bentley Design)

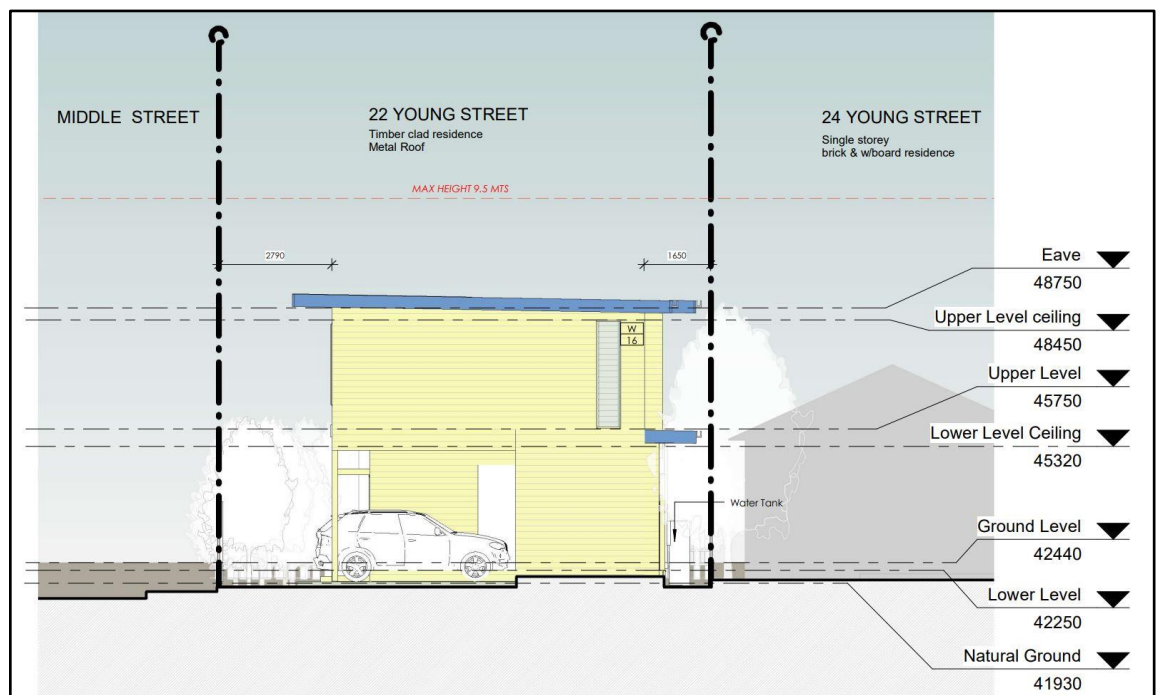


Figure 16: Proposed West Elevation. (Source: Bentley Design)

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5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. The following submission was received as a result of the notification process:

- 24 Young Street, Randwick (adjoining neighbour to the south)
TRIM Doc No. 'D04896976'

| Issue | Comment |
|--|--|
| <ul style="list-style-type: none"> • Side setback. <p>"The south side boundary setback proposed is 1.06m which does not meet the minimum setback requirement of 1.2m. The fact that the existing dwelling has a 1.06m setback does not justify building the significant additions proposed with the same setback."</p> | <p>The objector's comments are acknowledged and further discussed under Section 8.1 Key Issues 'Setbacks', below.</p> |
| <ul style="list-style-type: none"> • Upper level setback (side) setback <p>"We object further to the upper level set back of 1650mm, which is below the minimum requirement of 1800mm as set out by council guideline for low density residential housing."</p> | <p>The proposal complies with the prescribed side setback controls stipulated within the table under Clause 3.3.2(i) where a minimum 1.2m is required for Ground and First floor setbacks for a lot with a frontage >12m.</p> <p>The proposed upper-level southern setback is 1.65m, for 72% (5.96m) of the 7.81m total of the length of the southern elevation. The stairwell is articulated and protrudes towards the southern boundary for a setback that measures 1.2m and therefore also compliant with side setback controls.</p> |
| <ul style="list-style-type: none"> • Rear boundary setback <p>"The rear boundary setback is only 870mm, falling short of the 8m / 25% of allotment depth minimum rear setback requirement."</p> | <p>It must be noted, in reference to <u>Chapter 3.3.3 Rear Setbacks</u> "Rear setback controls do not apply to corner allotments". Therefore, side setback controls are appropriately applied to the western setback in this instance, in accordance with 'DCP Section C1 3.3.2 Side Setbacks'.</p> <p>See further comment under Section 8.1 Key Issues 'Setbacks', below.</p> |

| Issue | Comment |
|---|--|
| <ul style="list-style-type: none"> Bulk and Scale concerns <p>“The upper-level addition will be clearly visible from Middle Street (per street view 3 of 4), the extension as proposed will dwarf the existing heritage dwelling, and not sufficiently screened by existing vegetation, contrary to Council’s goal of heritage conservation of the area.”</p> | <p>The proposed rear addition has been thoroughly assessed by Council’s Heritage Officer against the applicable Heritage Controls stipulated within the RDCP 2013. The design is endorsed on the merits of its design and Heritage Conservation principles. See Appendix 1, item 1.1 for referral comments.</p> <p>Further justification is discussed in Appendix 2 Section 3.1. C1 4 - ‘Building Design’.</p> <p>With respect to existing vegetation, the SEE submitted with this application notes the following under Section B5 Preservation of Trees and Vegetation: “The subject site does not contain any trees of significance however existing vegetation will be retained where possible.”</p> <p>The proposal has been assessed and endorsed by Council’s Landscape Officer. See Appendix 1, item 1.3 for referral comments.</p> |
| <ul style="list-style-type: none"> Visual Privacy concerns <p>“We are also concerned about the loss of privacy and loss of northern sunlight from the extension, as i) plan includes window in the study (15) which would look directly into our backyard and ii) our property obtains most of the natural sunlight from the northern side extension will lead to significant loss of northern sunlight on our living room as illustrated in the shadow study.”</p> | <p>The objector’s comments are acknowledged and further discussed under Section 8.1 Key Issues ‘Visual Privacy – windows’, below.</p> |

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate No. A449743_02 has been submitted, prepared by Bentley Design, dated 23 February 2023, satisfying the requirements of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

6.2. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development involves the removal of vegetation. Council’s Landscape Development Officer reviewed the proposal and confirmed support for the proposed removal and landscaping

treatments, subject to the imposition of conditions (refer to Referrals Section in Appendix 1). As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

6.3. SEPP (Resilience and Hazards) 2021

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

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

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------------|----------------------|----------|---------------------|
| Cl 4.4: Floor space ratio (max) | 0.75:1 | 0.51:1 | Yes |
| Cl 4.3: Building height (max) | 9.5m | 7.29m | Yes |

6.4.1. Clause 5.10 - Heritage conservation

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

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

The proposal has been considered by Council’s Heritage Planner. The advice provided is that there are no objections to the proposal subject to conditions (refer to Referrals Section in Appendix 1).

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

8. Environmental Assessment

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

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument | See discussion in sections 6 and key issues below. |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | Nil. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below under Section 8.1 |
| Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement | Not applicable. |
| Section 4.15(1)(a)(iv) – Provisions of the regulations | The relevant clauses of the Regulations have been satisfied. |
| Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p> |
| Section 4.15(1)(c) – The suitability of the site for the development | The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development. |
| Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation | The issues raised in the submissions have been addressed in this report. See discussion under Section 5 above. |
| Section 4.15(1)(e) – The public interest | The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest. |

8.1. Discussion of key issues

Heritage

As noted above in Section 5.1.1, the proposal has been considered by Council's Heritage Planner in relation to the impact of the works upon the heritage item. The advice provided is that there are no objections to the proposal subject to conditions (refer to Referrals Section in Appendix 1).

Setbacks

Section 3.3 of the DCP details the objectives and controls in relation to building setbacks.

The relevant objectives seek to:

- a) *Ensure there is adequate separation between neighbouring buildings for visual and acoustic privacy and solar access.*
- b) *Reserve adequate areas for the retention or creation of private open space and deep soil planting,*
- c) *Enable a reasonable view sharing between a development and the neighbouring dwellings and the public domain.*

Assessing officer's comments: As previously addressed under 'Submissions', the subject site is a corner allotment, and in reference to Chapter 3.3.3 Rear Setbacks "Rear setback controls do not apply to corner allotments".

Further, the depth of the site is deficient compared to its adjoining southern neighbour at No. 24 Young Street (a parallel lot) by 6.4m and unreasonable to apply the same standard for rear setback controls in this instance. Therefore, the proposal is required to be assessed as having: two street frontages (to Middle Street and Young Street) and two sides applying the standard DCP setback controls.

The following discussion seeks to address the matters related to the side setbacks specifically, which are revealed to have minor and negligible variation the minimum prescribed side setback controls and are therefore assessed on merit. These are related to the southern side setback and western side setback, which have potential to impact adjoining neighbour amenity.

Southern Setback

The primary street frontage is to Young Street as it comprises the main entry door and pathway access to the dwelling. The Young Street frontage measures 12.19m. Under Clause 3.3.2 (i) the prescribed numerical control for a dwelling house on a site with a frontage >12m is 1.2m for ground and first floor levels.

It is noted the heritage cottage southern wall has an existing side setback non-compliance of 1.06m. It is proposed that the entire existing length of the southern wall is to be retained - a length of approximately 17m. The new rear addition extends the south elevation westward by a further 7.5m for an overall 25m ground floor length (to comprise 30% or less than 1/3 of the total wall length).

The proposed addition is to be offset from the side building alignment resulting in a compliant setback of 1.2m. The portion of wall at the stairwell is the exception, protruding out of practical necessity, however the minor variation is negligible and would not present any additional or undue impacts on view sharing or separation between properties, or advantages for solar access to the adjoining neighbours that it need to strictly meet the 1.2m setback requirement.

Considering the maximum preservation of the existing heritage fabric by locating the new two storey addition away and to the rear of the heritage cottage, and, that the proposed portion of new wall is compliant with side setback controls, reasonable attempts have been made to preserve the amenity of neighbours where possible and therefore Council is satisfied the aims and objectives of the DCP and therefore the proposed southern side setback is supported on merit.

Western Setback

The secondary street frontage is Middle Street where the proposed driveway is to be accommodated. The Middle Street frontage measures 30.175m. Under DCP Clause 3.3.2 (i) the prescribed numerical control for a dwelling house on a site with a frontage >12m is 1.2m for ground and first floor levels.

The proposed western side setback is 900mm for ground and first floor levels, an encroachment of 300mm, and therefore is non-compliant.

Should consent be granted, a condition of consent will be applied to the western side setback of the rear extension to meet the minimum setback requirements (1.2m).

Solar Access and Overshadowing – Neighbouring Properties

Section 5.1 of the DCP details the objectives and controls in relation to Solar Access and Overshadowing, as follows:

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

Assessing officer's comments: An assessment of the initially provided shadow diagrams in combination with hourly shadow diagrams have identified that a substantial portion of the private open space of the south-adjointing neighbour at 24 Young Street will be affected (refer to Figures 17 to 21).

Context and Setting

There is a parallel allotment relationship between 24 Young Street and the subject site with both lots orientated from east to west. Notably, the differences between the lots are that the subject site comprises a shorter allotment length and is being a corner allotment. The subject site features a residence that is clearly different in layout and displacement compared to the residence at 24 Young Street. Due to the nature of the site and relationship between the two (2) sites, given that the subject development is north of its neighbour, any additional overshadowing from a 2-storey built form that is fully compliant development will likely be inevitable.

The provision of a 2-storey form at the rear and minimal intrusion of the prevailing roof form of the original dwelling were intentional design responses as the dwelling house is a locally listed heritage item (Item I457) that is within a locally listed heritage conservation area (Struggletown – C19). As such, any contemporary form, particularly a new upper floor, would require a sympathetic design that is distinct and well separated from the heritage cottage to ensure the respective heritage provisions, controls and objectives under Council policy are achieved by the scheme. Council's Heritage Planner confirmed that the proposed development largely achieves the above heritage provisions, controls and objectives (refer to Appendix 1).

Impacts – Living Room Windows (Neighbours)

The proposal shows a negligible height difference at the mid-section/extension behind the main cottage hipped roof. Most of the existing cottage building fabric is proposed to remain intact with a minor reduction to the roof height at the middle of the dwelling due to the proposed flat roof configuration. The ground floor portion of the proposal therefore visibly extends to a length of 17m. It is noted that the northern elevation of the adjoining dwelling at 24 Young Street is 14.6m in comparison terminating in-line with the proposed kitchen window. The retention and extension of the single storey form ensures that the neighbour's current situation regarding access to natural sunlight to the adjoining, north-facing windows remain mostly unchanged.

The existing layout of 24 Young Street is shown in Figure 22. It is evident that the north-facing window in the living room is already compromised due to its centralized location. The existing single storey dwelling within the subject site already impacts this window. The proposed development does not increase these impacts. The south-facing window in the living room does not receive direct sun and will not be affected by the proposed development. As such, any impacts and additional shadows cast over living room windows are considered reasonable and acceptable.

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Figure 17: Shadow Diagrams – 8am and 9am, mid-winter (21 June)



Figure 18: Shadow Diagrams – 10am and 11am, mid-winter (21 June)



Figure 19: Shadow Diagrams – 12pm and 1pm, mid-winter (21 June)

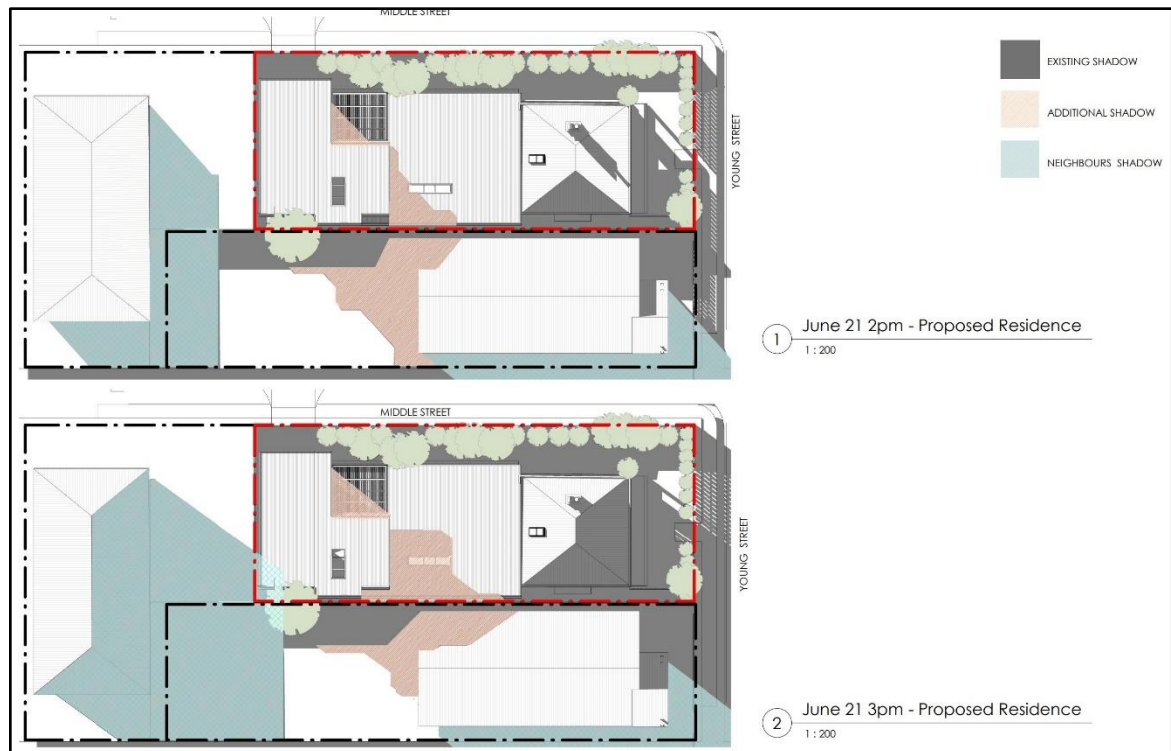


Figure 20: Shadow Diagrams – 2pm and 3pm, mid-winter (21 June)

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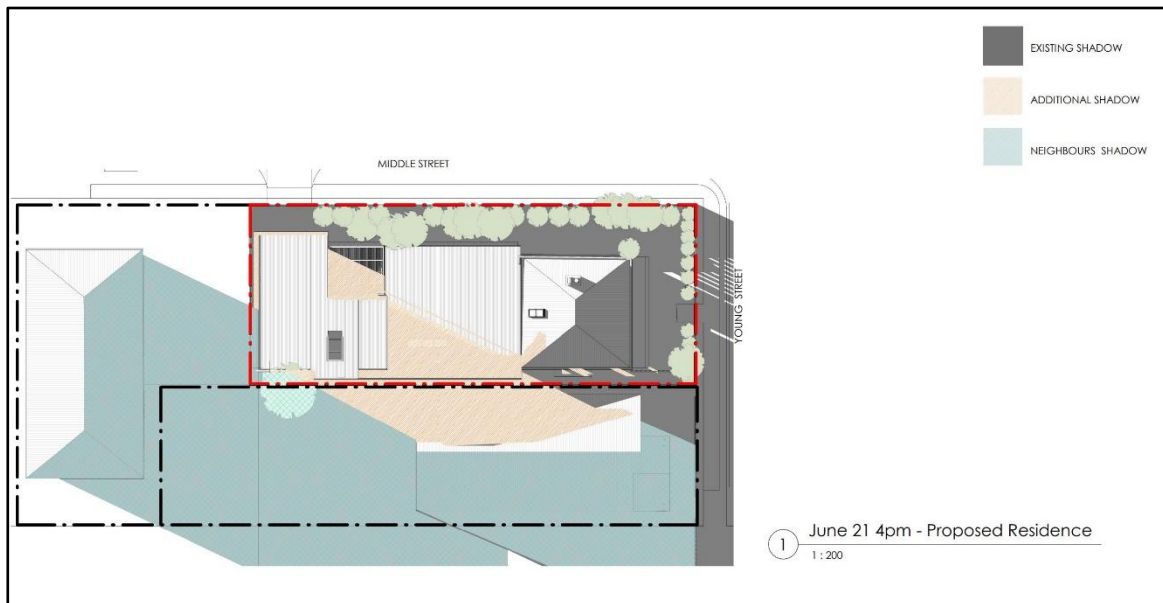


Figure 21: Shadow Diagrams – 4pm, mid-winter (21 June)

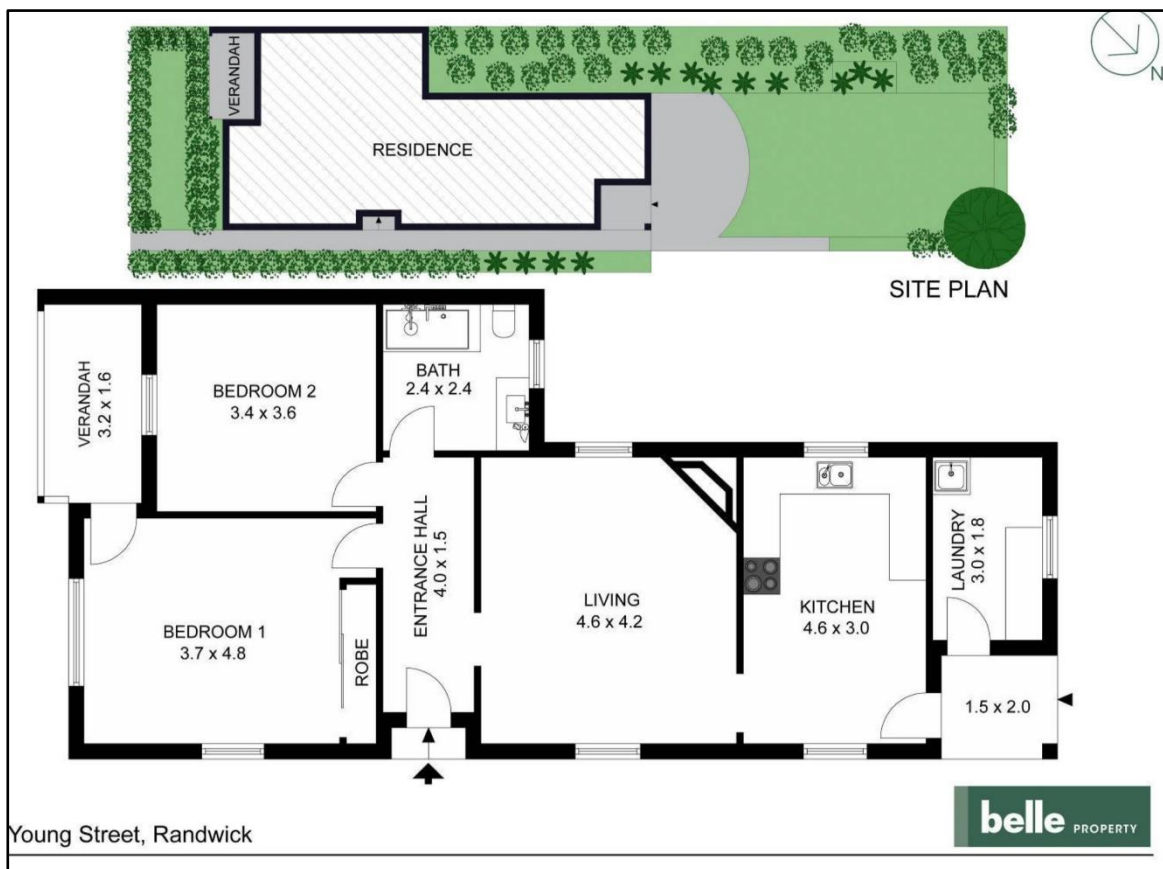


Figure 22: Floor Layout of 24 Young Street, Randwick (south-adjointing neighbour – Source: www.realestate.com.au August 2021)

Impacts – Private Open Spaces (Neighbours)

The private open space of 24 Young Street is shown in Figure 23 below. The location of the 2-storey form proposed will have adverse impacts on the private open space of 24 Young Street – particularly between 9am to 2pm. It is noted; however, that a substantial portion of grassed lawn area situated on the western portion of the private open space will receive direct sun from 11am to 3pm (a total of 4 hours) during mid-winter. Notwithstanding, the primary area of ‘passive recreation’ – the paved area for outdoor dining – will receive limited solar access. An hour of solar access will be obtained from 2pm to 3pm during mid-winter, within this paved area.



Figure 23: Western view of private open space of 24 Young Street, Randwick (south-adjointing neighbour – Source: www.realestate.com.au August 2021)

It is acknowledged that whilst the design of the scheme is acceptable in terms of a sympathetic response to heritage constraints, opportunities to facilitate a reasonable level of overshadowing (additional) to affected neighbours should be investigated. A review of potential alterations to the scheme have identified such opportunities. In order to provide additional solar access to the paved area (for passive recreation), the following design change conditions are recommended:

- The gross floor area of the first floor level must be reduced by deleting the entire ensuite including the associated window and door. The first floor layout may be re-configured within the reduced floor area to allow for the provision of an ensuite.
- The roof eaves/roof overhangs to the south of the first floor level and above the living room window (W01) at the ground floor level must be deleted.

Visual Privacyferra - Windows

Section 5.3 of the DCP details the objectives and controls in relation to Visual Privacy which are seen as applicable to the merit assessment of the first-floor addition proposed in this application.

Objective:

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

Assessing officer's comments: Side elevations 'West' and 'South' (Refer Figures 7 and 8) have potential to impact on adjoining neighbour amenity with respect to visual privacy and overlooking. Only the applicable windows with potential overlooking or visual privacy impacts are identified and individually referred to below. It is noted windows intentionally omitted are determined to satisfy the requirements of the DCP aims and objectives.

Proposed windows located on elevations 'North' and 'East' are also omitted due to their orientation toward the Middle Street and Young Street frontages respectively.

Upper Level Windows

West elevation:

- *'W16' Ensuite – is a 500mm wide floor to ceiling opening. The window is located at the Ensuite shower zone. W16 is nominally setback 900mm from the common boundary fence adjoining 511 Middle Street to the west. It is observed that 511 Middle Street is irregular in shape and the dwelling house is contained within a tightly held allotment, with an undersized POS orientated towards the proposed dwelling. Considering this, W16 is therefore highly likely to provide adverse overlooking impacts on the neighbour's use of their main outdoor space.*

A suitable condition will be imposed on 'W16'.

South elevation:

- *'W15' Study – is an 800mm wide opening with a sill height 400mm above the first floor level. W15 is set back 1.65m from the common boundary fence and obscured from oblique views to most of the neighbouring POS by the adjacent stairwell wall. Further, the window is likely to avoid cross-viewing to neighbouring habitable windows by the fact that the subject window is significantly west of the rearmost neighbouring window, however overlooking the neighbouring POS remains likely and has been raised as a privacy concern by the southern neighbour, therefore, to ensure overlooking of the neighbouring POS is minimised an appropriate condition will be applied.*

'A suitable condition will be imposed on 'W15'.

Ground floor Windows

- *Ground Floor windows are generally appropriate in size for their use and unlikely to cause undue visual privacy impacts to the adjoining side neighbours. The larger living area glazed openings are designed facing northward to the subject site POS and Middle Street frontage and focused away from the adjoining neighbours. Likewise, the existing front bedroom windows are orientated to the street frontages. Applicable windows with potential overlooking or visual privacy impacts are identified and individually assessed against the relevant DCP controls and objectives below.*

West elevation:

- *No west facing ground floor windows are proposed.*

South elevation:

- *'W01' Living – Is located at the rear corner of the proposed extension away from neighbouring habitable room windows and is mostly obscured by the existing common boundary fence. The use of the room is most likely in a seated position and unlikely to bring about unreasonable overlooking issues.*

'W01' satisfies the aims and objectives of the DCP.

- *'W06' Guest WC – is proposed 500mm wide and measures 2.4m from its floor level sill to its head. W06 would be taller than the standard 1.8m common fence height. The window has a side setback of 1.06m. Similarly to W01, the subject window is offset from the adjoining dwelling enough that no cross-viewing into neighbouring habitable rooms is possible, although would still likely overlook the adjoining POS. Considering the above living room would typically require users to be seated at most given times, no further privacy mitigation is considered necessary for the above W01, however for bathroom use it is likely*

to present undue visual privacy impacts to the neighbouring property and therefore recommended that measures be implemented.

A suitable condition will be imposed on 'W06'.

- *'W07' Kitchen – is designed to be at splashback height and will be below the height of the common boundary fence.*

'W07' satisfies the aims and objectives of the DCP.

- *'W08' Family Bath – is proposed to be located opposite the adjoining neighbour's Living Room window and likely to provide undue cross-viewing and visual privacy impacts.*

A suitable condition will be imposed on 'W08'.

- *'W09' Bed 1 – is a highlight level window located towards the front of the existing cottage and directly faces the neighbour's front bedroom side window. W09 proposes a sill height of 2.03m, and therefore at a height that reasonably prevents overlooking and undue visual privacy impacts to the adjoining neighbour.*

'W09' satisfies the aims and objectives of the DCP.

9. Conclusion

That the application to carry out alterations to the dwelling be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents, and maintaining the significance of the Heritage Item.
- 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

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

The proposal has been referred to Council's Heritage Planner for consideration and comment. The following advice has been provided, including conditions that may be included in any development consent issued.

The Site

The subject site is 22 Young Street Randwick, with a legal land parcel designation as Lot 2 DP 5450982. It is sited on the south-west corner of young Street and Middle Street. This is generous land parcel with established plantings. On site is a dwelling of weatherboard construction with a corrugated metal roof. It has a primary frontage to Young Street (12.19m) and a secondary (side) presentation to Middle Street (30.175m). There is currently no vehicle access provided to the site. In the immediate locality are single storey residential dwellings to the south and west, and the ongoing multi-storey mixed-use development of the Newmarket precinct.

The subject site is an individually listed heritage item of local significance (I457) within Schedule 5 of the Randwick Local Environmental Plan 2012. It is also sited within a relatively contained HCA of a few blocks, that is designated as 'Struggletown'(C19). This is one of the earliest settlements in Randwick. Generally, the housing stock comprises smaller single-fronted worker-style cottages, set back on narrow blocks. The earliest of these originated in the mid-nineteenth century and then there was a mixed presentation created through the Federation to interwar period. The relatively flat landform originally accommodated market garden areas and religious charitable services. From the early 20th century, it came to feature stables and other amenities associated with the racing industry, as well as with public transport storage facilities. Past heritage assessments have also noted important view corridors along its narrow streets, which feature some sandstone kerbing and arboreal features.

This HCA hosts numerous other individually listed heritage items, and this site is adjacent and in the vicinity of several such items: Newmarket House (I466) is located directly opposite, St Jude's Mission Church (I411), and cottages (I412 and I413) are sited diagonally to the rear, and the Newmarket Sale Ring (I292) is sited nearby. A State-Listed item (00388), known as the 'Big Stable Newmarket' is located nearby at 29-39 Young Street.

Importantly, and as outlined below under background, the subject site was recently identified by Council as being prone to partial inundation during significant weather events.

Background

An original Development Application for this proposal was submitted to Council on 24 May 2022 and designated as DA/260/2022. A heritage assessment dated 29 June 2022 was conducted for the proposal. That report noted that the subject cottage had rear extension works undertaken in the mid to later 20th century. Those works were determined to be of an adequate quality in that they are substantially sympathetic to the original materiality, bulk, and form of the structure.

The report determined however that the removal of these non-original rear additions would have no perceived negative heritage impact. It also determined that the proposed new addition would be substantially removed from nearby heritage listed sites, and would be of an acceptable a scale and pavilion form.

Then between July and September the applicant was advised by Council that a Flood and Drainage Assessment would need to be incorporated into plan amendments because of an identified localised low-point flow path. Council's engineer specified changes viz:

- The proposed rear extension at RL 41.97AHD, to be raised to a minimum of RL 42.44
- The proposed carport slab to be also raised to be at a minimum RL 41.98m AHD

Owing to the timetable process for finalisation of reports and plan amendments the application was subsequently withdrawn on 15 September 2022. This current Development Application represents a resubmission of that same project, but with the recommended height adjustments incorporated

Proposal

The proposal is for substantial alterations and additions to the rear of an individually heritage listed dwelling and incorporating the following works:

- Demolition of existing skillion-roofed addition at the rear of the subject dwelling
- Construction of a part one, part two-storey addition at the rear of the subject dwelling
- The proposed ground floor of the addition comprises a lounge, kitchen, dining area along with a living area laundry and WC with a roofed deck along the northern elevation adjacent to a single car carport accessed from Middle Street
- The proposed upper storey will comprise a bedroom, walk in wardrobe, study and ensuite
- Construction of driveway and landscaping of the completed proposal

It is noted that the Middle Street presentation is largely shielded from view by substantial plantings.

The aim of the proposal is to for contemporary amenity in an historical dwelling, and to provide additional accommodation for the occupant family. The alterations and additions have been carefully conceived to have minimum heritage impact on the original section of the house, and on the site generally, and on its context within this HCA, including all significant lines of sight.

The proposed works substantially fulfill the conceptual intent of a pavilion-style addition with substantial single storey separation. The current plans (Stamped 7 March 2023) are identical to the earlier submitted plans (24 May 2022) except for the required height adjustment of 280mm.

Submission

For the purposes of this Development Application the proposal is accompanied by the following documentation:

The submission is accompanied by:

- Detailed architectural drawings by Bentley Design of Bridge Road Stanmore NSW 2048 (now incorrectly referenced as 13/12/2021 Revision C – Please update)
- A Finishes schedule of materials and colours by Bentley Design of Bridge Road Stanmore NSW 2048 (now incorrectly referenced as 13/12/2021 Revision C – Please update)
- A Landscape Plan by Bentley Design of Bridge Road Stanmore NSW 2048 (now incorrectly referenced as 13/12/2021 Revision C – Please update)
- An acceptable set of perspective views by Bentley Design of Bridge Road Stanmore NSW 2048 (now incorrectly referenced as 13/12/2021 Revision C)

- *A detailed and acceptable Statement of Environmental effects (SEE) by Lance Doyle Consulting (Planning Institute of Australia)*
- *A detailed and thorough Heritage Impact Statement by Brad Vale of Umwelt (Aust) Pty Ltd*

Controls

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

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

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

Comments

The substantial and detailed accompanying documents have demonstrated that the proposed redevelopment for alterations and additions at 22 Young Street, Randwick, will have an acceptable impact on the heritage significance of the heritage item, the Struggletown Conservation Area, and the individually listed heritage items in the vicinity, including all view lines. It is noted that:

- *The currently presenting rear additions have been well researched and described, and their removal has no perceived negative heritage impact*
- *The proposed addition at the rear of the original component of this heritage listed dwelling are substantially removed from nearby heritage listed sites and is of a scale and form that is not likely to have any negative impact*
- *The design largely represents a pavilion form, with the single-storey component tucked under the original hip roof and the upper level removed as far as possible from the original house. Thus, the integrity of the original presentation of the dwelling and its principal roof form is maintained*
- *The visual-arcs and the view lines have been carefully examined. They are consistent with all currently established appreciations and should have no perceivable negative impact upon the character of the conservation area. This is further ameliorated by established plantings*
- *The schedule of materials and finishes are deemed to be sympathetic to the original dwelling and in harmony with nearby heritage items*
- *The physical arrangements for vehicle access and parking are accessed from the secondary location and with only concrete kerbing. The arrangements are well shielded by established plantings, with landscaping remaining a substantial proportion of the property, at almost 50%.*

Recommendation

The following conditions should be included in any consent:

- *Documentation dates and revision is to be updated as noted above*
- *The colours, materials and finishes of the external surfaces to the extension are to be in accord to the proposal submission as detailed in the External Finishes and*

Material Specifications prepared by Schulz Residence and Bentley Design and received by Council on 24 May 2022. They are to remain compatible with the existing built character of surrounding buildings, and presented in a generally neutral format

- *In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act*
- *No additional heritage consent conditions are required*

1.2. Development Engineer

The proposal has been referred to Council's Development Engineer for consideration and comment. The following advice has been provided, including conditions that may be included in any development consent issued.

An application has been received for alterations and additions to the existing dwelling including rear extension (Heritage Item & Heritage Conservation Area) at the above site.

This report is based on the following plans and documentation:

- *Architectural Plans by Bentley Design, rev C dated 02/03/2022;*
- *Statement of Environmental Effects by Lance Doyle stamped by Council 7th March 2023;*
- *Detail & Level Survey by GK Wilson & Associates dated 27/10/2021.*

Flooding Comments

The assessing officer is advised that the proposed development site lies within the catchment for the council commissioned and adopted Birds Gully Flood Study.

The defined flood planning level in the flood report is RL 42.42 which is close to the floor level of the existing dwelling

The flood report however adopts a worse case being the highest flood level and depth on the site. This is occurring at the intersection of Young Street & Middle Street (depth 0.23m, level 42.12). The flood planning level is therefore set at twice the depth of flow being 2 x 0.23 or 0.46m above ground level and is then applied to the whole site.

At the location of the proposed additions in the western half of the site however, the flood model is predicting lower flood depths being generally less than 0.14 m for the 1% AEP (1 in 100yr) flood

Accordingly, a floor level of RL 42.24 AHD which is based on twice the max depth of flow at the Middle Street entrance (i.e $41.96 + (2 \times 0.14) = 42.24$) would be acceptable. This is consistent with Council's flood controls detailed in Part B8 of the DCP.

This advice was forwarded to the applicant prior to the submission of the DA and the submitted plans are consistent with that advice with the floor level of the proposed additions being depicted as RL 42.25 AHD.

Carport

Part B8 of the DCP specifies open hardstand carspaces are to be provided at the level of the 5% AEP (1 in 20yr) flood being RL 41.98 AHD at the location of the proposed carport.

The submitted plans indicate the carspace at RL 41.98 AHD and so demonstrate compliance with Council's DCP flood controls

Drainage Comments

Surface water/stormwater runoff is to be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;

Parking Comments

The site currently comprises of a 3 bedroom dwelling and provides no-off street parking and is thereby experiencing an existing parking shortfall of around two spaces when assessed against the parking rates specified in Part E5 and B7 of the Randwick DCP.

The proposed development will be increasing the number of bedrooms within the dwelling from 3 to 4 however this will not increase the parking demand which will remain at 2 spaces.

The application proposes a single off-street carspace accessed off Middle Street which will reduce the parking shortfall from 2 to 1 space. This is supported

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 power pole on the same side of the street hence the above clause is applicable. A suitable condition has been included in this report.

1.3. Landscape Development Officer

The proposal has been referred to Council's Landscape Development Officer for consideration and comment. The following advice has been provided, including conditions that may be included in any development consent issued.

The inspection of 14 July 2023 revealed that while the small recently planted street tree on the Middle Street frontage, to the west of the pram ramp and 'no stopping' sign would not be directly affected by these works, due to the high demand and competition for parking spaces, and resulting likely of damage, minimal protection conditions have been imposed.

While the shrubs and screening hedges within both the front setback and along the northern side boundary assist the occupants with partial screen/privacy and amenity, none are significant or protected by the DCP, so no objections are raised to their removal where needed to accommodate these works as shown.

The only established vegetation that requires assessment for this application is beyond the southwest site corner, wholly on the adjoining private property at no.24, close to the common boundary, where there is a semi-mature 6-7m tall Jacaranda mimosifolia (Jacaranda), whose northern aspect overhangs above the subject site/existing free-standing fibro shed.

It is protected by the DCP, with both Council and the applicant having a common law responsibility to ensure it is not affected by these works, with the plans showing that the dwelling will be extended significantly further to the west, past the tree, right up near the boundaries.

The Ground Floor Plan, dwg DA-10 nominates a 1200mm side boundary setback adjacent the tree, which while encroaching its TPZ, providing the measures included in these conditions are complied with on-site during works, should be sufficient to minimise any impacts, with such younger trees having a higher tolerance to disturbance.

As a new First Floor will also be added, clearance pruning of the northern leader that encroaches into this development site and area of the new works will also be needed, with relevant conditions allowing this, by an Arborist.

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Appendix 2: DCP Compliance Table

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

The relevant provisions of the DCP are addressed below.

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

3.1 Section C1: Low Density Residential

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|--|---------------|
| | Classification | Zoning = R2 | |
| 2 | Site planning | | |
| 2.3 | Site coverage | | |
| | Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% | Site = 367.9m ² Proposed = 53% (196.44m ²) | Yes, complies |
| 2.4 | Landscaping and permeable surfaces | | |
| | i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones. | Proposed = 40% (For 148.35m ²) | Yes, complies |
| 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 | Proposed = 7.4m x 5.16m | Yes, complies |
| 3 | Building envelope | | |
| 3.1 | Floor space ratio LEP 2012 = 0.75:1 | Existing FSR = 0.27:1 (GFA 100.57m ²) Proposed FSR = 0.51:1 (GFA 188.46m ²) | Yes, complies |
| 3.2 | Building height | | |
| | Maximum overall height LEP 2012 = 9.5m | Existing = 5.8m Proposed = 7.29m | Yes, complies |
| | i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m | Existing = 3.61m | Yes, complies |

| DCP Clause | Controls | Proposal | Compliance |
|--------------|---|--|------------------|
| | iii) Merit assessment if exceeded | Proposed = 6.82m Minimum ceiling height of 2.7m achieved at the first floor | |
| 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 | Primary frontage = Young Street Secondary St frontage = Middle Street <u>Existing Ground Floor:</u> = 4.29m (Young St frontage) 3.44m (Middle St frontage) (No changes proposed to nearest front setbacks) <u>Proposed Ground Floor extension:</u> = 3.75m from Middle St. <u>Proposed Upper Level:</u> 2.79m to Middle Street The proposed extension fronting maintains the current setback depth at the Middle Street frontage. The secondary frontage to Middle Street will also generally remain consistent with the existing street setback pattern. | Yes, complies |
| 3.3.2 | Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> Frontage less than 6m = merit Frontage b/w 6m and 8m = 900mm for all levels Dwellings: <ul style="list-style-type: none"> Frontage less than 9m = 900mm Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above | Young Street frontage = 12.19m Min. side setback (south) = 1200m Middle Street frontage = 30.175m Min. side setback (west) = 1200mm | Refer Key Issues |

D24/24

D24/24

| DCP Clause | Controls | Proposal | Compliance |
|--------------|---|---|---------------|
| | <ul style="list-style-type: none"> Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p> | <p>Proposal: Side Setback (south) varies from existing cottage 1.06m to 1.2m at Ground level extension, and from 1.2m to 1.65 at the upper level addition.</p> <p>Side setback (west) = 900mm for Ground and Upper level.</p> | |
| 3.3.3 | <p>Rear setbacks</p> <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <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> | Corner allotment | N/A |
| 4 | Building design | | |
| 4.1 | General | | |
| | <p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design | <p>The design of the proposed rear additions is well considered.</p> <p>The façade treatment of weatherboard cladding, and appropriately articulated building form and window placements complement the existing heritage cottage without</p> | Yes, complies |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|--|---------------|
| | | <p>competing with its more traditional details and character but serve to enhance both equally.</p> <p>Overall, the design is well orientated and displaced on site improving overall amenity to its occupants and from the public domain.</p> <p>The proposal is in keeping with the character of surrounding locality and will provide a positive addition to the Heritage Conservation Area. (See 4.1.3 below confirming Council's Heritage Officer's endorsement of the proposal.)</p> | |
| 4.4 | Roof Design and Features | | |
| | <p><i>Rooftop terraces</i></p> <p>i) on stepped buildings only (not on uppermost or main roof)</p> <p>ii) above garages on sloping sites (where garage is on low side)</p> <p><i>Dormers</i></p> <p>iii) Dormer windows do not dominate</p> <p>iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof.</p> <p>v) Multiple dormers consistent</p> <p>vi) Suitable for existing</p> <p><i>Clerestory windows and skylights</i></p> <p>vii) Sympathetic to design of dwelling</p> <p><i>Mechanical equipment</i></p> <p>viii) Contained within roof form and not visible from street and surrounding properties.</p> | <p>The new roof design is a shallow skillion type roof, contemporary in appearance. Its simplified form contrasts with and does not compete with the original hipped roof form, which in turn enhances the original heritage character of the cottage.</p> <p>Solar panels are appropriately positioned - proposed to be located atop the centre single storey portion of the new roof extension and will not be easily visible from either street frontage whilst maximising</p> | Yes, complies |

D24/24

D24/24

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|--|
| | | <p>its performance with good exposure to direct sunlight.</p> <p>A new skylight is proposed to be cut into the western 'hip end' of the original cottage roof to enable natural light into the hallway. It is appropriately located away from street view and therefore has no detrimental effect on the existing heritage character of the original cottage.</p> | |
| 4.5 | Colours, Materials and Finishes | | |
| | <ul style="list-style-type: none"> i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) | <p>Finishes schedule 'DA-28' (Rev C) has been submitted with this application and received by Council on 7 March 2023.</p> <p>The materials are considered and compatible with the existing heritage portion of the dwelling</p> | <p>Yes, complies.</p> <p>Refer to the Referrals Section in Appendix 1.</p> |
| 4.6 | Earthworks | | |
| | <ul style="list-style-type: none"> i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. | <p>Earthworks are limited to the provision of trenches for footings and infrastructure.</p> | <p>Yes, complies</p> |
| 5 | Amenity | | |
| 5.1 | Solar access and overshadowing | | |
| | Solar access to proposed development: | | |
| | <ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight | <p>The site is orientated east to west.</p> <p>The main elevation</p> | <p>Yes, complies</p> |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|----------------------|
| | between 8am and 4pm on 21 June. | faces north where the main living areas are to be located. These spaces will be benefitted by large glazed window and door openings enabling sufficient access to direct sunlight in accordance with DCP requirements. The proposed POS is also orientated to the north of the dwelling and will receive the adequate minimum 3 hrs of direct sunlight in winter | |
| | Solar access to neighbouring development: | | |
| | i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. | Refer Key Issues discussion | Subject to condition |
| 5.2 | Energy Efficiency and Natural Ventilation | | |
| | i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: | The submitted development has been accompanied with a BASIX Certificate | Yes, complies |

D24/24

D24/24

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|-----------------------|
| | <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p> | <p>identifying compliance with thermal and water energy.</p> <p>In addition, the location of windows and doors have been considered as acceptable, addressing the matter of natural light and ventilation.</p> | |
| 5.3 | Visual Privacy | | |
| | Windows | | |
| | <p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm windowsills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p> | See proposal discussion under Key Issues | Subject to conditions |
| 5.4 | Acoustic Privacy | | |
| | <p>i) noise sources not located adjacent to adjoining dwellings bedroom windows</p> <p><i>Attached dual occupancies</i></p> <p>ii) Reduce noise transmission between dwellings by:</p> <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. | <p>The design layout is well considered and locates potential noise generating areas away from neighbouring bedrooms.</p> <p>Proposed living areas and POS are retained on the ground floor and orientated towards the street, whereas "low use" utilitarian rooms are located closest to the neighbour to the south.</p> <p>The design and layout of the first floor addition comprises a private bedroom, a study and low use rooms such as ensuite and</p> | Yes, complies |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|---------------|
| | | walk in robe | |
| 5.5 | Safety and Security | | |
| | <ul style="list-style-type: none"> 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 to obstruct casual surveillance (maintain safe access) | <p>The proposed development is considered to satisfy the requirements of the CPTED, and the overall design allows for passive surveillance of the street.</p> <p>The proposal maintains the existing front door entrance facing Young Street where three (3) bedrooms are located and overlook the intersection of Young and Middle Streets.</p> <p>The proposed first floor addition incorporates a Master bedroom fronting Middle Street which is benefitted by it's higher elevation enabling the opportunity for passive surveillance by looking over and past the perimeter landscaping.</p> | Yes, complies |
| 5.6 | View Sharing | | |
| | <ul style="list-style-type: none"> 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) | <p>It is noted that the proposed development is well below the maximum permissible FSR for this site, compliant with overall building envelope controls and landscape requirements.</p> <p>The first floor setback does not encroach onto the minimum side setback controls permissible for the site.</p> | Yes, complies |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|---------------|
| | | <p>Perceived visual bulk and scale is appropriately displaced on site, respecting the Heritage character of the original cottage that is supported by Council's Heritage Officer (see comments below under 4.1.3).</p> <p>The proposal does not unreasonably affect the existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas in the vicinity of the site.</p> | |
| 6 | Car Parking and Access | | |
| 6.1 | Location of Parking Facilities: | | |
| | <ul style="list-style-type: none"> i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: <ul style="list-style-type: none"> - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces) | <p>Proposed driveway for one (1) vehicular access is appropriately located at the Middle Street frontage at the far north-western end of the site minimising impacts on the heritage nature of the front cottage</p> | Yes, complies |
| 6.2 | Parking Facilities forward of front façade alignment (if other options not available) | | |
| | <ul style="list-style-type: none"> i) The following may be considered: <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level | <p>The proposed parking facility includes a single car space occupying the undercroft of the new two storey western extension and fronts Middle Street.</p> <p>Landscaping is incorporated into</p> | Yes, complies |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|--|-----------------------------------|
| | <ul style="list-style-type: none"> - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) | <p>the frontage by way of wheel strips with pebble surface finish.</p> <p>There is no alternative location and is appropriately distanced from the existing heritage cottage and curtilage that characterises the Young Street end.</p> <p>The location is a minor part of the overall Middle Street frontage (30.175m) and therefore will not adversely affect the visual amenity of the overall street appearance.</p> | |
| 6.3 | Setbacks of Parking Facilities | | |
| | <ul style="list-style-type: none"> i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing | <p>Proposed Middle Street (frontage) setback = 1.92m</p> <p>Proposed setback (west) = 900mm</p> <p>Is compatible with the existing parking development pattern of Middle Street where nearby hardstands are positioned forward of the building.</p> <p>The carport is integrated with the overall design of the building façade and therefore compatible with the streetscape.</p> | Subject to side setback condition |
| 6.4 | Driveway Configuration | | |
| | <p>Maximum driveway width:</p> <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m <p>Must taper driveway width at street boundary and at property boundary</p> | 3m wide single driveway proposed | Yes, complies |
| 6.6 | Carport Configuration | | |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|---|
| | i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to dwelling iii) 3m maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) front gate allowed (minimum 30% open) viii) Gate does not open to public land | <p>The proposed carport is to be integrated into the building envelope and occupy the under-croft space beneath the master bedroom part of the first floor addition.</p> <p>The carport measures 3.76m wide x 5.410m in length.</p> <p>The location is in general alignment with the Middle Street dwelling frontage.</p> <p>The carport is supported by simple posts at the front two corners and mostly open to the western side and Middle street frontage.</p> <p>Despite strict the non-compliance in width, the condition stipulated below regarding the requirement for compliance with the minimum 1.2m side setback will reduced the width to 3.47m.</p> | Yes, on merit |
| 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 | Existing timber picket and paling fencing to remain. It is noted that an opening with gates would be required to provide vehicular access to the new parking structure. | Yes, complies. A non-standard condition shall be imposed to ensure any new gates are compatible with the existing northern fencing. |
| 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 | Existing, no changes proposed | Yes, complies |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|-------------------------------|---------------|
| | <p>and evenly distributed</p> <p>iii) 1800mm max solid front fence permitted in the following scenarios:</p> <ul style="list-style-type: none"> - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> <p>iv) 150mm allowance (above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p> | | |
| 7.3 | Side and rear fencing | | |
| | <p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p> | Existing, no changes proposed | Yes, complies |
| 7.6 | Air conditioning equipment | | |
| | <p>i) Minimise visibility from street.</p> <p>ii) Avoid locating on the street or laneway elevation of buildings.</p> <p>iii) Screen roof mounted A/C from view by parapet walls, or within the roof form.</p> <p>iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.</p> | No units/equipment proposed. | N/A |

Responsible officer: Jose Serrao, Environmental Planning Officer

File Reference: DA/75/2023

D24/24

Development Consent Conditions



| | |
|------------------------|---|
| Folder /DA No: | DA/75/2023 |
| Property: | 22 Young Street, RANDWICK NSW 2031 |
| Proposal: | Alterations and additions to existing dwelling including rear extension (Heritage Item & Heritage Conservation Area). |
| Recommendation: | Approval |

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

| Plan | Drawn by | Dated |
|--|-----------------|--------------|
| DA-03 / Rev C – Site Plan | Bentley Design | 13/12/2021 |
| DA-04 / Rev C – Roof Plan Demolition | Bentley Design | 13/12/2021 |
| DA-05 / Rev C – Ground Floor Demolition Plan | Bentley Design | 13/12/2021 |
| DA-06 / Rev C – East Elevation Demolition | Bentley Design | 13/12/2021 |
| DA-07 / Rev C – West Elevation Demolition | Bentley Design | 13/12/2021 |
| DA-08 / Rev C – South Elevation Demolition | Bentley Design | 13/12/2021 |
| DA-09 / Rev C – North Elevation Demolition | Bentley Design | 13/12/2021 |
| DA-10 / Rev C – Ground Floor Plan | Bentley Design | 13/12/2021 |
| DA-11 / Rev C – Upper Level Plan | Bentley Design | 13/12/2021 |
| DA-12 / Rev C – Roof Plan | Bentley Design | 13/12/2021 |
| DA-13 / Rev C – Section A | Bentley Design | 13/12/2021 |
| DA-14 / Rev C – Section B | Bentley Design | 13/12/2021 |
| DA-15 / Rev C – East Elevation | Bentley Design | 13/12/2021 |
| DA-16 / Rev C – North Elevation | Bentley Design | 13/12/2021 |
| DA-17 / Rev C – South Elevation | Bentley Design | 13/12/2021 |
| DA-18 / Rev C – West Elevation | Bentley Design | 13/12/2021 |

| BASIX Certificate No. | Dated |
|------------------------------|--------------|
| No. A449743_02 | 23/02/2023 |

Amendment of Plans & Documentation

- The approved plans and documents must be amended in accordance with the following requirements:
 - The gross floor area of the first floor level must be reduced by deleting the entire ensuite including the associated window and door. The first floor layout may be re-configured within the reduced floor area to allow for the provision of an ensuite.
 - The roof eaves/roof overhangs to the south of the first floor level and above the living room window (W01) at the ground floor level must be deleted.

- c. The entire ground and first floor levels must provide a minimum setback of 1.2m from the western boundary.
- d. Windows W16 and W15 must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be provided with translucent, obscured, frosted, or sandblasted glazing below this specified height.
- e. Window W06 and W08 must be provided with translucent, obscured, frosted, or sandblasted glazing to the whole opening.
- f. Any new gates addressing Middle Street must feature materials/colours that match or are compatible with the existing northern boundary fencing.
- g. The colours, materials and finishes of the external surfaces to the extension are to be in accord with the proposal submission as detailed in the External Finishes and Material Specifications prepared by Schulz Residence and Bentley Design and received by Council on 24 May 2022. They are to remain compatible with the existing built character of surrounding buildings, and presented in a generally neutral format.

Any amended drawings/documentation to satisfy the above requirements must be submitted to Council's Coordinator Development Assessment/Manager Development Assessment for review and approval.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a 'Construction Certificate' by either Randwick City Council or an Accredited Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be submitted with the construction certificate application.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent 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.

Section 7.12 Development Contributions

- 4. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,486,671.00 the following applicable monetary levy must be paid to Council: \$14,866.17.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Long Service Levy Payments

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

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

Security Deposit

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

- \$3000.00 - Damage / Civil Works Security Deposit

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

The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works. To obtain a refund of relevant deposits, a *Security Deposit Refund Form* is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.

Design Alignment Levels

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

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

The design alignment levels at the property boundary as issued by Council and their relationship to the 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.

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881.

8. The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of **\$176** (as of 1st July 2022). This amount is to be paid prior to a construction certificate being issued for the development.

Carspace Design

9. The level of the carspace shall generally be provided at or above RL 41.98 AHD being the level of the 5% AEP (1 in 20yr) flood level in accordance with Council's flood controls specified in Table B Section 5.5 Part B8 of Randwick DCP 2013. Details of compliance are to be included in the construction certificate documentation.

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Stormwater Drainage

11. Surface water runoff from building work and structures must satisfy the following requirements (as applicable), to the satisfaction of the Certifier and details are to be included in the construction certificate:-

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

Sydney Water

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

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

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

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

Sydney Water's **Tap in™** online service is available at:
<https://www.sydneywater.com.au/tapin>

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

Street/Tree Protection Measures

14. To ensure retention of the small, recently planted street tree on Council's Middle Street verge, to the west of the tram ramp and No Stopping sign in good health, the following measures are to be undertaken:

- a. It must be physically protected by installing evenly spaced star pickets at a setback of **1500mm** to its east and west, matching up with the kerb to its north and public footpath to its south, to which, safety tape/para-webbing/shade cloth or similar shall then be permanently attached to completely enclose the tree/s for the duration of works.

- b. This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION, DO NOT REMOVE".
- c. Within the TPZ there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.
- d. The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.

Protection of neighbour's tree

15. To also ensure retention of the *Jacaranda mimosifolia* (Jacaranda) that is located beyond the southwest site corner, wholly on the adjoining private property at no.24, close to the common boundary in good health, the following measures are to be undertaken:
 - a. All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk and canopy to be clearly and accurately shown in relation to the development site and new works.
 - b. All Construction Certificate plans must show that the footprint of the rear extension will be consistent with the rev C set of architectural plans by Bentley Design dated 02/03/22, with details/notations to be including showing that the southern side setback will be retained as undisturbed deep soil, and at existing ground levels.
 - c. Any excavations associated with the installation of new services, pipes, stormwater systems or similar in the southern site setback must be offset a minimum distance of **2 metres** from its trunk, with the Principal Certifier to ensure that all Services Plans are both prepared and then installed on-site to comply with this requirement.
 - d. Prior to commencement, ground protection comprising strapped together rumble boards, sheets of plywood or similar must be provided in the 1200mm southern side setback, for a radius of **2 metres** from its trunk, and must then remain in place for the duration of works, until completion.
 - e. To prevent soil/sediment being washed over its root system, erosion control measures must also be provided at ground level along the southern site boundary.
 - f. There is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble in the southern side setback, within a radius of **2 metres** of its trunk, with all Site Management Plans to comply with these requirements.
 - g. The Principal Certifier must ensure/document that all initial excavations for footings or similar within a **2 metre** radius of its trunk are performed by hand, and where roots are encountered which are in direct conflict with the approved works, they may be cut cleanly using only hand-held tools, not machinery, with the affected area to then be backfilled with clean site soil as soon as practically possible.
 - h. Any new common boundary fencing, within a radius of **2 metres** of its trunk can only be a system which is supported on localised pads, not continuous strip footings, with details confirming compliance to be shown on the Construction Certificate plans.
 - i. The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.

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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

16. 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.

Structural Adequacy

17. Certificate of Adequacy supplied by a *professional engineer* shall be submitted to the *Certifier (and the Council, if the Council is not the Certifier)*, certifying the structural adequacy of the existing structure to support the storey/upper floor additions.

Driveway Design

18. 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.

BASIX Requirements

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity.

Building Certification & Associated Requirements

20. The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):

- a) a *Construction Certificate* must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

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

Home Building Act 1989

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

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

Dilapidation Reports

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

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

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

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

Construction Noise & Vibration Management Plan

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

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

Demolition Work Plan

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

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

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

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

Demolition & Construction Waste

25. A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development, to the satisfaction of Council.

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

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's website at https://www.randwick.nsw.gov.au/data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf or contact Council Development Engineer on 9093-6881/9093-6923.

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

Public Utilities

26. A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.

27. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

NOTE: The existing overhead power feed between the mains distribution pole in Middle Street and the development site shall remain or be relocated to an underground (UGOH) connection. No Permanent Private Poles are to be installed. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out any required works to the requirements and satisfaction of Ausgrid and at no cost to Council.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity during construction.

Unexpected Finds

28. In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act.

Site Signage

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

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

Restriction on Working Hours

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

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

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

Demolition Work

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

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

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

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

Public Safety & Site Management

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

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

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

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

- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.

- i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.
- j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

Building Encroachments

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

Road / Asset Opening Permit

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

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

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

Ausgrid Power Feed Connection

35. Should the existing overhead power feed from the Ausgrid Power Pole need to be reconnected to the site during any stage of building works it is to comply with either of the following methods:

- a) From the power pole directly to the façade of dwelling/s, similar to the existing connection, to the satisfaction of Ausgrid
- b) Relocate the existing overhead power feed from the distribution pole in the street to the development site via an underground (UGOH) connection (No Private Pole is to be provided). These works are to be to Ausgrid requirements.

Note: A Private Power Pole at the front of the site is not permitted. The applicant is to liaise with an Ausgrid Accredited Service Provider to carry out the works as mentioned above at their own expense to the satisfaction of Ausgrid and the Principal Certifier.

Vegetation

36. Due to their small size and insignificance, no objections are raised to removing any vegetation within this development site where needed to accommodate the approved works as shown, including those in the front and rear setbacks, as well as the row of screening shrubs along the northern side boundary, subject to providing landscaped/deep soil areas consistent with the Landscape Plan, dwg DA-20.

Pruning of neighbours tree

37. Permission is granted for the minimal and selective pruning of only those lower growing branches/leader from the northern aspect of the *Jacaranda mimosifolia* (Jacaranda) that is

located wholly in the rear setback of the adjoining private property to the south, no.24, close to the common boundary, only where they overhang into this development site and need to be pruned to avoid damage to the tree or interference with the approved works.

38. This approval does not imply any right of entry onto a neighbouring property nor does it allow pruning beyond a common boundary; however, where such measures are desirable in the best interests of correct pruning procedures, and ultimately, the ongoing health of the tree, the applicant must negotiate with the neighbour/tree owner for access to perform this work.
39. All pruning can only be undertaken by a Practicing Arborist who holds a minimum of AQF Level III in Arboriculture and to the requirements of Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and NSW Work Cover Code of Practice for the Amenity Tree Industry (1998).

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'.

Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.

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

Occupation Certificate Requirements

40. 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

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

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

Council's Infrastructure, Vehicular Crossings, street verge

42. The applicant must meet the full cost for a Council approved contractor to:
- a) Construct a concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site to Council's specifications and requirements.
43. 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.
44. 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.

45. That part of the nature-strips upon either of Council's footways which are damaged during the course of the works shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.

OPERATIONAL CONDITIONS

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

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

Use of Premises

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

External Lighting

47. 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

48. 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*.

D24/24