

Randwick Local Planning Panel (Electronic) Meeting

Thursday 11 April 2024



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Team on Thursday, 11 April 2024.

Declarations of Pecuniary and Non-Pecuniary Interests

General Reports

Nil

Development Application Reports

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Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D27/24

Subject: 132 Mount Street, Coogee (DA/135/2023) - DEFERRED ITEM







Executive Summary

Proposal:	Partial demolition of front façade with new roof, basement garage, replacement of rear pergola and first floor level addition to existing semi-detached dwelling.
Ward:	East Ward
Applicant:	Edifice Design Pty Ltd
Owner:	Mr C S Riethmuller and Mrs R Riethmuller
Cost of works:	\$1,189,925.00
Reason for referral:	A neighbouring objector is an employee of Randwick City Council.

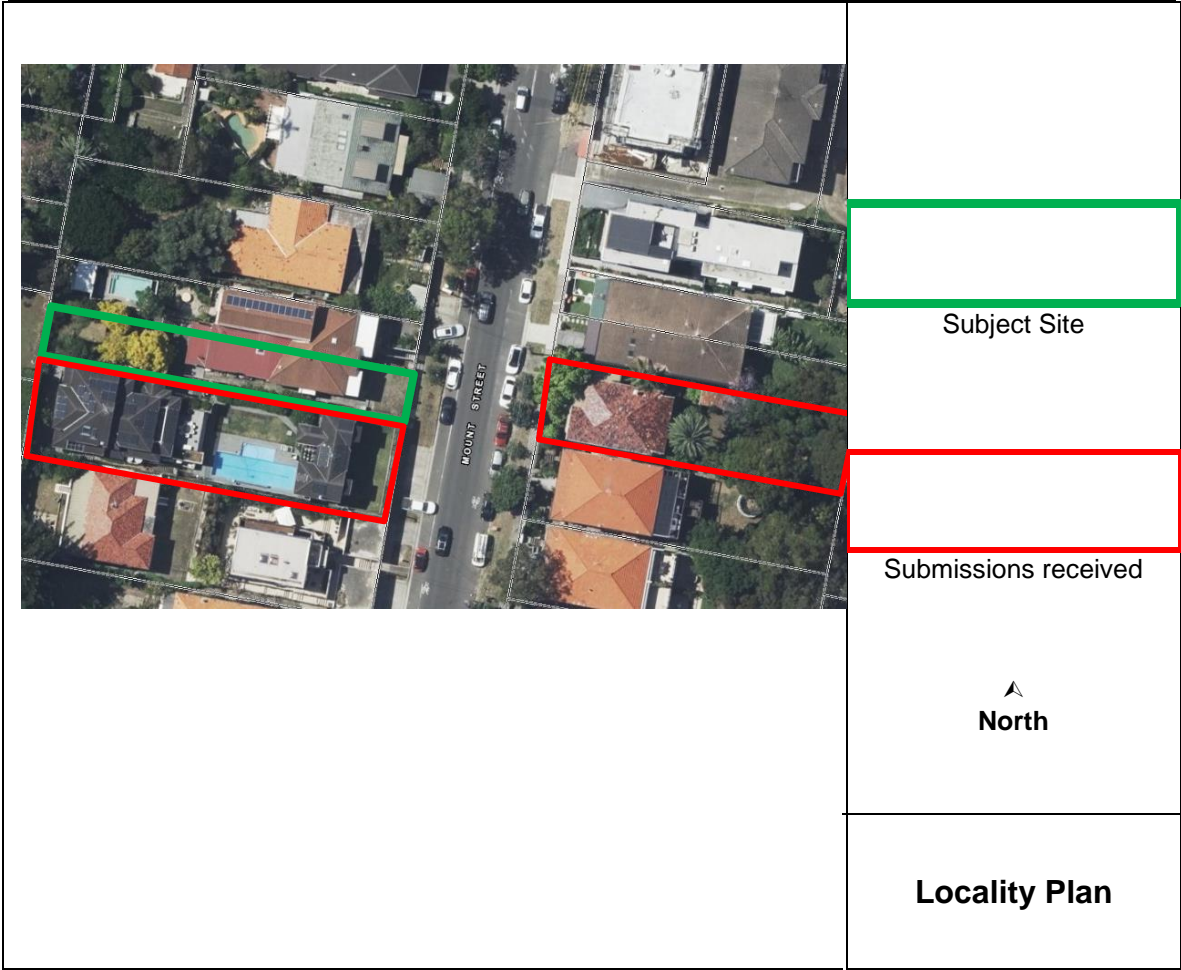
Recommendation

That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 135/2023 for partial demolition of front façade with new roof, basement garage, replacement of rear pergola and first floor level addition to existing semi-detached dwelling, at No. 132 Mount Street, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.   Draft RLPP Conditions of Consent - DA/135/2023 - 132 Mount Street, Coogee
2.   RLPP Meeting Resolution - 14 December 2023
3.   RLPP Report - 14 December 2023

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1. Executive summary

The subject Development Application (DA) was considered at the Randwick Local Planning Panel (RLPP) meeting on 14 December 2023. At the meeting, the Panel deferred the application under the following resolution:

The RLPP defers consideration of the Development Application No. 135/2023 for the partial demolition of front façade with new roof, basement garage, replacement of rear pergola and first floor level addition to existing semi-detached dwelling, at No. 132 Mount Street, Coogee, due to insufficient information in relation to the feasibility of retaining the existing walls located above the garage and associated excavations. The Panel also notes the requirement for owners consent from the adjoining semi-detached dwelling (No. 130 Mount Street) where demolition works are proposed.

The Panel requests a structural engineer’s report on the feasibility of the proposed excavation and construction works, and the written consent of the owners of No. 130 Mount Street.

A supplementary report is to be submitted to an electronic RLPP meeting for determination of the application. That report is also to address the feasibility of only losing 1 on-street car parking space.

Additional information has been prepared by the applicant and received by the Council, which includes the amendments that are outlined in Section 2 below. The information provided by the applicant has adequately addressed the reasons for deferral by the Panel.

2. Amendments

The amended plans submitted by the applicant and prepared by Edifice Design dated 6 March 2024, are outlined below:

- Amended garage floor plan (Drawing DA2, Rev B) including increased setback to the northern boundary, and detailing dish drains located behind a false wall as per stormwater plan detail, partial demolition of pedestrian pathway for proposed driveway, and partial demolition of the existing retaining wall at the front boundary.
- Internal reconfiguration of the basement level.
- Amended lower ground plan (Drawing DA3, Rev B) detailing the partial retaining wall removal between the site and 130 Mount Street and at the east/front boundary.
- Amended ground floor plan (Drawing DA4, Rev B) overlaying the partial demolition of structures and amendments to the lift and stairs.
- Amended section plans (Drawing DA11, DA12 & DA13, Rev B) with structural features shown.

An additional garage floor plan has been provided that shows the proposed driveway, and location of existing driveways on the adjoining properties at 130 & 134 Mount Street. The plan outlines car spaces to demonstrate a reduction in one (1) on-street parking space but provision of two (2) off-street parking spaces, resulting in a net-reduction in on street parking required by one (1) space.

The amended plans would result in a similar or lesser impact than that originally proposed, and therefore in accordance with Council's Community Engagement Strategy, re-notification of the plans was not required in this instance.

The additional information includes written consent from the owners of the north adjoining property at 130 Mount Street. A Structural Report has been prepared by Fred Barros Engineering as well as a letter from the applicant providing a history of previous traffic incidents involving the applicant's vehicles and adding context to the applicant's reasoning for proposing a two-car garage for the safety of their vehicles.

The amended plans and supporting documents have been referred to the Council's Engineering Unit, who have provided updated referral comments, summarised below in Section 3. The recommended conditions have been incorporated within the Conditions of Consent.

3. Internal Referral Comments

As a result of the amendments to the plans and additional information that include structural elements and partial demolition of retaining walls, the application was referred to the Council's engineering unit which provided the following comments:

Engineering Comments

The RLPP defers consideration of the Development Application No. 135/2023 for the partial demolition of front façade with new roof, basement garage, replacement of rear pergola and first floor level addition to existing semi-detached dwelling, at No. 132 Mount Street, Coogee, due to insufficient information in relation to the feasibility of retaining the existing walls located above the garage and associated excavations. The Panel also notes the requirement for owners consent from the adjoining semi-detached dwelling (No. 130 Mount Street) where demolition works are proposed.

The Panel requests a structural engineer's report on the feasibility of the proposed excavation and construction works, and the written consent of the owners of No. 130 Mount Street.

- 1) *The adjoining neighbour has signed a consent letter (The Panel will have to decide if this is sufficient)*
- 2) *A Structural Eng's Report has been submitted (We are not qualified to review a Structural Engs Report / Sign off on it) All I can suggest is a condition may be included that states the works are to be designed to a qualified Structural Engineers requirement*

so as to ensure no impact on the foundations/common wall with adjoining property at No 130 Mount Street.

Engineering/Parking Comments

'Currently it can be said 2-3 on-street parking spaces are provided looking at Google Maps Street view (Refer to Feb 2022 & Oct 2020 for best examples).

The 2 or 3 spaces are determined by the car sizes which park on the street. Post development the plans show a 5.00m wide Council driveway with an on-street car space length of 5.40m which is located to the north of the proposed Council driveway and a small car space length of 4.00m to the south of the Council driveway.

It can be argued 1 on-street car space length will be lost due to the 5.00m wide Council driveway however the development allows for 2 cars that would normally be parked on the street to be parked off the street.

There are no examples of splayed Council driveways along this section (western side) of Mount St however should the Panel wish they can recommend a 4.00m wide layback be centrally located (reduced from 5.00m) opposite the garage door opening with a splayed concrete driveway slab.

The benefit of this would be to increase the on-street car spaces either side of the Council driveway from 4.00m to 4.50m and 5.40m to 5.90m.'

The conditions recommended by Council's Engineers have been incorporated into the conditions of consent, which are provided below in this report.

4. Response to Deferral Resolution

The applicant submitted additional information including amended plans on 7 March 2024. The following comments are provided in response to the Panel's resolution:

1. The RLPP defers consideration of the Development Application No. 135/2023 ... due to insufficient information in relation to the feasibility of retaining the existing walls located above the garage and associated excavations. The Panel also notes the requirement for owners consent from the adjoining semi-detached dwelling (No. 130 Mount Street) where demolition works are proposed.

Planning Comment: The applicant has submitted amended plans which detail the portions of the retaining wall along the east/front boundary as well as a portion of the retaining wall between the site and the north adjoining 130 Mount Street. This is shown in red outline on the floor plans and annotated to clarify the extent of retaining wall removal. New slab and footings are proposed on the section plans and detailed on marked plans in addendum to the structural report. Written consent signed by the owners of the north adjoining 130 Mount Street has also been submitted with the additional information.

2. The Panel requests a structural engineer's report on the feasibility of the proposed excavation and construction works, and the written consent of the owners of No. 130 Mount Street.

Planning Comment: The applicant has provided a Structural Engineering/methodology report which provides recommendations including mark-ups on the architectural plans to detail how the proposed works will be designed to ensure the stability of the party wall between the site and 130 Mount Street is not undermined. Additionally, the Council's development engineers recommend a condition prior to the issue of a Construction Certificate (CC) that the works are to be designed by a suitably qualified structural engineer to prevent any impact upon the party wall between the site and 130 Mount Street. This condition has been included in the conditions of consent as attached to this report.

3. A supplementary report is to be submitted to an electronic RLPP meeting for determination of the application. That report is also to address the feasibility of only losing 1 on-street car parking space.

Planning Comment: The amended plans submitted include a garage floor plan showing the car spaces proposed on the site, and the impact of the proposed driveway on on-street parking. The floor plan shows a driveway width of 5m that widens to 5.36m at the kerb, removing one (1) on-street parking space from Mount Street. The double garage is shown to provide two (2) off-street parking spaces. It is noted that the distance between the two adjoining laybacks is approximately 14.75m which would legally accommodate two (2) on-street parking spaces, with the proposed development resulting in a loss of one parking space. However, despite the reduction of one on-street space, the proposal provides a net positive of two (2) on-site parking spaces.

A supplementary letter has also been provided from the owners of 132 Mount Street detailing a history of two car accidents (one in 2018, the second in 2022) which resulted in damage to their vehicles. This supplementary letter concludes these incidents as a key reason for seeking a double garage to enable safe storage of their vehicles.

Additional Planning Comments:

It is noted that the amendments made by the applicant have not altered the site's compliance with any key development standards, controls, or provision of the Randwick Local Environmental Plan 2012 or the Randwick Development Plan 2013.

Of note, Council's Engineering Unit in their referral provides the option to the panel to condition the reduction in driveway width from 5m to 4m by removing the splay should the Panel consider the additional length between driveways beneficial for on-street parking.

5. Amended Conditions

The amended proposal has resulted in an additional condition of consent being recommended as well as an alternative condition of consent being present for the Panel's consideration below:

Standard Recommended Condition:

Council's Infrastructure, Vehicular Crossings, street verge

8. *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.*

Note: The northern edge of the Council driveway is to be located a minimum 1.60m's from the outside edge of the trunk of the Council Street Tree.

Should the Panel wish to reduce the width of the Council driveway at the kerb line, to assist with on-street parking lengths with particular regards to potentially facilitating a small car, then the Council driveway condition could be amended to read as follows:

Council's Infrastructure, Vehicular Crossings, street verge

8. *The applicant must meet the full cost for a Council approved contractor to:*

- a) *Construct a centrally located 4.00m wide layback at kerb opposite the vehicular entrance to the site with a splayed concrete vehicular crossing that is 5.00m wide at the Council footpath. The works are to be to Council's specifications and requirements.*

6. Conclusion

That the application for partial demolition of front façade with new roof, basement garage, replacement of rear pergola and first floor level addition to existing semi-detached dwelling at 132 Mount Street, Coogee be approved (as amended, and 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.

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- 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 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 proposal does not result in any adverse amenity impacts to neighbouring sites.
- The development enhances the visual quality of the public domain/streetscape.

Responsible officer: GAT & Associates, Town Planners

File Reference: DA/135/2023

RLPP Draft Development Consent Conditions



Folder /DA No:	DA/123/2023
Property:	132 Mount Street, Coogee
Proposal:	Partial demolition of front façade with new roof, basement garage, replacement of rear pergola and first floor level addition to existing semi-detached dwelling.
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
DA0 – Cover Sheet	Edifice Design Pty Ltd	06.03.2024	07.03.2024
DA1 – Site/Analysis plan	Edifice Design Pty Ltd	06.03.2023	14.04.2023
DA2 - Garage floor plan	Edifice Design Pty Ltd	06.03.2024	07.03.2024
DA3 - Lower ground floor plan	Edifice Design Pty Ltd	06.03.2024	07.03.2024
DA4 – Ground floor plan	Edifice Design Pty Ltd	06.03.2024	07.03.2024
DA5 – First floor plan	Edifice Design Pty Ltd	06.03.2024	07.03.2024
DA6 – Roof Plan	Edifice Design Pty Ltd	06.03.2023	14.04.2023
DA7 - East elevation Streetscape	Edifice Design Pty Ltd	06.03.2023	14.04.2023
DA8 - South elevation	Edifice Design Pty Ltd	06.03.2023	14.04.2023
DA9 – West elevation	Edifice Design Pty Ltd	06.03.2023	14.04.2023
DA10 - North elevation	Edifice Design Pty Ltd	06.03.2023	14.04.2023
DA11 - Section A-A	Edifice Design Pty Ltd	06.03.2024	07.03.2024
DA12 - Section B-B	Edifice Design Pty Ltd	06.03.2024	07.03.2024
DA13 – Section C-C	Edifice Design Pty Ltd	06.03.2024	07.03.2024
DA14 – Finishes Schedule	Edifice Design Pty Ltd	06.03.2023	14.04.2023
DA15 – GFA Calculation	Edifice Design Pty Ltd	06.03.2024	07.03.2024
DA16 – Landscape Calculation	Edifice Design Pty Ltd	06.03.2024	07.03.2024

Reports	Dated	Received by Council
BASIX Certificate prepared by Drawable	10.02.2023	14.04.2023

– Certificate Number A487896		
Report on Geotechnical Investigation	12.04.2023	14.04.2023
Methodology Report	04.03.2024	07.03.2024

Boundary Fencing

2. Any replacement of side fencing is to be depicted on construction certificate plans, and must not exceed 1.8m in height from Natural Ground Level. The side fencing when passing the approved front building line must taper down to the front fence line.

Amendment of Plans and Documentation

3. The approved plans and documents must be amended in accordance with the following requirements:
- Translucent or obscured glazing is to be applied to Windows W6 and W7 on the south elevation up to a height of 1.6m from the finished floor level (The use of film applied to the clear glass pane is unacceptable).

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

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

Section 7.12 Development Contributions

6. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,189,925 the following applicable monetary levy must be paid to Council: \$11,899.25 .

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

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

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works.

Council's Infrastructure, Vehicular Crossings, street verge

8. 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.

Note: The northern edge of the Council driveway is to be located a minimum 1.60m's from the outside edge of the trunk of the Council Street Tree.

Security Deposit

9. 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*.

- \$2000.00 - 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.

Sydney Water Requirements

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

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

The [Tap in™](#) service provides 24/7 access to a range of services, including:

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

Sydney Water's [Tap in™](#) online service is available at:

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

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

Design Alignment levels

11. The design alignment level (the finished level of concrete, paving or the like) at the property boundary for the garage door entrance shall be as follows:

75mm below the existing Council footpath level at the garage door entrance.

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

Note Council Footpath Design: The Council footpath in front of the garage is to be lowered to improve driveway gradients from the kerb line in Mount St. The footpath on either side of the garage door opening (in front of the site) is to be regraded down to the new footpath level in front of the garage door opening.

12. The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of **\$183**. This amount is to be paid prior to a construction certificate being issued for the development.

Excavation Earthworks and Support of Adjoining Land

13. Details of proposed excavations and support of the adjoining land and buildings are to be prepared by a suitably qualified structural engineer and be included in the construction certificate, to the satisfaction of the appointed Certifier.

Excavation Earthworks and Support of Adjoining Land

14. 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: of proposed excavations and support of the adjoining land and buildings are to be prepared and be included in the construction certificate, to the satisfaction of the appointed 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.

Stormwater Drainage

15. Surface water/stormwater must be drained and discharged to the street gutter in front of 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.

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

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

BASIX Requirements

17. 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

18. 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.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY 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.

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Building Certification and Associated Requirements

19. The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):

- a) a *Construction Certificate* must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

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

Dilapidation Reports

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

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

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.

Construction Site Management Plan

22. 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.

Demolition and Construction Waste Management Plan (WMP)

23. 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.

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 Plan

25. 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

26. 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

27. 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

28. 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.

29. 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 Inman 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.

Street Tree Protection

30. Prior to the commencement of any demolition/building works the applicant must provide protective fencing around the Council Street Tree located in front of the pedestrian entrance to the site. The fencing is to remain for the duration of the building works. The Principal Certifier is to ensure compliance with this requirement.

Road / Asset Opening Permit

31. 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 from Power Pole

32. 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 the dwelling, similar to the existing connection, to the satisfaction of Ausgrid

OR

- 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.

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

33. 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:

- showing the name, address and telephone number of the principal certifier for the work, and

- showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and stating that unauthorised entry to the work site is prohibited.

The sign must be—

- a) maintained while the building work is being carried out, and
- b) removed when the work has been completed.

This section does not apply in relation to—

- a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

Building & Demolition Work Requirements

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

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

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

Noise & Vibration

35. 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

36. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:

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

Notes:

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

Overhead Hoardings

37. 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.

Public Safety & Site Management

38. 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

39. 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 During Demolition Work

40. 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

41. 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

42. 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

43. 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

44. 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

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

Road / Asset Opening Permit

46. 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 from Power Pole

47. 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 the dwelling, similar to the existing connection, to the satisfaction of Ausgrid

OR

- 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.

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-Dilapidation Reports

48. On completion of the development the subject of this consent and prior to the issue of the *Occupation Certificate*, a post-dilapidation report is to be prepared by an appropriately qualified consultant and is to be provided to the *Principal Certifier* (and a copy to Council if it is not the *Principal Certifier*) certifying

- whether any damage to adjoining properties has occurred as a result of the development;
- the nature and extent of any damage caused to the adjoining property as a result of the development;
- the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
- the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

A copy of the report and certification required by this condition must be submitted to Council with the *Final Occupation Certificate*. All costs incurred in achieving compliance with this condition shall be borne by the developer

Occupation Certificate

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

Structural Certification

50. 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

51. A *section 73 Compliance Certificate*, under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web

site www.sydneywater.com.au > Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

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

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

BASIX Requirements & Certification

52. 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

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

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

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

Noise Control Requirements & Certification

54. 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*.

55. A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from the development (and plant and equipment) satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority (EPA) Noise Policy for Industry and Council's development consent.

A copy of the report must be provided to the *Principal Certifier* and Council prior to an occupation certificate being issued.

Council's Infrastructure, Vehicular Crossings, street verge

56. 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.

Note: The northern edge of the Council driveway is to be located a minimum 1.60m's from the outside edge of the trunk of the Council Street Tree.

- b) Reconstruct the Council footpath along the site frontage to meet the lowered Council footpath level at the garage entrance. The works are to be to Council's specifications and requirements.

Note: The Council footpath either side of the garage entrance is to be regraded to the new Council footpath level in front of the garage..

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57. 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.
58. 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:
- 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.
 - 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.
 - 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.
59. That part of the naturestrip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicant's expense.
- Undergrounding of Power from Ausgrid Power Pole**
60. Prior to the issuing of an Occupation Certificate the Principal Certifier shall ensure that all power supply to the development site has been provided with either of the following methods:
- From the power pole directly to the façade of the dwelling, similar to the original connection, to the satisfaction of Ausgrid
- OR
- 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.
- Any 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

61. 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

62. 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 – Noise Levels

63. The operation of all plant and 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.

In this regard, the operation of the plant and equipment shall not give rise to an LAeq, 15 min sound pressure level at any affected premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.

Air Conditioners

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

- ☐ before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or
- ☐ before 7.00am or after 10.00pm on any other day.

Rainwater Tanks

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

- ☐ before 8.00am or after 8.00pm on weekends or public holiday; or
- ☐ before 7.00am or after 8.00pm on weekdays.

Use of parking spaces

66. 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.

Communication Dishes and Aerial Antennae

67. Provide a maximum of one (1) communication dish and one (1) antenna in respect to the development controls of section 7.7 of part C1 of the Randwick DCP 2013.

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FOR ACTION

RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

14/12/2023

TO: PA to Manager Development Assessment (Halcro, Andrea)

Subject: 132 Mount Street, Coogee (DA/135/2023)
Target Date: 4/01/2024
Notes:
Document No.: D05112615
Report Type: Report
Item Number: D87/23

RESOLUTION:

The RLPP defers consideration of the Development Application No. 135/2023 for the partial demolition of front façade with new roof, basement garage, replacement of rear pergola and first floor level addition to existing semi-detached dwelling, at No. 132 Mount Street, Coogee, due to insufficient information in relation to the feasibility of retaining the existing walls located above the garage and associated excavations. The Panel also notes the requirement for owners consent from the adjoining semi-detached dwelling (No. 130 Mount Street) where demolition works are proposed.

The Panel requests a structural engineer's report on the feasibility of the proposed excavation and construction works, and the written consent of the owners of No. 130 Mount Street.

A supplementary report is to be submitted to an electronic RLPP meeting for determination of the application. That report is also to address the feasibility of only losing 1 on-street car parking space.

REASON:

The Panel has visited the site, considered the written submissions and reviewed the assessment report prepared by Council officers that addresses the relevant matters detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979, as amended. The Panel requires additional information as detailed in the above resolution before it is able to determine the application.

CARRIED UNANIMOUSLY.

[Open Item in Minutes](#)

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Randwick Local Planning Panel

14 December 2023

Development Application Report No. D87/23

Subject: 132 Mount Street, Coogee (DA/135/2023)

Executive Summary

Proposal: Partial demolition of front façade with new roof, basement garage, replacement of rear pergola and first floor level addition to existing semi-detached dwelling.

Ward: East Ward

Applicant: Edifice Design Pty Ltd

Owner: Mr C S Riethmuller and Mrs R Riethmuller

Cost of works: **\$1,189,925.00**

Reason for referral: A neighbouring objector is an employee of Randwick City Council

Recommendation

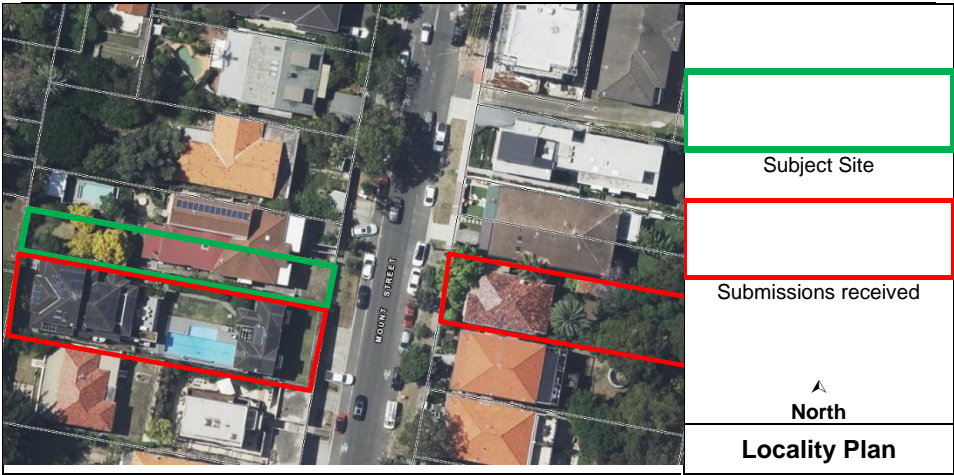
- A. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 135/2023 for *“Partial demolition of front façade with new roof, basement garage, replacement of rear pergola and first floor level addition to existing semi-detached dwelling”*, at No. 132 Mount Street, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1. RLPP Dev Consent Conditions (dwelling dual occ) - DA/135/2023 - 132 Mount Steet, Coogee

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) at the request of the Acting General Manager as a neighbouring objector is an employee of Randwick City Council.

The proposal seeks development consent for alterations and additions including partial demolition of the front façade with a new roof, basement garage, pergola replacement, and first-floor additions.

During the notification period, submissions were received from three neighbouring property owners/residents raising issues relating to privacy, solar access, damage to neighbouring properties during construction and loss of on-street parking.

The key issues associated with the proposal relate to:

- Overshadowing
- Privacy
- Excavation

The proposal is recommended for approval subject to conditions of consent.

2. Site Description and Locality

The subject site is known as 132 Mount Street, Coogee, and is legally described as Lot A in DP 438898. The site is 479m², is regular in shape, and has an 8.61m frontage to Mount Street to the east, and a site depth of 56.085m

The site contains a semi-detached part one/ part two-storey brick dwelling with a tile roof construction.

The site slopes from the west/rear boundary to the east/front boundary from RL 68.49m to RL 56.72m AHD for a slope of 11.77m at a 20.98% grade.

The site is located within a R2 Low Density Residential zone that generally consists of part two and part three-storey dwelling houses with a mix of detached and semi-detached dwellings.

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Figure 1: The east/front elevation of the site viewed from the footpath in front of the subject site.



Figure 2: East view from the front setback to Mount Street

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Figure 3: North view from the front setback to the adjoining podium at 130 Mount Street



Figure 4: South view from the front setback to the adjoining podium at 134 Mount Street

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Figure 5: North elevation of the adjoining stairs and balustrade to the first floor of 134 Mount Street



Figure 6: southeast view from rear deck of on the ground floor to vegetation screening views to the private open space of 134 Mount Street.

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Figure 7: southeast view from steps in the private open space to the existing rear elevation and attached dwelling at 130 Mount Street



Figure 8: Northwest view from the private open space

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Figure 9: East view from the private open space to the rear setback. No removal of trees in the private open space is proposed.



Figure 10: West view of the private open space and the rear boundary of the site. The proposal is to retain the steps and remove paving to provide additional landscaped area.

3. Relevant history

A search of Council's records reveal a previously approved development application. DA/769/2007 was approved on 19 October 2007 for the construction of a double garage to the front of the existing dwelling with a terrace above the garage. It appears the development of the double garage did not commence and this approval has since lapsed as no construction certificate was located relating to DA/769/2007.

The subject application was lodged to the Council on 14 April 2023. The application was notified from 10 May to 24 May 2023 in which two (2) submissions were made raising the following issues:

- Impacts to privacy of the south adjoining private open space.
- Solar access to the south adjoining windows.
- Geotechnical issues and impact to neighbouring properties.
- Loss of on-street parking.

The preliminary assessment of the proposal and site inspection conducted on 9 November 2023 took the matters raised into consideration and have been found to be sufficiently addressed. As such, a recommendation has been made for approval of the application, subject to the discussion of key issues in Section 8.1 and the recommended conditions of consent included in this report.

4. Proposal

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

- Garage floor level
 - Construction of a new driveway crossover.
 - Two-car garage with bin storage, general storage, and lift and stair access to the upper levels.
 - The existing side pedestrian entry and stairs along the northern boundary will be retained and repaired.
- Lower ground floor
 - Main dwelling entry with lift and stair access to the upper and lower ground levels.
 - Sub-floor area.
 - New planters and steps within the front setback, above the garage level.
- Ground floor
 - Reconfiguration of the front section of the dwelling to provide a new hallway with lift and stair access, and bedroom 2 with ensuite, built-in-robe and front facing balcony.
 - Retention of existing bedroom 3, bathroom, study, and kitchen, living and dining area at the rear.
 - Retention of the existing rear deck which will be provided with new timber columns, pergola and screens.
- First floor
 - The new first floor level will contain a family room, bedroom 2/study with built-in-robe, and bedroom 1 with walk-in-robe and ensuite. This level will be accessed by stairs.
- Roof
 - The existing roof at the front of the dwelling will be demolished in part and replaced to match the existing, and the new first floor addition at the rear will be provided with a new tile roof and two (2) skylights.

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:

- 134 Mount Street, Coogee
- 137 Mount Street, Coogee

- Unknown address

Issue	Comment
Privacy – Potential overlooking into the south adjoining private open space	<p>Section 5.3 of the DCP gives provisions to ensure habitable rooms do not directly view adjoining habitable room windows and private open space in controls i) and ii).</p> <p>The private open space and pool area of the adjoining southern property (134 Mount Street) is located in the centre of the site at a lower ground level. There are three (3) windows proposed along the southern elevation at first floor level – to the family room, bed 2/study and ensuite.</p> <p>Adjoining trees and existing trees on site prevent direct downward overlooking into the adjoining private open space.</p> <p>Reference can be made to Figures 11 and 12, which demonstrate the first-floor additions will not enable direct downward overlooking into adjoining private open space. However, this is considered only a secondary privacy measure as the neighbouring trees can be removed.</p> <p>Section 5.3, control i) states the following:</p> <p><i>'All 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:</i></p> <ul style="list-style-type: none"> - <i>Offsetting or staggering windows away from those of the adjacent buildings.</i> - <i>Setting the window sills at a minimum of 1600mm above finished floor level.</i> - <i>Installing fixed and translucent glazing up to a minimum of 1600mm above finished floor level.</i> - <i>Installing fixed privacy screens outside the windows in question.</i> - <i>Creating a recessed courtyard on the side elevations of a building measuring not less than 3m x 2m in dimensions, with windows opening towards the courtyard in lieu of the common boundary.'</i> <p>Given there is opportunity for overlooking from the first floor family room and bed 2/study, it is recommended that a condition is imposed on the consent requiring translucent glazing to a height of 1.6m from the finished floor level. This mitigates privacy impacts to the adjoining southern property in accordance with Council's DCP controls.</p>
Solar Access – Overshadowing of the south adjoining windows and photo-voltaic panel on the roof of the south adjoining buildings. The submitted SEE incorrectly states the impact to the adjoining property at 134 Mount Street.	<p>Assessing the shadow diagrams and aerial maps showing the solar panels at No. 134 Mount Street, the proposal retains at least three hours of solar access prior to 12pm (midday). The southwest adjoining building at No. 134 receives over three hours sunlight after 12pm (midday). A portion of the private open space will receive solar access after</p>

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Issue	Comment
	12pm to 4pm. As such, the proposal complies with the relevant DCP controls.
Geotechnical – The geotechnical assessment refers to incorrect excavation levels and concern is raised to the impact of construction on the neighbouring southern property at 134 Mount Street.	The geotechnical report recommends the use of a brace wall instead of cantilever systems. Review of the section plans indicate the excavation levels as referred to in the Geotechnical report are the accurate volumes of cut and fill material. Additional dilapidation conditions of consent prior to construction and prior to occupation certificate have been recommended.
Loss of on street parking due to the additional driveway location and width	The proposal complies with the minimum off-street car parking rates that require two spaces for dwellings with three or more bedrooms. The double garage is not dissimilar to garages in front of the building line along the west side of Mount Street. The adjoining site at 134 Mount Street has three (3) garages, while other sites have single or double garages. While the new double garage will remove on-street parking, the width of the site is 8.6m and the new driveway will take up approximately 5m of this frontage. The adjoining semi-detached dwelling at 130 Mount Street also has a driveway at its northern end, therefore one (1) on-street car space will be available between the two (2) driveways. The two (2) on-street spaces lost will be replaced by the double garage.

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 confirming compliance. Standard conditions of consent of will apply to ensure that the development is carried out in accordance with the approved BASIX commitments.

6.2. SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the Biodiversity SEPP relates to the clearing of vegetation in non-rural areas.

The proposal does not include removal of trees as part of the application.

6.3. State Environmental Planning Policy (Resilience and Hazards) 2021

6.3.1. Chapter 2 - Coastal Management

Chapter 2 of the Resilience and Hazards SEPP 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 is not identified by the SEPP mapping to be within any of the coastal zones.

6.3.2. Chapter 4 – Remediation of Land

Chapter 4 of the State Environmental Planning Policy (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 contaminating land uses that could impact the site.

Per Chapter 4 of the SEPP (Resilience and Hazards) 2021, it can be concluded that the subject land is suitable for continued residential uses.

6.4. 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.

At the time of writing this report, Amendment Number 9 of the RLEP 2012 came into force. This amendment altered the Floor Space Ratio provisions applicable to the site. However, a Savings Provision applies to this amendment for development applications that were made and not finally determined at the time of the gazettal of Amendment No. 9, which was on 1 September 2023. As the development application was lodged on 14 April 2023, it has been assessed as if Amendment No. 9 had not come into force.

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

The following objectives apply to the R2 Low Density Residential zone:

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

The proposal is consistent with the relevantly applicable 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
Cl 4.4A: Floor space ratio (max)	0.65:1	0.54:1 (260.09m ² GFA) N.B. An additional 6.86m ² has been added to the Applicant's FSR calculation to include the first floor level stair in	Yes

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		accordance with the standard instrument definition.	
Cl 4.3: Building height (max)	9.5m	9.1m	Yes
Cl 4.1: Lot Size (min)	275m ²	479m ² , (No subdivision proposed)	Yes

6.4.1. Clause 4.6 - Exceptions to development standards

No clause 4.6 exceptions to development standards have been requested with this application.

6.4.2. Clause 5.10 - Heritage conservation

The site does not contain a heritage item or adjoin a heritage item. The site is approximately 20m south of the Dudley Street Conservation area. The proposed works are contained entirely within the subject site and therefore, will not adversely affect the significance of the heritage conservation area.

6.4.3. Clause 6.7- Foreshore scenic protection area

The site is not mapped within the Scenic Protection areas pursuant to RLEP.

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 8 of key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.

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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 environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant residential character in the locality. The proposal will not result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social, or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of key issues

- Privacy

A submission was received raising concern the south facing windows W6 and W7 can potentially overlook into the south adjoining private open space including the swimming pool of 134 Mount Coogee.

Section 5.3, control i and ii states the following:

"i) All 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:

- *Offsetting or staggering windows away from those of the adjacent buildings.*
- *Setting the window sills at a minimum of 1600mm above finished floor level.*
- *Installing fixed and translucent glazing up to a minimum of 1600mm above finished floor level.*
- *Installing fixed privacy screens outside the windows in question.*
- *Creating a recessed courtyard on the side elevations of a building measuring not less than 3m x 2m in dimensions, with windows opening towards the courtyard in lieu of the common boundary.*

ii) The windows to the living areas must be oriented away from the adjacent dwellings where possible. In this respect, they may be oriented to:

- *Front or rear of the allotment*
- *Side Courtyard*

The controls above give provision to mitigate direct looking between habitable rooms. The southern adjoining property is an irregular shaped allotment where the private open space is located in the centre of the site, rather than towards the rear. This building layout results in the proposed side-facing windows facing the private open space of the neighbouring property. This is noted as atypical and characteristic of other dwellings along Mount Street. The adjoining site additionally features trees along its northern boundary with dense foliage providing vegetation screening that prevents direct downward overlooking into the private open space as seen in Figure 11 below.

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Figure 11: South side setback of the site shows adjoining tree planting providing vegetation screening to the private open space.

The alterations and additions proposed for the private open space on site is for the removal of brick paved area to provide additional landscaping. The proposal is to replace the rear pergola with a new pergola of a similar scale, the proposal does not include any tree removal. This retains the built form and vegetation screening direct viewing of private open space as shown in figure 12 and 13.



Figure 12: East view from the top of steps in the rear setback to a portion of the south adjoining swimming pool.

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Figure 13: East view from the far west/rear of the site to the west/rear building on 134 Mount Street.

As neighbouring vegetation screening is considered a secondary measure, conditions of consent are recommended that the first floor windows W6 and W7 are to provide translucent or obscured glazing treatment up to a height of 1.6m from the finished first floor level to prevent downward overlooking. Therefore, the visual privacy between the site and the south adjoining private open space will be retained.

- Loss of on-street parking

A submission was received by the Council that raised concern about the proposed double garage resulting in a loss of two (2) on-street parking along Mount Street due to the width of the double garage.

The car parking rates in Part B7 of the Randwick DCP do not provide controls for on-street parking requirements but give provision for off-street parking to be provided. Table 7 in Part B7 requires semi-detached dwellings with three (3) or more bedrooms to provide two (2) spaces on site. The proposal is for a double garage for a four (4) bedroom dwelling to comply with the car parking rates required by the DCP

Furthermore, part C1, section 6.1 control iv) states that a double-width garage can be provided where *'the development is consistent with the predominant pattern in the street'*. The predominant pattern along the western side of Mount Street is characterised by a mix of single and double garages from additions to provide off-street parking which was initially not provided to the site. Examples of south neighbouring garages include the southern adjoining three-car garage at 134 Mount Street, and double garages at 136, 138, and 144 Mount Street as shown in Figures 14, 15 and 16 below:

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Figure 14: The east/front elevation of the south adjoining dwelling and garages at 134 Mount Street, Coogee.



Figure 15: The east/front elevation of the south neighbouring dwelling and double garages at 136 & 138 Mount Street, Coogee.

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Figure 16: The east/front elevation of the south neighbouring double garages at 144 Mount Street, Coogee.

Therefore, the proposed double garage is consistent with the pattern on the west side of Mount Street. The double garage is considered a benefit by reducing the demand for two residential car spaces on-street by providing them off-street.

Part C1, Section 6.2 of the DCP additionally gives provisions to consider garages in front of the front façade of the dwelling where *'the site has a significant slope with the dwelling being elevated above the street'*. The site is noted to have a slope from the west/rear boundary and steps to the east/front boundary from RL 68.49m AHD to 56.72m AHD for a slope of 11.77m at a 20.98% grade.

Therefore, the proposed double garage is consistent with the predominant pattern along the western side of Mount Street that is characterised by the slope to accommodate garages set in front of the dwelling façade.

- Geotechnical risk of damage to adjoining structures

A submission was received with concern raised following their viewing of the Geotechnical Assessment Report submitted with the proposal with the following comments provided:

'of particular concern is the following statement on page 10 of the Geotechnical Report

"Even with installation of support systems any deflection in the support or poor construction practice can result in erosion/loosening of soil foundations and settlement of adjacent footings. Due to the proximity of the existing structures to the excavation there is high risk of at least cosmetic damage to the neighbouring structures".

Following the review of the Geotechnical report submitted, it is noted that the statement provided above is within the 'comments section' prior to the 'design and construction recommendations' and does not include the full paragraph for context in the assessment:

'Even with installation of support systems any deflection in the support or poor construction practice can result in erosion/loosening of soil foundations and settlement of adjacent

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footings. Due to the proximity of the existing structure to the excavation there is high risk of at least cosmetic damage to the neighbouring structures. As such, cantilever systems are not suitable and a brace support wall is necessary.

As underlined in the quote above, the report immediately follows the statement with the recommendation of a brace support wall instead of a cantilever system.

Conditions of consent are therefore recommended for dilapidation reports prior to the construction certificate and prior to the issue of an occupation certificate.

9. Conclusion

That the application for alterations and additions to the existing dwelling at 132 Mount Street, Coogee 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 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. Internal referral comments:****1.1. Development Engineer**

No issues were raised by the Council's development engineering officer with conditions of consent recommended as included in the conditions.

Appendix 2: DCP Compliance Table

The Comprehensive Development Control Plan Review, Stage 1 DCP commenced on 1 September 2023. The development application was submitted on 14 April therefore, the proposal is assessed against Part C1 of the former Randwick Comprehensive Development Control Plan 2013.

3.1 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2 Low-Density Residential	Dwelling alterations are permissible with consent
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): • R2 = 400sqm • R3 = 325sqm	479m ² , no subdivision proposed	Yes
	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	Existing = 8.16m No change to the frontage proposed	Yes
2.2	Layout Detached dual occupancy		
	i) Detached dual occupancies may be developed only if: - Dual frontage - Secondary access - Street frontage of at least 18m in width.	The proposal is alteration and additions to a single dwelling	N/A
	Minimum separation: - Dual frontage = 10m min. - Secondary access: Merit assessment - Detached in R2 = 1800mm min. (18m minimum frontage)	The proposal is alteration and additions to a single dwelling	N/A
	900mm minimum footpath at rear lane Note: N/A to corner allotment.	N/A, the site is not a corner lot	N/A
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site Area = 479m ² Existing = 154.12m ² (32.17%) Proposed = 214.69m ² (44.82%)	Yes

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DCP Clause	Controls	Proposal	Compliance
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site Area = 479m ² Existing = 99.14m ² (20.69%) Proposed = 149.71m ² (31.1%)	Yes
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 479m ² Existing = 59.86m ² Proposed = 59.86m ² unchanged	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 	Site = 479m ² The proposal is for a semi-detached dwelling.	N/A
3	Building envelope		
3.1	Floor space ratio LEP 2012 Clause 4.4 (3) = 0.65:1	Site area= 479m ² Existing FSR=0.26:1 (130.12m ² GFA) Proposed FSR= 0.53:1 (253.23m ²)	Yes
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Existing = 8.5m Proposed = 9.175m	Complies
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed= 6.756m	Complies
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:	Proposed= 7.15m The average front setback is approximately 7.6m as shown on the plans, the	Acceptable on Merit

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DCP Clause	Controls	Proposal	Compliance
	<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	7.3m setback proposed is only for a portion of the front setback for the lower ground floor entry and lift. The 7.15m front setback is for a portion of the front balcony.	
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 (Ground & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Ground & 1st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum= 900mm Existing= 1.875m Proposed= 1.875m unchanged	Complies
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 8m Existing = 24.865m Proposed = 24.865m Unchanged	Complies
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m 	Building articulation is provided from planter boxes, building	Complies

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> encourage innovative design 	articulation, and variation of proposed colours/materials	
4.2	Additional Provisions for symmetrical semi-detached dwellings		
	i) Enhance the pair as a 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 proposal increases visual symmetry in roof form with the attached dwelling at 130 Mount Street. The ground floor additions include partial removal of the roof ridge to align with the ridge of 130 Mount Street. The first-floor additions are proposed with a matching ridge height and roof pitch.	Complies
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 dwelling is a semi-detached dwelling	N/A
4.4	Roof Design and Features		
	<i>Roof top 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.	A front-facing podium is proposed above the garage. The site is noted to have a significant slope from the west/rear to the east/front with similar podiums above garages along the street (see Figures 3 & 4).	Yes
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes	The materials and	Complies

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> 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.) 	finishes schedule proposes a mix of non-reflective cement render, horizontal panels, and roof tiles with non-reflective materials and varied colours for articulation.	
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>Proposed = 3m for the basement level garage and storage areas.</p> <p>The site has a slope down of 11.77m to Mount Street. The slope is therefore considered significant to justify the proposed cut for a garage consistent with the streetscape.</p>	Complies
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. 	The site is attached on the north side. Skylights are provided for first-floor natural sunlight. The private open space. The private open space on site receives over 3 hours of direct sunlight.	Complies
	Solar access to neighbouring development:		
	<ul style="list-style-type: none"> i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) solar panels on neighbouring dwellings, 	The western side building on 134 Mount Street receives over three hours of solar access from 12pm. The building on the east side of	Complies

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DCP Clause	Controls	Proposal	Compliance
	<p>which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	<p>134 Mount Street does receives 3 hours of direct solar access from 8am to 12pm.</p> <p>The building on the west side of 134 Mount Street obtains three hours solar access from 12pm to 4pm.</p>	
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	<p>Daylight to the first-floor hall is provided with skylights proposed on the roof.</p> <p>The living room is to retain the bi-fold doors to the outdoor deck area.</p>	Complies
5.3	Visual Privacy		
	Windows		
	<p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> windows are offset or staggered minimum 1600mm window sills Install fixed and translucent glazing up to 1600mm minimum. Install fixed privacy screens to windows. Creating a recessed courtyard (minimum 3m x 2m). <p>ii) orientate living and dining windows away from adjacent dwellings (that is orient to</p>	<p>The ground floor bedroom and ensuite windows are proposed with windowsill heights 1.6m from ground level. The first-floor ensuite window proposes a windowsill height of 1.65m from the first-floor level. The bedroom windows W6 & W7 are to</p>	Complies

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DCP Clause	Controls	Proposal	Compliance
	front or rear or side courtyard)	provide glazing for south adjoining privacy.	
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	A vertical privacy screen is proposed on the south side of the existing deck area. 300mm sunhoods to the east and west windows prevent direct south overlooking into adjoining private open space	Complies
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 alterations and additions retain the noise-generating areas location west adjacent to the noise-sensitive areas. The first-floor hallway is located adjacent to the party wall as an acoustic buffer.	Complies
5.5	Safety and Security		
	i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	The main entry remains at the front elevation to Mount Street. A study area within bedroom 2 overlooks the street with a balcony. An east-facing window is also proposed for the east side of the family room to provide passive surveillance of the street.	Complies
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) retaining existing views from the living areas are a priority over low use rooms iii) retaining views for the public domain takes	The site is not mapped in the Randwick LEP as within the foreshore scenic protection area. The site does not	Complies

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DCP Clause	Controls	Proposal	Compliance
	iv) priority over views for the private properties 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)	obtain views to any park, reserves or significant natural views or vistas from the site.	
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	A 5m wide driveway is proposed from Mount Street to a two-car driveway. The two-car garage is consistent with garages along the west side of Mount Street with examples such as 136, 136A, 140 & 142 Mount Street.	Complies on Merit, Double garage is discussed in section 6.2 below.
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls)	The proposal is for a two-car garage on a site with a significant slope from the west/rear to the east/front. The garage will not adversely affect the visual amenity as the garage is not dissimilar to the garages on the sites discussed above. No tree removal is required.	Complies
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks.	The double garage with nil	Complies

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DCP Clause	Controls	Proposal	Compliance
	ii) 1m rear lane setback iii) Nil side setback where: - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing	south side setback is consistent with the streetscape consisting of attached garages on the west side facing Mount Street.	
6.4	Driveway Configuration		
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	5m double driveway proposed	Complies
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1	The garage door width proposed is 5m. Internal garage dimensions of 6m x 6m are shown on the plans. 2.2m clearance height measured	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 is 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	No hardstand car space proposed	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	Aluminum flat gate proposed, no changes to side or rear fencing proposed.	Complies
7.2	Front Fencing		

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DCP Clause	Controls	Proposal	Compliance
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.	No front fencing is proposed, only a front gate and double garage.	N/A
7.3	Side and rear fencing		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	No change to side or rear fencing proposed	Complies
7.4	Outbuildings		
	i) Locate behind the front building line. ii) Locate to optimise backyard space and not over required permeable areas. iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height) iv) Nil side and rear setbacks where: - finished external walls (not requiring maintenance; - no openings facing neighbours lots and - maintain adequate solar access to the neighbours dwelling v) First floor addition to existing may be considered subject to:	No outbuildings are proposed	N/A

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades; - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. vi) Must not be used as a separate business premises.		
7.5	Swimming pools and Spas		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	No Swimming pool or spa is proposed	Complies
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 unit is proposed on the south side of the building behind the building line out of view from the street.	Complies
7.7	Communications Dishes and Aerial Antennae		
	i) Max. 1 communications dish and 1 antenna per dwelling. ii) Positioned to minimise visibility from the adjoining dwellings and the public domain, and must be: <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 communication dishes are proposed with this application	N/A
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	No change to the clothes drying	Complies

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DCP Clause	Controls	Proposal	Compliance
		facility proposed	
8	Area Specific Controls		
8.1	Development in Laneways		
	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: - adjoining building similarly constructed - no unreasonable visual, privacy and overshadowing impacts v) Screen or match exposed blank walls on adjoining properties (i.e., on common boundary).	The site is not accessed from or adjoin a laneway.	N/A

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.	Additions propose a total of 4 bedrooms with a 2 car garage	Complies

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.	Mount Street is not mapped for future widening	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	The site is not mapped in RLEP as within a scenic protection area	Complies

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	<p>articulated.</p> <p>ii) Outbuildings and ancillary structures integrated with the dwelling design (coherent architecture).</p> <p>iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues).</p> <p>iv) Must not use high reflective glass</p> <p>v) Use durable materials suited to coast</p> <p>vi) Use appropriate plant species</p> <p>vii) Provide deep soil areas around buildings</p> <p>viii) Screen coping, swimming and spa pools from view from the public domain.</p> <p>ix) Integrate rock outcrops, shelves and large boulders into the landscape design</p> <p>x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone.</p>		
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Responsible officer: GAT & Associates, Town Planners

File Reference: DA/135/2023

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Development Application Report No. D28/24

Subject: 69A St Pauls Street, Randwick (DA/665/2022)

Executive Summary

Proposal:	Alterations and additions to the existing dwelling house including rear ground floor addition and construction of a detached single storey secondary dwelling at the rear of the site with associated site and landscape works
Ward:	East Ward
Applicant:	Mr Damien Vass
Owner:	Mr Damien Vass
Cost of works:	\$190,000.00
Reason for referral:	Contravenes the Minimum Site Area for Secondary Dwellings as per Clause 53(2)(a) of the Housing SEPP

Recommendation

That the Randwick Local Planning Panel (RLPP) refuses consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. 665/2022 for alterations and additions to the existing dwelling house including rear ground floor addition and construction of a detached single storey secondary dwelling at the rear of the site with associated site and landscape works at No. 69A St Pauls Street, Randwick for the following reasons:

1. Pursuant to Section 4.15 (1)(a) of the EP&A Act 1979, the proposed development does not comply with the following relevant environmental planning instruments and development controls as follows:
 - a) Clause 4.6 of the Randwick Local Environmental Plan 2012.
 - The consent authority is not satisfied that the Applicant has demonstrated that compliance with the non-discretionary development standard under Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021 is unreasonable or unnecessary in the circumstances.
 - The consent authority considers that there are no sufficient environmental planning grounds to justify the contravention of the non-discretionary development standard under Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021.
 - The consent authority considers that the proposed development is not in the public interest as it fails to achieve consistency with the relevant aims of the Randwick Local Environmental Plan 2012 and the objectives of the R3 – Medium Density Residential zone. As such, development consent cannot be granted to development that contravenes the respective development standard.
 - b) Randwick Local Environmental Plan 2012 – Aims of the Plan – unable to satisfy the key aims (2)(c) and (2)(d).
 - The proposal fails to promote a development form that is appropriate to its context and that supports an efficient use of land.
 - The proposal fails to achieve a high standard of design in the private and public domain that enhances the quality of life of the community.
 - c) Randwick Local Environmental Plan 2012 – the relevant objectives of the R3 Medium Density Residential zone. The proposal is not consistent with these objectives in that

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the development fails to recognise the desirable elements of the existing streetscape and built form and does not provide positive contribution to the desired future character of the area. The proposal will unreasonably compromise the amenity of residents.

- d) Randwick Local Environmental Plan 2-12 – Clause 6.2 (Earthworks). The proposed earthworks are excessive and fail to achieve the provisions and objective under Clause 6.2.
 - e) Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Section 4.6 – Earthworks. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the development involves substantial excavation that is excessive and fails to respond to and respect the topography and site constraints of the subject land.
 - f) Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Sections 5.3 and 5.4 – Visual and Acoustic Privacy. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the development will result in adverse visual and acoustic privacy impacts.
 - g) Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Sections 5.3 and 5.4 – Visual and Acoustic Privacy. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the development will result in adverse visual and acoustic privacy impacts.
 - h) Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Section 7.4 – Outbuildings. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the development comprises an outbuilding that is excessive in terms of bulk and scale.
2. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979, the proposal is likely to have adverse impacts on the following aspects on the environment: visual and acoustic privacy impacts; visual bulk, scale and massing presenting to private open spaces, facilitating development that is uncharacteristic and not compatible with existing and desired built forms and the prevailing development pattern of the immediate locality, setting an undesirable precedent for overdevelopment of sites and allowing undersized lots to feature secondary dwellings.
 3. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the subject site is not suitable for the proposal for the following reasons: undersized lot that is not able to facilitate an appropriate development form and a secondary dwelling (building) that achieves compliance with the relevant controls and provisions under State and Council policies, and the development will have unacceptable privacy impacts on neighbouring properties.
 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 precedent including endorsement of an unacceptable non-compliance to the non-discretionary development standard under Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021 and facilitates an excessive built form and secondary dwelling that does not respect the predominant development pattern of the locality and does not achieve compliance with Council controls and requirements including those associated with outbuildings and privacy.

Attachment/s:

Nil

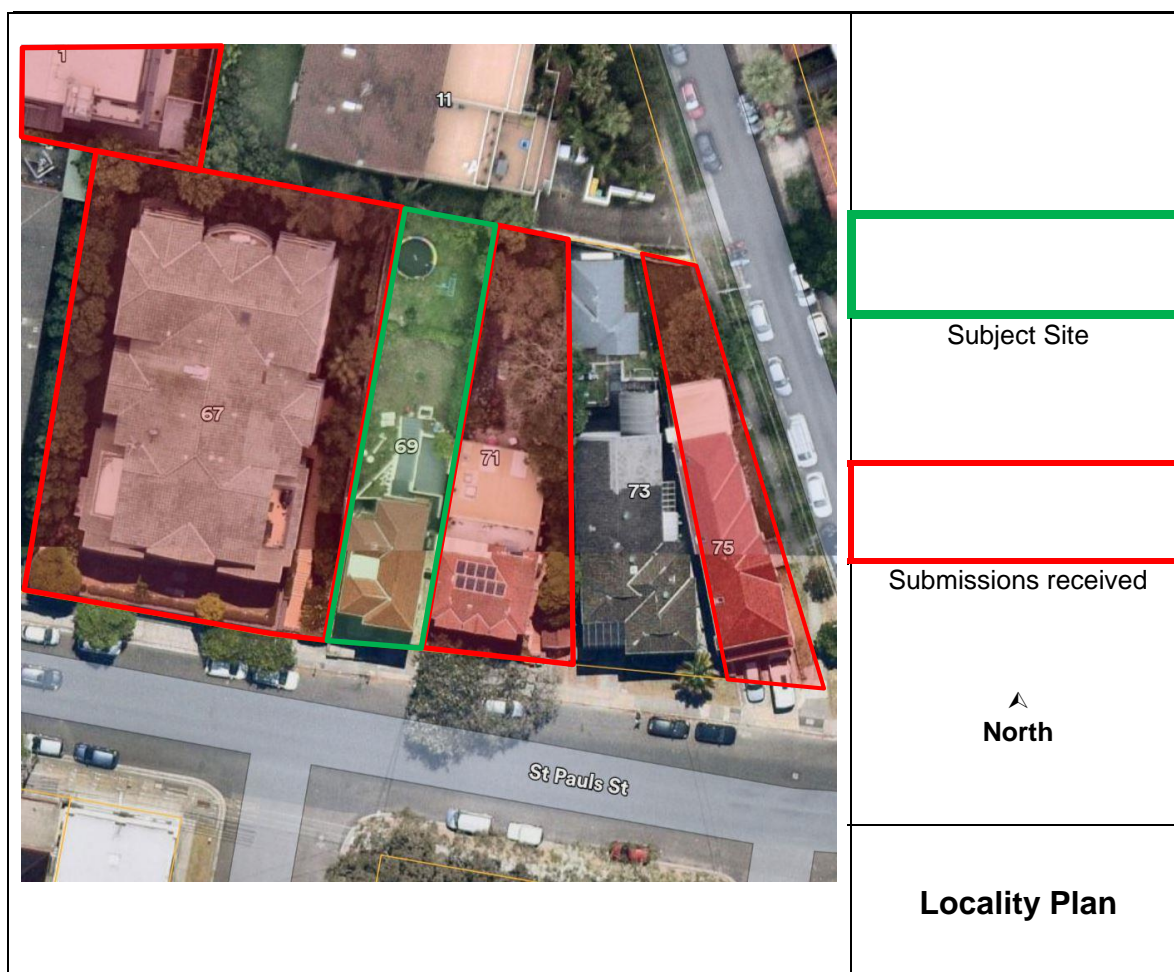


Figure 1: Aerial view, 69A St Pauls Street RANDWICK, December 2023 (Source: Nearmap)

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the non-discretionary development standard for a detached secondary dwelling under the Housing SEPP 2021 by more than 10%.

The proposal seeks development consent for alterations and additions to an existing residence including ground floor extension, and the construction of a detached secondary dwelling at the extreme rear of the property.

The provision of a secondary dwelling is prohibited in the R3 zone under Randwick Local Environmental Plan 2012 (RLEP 2012). However, the proposal is permissible pursuant to the provisions of the State Environmental Planning Policy (Housing SEPP) 2021.

Pursuant to Clause 53 of the Housing SEPP, a minimum site area of 450m² applies to a detached secondary dwelling. The subject site has an area of 395.8m² and therefore, reflects a non-compliance to the non-discretionary development standard of 12% or 54.2m². The Applicant submitted a Clause 4.6 written request (dated 6 November 2023) seeking an exception to the minimum site area development standard. Council is not satisfied that the written request has demonstrated that compliance is unreasonable or unnecessary in the circumstances of the case.

On that basis, the Clause 4.6 written request has failed to adequately address the matters under Clause 4.6 and the proposal cannot be supported.

The application is therefore recommended for refusal.

2. Site Description and Locality

The subject property is legally described as Lot A within DP 337572 and is located on the northern side of St Pauls Street, and opposite the intersection with Lee Street which runs perpendicular to the south.

The site itself is near rectangular in shape with a south to north orientation, having a frontage width to St Pauls Street of 9.18m, an eastern (side) boundary length of 42.730m, a western (side) boundary length of 43.67m and northern (rear) boundary width of 9.165m, resulting in a total site area of 395.8m².

The site topography is sloped with a level difference of approximately 7.76m from the rear of the property to the street level.

The site is presently occupied by a three-storey brick dwelling with tiled roof plus basement garage level (Figure 1). Vehicle access is provided via a driveway of St Pauls Street leading to the existing single basement garage. Pedestrian access to the site is via a stair within the site frontage and front setback leading to the front terrace and main dwelling entry. The remainder of the property to the rear contains vegetation.

The subject site is not identified as a Heritage Item, nor within the vicinity of a Heritage item however is directly opposite Heritage Conservation Area known as "The Spot" on the south side of St Pauls Street.



Figure 1: Subject site viewed from the intersection of St Pauls and Lee Streets, April 2023
(Source: Google Maps)



Figure 2: Subject site rear yard, July 2023

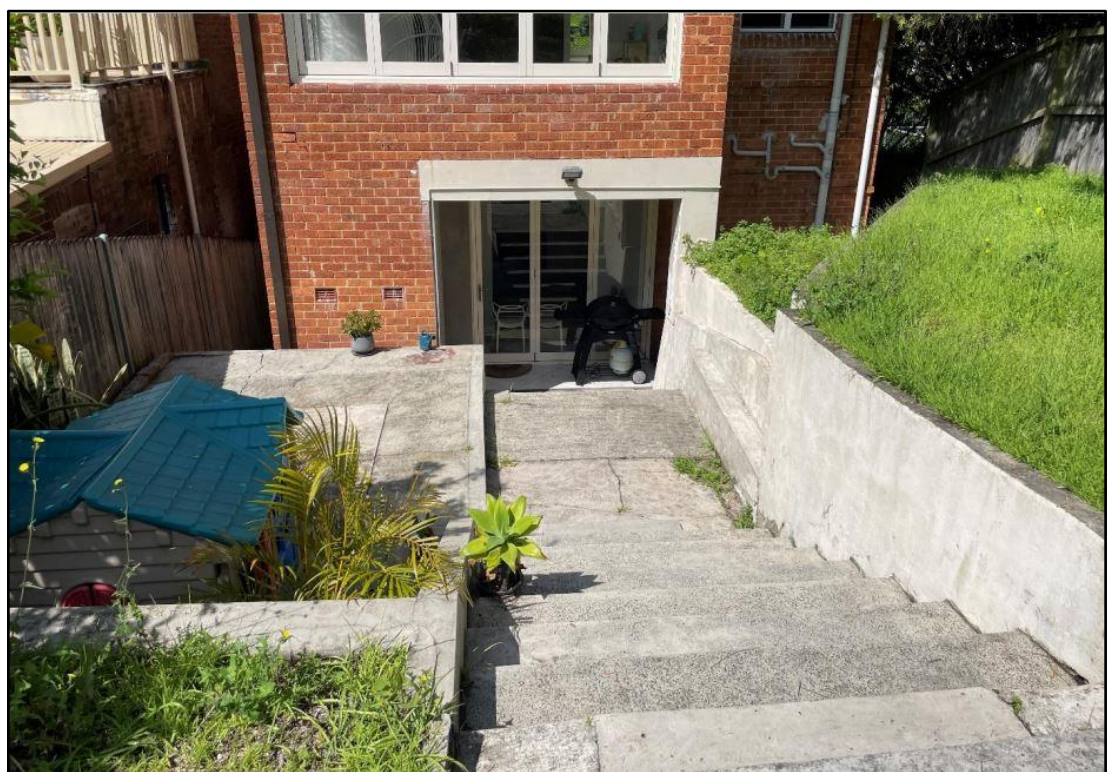


Figure 3: Existing rear of the dwelling (Source: *Planning Ingenuity*)

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Figure 4: Existing rear of the site looking towards the rear fence and RFB at 11 Daintrey Crescent beyond
(Source: *Planning Ingenuity*)



Figure 5: View west toward RFB at 67-69 St Pauls Street, seen from the rear of the subject site



Figure 6: Oblique aerial view (south), October 2022 (Source: Nearmap)



Figure 7: Oblique aerial view (north), May 2023 (Source: Nearmap)

3. Relevant history

DA/1628/1999 – was approved by Council on 7 April 2000 for the “*Second floor addition to existing dwelling.*”

DA/674/2004 – was approved by Council on 9 September 2004 for the “*Attic extension to include new bedroom at roof level.*”

DA/667/2005 – was approved by Council on 30 September 2005 to “*Extend the existing front deck over the existing garage to extend the full length of the dwelling.*”

DA/1/2009 – was approved by Council on 6 April 2009 for the “*Construction of a new roof terrace with a new kitchen.*”

4. Proposal

The proposal seeks development consent for “Alterations and additions to the existing dwelling house including rear ground floor addition and construction of a detached single storey secondary dwelling at the rear of the site with associated site and landscape works”.

The submitted SEE prepared by *Planning Ingenuity* lists the proposed works as follows:

Demolition

The proposal requires the demolition of some internal and external walls of the dwelling house at the ground floor level. Existing landscaped and hard surface areas to the north of the existing dwelling will also be demolished as shown on plans.

All demolition proposed is shown clearly on the architectural plans submitted with this application.

Garage Floor

The proposal will retain the existing driveway, garage and subfloor areas. Vehicular access to the site and pedestrian access to the principal dwelling will remain as existing.

Proposed works at the garage floor are:

- New paved area for bin storage; and
- New stair along the eastern boundary

Ground Floor

The proposal will retain the existing entry, front terrace, internal stair and southern living room.

Proposed works at the ground floor level include:

- Demolition of the existing kitchen, WC and laundry and internal and external walls;
- Construction of a northern rear addition to provide an open plan kitchen and dining area with new laundry and WC;
- New roof to the proposed additions;
- Demolition of the existing stair and alfresco and provision of new paved outdoor space with tiered planters;
- New path along the eastern side boundary from the garage stairs;
- Extended path and stair along the western side boundary leading to the secondary dwelling.

First Floor

There are no proposed works to the principal dwelling at the first floor level.

Second Floor

There are no proposed works to the principal dwelling at the second floor level.

Secondary Dwelling

A new secondary dwelling is proposed to the rear of the site comprising a GFA of 52.3m².

It will have the following layout:

- Main pedestrian entry;
- Open plan kitchen, living and dining area;
- Northern terrace;
- Bedroom 1 and 2 with built in robe;
- Bathroom; and
- Laundry.

Figures 8 to 18 illustrate the proposed development.

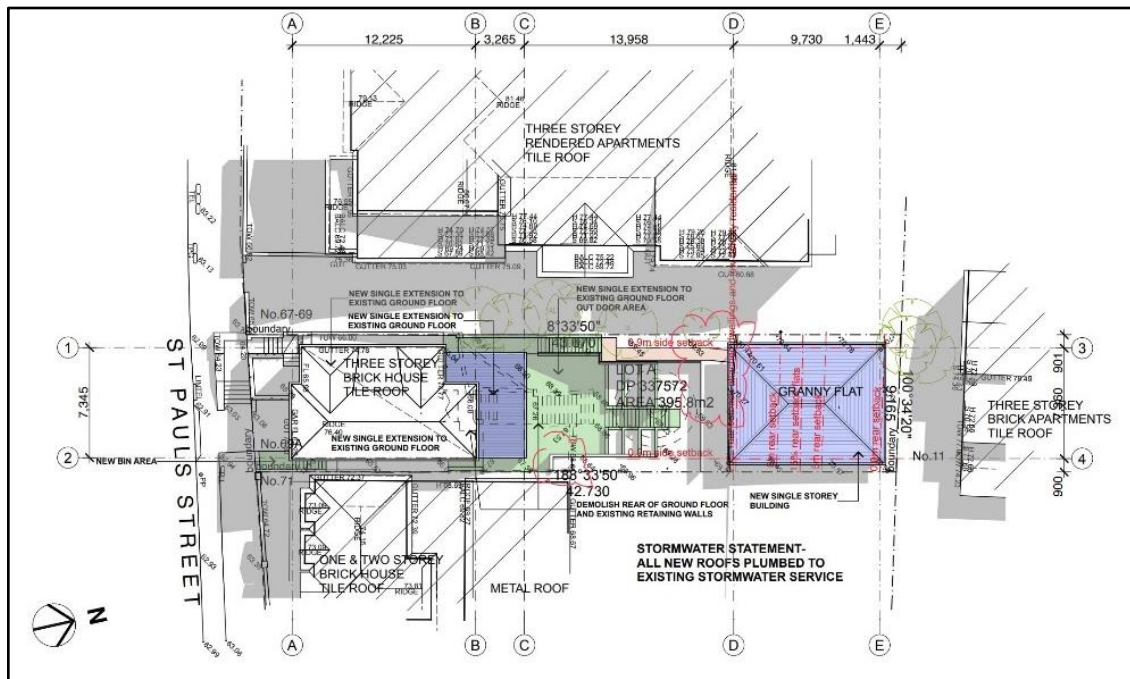


Figure 8: Site and Roof Plan (Rev B), 2/11/2023 (Fortey & Grant Architecture)

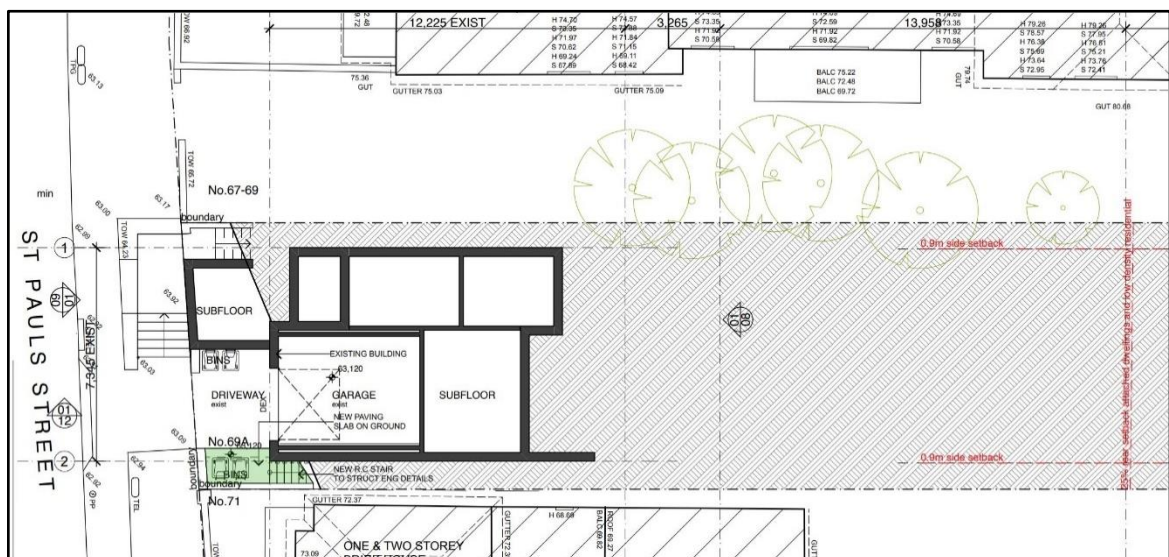


Figure 9: Garage Plan (Rev B), 2/11/2023 (Fortey & Grant Architecture)

D28/24

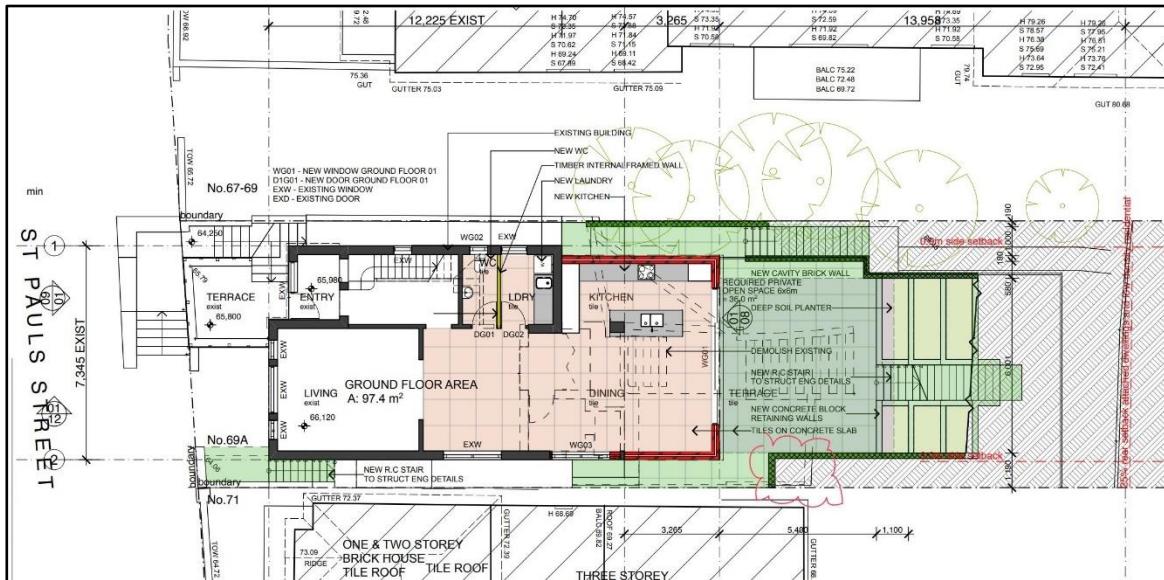


Figure 10: Ground Floor Plan (Rev B), 2/11/2023 (Fortey & Grant Architecture)

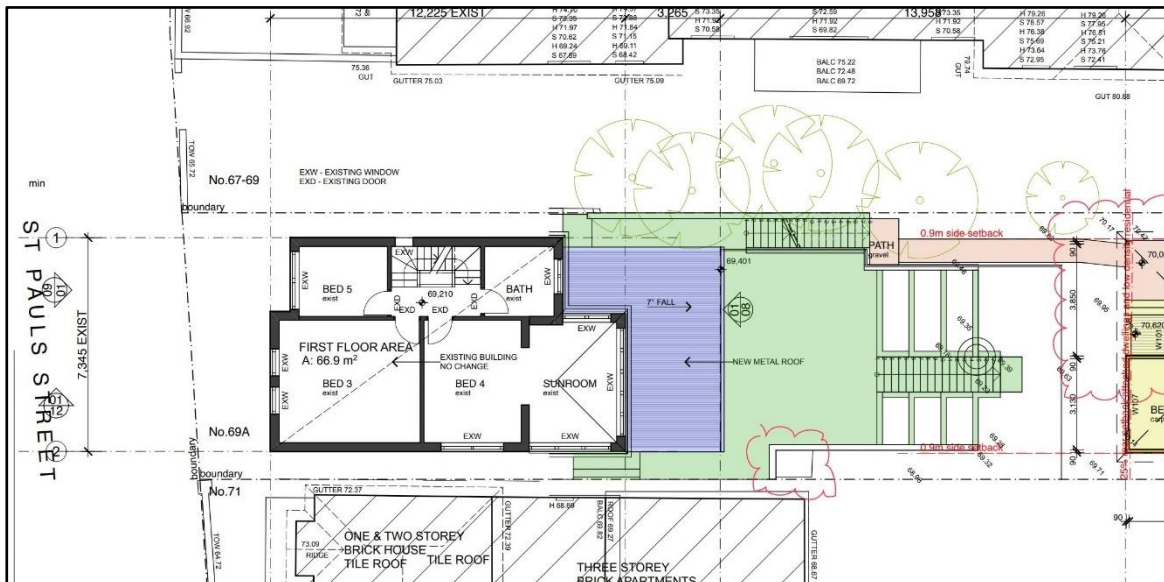


Figure 11: First Floor Plan (Rev B), 2/11/2023 (Fortey & Grant Architecture)

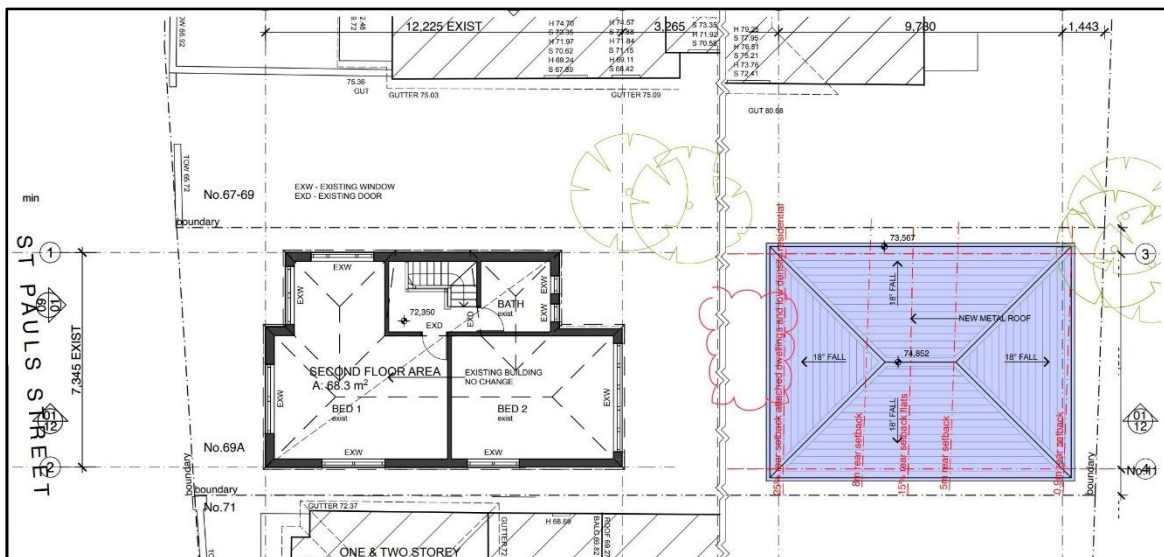


Figure 12: Second Floor Plan & Secondary Dwelling Roof (Rev B), 2/11/2023 (Fortey & Grant Architecture)

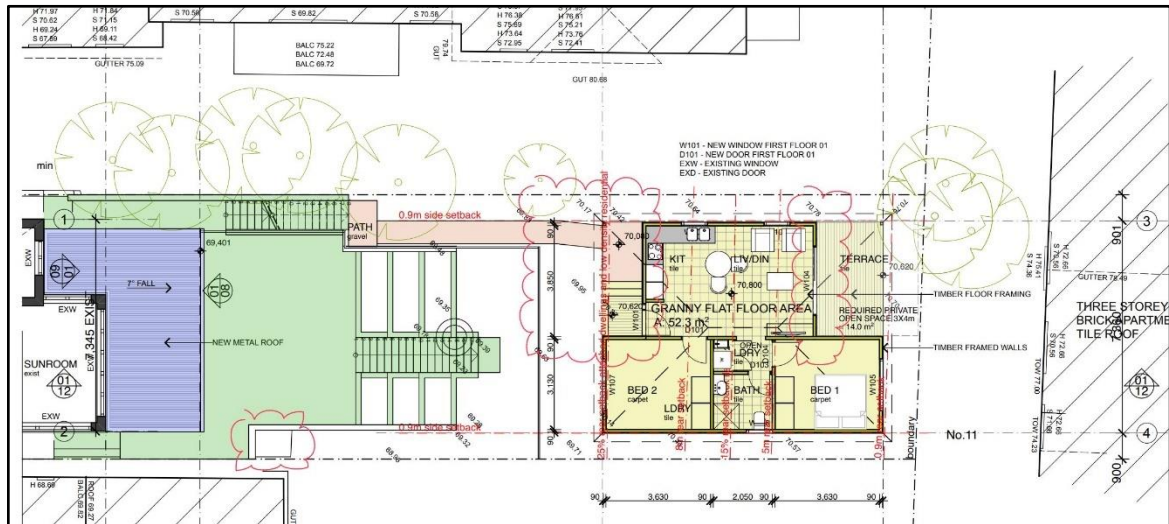


Figure 13: Secondary Dwelling Floor Plan (Rev B), 2/11/2023 (Fortey & Grant Architecture)

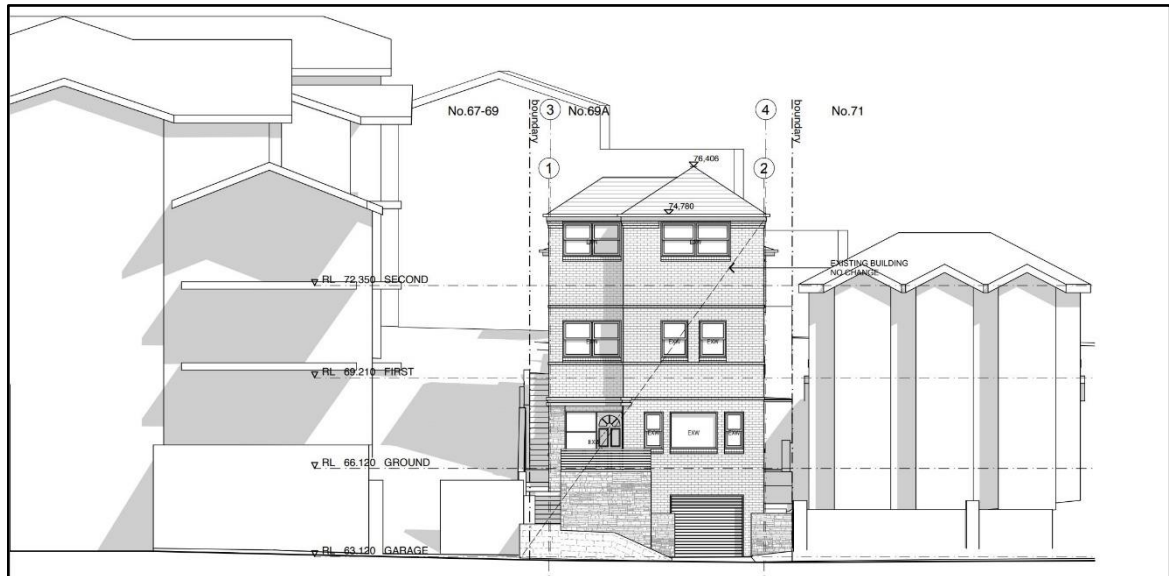


Figure 14: Street /South Elevation (Rev B), 2/11/2023 (Fortey & Grant Architecture)

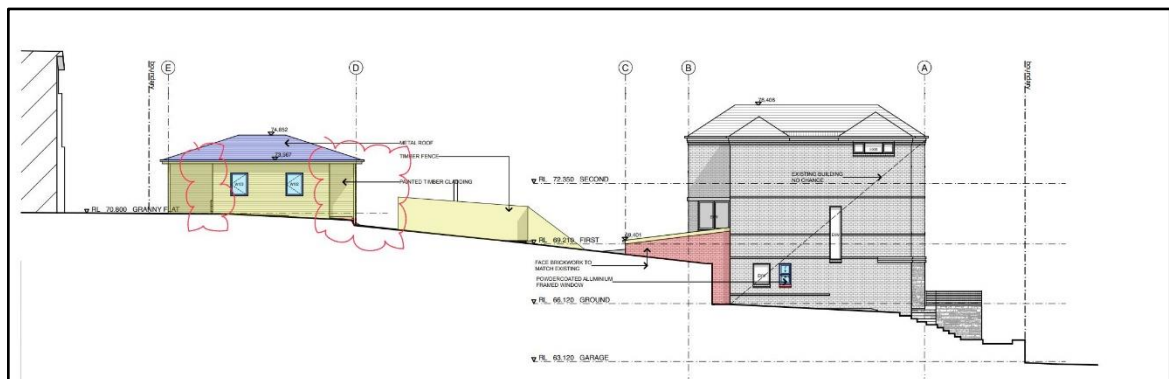


Figure 15: West Elevation (Rev B), 2/11/2023 (Fortey & Grant Architecture)

D28/24

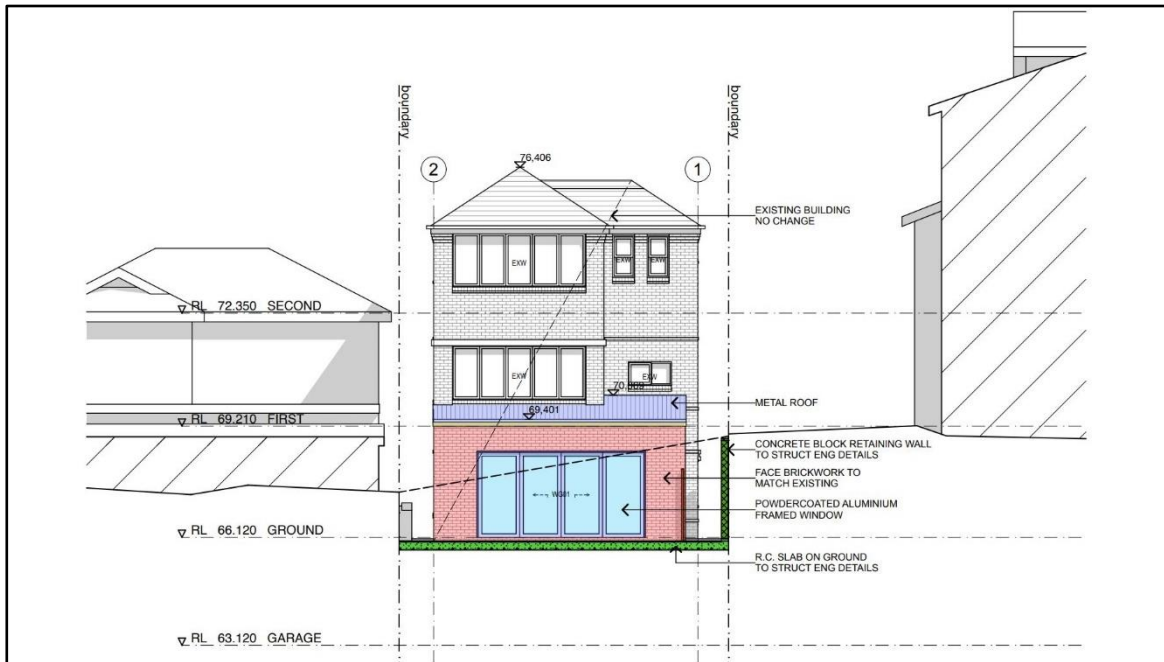


Figure 16: Rear / North Elevation (Rev B), 2/11/2023 (Fortey & Grant Architecture)

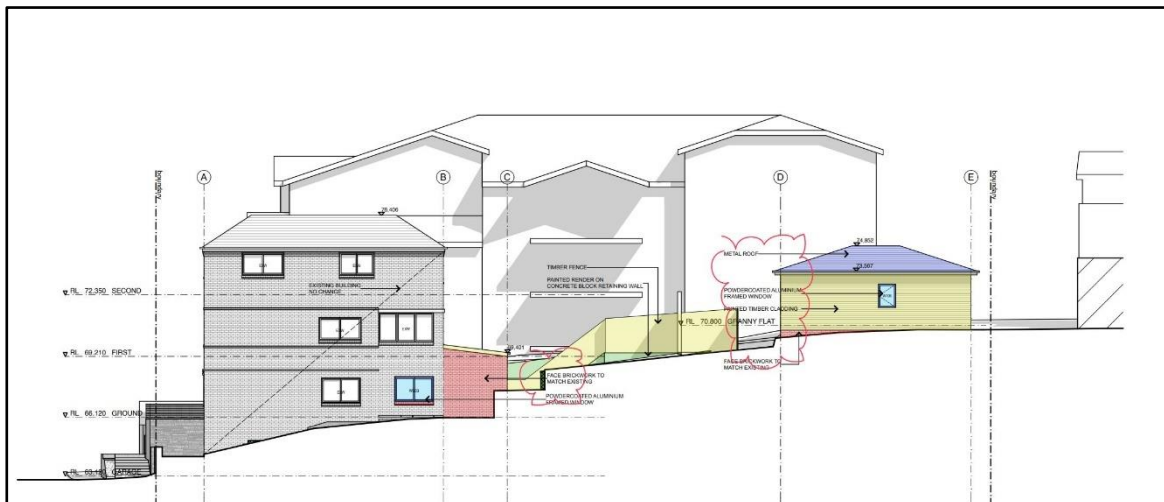


Figure 17: East Elevation (Rev B), 2/11/2023 (Fortey & Grant Architecture)

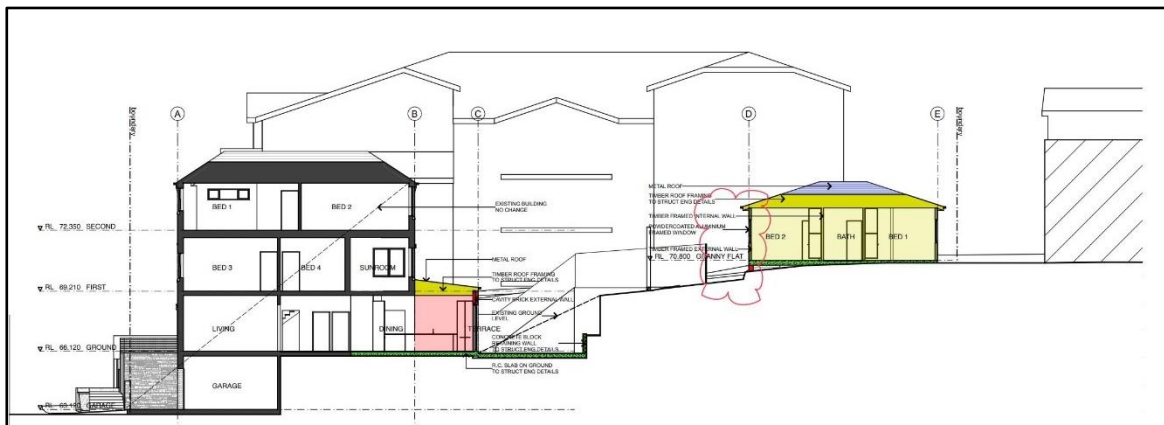


Figure 18: East Elevation (Rev B), 2/11/2023 (Fortey & Grant Architecture)

5. Notification

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

- Petecost Pty Ltd owner of 9 apartments within RFB at 67-69 St Pauls St, Randwick

Issue	Comment
Concerns for excessive excavation works at the adjoining boundary would compromise the integrity of existing ground, structures, and trees.	Noted. Refer Landscape referral for comments related to tree management in Appendix 1.
Request adequate retention provided by the Applicant or be appropriately conditioned by Council.	Refer Clause 6.2 – Earthworks and Earthworks concerns discussed under section '8.1- Discussion of Key Issues' below.

- Units 1 and 4, 67-69 St Pauls St, Randwick

Issue	Comment
Potential lack of privacy	Visual Privacy concerns are discussed under section '8.1- Discussion of Key Issues' below.
The amount of soil being removed	Noted. Refer to Clause 6.2 – Earthworks and Earthworks concerns discussed under section '8.1- Discussion of Key Issues' below.

- Unit 15, 67-69 St Pauls St, Randwick

Issue	Comment
Visual privacy concerns	Visual Privacy concerns are discussed under section '8.1- Discussion of Key Issues' below
Concerns for removal or altering of existing boundary fencing	No changes to existing side and rear fencing is proposed
General concerns for proposed extent of excavation works.	Noted. Refer to Clause 6.2 – Earthworks and Earthworks concerns discussed under section '8.1- Discussion of Key Issues' below.

- Unit 28, 67-69 St Pauls St, Randwick (within the adjoining RFB)

Issue	Comment
General concerns about proposed excessive excavation works and inadequate Geo-Technical information	Noted. Refer to Clause 6.2 – Earthworks and Earthworks concerns discussed under section '8.1- Discussion of Key Issues' below.

D28/24

Issue	Comment
The Applicant's consulting planner does to not appear to endorse the geotechnical report prepared by Geofirst Pty Ltd	Noted
Applicant SEE fails to address Clause 6.2 Earthworks and insufficient justification provided	Noted. Refer to Clause 6.2 – Earthworks and Earthworks concerns discussed under section '8.1- Discussion of Key Issues' below.

- 71 St Pauls St, Randwick (adjoining eastern neighbour)

Issue	Comment
Concerns for excessive excavation works at the adjoining boundary would compromise the integrity of existing ground, structures, and trees.	Noted. Refer to Clause 6.2 – Earthworks and Earthworks concerns discussed under section '8.1- Discussion of Key Issues' below.

- 75 St Pauls St, Randwick (adjoining eastern neighbour)

Issue	Comment
Likely noise and amenity impacts from secondary dwelling and concern for possible unauthorized use as commercial rental property.	Acoustic Privacy concerns are discussed under section '8.1- Discussion of Key Issues' below.

- 1 and 3 Daintrey Crescent, Randwick

Issue	Comment
Visual privacy concerns related to the secondary dwelling due to proposed balcony and window openings facing the objector's property.	Visual Privacy concerns are discussed under section '8.1- Discussion of Key Issues' below

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

BASIX Certificate [#A480303](#) (principal dwelling) and [#1305660S](#) (secondary dwelling) have been submitted, prepared by Noura Al Hazzouri, dated 16 November 2022, satisfying the requirements of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

6.2. SEPP (Housing) 2021

Secondary Dwelling

Chapter 3, Part 1 of the Housing SEPP applies to development for the purposes of a secondary dwelling on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument.

The subject site is in the R3 Medium Density Residential zone and the development of a dwelling house is permissible in this zone pursuant to RLEP 2012 (i.e., another environmental planning instrument). On this basis, and noting that the proposal seeks consent for the construction of an

attached secondary dwelling, an assessment of the relevant provisions of the Housing SEPP is provided below:

Clause 49 – Definition

The proposed development falls within the scope of the definition of a secondary dwelling in that it entails the erection of a secondary dwelling in a R3 Medium Density Residential zone.

Clause 50 – Application of Part

This development is for the purposes of a secondary dwelling on land in a residential zone where a dwelling house is permissible on the land under RLEP 2012 with Council's consent.

Clause 51 – No Subdivision

The proposed development for a secondary dwelling does not involve subdivision.

Clause 52 – Development may be carried out with consent

Pursuant to section 52, the development of a secondary dwelling may be carried out with consent at the subject site, subject to the following criteria:

(a) no dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land

Assessing officer's comments: The proposal includes one (1) principal dwelling and one (1) secondary dwelling on the site. The proposal complies with this control.

(b) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and

Assessing officer's comments: The total floor area of the combined renovated principal dwelling and proposed secondary dwelling is 284.9m² which equates to a floor space ratio (FSR) of 0.72:1. The total FSR complies with the maximum 0.75:1 FSR control applying to the site under clause 4.4(2A) of RLEP 2012.

(c) the total floor area of the secondary dwelling is—

(i) no more than 60m², or

(ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.

Assessing officer's comments: The floor area of the proposed secondary dwelling is 52.3m², which complies with the maximum 60m² requirement.

Clause 53 – Non-discretionary development standards

Pursuant to Clause 53, the following non-discretionary development standards are applicable:

(a) for a detached secondary dwelling—a minimum site area of 450m²

Assessing officer's comments: The total site area is 395.8m². The proposal does not comply with this control and contravenes this standard by 12.04%.

(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.

Assessing officer's comments: Consistent with the existing situation, the proposal provides for a total of one (1) dedicated car parking space which is to be maintained. The proposal complies with this control.

The subject site has an area of 395.8m², which represents a non-compliance to the non-discretionary development standard (minimum 450m² site area) of 12% or 54.2m². The Applicant has submitted a written request to vary the development standard (refer to discussion below). There will be no change to the existing parking configuration at the front of the principal dwelling.

6.3. 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 Appendix 1). As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

6.4. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

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

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

6.5. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R3 Medium Density Residential under Randwick Local Environmental Plan 2012. The application for a secondary dwelling is prohibited development as specified by the Land Use Table for the R3 Medium Density Residential zone, in accordance with the RLEP 2012.

However, pursuant to Clause 50 of the Housing SEPP, secondary dwellings are permissible in R3 zones only if development for the purposes of a dwelling house is permissible in that zone. Under the provisions of RLEP 2012, dwelling houses are permissible in R3 zones and therefore permissibility is pursuant to the provisions of SEPP ARH.

The proposal is inconsistent with the specific objectives of the R3 zone as it is contrary to the desired future character of the surrounding area.

The following development standards contained 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	0.72:1	Yes
Cl 4.3: Building height (max)	12m	3.28m (Rear addition of dwelling)	Yes
		4.42m (Secondary Dwelling)	Yes

Clause 6.2 – Earthworks

The objective of Clause 6.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Clause 6.2(3) of the RLEP (2012) further states:

Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Assessing officer's comments: Refer Section 8.1 – Discussion of Key Issues related to Earthworks. The proposed earthworks are excessive and fail to achieve the provisions and objective under Clause 6.2.

6.5.1. Clause 4.6 - Exceptions to development standards

The non-compliance with the minimum site area development standard under the Housing SEPP 2021 is discussed in section 7 below.

6.5.2. Clause 5.10 - Heritage conservation

See heritage referral comments in **Appendix 1**.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following non-discretionary development standard contained within the Housing SEPP 2021:

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Clause 53 Non-discretionary development standard	Min. site area 450m ²	395.8m ²	54.2m ²	12.04%

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

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

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

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

(a) the consent authority is satisfied that:

- (i) the Applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

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

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

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

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

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

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

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

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

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

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

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

4. The concurrence of the Secretary has been obtained.

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

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

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

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

7.1. Exception to the Minimum Site Area development standard (Clause 53 of Housing SEPP)

The Applicant's written justification for the departure from the Minimum site area standard is contained in **Appendix 2**.

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

The Applicant's written request seeks to justify the contravention of the minimum site area standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case, and is provided as follows:

It is noted that there are no specific objectives for Clause 53(2)(a) of the Housing SEPP. However, the objectives of applying a minimum site area for secondary dwellings is closely aligned in a practical sense with the objectives of Clause 4.1 Minimum Subdivision Lot Size and Clause 4.4 Floor Space Ratio of the RLEP. The purposes of applying minimum site area, lot sizes and floor space ratio controls is to minimise adverse residential amenity impacts, ensure the development is compatible with the locality and provide appropriate density to the site. These key objectives are reflected in the objectives of Clause 4.1 and Clause 4.4 of the RLEP.

The objectives of Clause 4.1 Minimum Subdivision Lot Size of RLEP states:

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

The objectives of Clause 4.4 Floor Space Ratio of the RLEP states:

- (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.*

Assessing officer's comments: In the absence of specific objectives for the minimum site area development standard under the Housing SEPP, the Applicant appeals to alternative clauses to determine whether the development standard is unreasonable or unnecessary in this circumstance. However, these clauses remain irrelevant and not applicable to the specific standard that is under focus.

Therefore, Council is not satisfied that the written request has in fact demonstrated that compliance is unreasonable or unnecessary.

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

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

1. The subject site has an area of 395.8sqm which is 54.2sqm or 12.04% less than the minimum allotment size required under the Housing SEPP. Given the site does not achieve the minimum site area the proposal reduces the size of the secondary dwelling by a proportionate amount to ensure the density of the site remains relative to the site area. In this regard, the proposed secondary dwelling has a maximum GFA of 52.3sqm which represents a 12.8% reduction on the maximum GFA for a secondary dwelling (60sqm). That is, the size of the secondary dwelling (52.3sqm) continues to be proportionate to the difference between the site area clause 4.6 written request for exception to development standard Planning Ingenuity Pty Ltd REF: M220498 10 (395.8sqm) and the 450sqm minimum site area requirement under the Housing SEPP. This ensure that an appropriate density will be maintained on the subject site.

2. The proposed floor space ratio (FSR) with the principal and secondary dwelling combined is 0.72:1. The maximum FSR for a site area that is between 300m² and 450m² is 0.75:1. The proposed FSR is under the maximum FSR control and therefore will comfortably fit within the density parameters of the site and is capable of accommodating a secondary dwelling, even with the variation to the minimum site area. Therefore, the proposal is of an appropriate density for the site that is similar to the density of neighbouring properties.

3. The development complies with the site coverage and landscaping requirements in accordance with the Randwick Development Controls Plan (RDCP). The development results in a site coverage of 44.8% which is well below the maximum site coverage requirement of 55% for a site area between 301m² and 450m² under the RDCP. For a larger compliant site area of 450m² to 600m² in accordance with the SEPP Housing controls, the maximum site coverage is 50% which the proposal is still compliant. Whilst the secondary dwelling is located as a detached building in the rear yard, the development complies with the deep soil landscaping area and private open space requirements of the RDCP. The proposal provides

at least 99m² of the landscape deep soil area which meet the minimum requirement of 25% of the site being deep soil permeable surfaces in accordance with the RDCP. Furthermore, the proposal provides for a private open space area that is at least 7 x 7 metres with adequate solar access. It is also noted that a private terrace is provided to the secondary dwelling. The compliant landscaping to the site ensures the development is visually integrated well within the site, streetscape and to neighbouring properties. A high level of amenity is provided for both the occupants of the principal and secondary dwelling which includes adequate private areas for recreation and clothes drying and a landscaped outlook.

4. The proposed secondary dwelling is single storey and is of a modest scale that is compliant with the built form controls including FSR, height and setbacks of the RLEP and RDCP. Contextually the site is surrounded by apartment buildings and dwellings that are of two to five storey scale, including No. 73 St Paul Street which has an ancillary structure in the rear yard and therefore the proposal is not introducing a new element or scale not already in existence. The surrounding buildings are built with minimal setbacks and directly adjoin the proposed secondary dwelling. Therefore, in comparison, the single storey secondary dwelling to the rear would be of a lesser and more modest scale that is appropriate for the site and surrounding development. In addition, the secondary dwelling cannot be visually seen from the public domain and is surrounded by larger buildings. The proposal scale and built form is compatible with the site and surrounding development and will have no adverse visual amenity impact to the public domain.

5. 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 and on the character of the locality. Specifically: a. The extent of the variation creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope on a compliant (450sqm) site. When considering the overshadowing against the backdrop of the applicable planning controls and existing development, the additional overshadowing impacts caused by the non-compliant element would be insignificant; b. The extent of the variation creates no adverse additional privacy impacts when compared to a compliant building envelope on a compliant (450sqm) site. The proposed addition provides setbacks which are consistent with the RDCP 2013 setbacks and when considering the visual and acoustic privacy impacts against the backdrop of the applicable planning controls, the additional privacy impacts caused by the non-compliant element would be insignificant or nil; and c. The extent of the variation will not result in any significant view loss. The proposed development does not increase the visual bulk of the development over that anticipated by the building envelope controls and therefore any view loss impacts caused by the non-compliant element would be insignificant or nil.

6. A compliant site area of 450m² will not change the impact of the secondary dwelling. The secondary dwelling within a site area of 395.8m² still results in a density and scale that is compatible with the surrounding development, is appropriate for the site and does not result in any significant adverse impacts to the residential amenity of the neighbouring properties. Applying strict compliance with the site area is not considered necessary when the development is capable with complying with the objectives and controls of the Housing SEPP, RLEP and RDCP. As discussed above, the proposal satisfies the "assumed objectives" and results in no significant adverse impacts.

7. The proposal is compliant with all the SEPP Housing requirement for secondary dwellings (excluding site area) and satisfies the relevant principles of the Housing SEPP, specifically: i. The variation enables development of diverse housing with the provision of a secondary dwelling in a medium density zone (3(a)); ii. The proposal will provide a high level of amenity for the occupants of the principal and secondary dwellings (3(c)); iii. The provision of a secondary dwelling is ideally located in a built up medium density environment will excellent accessibility, existing infrastructure and services readily available (3(d)); and iv. The single storey scale and location of the secondary dwelling will incorporate a high quality design that will enhance the character of the locality (3(f)). 9. The proposed development achieves the Objects in Section 1.3 of the EP&A Act. Specifically: i. that the proposed development promotes the orderly and economic use and development of land (1.3(c)); ii. that the proposed development promotes the delivery and maintenance of affordable housing (1.3(d)); and iii. that the proposed developed promotes good design and amenity of the built

environment through a well-considered design which is responsive to its setting and context (1.3(g)). 10. The proposed development is consistent with the aims of RLEP listed in Clause 1.2. Specifically: i. the proposal is compatible with aim (f) to facilitate sustainable population and housing growth; ii. the proposal is compatible with aim (g) to encourage the provision of housing mix and tenure choice, including affordable and adaptable housing, that meets the needs of people of different ages and abilities in Randwick.

Assessing officer's comments: The Applicant's environmental planning grounds include matters relating to built form, planning controls, affordability and environmental impacts which are largely irrelevant to the matter. It is reiterated that the focus must be on the aspect of the development that contravenes the development standard (minimum required site area of 450m²), not the development as a whole.

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?

Assessment against objectives of the development standard

In the absence of specific objectives of the standard the Applicant appeals to assumed objectives as follows:

In the absence of any specific objectives for minimum site area for secondary dwellings in the Housing SEPP, the following key objectives summarised from the objectives of Clauses 4.1 and 4.4 of the RLEP can be considered 'assumed objectives' for Clause 53(2)(A) of the Housing SEPP:

- *Provides an appropriate density of the site*
- *Minimise any likely residential amenity impacts*
- *Ensure the development is compatible with the character and appearance of the locality.*

An assessment of the assumed objectives is provided in turn below.

• Provides an appropriate density of the site.

The subject site has an area of 395.8sqm which is 54.2sqm or 12.04% less than the minimum allotment size required under the Housing SEPP. Given the site does not achieve the minimum site area it is reasonable to require the size of the secondary dwelling to be reduced by a proportionate amount to ensure the density of the site remains relative to the site area. In this regard, the proposed secondary dwelling has a maximum area of 52.3sqm which represents a 12.8% reduction on the maximum GFA for a secondary dwelling (60sqm). That is, the size of the secondary dwelling (52.3sqm) continues to be proportionate to the difference between the site area (395.8sqm) and the 450sqm minimum site area requirement under the Housing SEPP. This ensures that an appropriate density will be maintained on the subject site.

Appropriate density for the site is measured through the floor space ratio control, site coverage and landscaping. As mentioned above the proposed development is below the maximum floor space ratio and site coverages for a 395.8sqm site and also complies with the deep soil landscaped area. This demonstrates that the proposal is an appropriate density for the site and maintains a similar density to the neighbouring properties and proportionate to the site area.

Whilst the secondary dwelling is located as a detached building in the rear yard, the development complies with the landscaping deep soil area and private open space requirements of the RDCP. Given that the new secondary dwelling meets all the prescribed density and site arrangement controls, a high level of amenity is provided for both the occupants of the principal and secondary dwellings which includes adequate private open

space areas for recreation and access to sunlight, a landscaped outlook and a reasonable level of privacy maintained.

Even with a compliant site area of 450m², the proposed impact of the secondary dwelling will be no different to the site area being 395.8m². The current site area still results in a density and scale that is compatible with the surrounding development, is appropriate for the site and does not result in any significant adverse impacts to the residential amenity of the neighbouring properties. Applying strict compliance with the site area is not considered necessary when the development complies with all the objectives and controls of the SEPP Housing, RLEP and RDCP.

Given the above, the proposal, despite the variation to the minimum site area, is of appropriate density for the site and therefore, this 'assumed objective' is achieved.

• Minimise any likely residential amenity impacts

The proposed secondary dwelling has been designed to result in minimal residential amenity impacts to neighbouring properties and provides a positive impact to the subject site. There are no views which would be adversely affected by the proposal, particularly given works proposed are typically at ground level and relate to a single storey secondary dwelling.

The proposed new secondary dwelling has been positioned at the rear of the site with a rear setback compatible with surrounding development including No. 67-69 St Pauls Street to the west and No. 73 St Pauls Street to the east which also has an ancillary structure in the rear yard. The proposal is also site at ground level which ensures that boundary fencing largely screens the windows and private terrace of the secondary dwelling and avoids any adverse overlooking to adjoining sites. A fence is also proposed internally on site to provide for mutual privacy between the principal and secondary dwellings.

The proposed secondary dwelling will not have any adverse impacts on the adjoining sites and the subject site in terms of overshadowing. The proposed development ensure compliance is maintained with Council's solar access controls and that a reasonable amount of sunlight is maintained to the private open space and living room windows of both the subject site and neighbouring properties in accordance with the RDCP.

Adequate private open spaces is provided for both the secondary dwelling and principal dwelling. The compliant landscaping to the site ensures the development is visually integrated well within the site, streetscape and to neighbouring properties. A high level of amenity is provided for both the occupants of the principal and secondary dwelling which includes adequate private areas for recreation and clothes drying and a landscaped outlook.

Given the above, the proposal, despite the variation to the minimum site area, will have no significant residential amenity impacts to the occupants and neighbouring properties and therefore, this 'assumed objective' is achieved.

• Ensure the development is compatible with the character and appearance of the locality

The site is located within the R3 Medium Density Residential zone and surrounding development is characterised by a mixture of residential accommodation including dwelling houses, attached dwellings, semi-detached dwellings, residential flat buildings and Seniors Developments. On the southern side of St Pauls Street, lots are zoned R2 Low Density Residential.

To the west, the site adjoins No. 67-69 St Pauls Street which contains a five storey rendered residential flat building. Pedestrian access is via a high gate at the front boundary, while vehicular access is via a roller door directly adjacent the front boundary leading to basement parking. Adjoining the site to the east is No. 71 St Pauls Street which contains a one to two storey brick dwelling with tile roof. This dwelling has a detached single garage with limited front setback addressing St Pauls Street. To the north (rear) of the site is No. 11 Daintrey Crescent which contains a three to four storey residential flat building.

The proposed secondary dwelling is single storey and is of a modest scale that is compliant with the built form controls including FSR, height, setbacks and landscaped area of the RLEP and RDCP. Given the varying scales and housing types of the surrounding development, a one storey secondary dwelling is compatible with the context and character of the locality. In addition, the secondary dwelling cannot be visually seen from the public domain as it is located to the rear of the site with no rear lane and the adjoining buildings are larger in built form and scale.

The secondary dwelling is of high quality contemporary design utilising a variety of materials and colours such as Dulux Lexicon timber cladding and Colorbond Windspray roof sheeting. The external materials, colours and finishes and architectural design results in an appearance that is compatible with the surrounding built and natural environment. The site also incorporates large amount of landscaping and deep soil to integrate the built form with the site and streetscape.

Given the above, the proposed scale and built form is compatible with the character and appearance of the locality and will have no adverse visual amenity impact to the public domain and therefore, this 'assumed objective' is achieved.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in Section 6 below.

Assessing officer's comments: The assessment against "assumed" objectives provided in the Applicant's written request (outlined above) in relation to the minimum site area standard is irrelevant to the aim of the standard aims and therefore the development remains inconsistent with the specific standard.

Assessment against objectives of the R3 zone

The objectives of the R3 zone are:

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

The Applicant has addressed the objectives of the zone with the submitted Clause 4.6 exception request, as follows:

The proposed secondary dwelling allows the owners to increase the density of the site so that it is more reflective of the R3 Medium Density Residential objectives. As a result, the existing dwelling can be retained and a secondary dwelling can be provided which contributes to additional housing types in the area and by nature contributes to affordable housing particularly for young couples, families and students. The retention of the dwelling also ensures that there is no significant demolition impact which would contribute negatively to the carbon footprint and amenity of the neighbouring properties. Therefore, the proposal is compatible with the R3 Medium Density Zone objectives.

Assessing officer's comments: The proposed development is ordinarily prohibited in the R3 zone and is only permissible by virtue of the Housing SEPP 2021. Notwithstanding, it is

considered the development would not contribute to the desired future character of the area and is inconsistent with the objectives of the R3 zone. Therefore, the development is not 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?

There is a public benefit in maintaining the development standard in this instance as it will allow for the orderly use of the site.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have not been satisfied and that there is no legal basis for Council to grant development consent for a development that contravenes the minimum site area development standard under the Housing SEPP 2021.

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal fails to satisfy several objectives and controls under the Randwick Comprehensive DCP 2013. See Appendix 3: DCP Compliance Table.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposal will result in detrimental social or economic impacts on the locality.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(c) – The suitability of the site for the development	The site has insufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered unsuitable 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) – <i>The public interest</i>	The proposal is inconsistent with the relevant objective of the zone and will result in adverse environmental impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

8.1. Discussion of key issues

Clause 4.6 - Exception to a Development Standard

Pursuant to Clause 53 of the Housing SEPP, a minimum site area of 450m² applies to a detached secondary dwelling. The subject site has an area of 395.8m² and therefore the proposal represents a 12.04% variation above the development standard. The Applicant submitted a Clause 4.6 written request seeking an exception to the minimum site area development standard.

Council can only grant development consent for a development that contravenes a development standard if it is satisfied that the 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.

Refer Section 7.1 above for Clause 4.6 written request assessment. Council is not satisfied that the written request has in fact demonstrated both that compliance is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention.

In conclusion, it is considered that the requirements of Clause 4.6(4) have not been satisfied and that there is no legal basis for Council to grant development consent for a development that contravenes the minimum site area development standard under the Housing SEPP 2021.

Earthworks

Section 4.6 of the DCP details the objectives and controls in relation to Earthworks which are seen as applicable to the merit assessment of the secondary dwelling proposed in this application.

Objective:

- To maintain or minimise change to the natural ground levels.
- To ensure excavation and backfilling of a site do not result in unreasonable structural, visual, overshadowing and privacy impacts on the adjoining dwellings.
- To enable the provision of usable private open space for dwellings with adequate gradient.
- To ensure earthworks do not result in adverse stormwater impacts on the adjoining properties.

Assessing officer's comments: Excavation greater than 1m depth is proposed within the rear yard to create an outdoor terrace to extend to the eastern and western boundaries and will incorporate stepped planters/retaining walls to transition between the new changes in levels.

This proposed modification and lowering of the existing ground adjacent the principal dwelling and within proximity of adjoining boundary fencing is also proposed to accommodate stair access to the rear garden and secondary dwelling located at the rear of the property.

Concern remains for the extensive amount of excavation, and it is unclear from the submitted plans to discern with any detail that appropriate measures are proposed to avoid, minimise or mitigate the impacts of the development, for Council to be satisfied that the proposed excavation will not have a detrimental impact on the site and amenity of adjoining properties.

Further, it is noted the submitted SEE does not adequately address the objectives of the above Clause and therefore consent for the current proposed configuration cannot be granted.

Bulk and Scale – Outbuilding

The proposed outbuilding comprising the secondary dwelling features an external wall height of 3.24m and a maximum overall height of 4.422m. This outbuilding is considered excessive in bulk and scale and does not comply with maximum height controls under the DCP. The proposed development will consequently introduce substantial visual bulk, scale and massing that presents and relates poorly to private open spaces. The proposal will facilitate development that is uncharacteristic and not compatible with existing and desired built forms and the prevailing development pattern of the immediate locality. As such, the proposed outbuilding's design, bulk and scale are not considered acceptable. The proposed outbuilding is not supported in its current form.

Visual Privacy

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 secondary dwelling proposed in this application.

Objective under Section 5.3:

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

Dwelling alterations

Side elevations 'East' and 'West' (Refer Figures 15 and 17,,) have potential to impact on adjoining neighbour amenity with respect to visual privacy and overlooking, primarily in relation to the units within the adjoining RFB at 67-69 St Pauls Street to the west of the subject site. Applicable windows with potential impacts have been identified and are individually assessed against the relevant DCP controls and objectives below:

Secondary Dwelling

- Ground floor windows 'W102' and 'W103' orientated to the west belong to the open plan kitchen and living area and directly faces adjoining units and balconies at the multi-level 67-69 St Pauls Street. The subject windows are at a ground floor location, and in normal instances the separating boundary fence would provide adequate visual privacy to neighbours, however it is noted that the upper two to three levels of the adjoining RFB are currently located at height above the fence line which raised likely overlooking concerns generated by the proposal. It is noted this has been raised in the submitted neighbouring objections provided by Units 1 and 4.

It is agreed there is likely visual privacy impact to windows and balcony spaces belonging to adjoining neighbours and therefore recommended the two west facing windows be deleted or provided with a translucent or obscure glass.

- Ground floor window 'W105' orientated to the north belongs to Bedroom 1 and proposes dimensions of 1.2m (high) x 2.6m (wide). The location is orientated to towards the adjoining multi-level RFB located at No. 11 Daintrey Crescent. For similar reasons above the window in its current position and proportion is likely to provide cross viewing and overlooking impacts to the adjoining neighbours. It is recommended window 'W105' be deleted.
- Ground floor window 'W106' orientated to the east belongs to the proposed bathroom. The

window is orientated to the adjoining neighbour's rear yard and is obscured by the current boundary fence, therefore unlikely to provide visual privacy to neighbours.

Acoustic Privacy

Section 5.4 of the DCP details the objectives and controls in relation to Acoustic Privacy which are seen as applicable to the merit assessment of the secondary dwelling proposed in this application.

Objectives under Section 5.4:

To ensure the siting and design of development minimise the impacts of noise transmission between dwellings.

To ensure the siting and design of development minimise impacts from significant noise sources outside the property, such as arterial roads, flight paths, industries and ports.

Assessing officer's comments: Concern is raised for the proposed external rear terrace located at the northern corner of the proposed secondary dwelling. The terrace orientated towards and facing the adjoining RFB to the north at No. 11 Daintrey Cresc where several bedroom windows directly face the subject site.

The proposed terrace is accessed off the living areas of the secondary dwelling and will likely be the main outside place of congregation and therefore poses a risk of likely disruption and noise impacts to adjoining neighbours. For these reasons it is considered that the terrace is inappropriate in its location and is recommended to be deleted.

In light of the above as well as any substantive and critical issues associated with the proposal, the subject application is recommended for refusal.

9. Conclusion

The proposal is not satisfactory and does not meet the applicable statutory and non-statutory environmental planning requirements. The proposal will result in the following adverse impacts on the environment: visual and acoustic privacy impacts; visual bulk, scale and massing presenting to private open spaces, facilitating development that is uncharacteristic and not compatible with existing and desired built forms and the prevailing development pattern of the immediate locality, setting an undesirable precedent for overdevelopment of sites and allowing undersized lots to feature secondary dwellings .

The Applicant submitted a written request as per Clause 4.6 of the RLEP 2012 to vary the non-discretionary development standard under Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021. Council considered the written request and has determined that the Applicant has not demonstrated that compliance with the non-discretionary development standard is unreasonable or unnecessary in the circumstances. Council considers that there are no sufficient environmental planning grounds to justify the contravention of the non-discretionary development standard.

10. Recommendation

That the Randwick Local Planning Panel (RLPP) refuse consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. 665/2022 for alterations and additions to the existing dwelling house including rear ground floor addition and construction of a detached single storey secondary dwelling at the rear of the site with associated site and landscape works at No. 69A St Pauls Street, Randwick for the following reasons:

1. Pursuant to Section 4.15 (1)(a) of the EP&A Act 1979, the proposed development does not comply with the following relevant environmental planning instruments and development controls as follows:

- i) Clause 4.6 of the Randwick Local Environmental Plan 2012.
 - o The consent authority is not satisfied that the Applicant has demonstrated that compliance with the non-discretionary development standard under Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021 is unreasonable or unnecessary in the circumstances.
 - o The consent authority considers that there are no sufficient environmental planning grounds to justify the contravention of the non-discretionary development standard under Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021.
 - o The consent authority considers that the proposed development is not in the public interest as it fails to achieve consistency with the relevant aims of the Randwick Local Environmental Plan 2012 and the objectives of the R3 – Medium Density Residential zone. As such, development consent cannot be granted to development that contravenes the respective development standard.
 - j) Randwick Local Environmental Plan 2012 – Aims of the Plan – unable to satisfy the key aims (2)(c) and (2)(d).
 - o The proposal fails to promote a development form that is appropriate to its context and that supports an efficient use of land.
 - o The proposal fails to achieve a high standard of design in the private and public domain that enhances the quality of life of the community.
 - k) Randwick Local Environmental Plan 2012 – the relevant objectives of the R3 Medium Density Residential zone. The proposal is not consistent with these objectives in that the development fails to recognise the desirable elements of the existing streetscape and built form and does not provide positive contribution to the desired future character of the area. The proposal will unreasonably compromise the amenity of residents.
 - l) Randwick Local Environmental Plan 2-12 – Clause 6.2 (Earthworks). The proposed earthworks are excessive and fail to achieve the provisions and objective under Clause 6.2.
 - m) Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Section 4.6 – Earthworks. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the development involves substantial excavation that is excessive and fails to respond to and respect the topography and site constraints of the subject land.
 - n) Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Sections 5.3 and 5.4 – Visual and Acoustic Privacy. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the development will result in adverse visual and acoustic privacy impacts.
 - o) Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Sections 5.3 and 5.4 – Visual and Acoustic Privacy. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the development will result in adverse visual and acoustic privacy impacts.
 - p) Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Section 7.4 – Outbuildings. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the development comprises an outbuilding that is excessive in terms of bulk and scale.
2. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979, the proposal is likely to have adverse impacts on the following aspects on the environment: visual and acoustic privacy impacts; visual bulk, scale and massing presenting to private open spaces, facilitating development that is uncharacteristic and not compatible with existing and desired built forms and the

prevailing development pattern of the immediate locality, setting an undesirable precedent for overdevelopment of sites and allowing undersized lots to feature secondary dwellings .

3. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the subject site is not suitable for the proposal for the following reasons: undersized lot that is not able to facilitate an appropriate development form and a secondary dwelling (building) that achieves compliance with the relevant controls and provisions under State and Council policies, and the development will have unacceptable privacy impacts on neighbouring properties.
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 precedent including endorsement of an unacceptable non-compliance to the non-discretionary development standard under Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021 and facilitates an excessive built form and secondary dwelling that does not respect the predominant development pattern of the locality and does not achieve compliance with Council controls and requirements including those associated with outbuildings and privacy.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

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

The Site

The site is occupied by a three storey dwelling over lower ground level carparking. To the south of the site, on the opposite side of St Pauls Street is The Spot heritage conservation area. To the east of the site on the corner of Daintrey Crescent is the St Pauls Street sandstone retaining wall, listed as a heritage item under Randwick LEP 2012. To the west of the site is "Aeolia", and the Brigidine convent and chapel, as well as the Ritz Cinema, also listed as heritage items. The Ritz cinema is also listed on the State Heritage Register.

Proposal

The application proposes alterations and additions to the dwelling, particularly to the rear at ground floor level. A large secondary dwelling is also proposed in the rear garden.

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 site is separated from the heritage conservation area and the heritage items and will not impact on their physical fabric. The proposed changes are to the rear of the existing building and will not impact on the streetscape setting of surrounding heritage properties, or views to or from them.

Recommendation

No additional consent conditions are required.

1.2. Landscape Development Officer

Council's Landscape Development Officer has confirmed the proposed development is satisfactory and provided the following comments, subject to the below prescribed conditions:

An application has been received for alterations and additions at the above site.

This report is based on the following plans and documentation:

- *Architectural Plans by Fortey & Grant Architecture Pty Ltd, Job No 2207, dated 24/11/2022;*
- *Statement of Environmental Effects by Planning Ingenuity dated 13/12/2022;*
- *Landscape Plan by Be Landscape Architects, Project FG ARCH, Date 28/11/2022;*
- *Detail & Level Survey by Benchmark Surveys NSW Pty Ltd Ref; 220306, Date 25/11/2022.*

Tree Management & Landscape Comments

Site inspection was undertaken on Wednesday 3 May 2023, and confirmed vegetation submitted on, Trim Doc: D04931998.

Within the frontage of this site, zero vegetation was found, the only vegetation were two street trees located to the east and west of No69 property, they were plotted centrally, on councils verge adjacent the neighbouring properties, these trees will not be in direct conflict with works, are measured well clear from any physical or mechanical damage, tree protection will not be implemented.

With all works carried out to the rear of the of the property, the only movement at the frontage will be deliveries of materials, possible lifting and maneuvering of mechanical machinery.

Moving to north frontage, towards a wooden gate above a small concrete stair, that leads to a narrow laneway, adjacent No.67-69 boundary, this narrow lane leads to the rear of the existing building, where you meet a 90-degree angled retaining wall.

This retaining wall will be demolished and excavated 5.5 metres north, within the excavation works, will leave neighbouring upper level trees in direct conflict with works.

Investigation report was sought from owner/builder detailing a root mapping trench, this trench was undertaken by hand, width of 2 metres, measuring 0.2metres from rear boundary fence, where minor root activity was identified, seen on TRIM Doc: D05059970 & D05064309.

Council agrees, the works will proceed to the architects' measurements and specifications, council still requires the owner to comply with below guidelines before excavations proceeds.

*Given the relatively small size of the neighbouring trees, we're not anticipating any major issues, roots with a diameter of **less than 50mm** to be found which are in direct conflict with the approved works, Council grants permission for their pruning, they will be cut cleanly using hand-held tools only, not machinery, with the affected area then be backfilled with clean site soil as soon as practically possible.*

Moving to north setback, screening bamboo species listed in the DCP of undesirable species, were located on the boundary fence to the west, in direct conflict with works, removal is granted for the proposed works and new landscaping.

Moving to the north, wholly in the adjoining property, two Archontopheonix cunninghamiana (Bangalow palms) 9 meters high, good vigor, slight overhang over site, not in direct conflict with works, boundary fence will be sufficed for protection, a dedicated deep soil area must be provided, within the site boundary and proposed building to consider root protection, this condition is stated further in this report.

Moving back within the site on the northern boundary, screening bamboo species, listed in the DCP of undesirable species, in direct conflict with works, removal is granted for proposed building and landscaping.

Further southeast of above vegetation, Jasmine species, growing wholly in the neighbouring property, this climbing plant envelopes the entire boundary fence within the works site, will apply conditions specifying that pruning will be undertaken, due to been in direct conflict with proposed new landscaping, shown in, Landscape Dwg No, L01.

Site inspection saw varied small vegetation throughout the site, pot plants etc., all in direct conflict with works, all to be removed prior to commencement of this project.

*The only aspect that requires amendment, is the removal of the western boundary Banksia integrifolia (Coast Banksia), from Landscape Plans by Be Landscape architects (Dwg L01) **(conditioned in this report)***

Landscape plans by Be Landscape architects, Project FG ARCH, Date 28/11/2022, have been submitted, all surrounding plants and vegetation will be planted to drawings specifications, all plants are of acceptable standard, with good treatment of suitable fertilisers and maintenance they will improve the open space living area to a higher standard.

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

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**CLAUSE 4.6 WRITTEN REQUEST FOR EXCEPTION TO
DEVELOPMENT STANDARD**

Variation to Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021 – Minimum Site Area for Secondary Dwellings

69A St Paul Street
Randwick

Prepared for: Damien Vass

REF: M220498

DATE: 6 November 2023

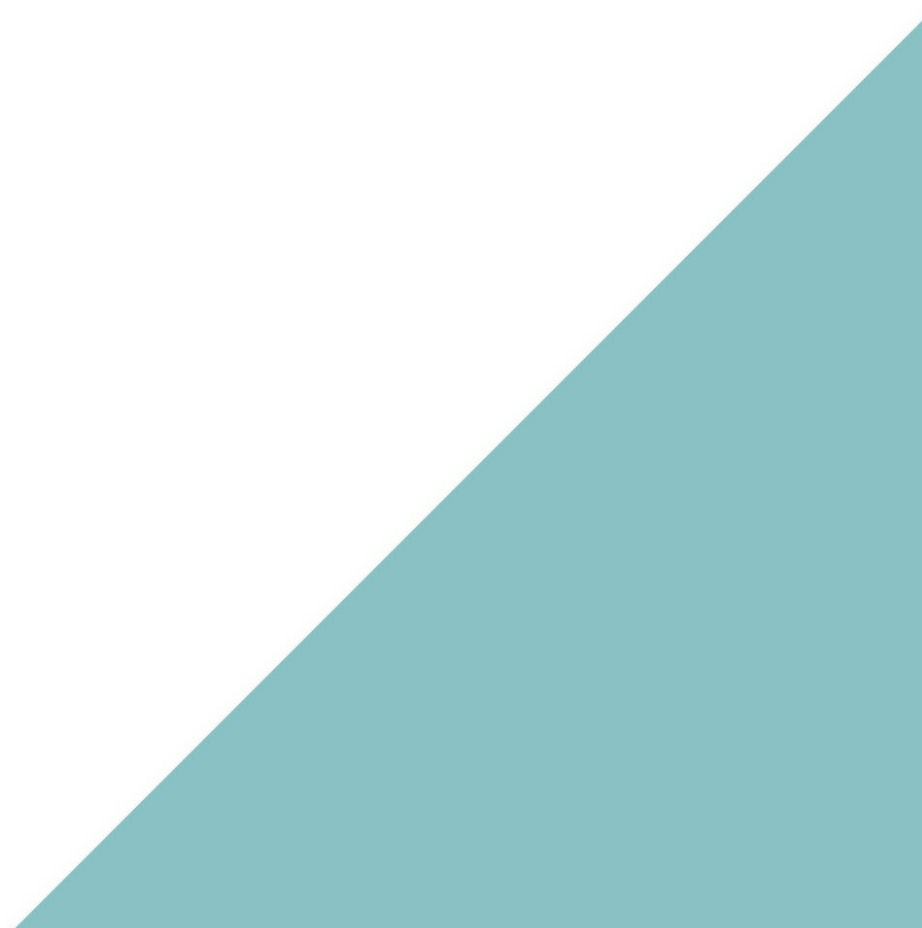




DEVELOPMENT



Clause 4.6 Written Request for Exception to Development Standard
Prepared for: Damien Vass
Ref: M220498
Date: 6 November 2023



Clause 4.6 written request for exception to development standard – (Clause 53(2)(a) Housing SEPP)

1. INTRODUCTION

This Clause 4.6 written request for exception to development standard has been prepared on behalf of the applicant for the proposed development at No. 69A St Paul Street Randwick (the site).

This Clause 4.6 Written Request for Exception to a Development Standard has been prepared in accordance with the NSW Department of Planning and Environment's "Guide to Varying Development Standards" (November 2023) and relevant decisions in the New South Wales Land and Environment Court (the Court). In particular it is noted that the requirements of Clause 4.6(4) have been deleted which remove the need for the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone.

The following two Court judgments provide a clear outline of the matters required to be addressed under Clause 4.6, including the structure of such requests:

- *Brigham v Canterbury-Bankstown Council* [2018] NSWLEC 1406; and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The Court has established principles that are to be addressed in relation to whether a variation to a development standard should be approved by a consent authority. The relevant tests to be considered are set out in the judgement of Justice Lloyd in *Winton Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79. The relevant tests were revisited by Chief Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*). Although the Winton Property Group and Wehbe judgment refer to variations to development standards submitted under State Environmental Planning Policy 1 – Development Standards (SEPP 1) the principles and tests contained therein remain applicable to a variation request under Clause 4.6 in the NSW Standard Instrument as confirmed by the Court in the following judgments:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five);
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245;
- *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61;
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191;
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112;
- *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115.

It is important to note at the outset that clause 4.6 of the LEP "is as much a part of [the LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome." (*SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [73]).

In our opinion, the variation achieves the objectives of the zone and the development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

2. CLAUSE 53(2)(A) OF THE HOUSING SEPP

Clause 53 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) provides non-discretionary development standards, which if complied with, prevent the consent authority from requiring a more onerous standard. This Clause 4.6 Variation Request has been prepared in relation to Clause 53(2)(a) of the Housing SEPP relating to minimum site area of secondary dwellings which states:

(a) for a detached secondary dwelling—a minimum site area of 450m²



The subject development includes a detached secondary dwelling therefore, the site area is to be 450m².

3. THE VARIATION

The proposed site area does not meet the above non-discretionary development standard for a detached secondary dwelling. The site area is 395.8m² and is therefore, deficient by approximately 12.04%.

4. CLAUSE 4.6 OF RLEP 2012

Clause 4.6(2) of the *Randwick Local Environmental Plan 2012* (RLEP) states that this clause is applicable to a development standard "imposed by this or any other environmental planning instrument". The Housing SEPP is an environmental planning instrument and therefore Clause 53(2)(a) of the Housing SEPP is a development standard which can be varied pursuant to Clause 4.6 of the RLEP.

Clause 4.6 of the RLEP allows for flexibility in the application of development standards in certain circumstances. The objectives and provisions of Clause 4.6 are reproduced below.

(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 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.*

Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) *The consent authority must keep a record of its assessment carried out under subclause (3).*

(5) *(Repealed)*

(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) (Repealed)

(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,

d. clause 5.5.

(ca) clause 6.16(3)(b).

In accordance with Clause 4.6(2), the minimum site area standard for secondary dwellings in Clause 53(2)(a) of the Housing SEPP can be varied under Clause 4.6 of the RLEP. Clause 53(2)(a) is not expressly excluded from the operation of clause 4.6.

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

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

However, it is still useful to provide a preliminary assessment against the objectives of the Clause.

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 Subclause 4.6(3) in order to demonstrate to the consent authority 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).

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

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

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

5. COMPLIANCE IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (Sub-Clause 4.6(3)(a))

Of relevance to Clause 4.6(3)(a) is Preston CJ's judgment in *Wehbe v Pittwater Council (2007) NSW LEC 827* which sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. 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 judgment 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 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 written request [our underline]):

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

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

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

It is noted that there are no specific objectives for Clause 53(2)(a) of the Housing SEPP. However, the objectives of applying a minimum site area for secondary dwellings is closely aligned in a practical sense with the objectives of Clause 4.1 Minimum Subdivision Lot Size and Clause 4.4 Floor Space Ratio of the RLEP. The purposes of applying minimum site area, lot sizes and floor space ratio controls is to minimise adverse residential amenity impacts, ensure the development is compatible with the locality and provide appropriate density to the site. These key objectives are reflected in the objectives of Clause 4.1 and Clause 4.4 of the RLEP.

The objectives of Clause 4.1 Minimum Subdivision Lot Size of RLEP states:

(a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,

(b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,

(c) to ensure that lot sizes are able to accommodate development that is suitable for its purpose.

The objectives of Clause 4.4 Floor Space Ratio of the RLEP states:

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

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

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

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

In the absence of any specific objectives for minimum site area for secondary dwellings in the Housing SEPP, the following key objectives summarised from the objectives of Clauses 4.1 and 4.4 of the RLEP can be considered 'assumed objectives' for Clause 53(2)(A) of the Housing SEPP:

- Provides an appropriate density of the site
- Minimise any likely residential amenity impacts
- Ensure the development is compatible with the character and appearance of the locality

An assessment of the assumed objectives is provided in turn below.

- Provides an appropriate density of the site

The subject site has an area of 395.8sqm which is 54.2sqm or 12.04% less than the minimum allotment size required under the Housing SEPP. Given the site does not achieve the minimum site area it is reasonable to require the size of the secondary dwelling to be reduced by a proportionate amount to ensure the density of the site remains relative to the site area. In this regard, the proposed secondary dwelling has a maximum area of 52.3sqm which represents a 12.8% reduction on the maximum GFA for a secondary dwelling (60sqm). That is, the size of the secondary dwelling (52.3sqm) continues to be proportionate to the difference between the site area (395.8sqm) and the 450sqm minimum site area requirement under the Housing SEPP. This ensures that an appropriate density will be maintained on the subject site.

Appropriate density for the site is measured through the floor space ratio control, site coverage and landscaping. As mentioned above the proposed development is below the maximum floor space ratio and site coverages for a 395.8sqm site and also complies with the deep soil landscaped area. This demonstrates that the proposal is an appropriate density for the site and maintains a similar density to the neighbouring properties and proportionate to the site area.

Whilst the secondary dwelling is located as a detached building in the rear yard, the development complies with the landscaping deep soil area and private open space requirements of the RDCP. Given that the new secondary dwelling meets all the prescribed density and site arrangement controls, a high level of amenity is provided for both the occupants of the principal and secondary dwellings which includes adequate private open space areas for recreation and access to sunlight, a landscaped outlook and a reasonable level of privacy maintained.

Even with a compliant site area of 450m², the proposed impact of the secondary dwelling will be no different to the site area being 395.8m². The current site area still results in a density and scale that is compatible with the surrounding development, is appropriate for the site and does not result in any significant adverse impacts to the residential amenity of the neighbouring properties. Applying strict compliance with the site area is not considered necessary when the development complies with all the objectives and controls of the SEPP Housing, RLEP and RDCP.

Given the above, the proposal, despite the variation to the minimum site area, is of appropriate density for the site and therefore, this 'assumed objective' is achieved.

- ***Minimise any likely residential amenity impacts***

The proposed secondary dwelling has been designed to result in minimal residential amenity impacts to neighbouring properties and provides a positive impact to the subject site. There are no views which would be adversely affected by the proposal, particularly given works proposed are typically at ground level and relate to a single storey secondary dwelling.

The proposed new secondary dwelling has been positioned at the rear of the site with a rear setback compatible with surrounding development including No. 67-69 St Pauls Street to the west and No. 73 St Pauls Street to the east which also has an ancillary structure in the rear yard. The proposal is also site at ground level which ensures that boundary fencing largely screens the windows and private terrace of the secondary dwelling and avoids any adverse overlooking to adjoining sites. A fence is also proposed internally on site to provide for mutual privacy between the principal and secondary dwellings.

The proposed secondary dwelling will not have any adverse impacts on the adjoining sites and the subject site in terms of overshadowing. The proposed development ensure compliance is maintained with Council's solar access controls and that a reasonable amount of sunlight is maintained to the private open space and living room windows of both the subject site and neighbouring properties in accordance with the RDCP.

Adequate private open spaces is provided for both the secondary dwelling and principal dwelling. The compliant landscaping to the site ensures the development is visually integrated well within the site, streetscape and to neighbouring properties. A high level of amenity is provided for both the occupants of the principal and secondary dwelling which includes adequate private areas for recreation and clothes drying and a landscaped outlook.

Given the above, the proposal, despite the variation to the minimum site area, will have no significant residential amenity impacts to the occupants and neighbouring properties and therefore, this 'assumed objective' is achieved.

- ***Ensure the development is compatible with the character and appearance of the locality***

The site is located within the R3 Medium Density Residential zone and surrounding development is characterised by a mixture of residential accommodation including dwelling houses, attached dwellings, semi-detached dwellings, residential flat buildings and Seniors Developments. On the southern side of St Pauls Street, lots are zoned R2 Low Density Residential.

To the west, the site adjoins No. 67-69 St Pauls Street which contains a five storey rendered residential flat building. Pedestrian access is via a high gate at the front boundary, while vehicular access is via a roller door directly adjacent the front boundary leading to basement parking. Adjoining the site to the east is No. 71 St Pauls Street which contains a one to two storey brick dwelling with tile roof. This dwelling has a detached single garage with limited front setback addressing St Pauls Street. To the north (rear) of the site is No. 11 Daintrey Crescent which contains a three to four storey residential flat building.

The proposed secondary dwelling is single storey and is of a modest scale that is compliant with the built form controls including FSR, height, setbacks and landscaped area of the RLEP and RDCP. Given the varying scales and housing types of the surrounding development, a one storey secondary dwelling is compatible with the context and character of the locality. In addition, the secondary dwelling cannot be visually seen from the public domain as it is located to the rear of the site with no rear lane and the adjoining buildings are larger in built form and scale.

The secondary dwelling is of high quality contemporary design utilising a variety of materials and colours such as Dulux Lexicon timber cladding and Colorbond Windspray roof sheeting. The external materials, colours and finishes and architectural design results in an appearance that is compatible with the surrounding built and natural environment. The site also incorporates large amount of landscaping and deep soil to integrate the built form with the site and streetscape.



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Given the above, the proposed scale and built form is compatible with the character and appearance of the locality and will have no adverse visual amenity impact to the public domain and therefore, this 'assumed objective' is achieved.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in Section 6 below.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (Sub-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, 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 recent 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 decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6. The case also demonstrates that the requirement in Clause 4.6(3)(b) of LEP 2012 to justify there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development and not simply grounds that apply to any similar development on the site or in the vicinity. In the *Four2Five* case, the Court found that the environmental planning grounds presented by the applicant in a Clause 4.6 written request must be specific to the circumstances of the proposed development on that site.

Furthermore, it is noted that whilst *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24] indicated that the focus of consideration of environmental planning grounds should be on the aspect or element of the development that contravenes the development standard and not on the development as a whole, in this case, it is the design of the building as a whole that results in the contravention of the development standard and not necessarily an identified aspect of the development. In this context the proposed development must be considered holistically.

In this instance, there are sufficient environmental planning and design grounds to justify the proposed contravention of the minimum site area for secondary dwelling standard in the Housing SEPP as follows:

1. The subject site has an area of 395.8sqm which is 54.2sqm or 12.04% less than the minimum allotment size required under the Housing SEPP. Given the site does not achieve the minimum site area the proposal reduces the size of the secondary dwelling by a proportionate amount to ensure the density of the site remains relative to the site area. In this regard, the proposed secondary dwelling has a maximum GFA of 52.3sqm which represents a 12.8% reduction on the maximum GFA for a secondary dwelling (60sqm). That is, the size of the secondary dwelling (52.3sqm) continues to be proportionate to the difference between the site area



(395.8sqm) and the 450sqm minimum site area requirement under the Housing SEPP. This ensure that an appropriate density will be maintained on the subject site.

2. The proposed floor space ratio (FSR) with the principal and secondary dwelling combined is 0.72:1. The maximum FSR for a site area that is between 300m² and 450m² is 0.75:1. The proposed FSR is under the maximum FSR control and therefore will comfortably fit within the density parameters of the site and is capable of accommodating a secondary dwelling, even with the variation to the minimum site area. Therefore, the proposal is of an appropriate density for the site that is similar to the density of neighbouring properties.
3. The development complies with the site coverage and landscaping requirements in accordance with the Randwick Development Controls Plan (RDCP). The development results in a site coverage of 44.8% which is well below the maximum site coverage requirement of 55% for a site area between 301m² and 450m² under the RDCP. For a larger compliant site area of 450m² to 600m² in accordance with the SEPP Housing controls, the maximum site coverage is 50% which the proposal is still compliant..

Whilst the secondary dwelling is located as a detached building in the rear yard, the development complies with the deep soil landscaping area and private open space requirements of the RDCP. The proposal provides at least 99m² of the landscape deep soil area which meet the minimum requirement of 25% of the site being deep soil permeable surfaces in accordance with the RDCP. Furthermore, the proposal provides for a private open space area that is at least 7 x 7 metres with adequate solar access. It is also noted that a private terrace is provided to the secondary dwelling. The compliant landscaping to the site ensures the development is visually integrated well within the site, streetscape and to neighbouring properties. A high level of amenity is provided for both the occupants of the principal and secondary dwelling which includes adequate private areas for recreation and clothes drying and a landscaped outlook.

4. The proposed secondary dwelling is single storey and is of a modest scale that is compliant with the built form controls including FSR, height and setbacks of the RLEP and RDCP. Contextually the site is surrounded by apartment buildings and dwellings that are of two to five storey scale, including No. 73 St Paul Street which has an ancillary structure in the rear yard and therefore the proposal is not introducing a new element or scale not already in existence. The surrounding buildings are built with minimal setbacks and directly adjoin the proposed secondary dwelling. Therefore, in comparison, the single storey secondary dwelling to the rear would be of a lesser and more modest scale that is appropriate for the site and surrounding development. In addition, the secondary dwelling cannot be visually seen from the public domain and is surrounded by larger buildings. The proposal scale and built form is compatible with the site and surrounding development and will have no adverse visual amenity impact to the public domain.
5. 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 and on the character of the locality. Specifically:
 - a. The extent of the variation creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope on a compliant (450sqm) site. When considering the overshadowing against the backdrop of the applicable planning controls and existing development, the additional overshadowing impacts caused by the non-compliant element would be insignificant;
 - b. The extent of the variation creates no adverse additional privacy impacts when compared to a compliant building envelope on a compliant (450sqm) site. The proposed addition provides setbacks which are consistent with the RDCP 2013 setbacks and when considering the visual and acoustic privacy impacts against the backdrop of the applicable planning controls, the additional privacy impacts caused by the non-compliant element would be insignificant or nil; and
 - c. The extent of the variation will not result in any significant view loss. The proposed development does not increase the visual bulk of the development over that anticipated by the building envelope controls

and therefore any view loss impacts caused by the non-compliant element would be insignificant or nil.

6. A compliant site area of 450m² will not change the impact of the secondary dwelling. The secondary dwelling within a site area of 395.8m² still results in a density and scale that is compatible with the surrounding development, is appropriate for the site and does not result in any significant adverse impacts to the residential amenity of the neighbouring properties. Applying strict compliance with the site area is not considered necessary when the development is capable with complying with the objectives and controls of the Housing SEPP, RLEP and RDCP. As discussed above, the proposal satisfies the "assumed objectives" and results in no significant adverse impacts.
7. The proposed secondary dwelling allows the owners to increase the density of the site so that it is more reflective of the R3 Medium Density Residential objectives. As a result, the existing dwelling can be retained and a secondary dwelling can be provided which contributes to additional housing types in the area and by nature contributes to affordable housing particularly for young couples, families and students. The retention of the dwelling also ensures that there is no significant demolition impact which would contribute negatively to the carbon footprint and amenity of the neighbouring properties. Therefore, the proposal is compatible with the R3 Medium Density Zone objectives.
8. The proposal is compliant with all the SEPP Housing requirement for secondary dwellings (excluding site area) and satisfies the relevant principles of the Housing SEPP, specifically:
 - i. The variation enables development of diverse housing with the provision of a secondary dwelling in a medium density zone (3(a));
 - ii. The proposal will provide a high level of amenity for the occupants of the principal and secondary dwellings (3(c));
 - iii. The provision of a secondary dwelling is ideally located in a built up medium density environment will excellent accessibility, existing infrastructure and services readily available (3(d)); and
 - iv. The single storey scale and location of the secondary dwelling will incorporate a high quality design that will enhance the character of the locality (3(f)).
9. The proposed development achieves the Objects in Section 1.3 of the EP&A Act. Specifically:
 - i. that the proposed development promotes the orderly and economic use and development of land (1.3(c));
 - ii. that the proposed development promotes the delivery and maintenance of affordable housing (1.3(d)); and
 - iii. that the proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).
10. The proposed development is consistent with the aims of RLEP listed in Clause 1.2. Specifically:
 - i. the proposal is compatible with aim (f) to facilitate sustainable population and housing growth;
 - ii. the proposal is compatible with aim (g) to encourage the provision of housing mix and tenure choice, including affordable and adaptable housing, that meets the needs of people of different ages and abilities in Randwick.

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.

Regardless, as outlined above, it is considered that 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 in the circumstances of this case, as required in Clause 4.6(3)(b).

7. CONCLUSION

This Clause 4.6 written request to vary the minimum site area development standard in clause 53(2)(a) of the Housing SEPP has adequately addressed the matters required to be demonstrated under clause 4.6(3) in order for any consent authority to be satisfied that compliance with the Minimum Site Area for Secondary Dwelling provisions of the Housing SEPP is unreasonable or unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standard.

We are of the opinion that the consent authority should be satisfied that the proposed development achieves the assumed objectives of the standard and provides sufficient environmental planning grounds to support the variation. On that basis, the request to vary Clause 53(2)(a) of the Housing SEPP should be upheld.



Appendix 3: DCP Compliance Table

3.1 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Existing = 22% (87.6m ²) Proposed = 45% (177.4m ²)	Yes
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Existing = 37% (145.4m ²) Proposed = 25% (99m ²)	Yes
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	A minimum 6m x 6m of contiguous POS is proposed to the rear of the dwelling and accessible from the rear living area.	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.75:1	Existing FSR = 0.5:1 (GFA of 201.8m ²) Proposed FSR = 0.72:1 (Combined principal and secondary dwelling GFA of 284.9m ²)	Yes
3.2	Building height		
	Maximum overall height LEP 2012 = 12m (R3) (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. (2A) Despite subclause (2), the maximum height of a <u>dwelling house</u> or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres	Existing principal dwelling = >9.5m No changes proposed to dwelling building height and no works are proposed above the maximum building height. Secondary Dwelling = 4.422m (Measured between	As existing Yes

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DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	
		Ridge Level RL74.852 and adjacent ground RL70.43)	
	<ul style="list-style-type: none"> i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded 	<p><u>Existing principal dwelling:</u> Rear extension max. wall height = 3.49m Minimum floor to ceiling = 2.87m</p> <p><u>Proposed secondary dwelling:</u> Max. wall height = 3.24m Minimum floor to ceiling = 2.7m</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
3.3	Setbacks		
3.3.1	Front setbacks <ul style="list-style-type: none"> i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front 	No change to existing	Yes
3.3.2	Side setbacks: 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. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p>Frontage = 9.19m</p> <p>Works pertaining to the <i>principal dwelling</i> are limited to the ground floor rear extension resulting in the following side setbacks: West = 1.77m East = 1.44m</p>	Yes
3.3.3	Rear setbacks <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear 	<p>Minimum = 10.68m</p> <p>Principal dwelling proposed rear setback = 24.8 - 25.12m</p>	<p>Yes</p> <p>The proposal complies with the outbuilding setback controls in Section 8.1 of this table and the rear setback is acceptable.</p>

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	
	<p>setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 	The building occupies the majority of the rear yard and does not respond appropriately to the site.	Yes
4.5	Colours, Materials and Finishes		
	<p>i) Schedule of materials and finishes</p> <p>ii) Finishing is durable and non-reflective.</p> <p>iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration)</p> <p>iv) Articulate and create visual interest by using combination of materials and finishes.</p> <p>v) Suitable for the local climate to withstand natural weathering, ageing and deterioration.</p> <p>vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)</p>	<p>Proposed materials and Finishes schedule is provided within DA drawing DA-13 (B)</p> <p>The nominated colours and materials are satisfactory.</p>	Yes
4.6	Earthworks		
	<p>i) excavation and backfilling limited to 1m, unless gradient too steep</p> <p>ii) minimum 900mm side and rear setback</p> <p>iii) Step retaining walls.</p> <p>iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm.</p> <p>v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping)</p> <p>vi) cut and fill for POS is terraced <i>where site has significant slope:</i></p> <p>vii) adopt a split-level design</p> <p>viii) Minimise height and extent of any exposed under-croft areas.</p>	<p>Excavation >1m is proposed within the rear yard to create an outdoor terrace to extend to the eastern and western boundaries and will incorporate stepped planters/retaining walls to transition between the new changes in levels.</p> <p>This proposed modification and lowering of the existing ground adjacent the principal dwelling and within proximity of adjoining boundary fencing is also proposed to accommodate stair</p>	No

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DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	
		access to the rear garden. Concern remains for the extent of excavation, and it is unclear from the submitted plans to discern with any detail that excavation will not have a detrimental impact on the site and adjoining properties.	
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 proposed secondary dwelling is single storey and does not trigger the requirements for shadow diagrams to be submitted. Due to the extent of earthworks and level change it presents it is not possible to fully discern and determine the exact extent of overshadowing caused by the secondary dwelling on the subject proposed POS. North-facing living room windows are unlikely to be impacted by the proposed development and it is likely that adequate ambient light is provided during midwinter in line with the objectives. As the works predominately impact on the subject site, the proposal is therefore seen to satisfy the DCP objectives.	Satisfactory
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours	The proposed secondary dwelling is a single	Yes

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	
	<p>of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	<p>storey structure and does not trigger the requirements for shadow diagrams to be submitted.</p> <p>The proposal is single storey and will not result in any unreasonable overshadowing impacts to the adjoining properties.</p>	
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	The layout and design will provide adequate internal amenity for the future occupants.	Yes
5.3	Visual Privacy		
	Windows		
	i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:	The proposed principle ground floor extension will not likely impact on visual privacy as the opening is orientated to	No (refer to Key Issues)

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DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	
	<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 subject site rear yard.</p> <p>The proposed secondary dwelling includes two window orientated to adjoining neighbouring windows and balconies as well as a rear storey and there will be no unreasonable visual privacy impacts to the adjoining properties.</p>	
5.4	Acoustic Privacy		
	<p>i) noise sources not located adjacent to adjoining dwellings bedroom windows <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 proposed principal dwelling additions are appropriately located to the rear of the dwelling and orientated to the subject site's rear yard.</p> <p>The secondary dwelling, however, is located at the rear of the property and within 5.6m to adjoining RFB at No 11 Daintrey Cresc and 5.8m to the adjoining RFB at 67-69 St Pauls Street where existing bedrooms and balconies face the subject secondary dwelling development.</p> <p>The secondary dwelling proposes an external terrace facing north and facing the adjoining three storey RFB at No 11 Daintrey Crescent.</p>	No (refer to Key Issues)
5.5	Safety and Security		
	<p>i) dwellings main entry on front elevation (unless narrow site)</p> <p>ii) Street numbering at front near entry.</p> <p>iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place.</p> <p>iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)</p>	<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 will maintain the existing front door entrance.</p>	Yes

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	
		Direct, obvious, and secure access will be provided to the proposed secondary dwelling.	
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)	<p>The proposed development retains the existing principal dwelling upper levels and together with the proposed secondary dwelling generally complies with the overall building envelope controls.</p> <p>The proposed ground floor extension and secondary dwelling is considered unlikely to affect the existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas in the vicinity of the site.</p>	Yes
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	There will be no change to the existing parking arrangement at the front of the principal dwelling.	Yes
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	No changes are proposed to the existing boundary fencing.	Yes

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DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	
	wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street		
7.4	Outbuildings		
	i) Locate behind the front building line. ii) Locate to optimise backyard space and not over required permeable areas. iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height) iv) Nil side and rear setbacks where: <ul style="list-style-type: none"> - finished external walls (not requiring maintenance; - no openings facing neighbours lots and - maintain adequate solar access to the neighbours dwelling v) First floor addition to existing may be considered subject to: <ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades; - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. vi) Must not be used as a separate business premises.	The proposed secondary dwelling is single storey and will be located in the rear yard and have a maximum external wall height of 3.24m and a maximum overall height of 4.422m. The secondary dwelling has side setbacks of 900mm. And a rear setback from 1.15m – 1.41m	No.

Responsible officer: Jose Serrao, Environmental Planning Officer

File Reference: DA/665/2022

Development Application Report No. D29/24

Subject: 36-38 Wentworth Street, Randwick (DA/1055/2023)


Executive Summary

Proposal:	Alterations and additions to existing dwelling including enclosing existing upper level terrace and new balcony
Ward:	North Ward
Applicant:	John Haddock
Owner:	J & T Haddock
Cost of works:	\$150,000.00
Reason for referral:	Non-compliance with LEP Height Standard >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.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/1055/2023 for Minor addition to extend and enclose rear upper-level terrace, at No. 36-38 Wentworth Street, Randwick subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/1055/2023 - 36-38 Wentworth Street, 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 building height by more than 10%

The proposal seeks development consent for a minor rearward extension and enclose rear upper-level terrace, which will accommodate a new study and balcony, located on the first floor at the rear of the property.

One of the key issues associated with the proposal relate to the works being above the maximum building height development standard (9.5m) under Clause 4.3 of the Randwick Local Environmental Plan 2012. The proposed development features a height of 10.6m, which represents a variation of 11.6% (or 1.1m) to the development standard. It is noted that the proposed development is situated below the existing roof of the dwelling house. This roof comprises a maximum height of 11.76m and has a pre-existing variation of 23.8% (or 2.26m).

This report has considered the merits and impacts associated with the proposal, including a detailed assessment of the proposed contravention to the development standard. This assessment has identified that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

Accordingly, the proposal is recommended for approval.

2. Site Description and Locality

The subject site is known as No. 36-38 Wentworth Street, Randwick and is legally described as Lot 1 in DP 1077938. The site is 843.5m², is regular in shape and has a 18.29m frontage to Wentworth Street to the east. The site is mostly modified, containing a 3-storey rendered brick and tile roof dwelling house and ancillary structures such as an elongated in-ground swimming pool with pool decking, attached pergola and awning above an outdoor dining area and a detached 2-storey outbuilding comprising a double car garage with a change room above (refer to Figures 1 to 5). The site benefits from having vehicular access off Dangar Lane (at the rear). Surrounding the dwelling house are a number of formal garden beds containing shrubbery and hedges and open grassed lawn areas.

The site slopes approximately 4m from east (front) to west (rear) and exhibits a cross-fall of approximately 1.55m from south to north.

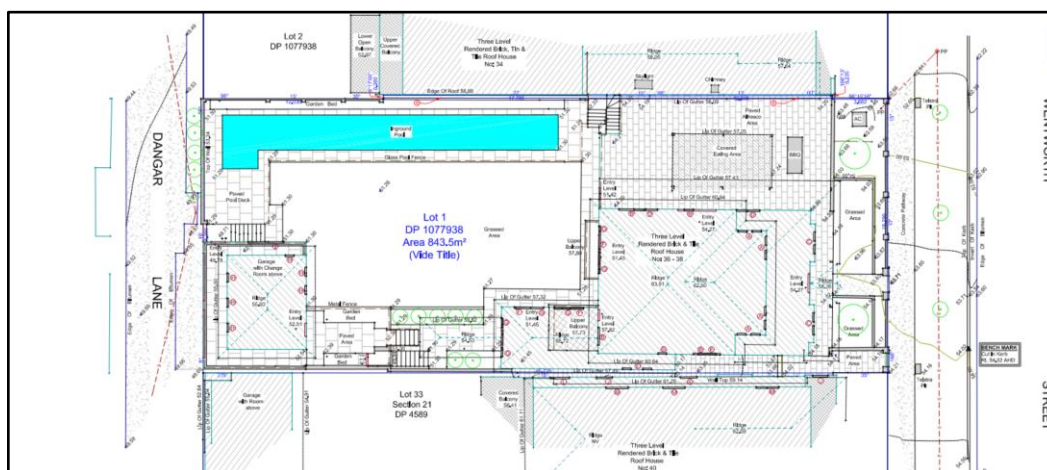


Figure 1: Survey Plan of No. 36-38 Wentworth Street (Source: Hammond Smeallie & Co Pty Ltd)



Figure 2: Front of dwelling house within subject site (No. 36-38 Wentworth Street)

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Figure 3: View of eastern elevation of the dwelling house from the western side of rear yard



Figure 4: Existing pool and paved pool deck area along northern side of rear yard and first floor balcony of north-adjacent neighbour (No. 34 Wentworth Street)



Figure 5: View of the southern and rear portion of dwelling house and elevated balcony of south-adjointing neighbour (No. 40 Wentworth Street)



Figure 6: Existing first floor balcony that is proposed to be enclosed and converted to a study room with the extended balcony beyond existing balustrade

Development application DA/396/2012 was approved by Council under delegated authority on 27 November 2012. This application sought consent for the removal of existing pool and tennis court, erection of a new lap pool, timber pergola and covered walkway, changes to front façade and fences on front and rear boundaries, increase the size of the garage, new granny flat at rear and changes to the internal layout of the dwelling house including new rear first floor balcony. A construction certificate (CC/103/2013) was issued for the approved works and provided to Council on 7 March 2013.

The proposal seeks development consent for a rearward extension of the first floor of the dwelling house to provide a new study room and balcony (terrace). The study is proposed to be 4.2m deep and 3.0m wide. The balcony is proposed to be 1.42m deep and 2.6m wide. The east-facing door off the corridor (to the existing balcony) will be retained. The east-facing window of the bathroom will be demolished and replaced with a solid wall (for the study).

The rearward extension comprising the study is proposed to feature the same finished floor level and floor to ceiling heights (2.75m) as the remaining internal area of the first floor. The study will be raised above the floor level of the existing balcony (that is to be enclosed). The proposed first floor balcony will have a slight step down from the new study room.

The proposal does not involve any changes to the remaining floors of the dwelling house nor any other existing ancillary structures or built forms onsite.

[illegible]

Figure 7: Site Plan

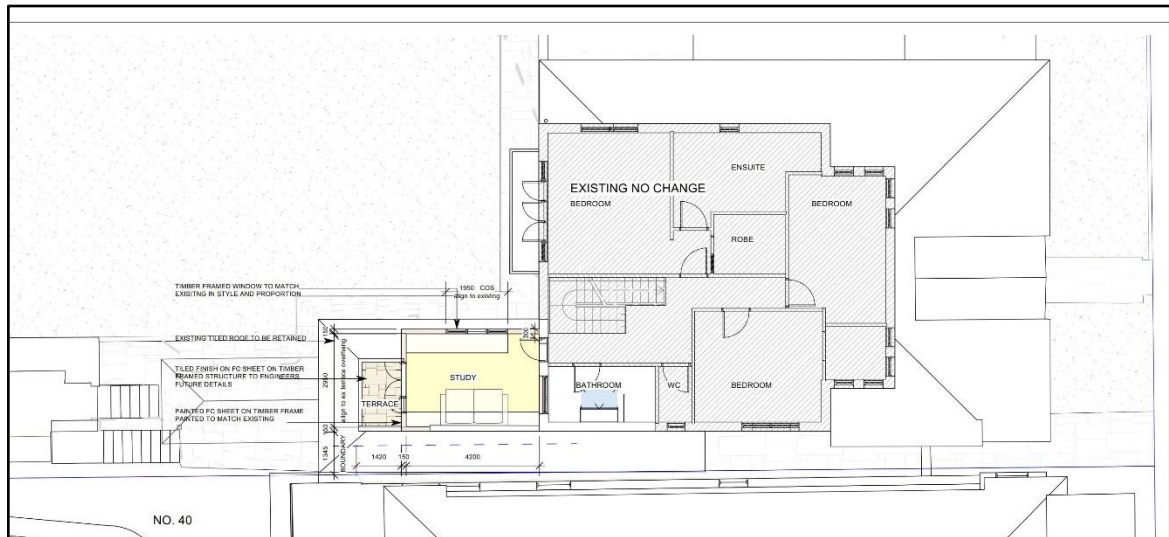


Figure 8: First Floor Plan

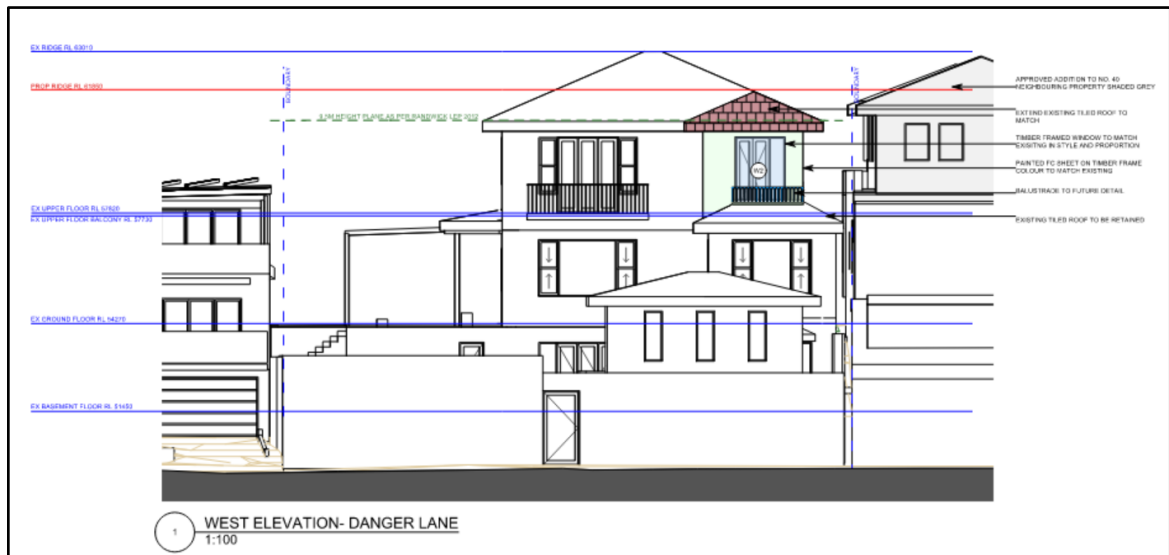


Figure 9: West Elevation – view from Dangar Lane

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Figure 10: North and South Elevations



Figure 11: Longitudinal Section



Figure 12: Cross Section



Figure 13: East-facing door (to be retained) and east-facing window (to be demolished)

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Figure 14: Existing first floor balcony that is proposed to be enclosed and converted to a study room with the extended balcony beyond existing balustrade, and distant view of first floor balcony of north-adjointing neighbour (No. 34 Wentworth Street)

5. Notification

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

6. Relevant Environment Planning Instruments

6.1 SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022. The submitted BASIX Certificate includes a BASIX materials index which calculates the embodied emissions and therefore the consent authority can be satisfied the embodied emissions attributable to the development have been quantified.

6.2 SEPP (Resilience and Hazards) 2021

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

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

6.3 SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development does not involve the removal of any vegetation (including any trees). As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.4 Randwick Local Environmental Plan 2012 (LEP)

On 18 August 2023, the Department of Planning and Environment (DPE) formally notified the LEP amendment (amendment No. 9) updating the *Randwick Local Environmental Plan 2012*, and the updated LEP commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of RLEP 2012 (Amendment No. 9) are applicable to the proposed development, and the proposal shall be assessed against the updated RLEP 2012.

The site is zoned R2 – low density residential under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.6:1	0.41:1	Yes
CI 4.3: Building height (max)	9.5m	10.55m Existing = 11.76m	No

6.1.1. Clause 4.6 - Exceptions to development standards

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

6.1.2. Clause 5.10 - Heritage conservation

Council's Heritage Planner reviewed the proposal (see Appendix 3), raising no concerns and not requiring any specific conditions of consent in terms of heritage.

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 (%)
CI 4.3: Building height (max)	9.5m	10.55m	1.05 m	11.05%

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.

7.1. Exception to the Height of Buildings development standard (Clause 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 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 building height 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 building height standard are set out in Clause 4.3 (1) of RLEP 2012. The Applicant has addressed each of the objectives as follows:

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

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

The dwelling additions provide for necessary study needs for the existing dwelling occupants.

The DA dwelling additions are limited to the rear of the dwelling, are minor in nature, and will not be visible from Wentworth Street thereby having no impact on the streetscape character.

The rear minor dwelling additions:

- *complement the existing character, scale and footprint of the host dwelling and those of neighbouring dwellings; and*
- *does not introduce any additional level of privacy invasion or solar loss to neighbouring properties.*

- (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 proposed rear dwelling 1st floor and roof additions will produce no visual impact to and from the public domain and therefore will not have any impact upon the streetscape value of Wentworth Street or the C1 North Randwick Conservation Area.

Furthermore, there are no iconic or significant views to and from the proposed development within this precinct/vicinity.

- (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:

The proposed rear dwelling 1st floor and roof additions produces a minor 1.05 metre height departure above the RLEP density control of 9.5 metres. This minor height variation blends into the backdrop of a neighbouring dwelling that already exceeds this height. We note that DA/61/2023 for adjoining 40 Wentworth Street (approved by Council on 17 November 2023) is for a rear 1st floor addition which also exceeds the RLEP height control. Consequently, the visual impact of this addition will be negligible from any adjoining property.

The proposed rear dwelling 1st floor and roof additions is contained entirely within dwelling's existing building footprint.

The proposed rear dwelling 1st floor and roof additions maintains the existing building front, side and rear building setbacks.

The proposed rear dwelling 1st floor and roof additions produce a high quality amenity and accessibility for the dwelling's occupants.

The proposed rear dwelling 1st floor and roof additions does not introduce an activity that will introduce a level of privacy or noise invasion within the residential neighbourhood.

The proposed rear dwelling 1st floor and roof additions produces a satisfactory and compliant level of solar access and privacy to the host dwelling as well as maintaining existing solar access to adjoining dwelling habitable windows, open spaces, and to the public domain.

Assessing officer's comment: The above discussion and justification provided by the Applicant have been reviewed by Council. Applicant's written request adequately demonstrates that compliance with the maximum building height development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

Due to the rear setback location of the proposed dwelling additions and alterations, the proposal will have negligible impact upon the C1 North Randwick Conservation Area. Furthermore, the siting of the proposed additions will blend within an existing a greater dwelling height of the host building, and consequently its visual impact will be rendered minimalistic and negligible.

The proposed dwelling addition height (RL61.85) is 1.05 metres lower than the existing rear ridge height (RL 63.01), as demonstrated above, and again therefore constitutes a height with negligible visual impact from neighbouring properties, and no visual impact from the public domain.

As illustrated on the Shadow Diagrams prepared by Yvonne Haber Architects, the minor dwelling additions will produce no additional or adverse shadow impact upon any neighbouring property (in particular 40 Wentworth Street) or to the public domain.

The proposed dwelling addition fully maintains the orientation and presentation of the existing dwelling to the public domain and principal street of Wentworth Street, with no resulting visual impacts. The proposed rear dwelling addition is contained within the existing building footprint and therefore does not encroach or impact upon the property's existing open space, or any existing building footprint setbacks.

The proposed dwelling addition produces an improved residential and spatial amenity through use, ventilation and natural light source.

The proposed development satisfies the Objectives of the RLEP R2 Low Density Residential land use zone.

There is no demonstrated public benefit in strictly adhering to the RLEP Building Height Control as a consequence of no/negligible resulting amenity impacts upon the property, adjoining properties, or the public domain.

Assessing officer's comment: The above discussion and assessment by the Applicant pertaining to environmental grounds and the merits of the variation have been reviewed by Council. The Applicant's written request adequately demonstrates 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 Building Height standard and R2 zone is provided below:

Assessment against objectives of the building height 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 objectives of the R2 zone.

The size and scale of the proposed development is compatible with the 'desired future character of the locality' as it will generally maintain the existing bulk and scale of the development. The proposed extension is situated at the rear of the dwelling house and will not be visible from Wentworth Street. The proposal will be visible from Dangar Lane; however, given its siting, scale and conservative massing – its presentation from the laneway is considered contextually appropriate and acceptable. The extension is minor in comparison to the scale and built form of the respective dwelling house and surrounding dwellings houses featured and visible along Dangar Lane.

- (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 is located within the North Randwick Heritage Conservation Area (HCA), but it is not recognised as a heritage item.

The proposal was reviewed by Council's Heritage Planner, who noted and commented the following:

It appears that the alterations and additions does not have any impact on the streetscape or presentation of the existing building to the HCA.

Recommendation

The development is supported from a heritage perspective no condition is required.

As such, the proposed development achieves key provisions and objectives under Clause 5.10 (for Heritage Conservation) under the RLEP 2012 and the above objective of the R2 zone.

- (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.*

Below is the detailed assessment of the proposed development in relation to adverse impacts adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

Visual bulk

The streetscape presentation of the dwelling house from Wentworth Street, remains as a 2-storey building and is not altered by this proposal. The proposed extension is situated at the rear of the dwelling house and will not be visible from Wentworth Street. The proposal will be visible from Dangar Lane; however, given its siting, scale and conservative massing – its presentation from the laneway is considered contextually appropriate and acceptable. The extension is minor in comparison to the scale and built form of the respective dwelling house and surrounding dwellings houses featured and visible along Dangar Lane.

The proposed extension will continue the 3-storey form of the dwelling house as visible from Dangar Lane and neighbouring properties. The proposal features generous setbacks from property boundaries and adequate building separation – such that any additional bulk and massing proposed will not overwhelm nor adversely affect the amenity of neighbouring properties.

Visual and acoustic privacy

The proposed development involves the enclosure of an existing elevated outdoor space (balcony) in the first floor to facilitate a new study room. The study is considered a low activity space. The study will feature no new windows facing south. The only windows proposed face the rear yard (west) and north. The north-facing window will have a setback of 13.89m from the northern side boundary and will not result in substantial privacy impacts. The western openings are associated with the new balcony. The balcony will have a setback of 14m from the outbuilding/studio of No. 40 Wentworth Street and a side setback of 4.4m from the southern boundary. Further, alterations and additions to the existing dwelling house at No. 40 Wentworth Street was recently approved (under DA/61/2023). This approved development features an extension of the upper-level roof towards the rear of the property. Whilst works for this development have yet to commence, the proposal is considered minor and minimal in form and impacts compared to this development.

The new balcony is accessed via the study and is small (approximately 3.5m²). It will be setback behind the rear setbacks of the upper levels of the dwelling houses of the side-adjointing properties at No. 40 Wentworth Street and No. 34 Wentworth Street. Given the scale and design of the balcony, it is unlikely to be an area that will be highly nor intensely utilised for entertaining purposes – such that resultant privacy impacts would be detrimental or substantial.

The subject dwelling already contains a first floor balcony within a similar location, that comprises a larger area (10m²) than the proposed balcony. It is further noted that the side-adjointing properties at No. 40 Wentworth Street and No. 34 Wentworth Street feature elevated terraces and balconies (as shown in Figures 4, 5 and 14). Many of these spaces are off high activity rooms (such as living rooms) and overlook the private open space and internal spaces of the subject dwelling house.

Given the above considerations, any visual and acoustic privacy impacts associated with the proposed development are considered reasonable and acceptable.

Overshadowing

The proposal does not significantly alter the overall height and bulk and scale of the building and the minor works to the first-floor rear portion of the dwelling will result in negligible additional overshadowing to the adjoining properties (refer to shadow diagrams in Figure 15).

Any additional shadows generally fall on windows that are not off living rooms and on blank walls – of No. 40 Wentworth Street.

The proposal will result in at least three (3) hours of solar access to the living room windows and private open spaces of neighbouring/surrounding properties. As such, the proposed development achieves compliance in relation to solar access requirements and provisions and controls associated with overshadowing as per Council policy.



Figure 15: Shadow Diagrams and Elevational Shadow Diagrams – June 21 (mid-winter)

View Loss

There will be no impact on views for neighbouring properties because the addition is to the rear of the property and is contained within the existing site coverage and below the existing maximum height.

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.

Assessment against objectives of the R2 zone

The objectives of R2 zone are:

- To provide for the housing needs of the community within a low-density residential environment,
- To enable other land uses that provide facilities or services to meet the day to day needs of residents,
- To recognize 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, and
- To enable small scale business uses in existing commercial buildings.

Assessing officer's comment: The proposed development will not conflict with the objectives of the R2 zone as it maintains the use of the dwelling and does not significantly alter the bulk and scale of the development and will not adversely impact upon the amenity of the adjoining properties.

The development is consistent with the objectives of the building height standard and the R2 zone. Therefore, the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have been satisfied and that development consent may be granted for development that contravenes the building height development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two (2) 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 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)(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	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.

Section 4.15 'Matters for Consideration'	Comments
environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.
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 to provide a minor addition to extend and enclose rear upper-level terrace 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 development remains compatible with the existing character of the locality and will not result in any adverse amenity to the adjoining properties.
- The bulk, scale, design, aesthetic and architectural expression of the proposal are considered to be suitable for the location and is sympathetic to and compatible with the desired future character of the locality.
- The proposed development maintains the visual quality of the public domain/streetscape and maintains the prevailing multi-storey form and presentation of the existing dwelling house.
- The proposal provides a reasonable extension of the first floor of the dwelling house, facilitates additional internal and external spaces as well as additional amenity and dwelling functionality for future occupants.
- The proposed development will not result in any substantial nor adverse impacts on the environment and on surrounding properties, including those associated with visual bulk, streetscape, heritage, visual and acoustic privacy, overshadowing and view loss.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The Site

The subject site is not recognised as a heritage item. However, the site is located within the North Randwick Heritage Conservation Area (HCA).

Proposal

Internal and external additions and alterations

Submission

- D05167763 - Heritage Impact Statement
- D05167764 - Other - 3D Architectural perspective views
- D05167766 - External Finish Schedule
- D05167769 - SEE

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 2023 provided Objectives and Controls in relation to heritage properties.

Comments

It appears that the alterations and additions do not have any impact on the streetscape or presentation of the existing building to the HCA.

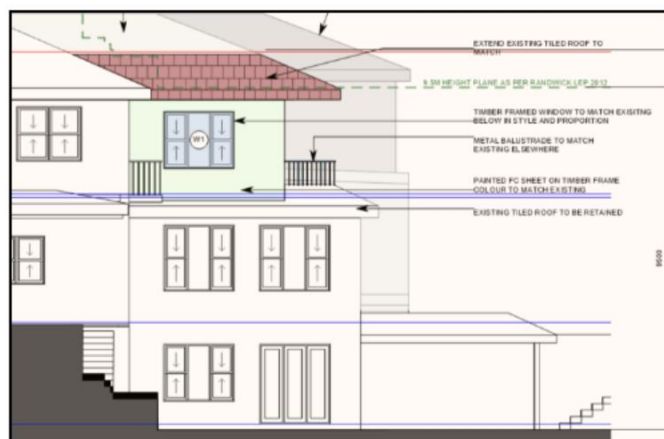
Recommendation

The development is supported from a heritage perspective no condition is required.

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

**CLAUSE 4.6 VARIATION TO RANDWICK LEP 2012
CLAUSE 4.3 BUILDING HEIGHT STANDARD**

**36-38 WENTWORTH STREET, RANDWICK
REAR DWELLING ADDITIONS & ALTERATIONS**



MARCH 2023

Prepared by



**sk design
town planning
urban design**

D29/24

CL4.6 VARIATION TO RLEP CLAUSE 4.3 HEIGHT OF BUILDINGS- 36-38 WENTWORTH STREET, RANDWICK



CI.4.6 Request for Exemption to RLEP CI.4.3 Height of Buildings

This Clause 4.6 *Request for Exemptions to Standards* under the *Randwick Local Environmental Plan 2012* (RLEP) specifically addresses a proposed Development Application (DA) minor variation to the RLEP *clause 4.3 Height of Buildings*.

This *Request* has been prepared by **sk design** Town Planners to accompany a DA for the rear residential additions and alterations to the detached dwelling at 36-38 Wentworth Street in Randwick. This request is supported by plans prepared by Yvonne Haber architect.

RLEP Clause 4.6 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

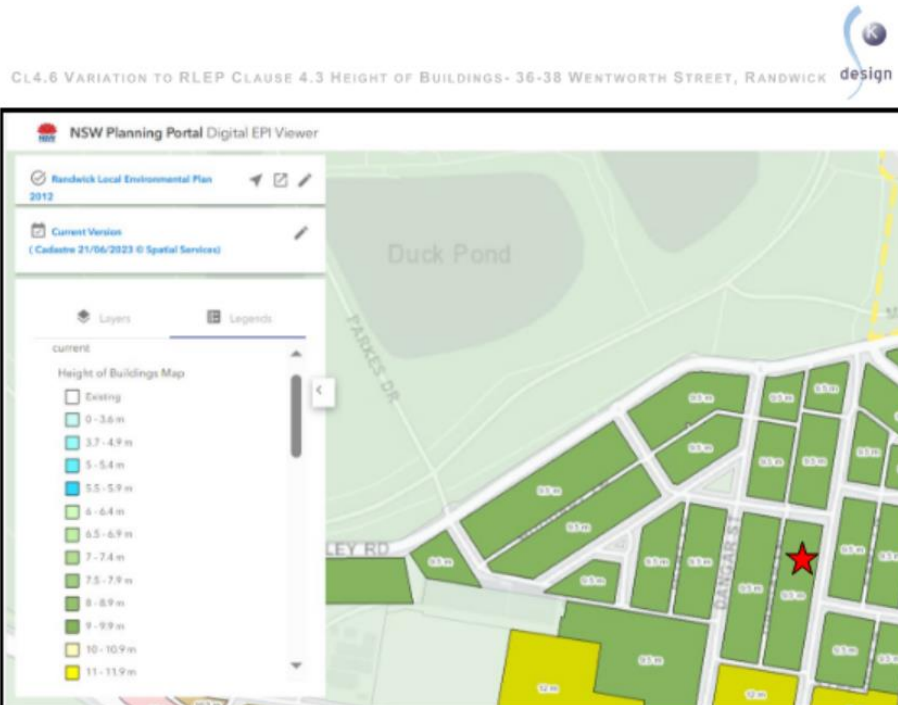
Development Standard for Variation: RLEP Height of Building Control

The RLEP Map Excerpt overleaf demonstrates that the maximum height of buildings limit for the site at 36-38 Wentworth Street in Randwick is **9.5 metres**.

The RLEP defines height of building as being:

“**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.”



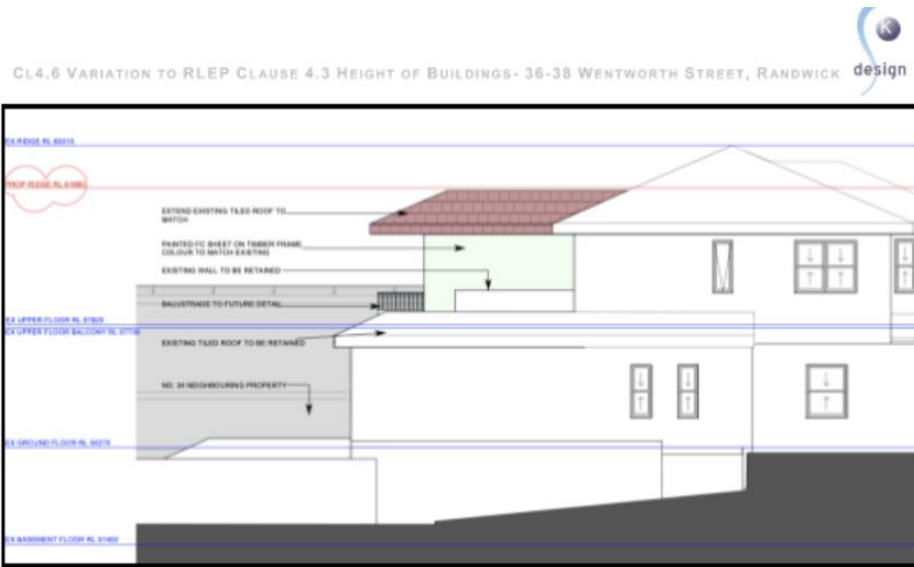
The ★ identifies the DA site 36-38 Wentworth Street superimposed on to the RLEP height of buildings map.

Land Use Zone Context: 36-38 Wentworth Street is located within a *R2 Low Density Residential* land use zone under the RLEP. *Dwelling Houses* are permitted with consent.

Heritage Conservation context: 36-38 Wentworth Street is not heritage listed under the *Randwick Local Environment Plan 2012* but is located within the *C1 North Randwick Conservation Area*.

Extent of DA Departure from the Height of Buildings Standard

The DA proposes a minor rear 1st floor addition and minor roof extension to accommodate a new Study, and to allow for associated internal alterations to an existing Bathroom. The consequence of this rear 1st floor extension is that the 1st floor pitched roof form above the new Study will exceed the RLEP building height limit of 9.5 metres by **1.05 metres** (to RL61.85) and for a roof length of 4.1metres. This height lies 1.16 metres lower than the existing dwelling roof ridge height of RL63.01. The extent of the building height departure is illustrated in the Elevation excerpts below prepared by Yvonne Haber architect.



Existing Building Context

This report also notes that the existing height of the adjoining building at 40 Wentworth Street, and its' DA/61/2023 (approved by Council on 17 November 2023) is for a rear 1st floor addition which also exceeds the RLEP height control. The Elevation excerpts confirm that this DA for 36-38 Wentworth Street will blend into an existing and neighbouring building height form, and consequently its visual impact will be rendered minimalistic and negligible.



REAR PROPERTY WITH ADJOINING 40 WENTWORTH (RIGHT) WITH AREA OF DA ADDITIONS

CL4.6 VARIATION TO RLEP CLAUSE 4.3 HEIGHT OF BUILDINGS- 36-38 WENTWORTH STREET, RANDWICK



Justification for Proposed Variation to RLEP Building Height Control

This report addresses RLEP Clause 4.6(3) in seeking Council's agreement to vary the building height control in this instance:

4.6 (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

This report concludes that strict compliance with the numeric building height controls under the RLEP for this proposed development is considered to be unreasonable and unnecessary due to the following reasons: :

- A. The proposed rear 1st floor and roof additions satisfy the following relevant RLEP *R2 Low Density Residential* land use zone and associated objectives:
- 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.
- Response:** The dwelling additions provide for necessary Study needs for the existing dwelling occupants.
- To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.
- Response:** The DA dwelling additions are limited to the rear of the dwelling, are minor in nature, and will not be visible from Wentworth Street thereby having no impact upon the streetscape character.
- To protect the amenity of residents.
- Response:** The DA additions will not result in any shadow, noise, privacy effects to neighbouring dwellings/properties.
- B. The proposed rear dwelling 1st floor and roof additions satisfy the following relevant Clause 4.3 RLEP provisions in relation to Height of Buildings:
- (1) The objectives of this clause are as follows —
- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,
 - (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
 - (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

CL4.6 VARIATION TO RLEP CLAUSE 4.3 HEIGHT OF BUILDINGS- 36-38 WENTWORTH STREET, RANDWICK



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

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

The rear minor dwelling additions:

- complement the existing character, scale and footprint of the host dwelling and those of neighbouring dwellings; and
 - does not introduce any additional level of privacy invasion or solar loss to neighbouring properties.
- C. The proposed rear dwelling 1st floor and roof additions will produce no visual impact to and from the public domain and therefore will not have any impact upon the streetscape value of Wentworth Street or the *C1 North Randwick Conservation Area*.
- Furthermore, there are no iconic or significant views to and from the proposed development within this precinct/vicinity.
- D. The proposed rear dwelling 1st floor and roof additions produces a minor 1.05 metre height departure above the RLEP density control of 9.5 metres. This minor height variation blends into the backdrop of a neighbouring dwelling that already exceeds this height. We note that DA/61/2023 for adjoining 40 Wentworth Street (approved by Council on 17 November 2023) is for a rear 1st floor addition which also exceeds the RLEP height control. Consequently, the visual impact of this addition will be negligible from any adjoining property.
- E. The proposed rear dwelling 1st floor and roof additions is contained entirely within dwelling's existing building footprint.
- F. The proposed rear dwelling 1st floor and roof additions maintains the existing building front, side and rear building setbacks.
- G. The proposed rear dwelling 1st floor and roof additions produce a high quality amenity and accessibility for the dwelling's occupants.
- H. The proposed rear dwelling 1st floor and roof additions does not introduce an activity that will introduce a level of privacy or noise invasion within the residential neighbourhood.
- I. The proposed rear dwelling 1st floor and roof additions produces a satisfactory and compliant level of solar access and privacy to the host dwelling as well as maintaining existing solar access to adjoining dwelling habitable windows, open spaces, and to the public domain.

CL4.6 VARIATION TO RLEP CLAUSE 4.3 HEIGHT OF BUILDINGS- 36-38 WENTWORTH STREET, RANDWICK



4.6 (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 —

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

This environmental impact assessment of the proposed rear and minor dwelling additions to the dwelling at 38 Wentworth Street finds that there are sufficient environmental planning grounds for Council to support the variation to the RLEP Building Height Control as follows:

- Due to the rear setback location of the proposed dwelling additions and alterations, the proposal will have negligible impact upon the *C1 North Randwick Conservation Area*. Furthermore, the siting of the proposed additions will blend within an existing a greater dwelling height of the host building, and consequently its visual impact will be rendered minimalistic and negligible.



- The proposed dwelling addition height (RL61.85) is 1.05 metres lower than the existing rear ridge height (RL 63.01), as demonstrated above, and again therefore constitutes a height with negligible visual impact from neighbouring properties, and no visual impact from the public domain.
- As illustrated on the Shadow Diagrams prepared by Yvonne Haber Architects, the minor dwelling additions will produce no additional or adverse shadow impact upon any neighbouring property (in particular 40 Wentworth Street) or to the public domain.

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CL4.6 VARIATION TO RLEP CLAUSE 4.3 HEIGHT OF BUILDINGS- 36-38 WENTWORTH STREET, RANDWICK



- The proposed dwelling addition fully maintains the orientation and presentation of the existing dwelling to the public domain and principal street of Wentworth Street, with no resulting visual impacts. The proposed rear dwelling addition is contained within the existing building footprint and therefore does not encroach or impact upon the property's existing open space, or any existing building footprint setbacks.
- The proposed dwelling addition produces an improved residential and spatial amenity through use, ventilation and natural light source.
- The proposed development satisfies the Objectives of the RLEP R2 *Low Density Residential* land use zone.
- There is no demonstrated public benefit in strictly adhering to the RLEP Building Height Control as a consequence of no/negligible resulting amenity impacts upon the property, adjoining properties, or the public domain.


Conclusion: The grounds of justification addressed above demonstrate that the proposed rear minor dwelling addition and alterations to 36-38 Wentworth Avenue in Randwick will achieve the relevant objectives of the RLEP without necessitating strict compliance to the height for buildings standards applying to this site and DA. This *Clause 4.6 Request for Variation* under the *Randwick Local Environmental Plan 2012* therefore concludes that strict compliance with Randwick Council's numeric and maximum 9.5 metre height control is, in this case, both unnecessary (it achieves the RLEP *building height* and *land use zone* objectives) and unreasonable (the development produces no adverse environmental impacts, and consequently no purpose would be served by strict adherence to the height control).

This report concludes the proposed residential rear additions and alterations to 36-38 Wentworth Street in Randwick to be worthy of Council support and development consent.

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

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 843.5m ²	
2.4	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	Site coverage is not changing from the existing 25.8%.	N/A.
2.5	Deep soil permeable surfaces		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm i) Retain existing significant trees ii) Minimum 25% front setback area permeable surfaces	The site coverage is not changing by >10%, so this control does not apply.	N/A.
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	The site coverage is not changing by >10%, so this control does not apply.	N/A.
2.7	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	The site coverage and private open space area is not being altered.	N/A.
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.6:1	Proposed = 0.41:1	Complies.
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 10.55m	No
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: - Topography - Site orientation - Lot configuration - Flooding - Lot dimensions - Impacts on visual amenity, solar access, privacy and views of adjoining properties.	The proposed addition is an extension of the existing roof form. The addition has a floor to ceiling height of 2.6m, which is the same as the prevailing floor to ceiling height of the first floor.	Acceptable on merit.

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DCP Clause	Controls	Proposal	Compliance																								
3.3	Setbacks																										
3.3.1	Front setbacks <ul style="list-style-type: none"> i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites - Should align with setbacks of adjoining dwellings iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front. 	No changes to existing.	N/A.																								
3.3.2	Side setbacks <table border="1" data-bbox="336 728 877 981"> <thead> <tr> <th colspan="4">Minimum side setbacks</th> </tr> <tr> <th>Existing primary frontage width</th><th>Building heights 0m to 4.5m</th><th>Building heights >4.5m to 7m</th><th>Building heights >7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height - 7m)</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.5m + 2 \times (\text{building height} - 7m)$</td></tr> <tr> <td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.8m + 2 \times (\text{building height} - 7m)$</td></tr> </tbody> </table>  <p>Figure 11: Proposed study and terrace setback from property boundary (blue).</p>	Minimum side setbacks				Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m	Less than 6m	Merit assessment			6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	<p>The site frontage is 18.29m, therefore, the required setback for the first-floor addition is approximately 2m for the first-floor addition (because the first floor addition is 6.37m high at the lowest point).</p> <p>However, most of the existing built form encroaches much closer so the southern side boundary. The neighbouring properties side setback from the common boundary is almost nil.</p> <p>The addition aligns with the external walls of the existing first floor and is sited in an appropriate location above the ground floor.</p> <p>The proposal is consistent with the setbacks objectives and is therefore considered appropriate.</p>	Acceptable on merit.
Minimum side setbacks																											
Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m																								
Less than 6m	Merit assessment																										
6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)																								
9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$																								
12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$																								
3.3.3	Rear setbacks <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, 	No changes to existing	N/A.																								

DCP Clause	Controls	Proposal	Compliance
	<p>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 		
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 • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	<p>Generally consistent with building design controls for alterations to an existing dwelling.</p>	Complies.
4.4	Roof terraces and balconies		
	<p>i) Locate on stepped buildings only (not on uppermost or main roof)</p> <p>ii) Where provided, roof terraces must:</p> <ul style="list-style-type: none"> • Prevent overlooking • Size minimised • Secondary POS – no kitchens, BBQs or the like • Maintain view sharing, minimise structures and roof top elements • Be uncovered and comply with maximum height <p>iii) Locate above garages on sloping sites (where garage is on low side)</p> <p><i>*Note: Existing roof terraces in locality that do not comply with the above controls should not be utilised as precedent in seeking variations to the controls outlined in this Section. This is to ensure that the objectives of low density residential development are met.</i></p>	<p>The proposal includes a balcony, accessible from the proposed study.</p> <p>This does not increase the building footprint.</p> <p>The balcony is small (approx. 3.5m²), adequately prevents overlooking, maintains view sharing and will not be used as a secondary POS.</p>	Complies.
4.5	Roof design and features		
	<p><i>Dormers</i></p> <p>i) Dormer windows do not dominate</p> <p>ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof.</p> <p>iii) Multiple dormers consistent</p> <p>iv) Suitable for existing</p> <p><i>Clerestory windows and skylights</i></p> <p>v) Sympathetic to design of dwelling</p> <p><i>Mechanical equipment</i></p>	<p>Maintains the existing roof form.</p>	Complies.

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DCP Clause	Controls	Proposal	Compliance
	vi) Contained within roof form and not visible from street and surrounding properties.		
4.6	Colours, Materials and Finishes		
	i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. 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	Conditioned to comply.	Conditioned to comply.
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.	Solar access is maintained in accordance with DCP Controls.	Complies.
	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. 	Solar access for neighbouring dwellings is maintained in accordance with DCP Controls.	Complies.
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any	Alterations to the rear of the dwelling maintain sufficient ventilation and	Complies.

DCP Clause	Controls	Proposal	Compliance
	<p>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>i) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>ii) 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>	lighting in accordance with the submitted BASIX certificate.	
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>	No windows facing south towards the neighbouring property (40 Wentworth Street)	Complies.
	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% opaqueness (glass, timber or metal slats and louvers)</p> <p>v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure)</p> <p>vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.</p>	The proposed balcony is in a similar location to the existing balcony and faces over the rear of the garden. This is consistent with other balconies along Wentworth Street and will not cause visual privacy concerns.	Complies.

Responsible officer: Joseph Edmonds, Environmental Planning Officer

File Reference: DA/1055/2023

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Development Consent Conditions
(Dwellings and Dual Occupancies)



Folder /DA No:	DA/1055/2023
Property:	36-38 Wentworth Street, RANDWICK NSW 2031
Proposal:	Alterations and additions to existing dwelling including enclosing existing upper level terrace and new balcony (Heritage Conservation Area).
Recommendation:	Approval

GENERAL CONDITIONS

Condition

1.
- Approved plans and documentation**

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

Plan	Drawn by	Dated	Received by Council
Site roof plan – Revision C	Yvonne Haber Architect	04/03/2024	04/03/2024
Floor Plans – Revision B	Yvonne Haber Architect	04/03/2024	04/03/2024
Elevation – N + S – Revision B	Yvonne Haber Architect	04/03/2024	04/03/2024
Elevation E + W – Revision B	Yvonne Haber Architect	04/03/2024	04/03/2024
Sections A + B – Revision B	Yvonne Haber Architect	04/03/2024	04/03/2024

BASIX Certificate No.	Dated	Received by Council
A1730529	15 December 2023	20 December 2023

In the event of any inconsistency between the approved plans and supplementary documentation, the approved drawings will prevail.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

2.
- Consent Requirements**

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

	Condition
	Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.
3.	<p>External Colours, Materials & Finishes</p> <p>The colours, materials and finishes of the external surfaces are to be compatible with the existing building and adjacent development to maintain the integrity and amenity of the building and the streetscape.</p> <p>External materials, finishes and colours of the building are required to match, as closely as possible, the existing building and any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare.</p> <p>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 or the Certifier prior to issuing a construction certificate for the development.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
4.	<p>Structural Adequacy</p> <p>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 upper floor addition.</p> <p>Condition Reason: To ensure the structural integrity of the building is maintained.</p>
5.	<p>BASIX Requirements</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
6.	<p>Stormwater Drainage</p> <p>A surface water/stormwater drainage system must be provided in accordance with the following requirements, to the satisfaction of the Certifier and details are to be included in the construction certificate:-</p> <ol style="list-style-type: none">Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);The surface water/stormwater must be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;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;

Condition

- 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.

Condition Reason: To control and manage stormwater run-off.

BEFORE BUILDING WORK COMMENCES

Condition

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

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

Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.

8. **Home Building Act 1989**
 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.

Condition	
	Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.
9.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>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.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>

DURING BUILDING WORK

Condition							
10.	<p>Site Signage</p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> showing the name, address and telephone number of the principal certifier for the work, and showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ol style="list-style-type: none"> maintained while the building work is being carried out, and removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or Crown building work certified to comply with the Building Code of Australia under the Act, Part 6. <p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>						
11.	<p>Restriction on Working Hours</p> <p>Building, demolition and associated site works must be carried out in accordance with the following requirements:</p> <table border="1"> <thead> <tr> <th>Activity</th><th>Permitted working hours</th></tr> </thead> <tbody> <tr> <td>All building, demolition and site work, including site deliveries (except as detailed below)</td><td> <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 </td></tr> <tr> <td>Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like</td><td> <ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm (maximum) </td></tr> </tbody> </table>	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)
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) 						

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Condition	
	<ul style="list-style-type: none"> • 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.

Condition reason: To protect the amenity of the surrounding area.

12. **Public Safety & Site Management**

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.

	Condition
	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>

Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

13. **Building Encroachments**

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

Condition Reason: To ensure no encroachment onto public land and to protect Council land.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
14.	<p>Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
15.	<p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, 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.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>
16.	<p>Council's Infrastructure, Vehicular Crossings and Street Verge</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering</p>

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Condition	
	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)	All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors.
(b)	Details of the proposed civil works to be carried out on Council land must be submitted to Council in a <i>Pre-paid Works Application Form</i> , prior to issuing an occupation certificate, together with payment of the relevant fees.
(c)	If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee.
(d)	The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing.

Condition Reason: To ensure rectification of any damage to public infrastructure and that works are completed in accordance with Council's requirements with Council's approval.

OCCUPATION AND ONGOING USE

Condition	
17.	Use of Premises The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes. Condition reason: To ensure the development is used for its intended purpose.
18.	External Lighting External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance. Condition reason: To protect the amenity of the surrounding area and residents.
19.	Plant & Equipment Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i> . Condition reason: To protect the amenity of the surrounding area and residents.

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

Condition	
20.	Demolition Work Plan A demolition work plan must be developed and be implemented for any demolition

Condition
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.
Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.

DURING DEMOLITION WORK

Condition
<p>21. Demolition Work</p> <p>Any 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.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the 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. <p>Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.</p> <p>Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

Development Application Report No. D30/24

Subject: 224-228 Coogee Bay Road, Coogee (DA/95/2024)


Executive Summary

Proposal:	Addition of an upper storey (Level 3) to Unit 1 to accommodate two (2) bedrooms and one (1) bathroom.
Ward:	East Ward
Applicant:	C Garduno Freeman
Owner:	C Garduno Freeman
Cost of works:	\$268,530.00
Reason for referral:	The development contravenes the development standards for floor space ratio and building height by more than 10%

Recommendation

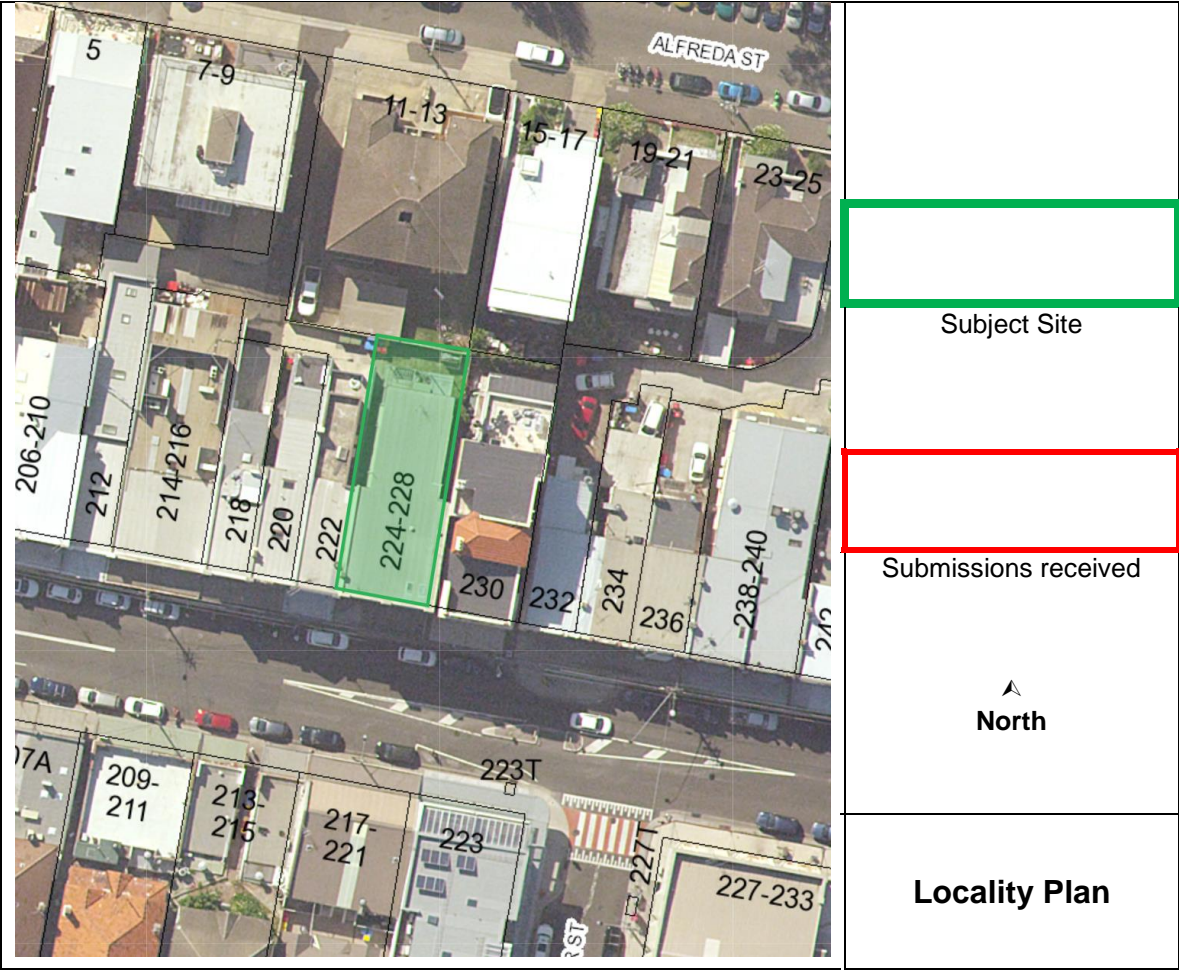
- A. That the RLPP is satisfied that the matters detailed in Clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of buildings and floor space ratio development standards in clauses 4.3 and 4.4 of Randwick Local Environmental Plan 2012.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/95/2024 for addition of an upper storey (Level 3) to Unit 1 to accommodate two (2) bedrooms and one (1) bathroom at 224-228 Coogee Bay Road, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (mixed-use) - DA/95/2024 - 224-228 Coogee Bay Road, COOGEE NSW 2034 - DEV - Randwick City Council

D30/24

D30/24



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%.

The proposal seeks development consent for the addition of an upper storey (Level 3) to Unit 1 to accommodate two (2) bedrooms and one (1) bathroom. The proposal also includes minor internal works at Level 2 to accommodate a new robe (to Bed 3) and internal stair.

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 variations are supported as the proposal is consistent with the objectives of the height of buildings development standard, FSR development standard, and the E1 Local Centre zone. The applicant's written requests have adequately addressed the matters for consideration pursuant to clause 4.6.

The proposed development is supported noting that the upper addition is contained behind and below the front parapet of the existing building. The addition will not be readily visible from the street or surrounding public domain and will not adversely impact the amenity of neighbouring residential properties.

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The subject site is known as 224-228 Coogee Bay Road, Coogee and is legally described as Lot A in DP 302991. The site has a total area of 282.8m², is rectangular in shape, and has a 10.07m frontage to Coogee Bay Road to the south.

As shown in Figure 1, the site is currently occupied by a four (4) storey shop-top housing development comprising two (2) commercial units (Coogee Bay Cellars and Coogee Surf & Co.) and four (4) residential units above. The scope of proposed works relates only to Unit 1.



Figure 1: Subject site, viewed to north from Coogee Bay Road (Source: Domain)

3. Relevant history

A search of Council's electronic records revealed the following or relevant applications for the site:

- DA/583/2020 – approved 09 September 2021 for replacement of stairs and balconies, fire upgrade and strata subdivision.
- DA/583/2020/A – approved 15 December 2023 for modification to correct a minor error in the approved development to amend the Determination Letter as it does not cite the two supplied Fire NCC Reports as part of the works package.

4. Proposal

The proposal seeks development consent for the addition of an upper storey (Level 3) to Unit 1 to accommodate two (2) bedrooms and one (1) bathroom. As shown in Figures 2-4, the proposed addition is contained behind the front parapet of the existing building fronting Coogee Bay Road.

The proposal seeks to reconfigure the existing attic storage area at Level 3 (for Unit 1 only) to accommodate the upper addition.

The proposal also includes minor internal works at Level 2 to accommodate a new robe (to Bed 3) and internal stair.

On 23 February 2024, Council requested additional information from the Applicant. The requested documentation was submitted on 06 March 2024 and 08 March 2024.

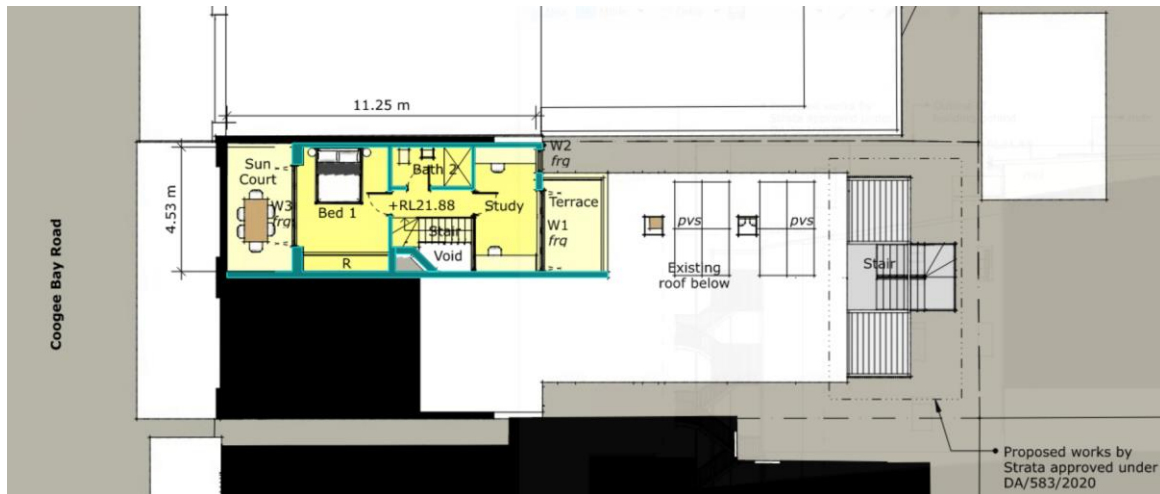


Figure 2: Proposed Level 3 floor plan (Source: Saltbush)

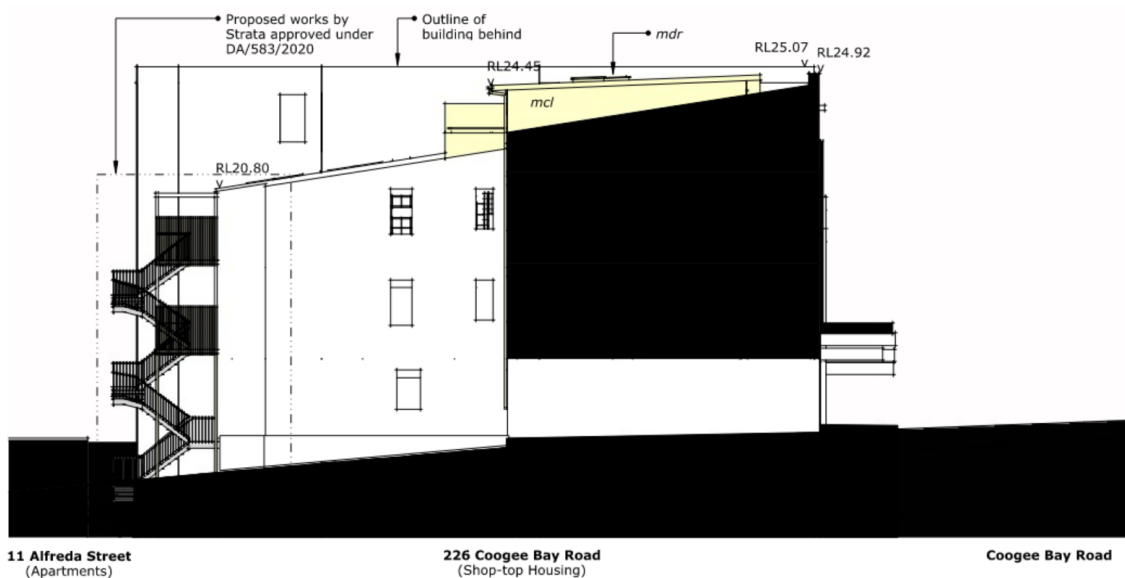


Figure 3: Proposed north elevation plan (Source: Saltbush)

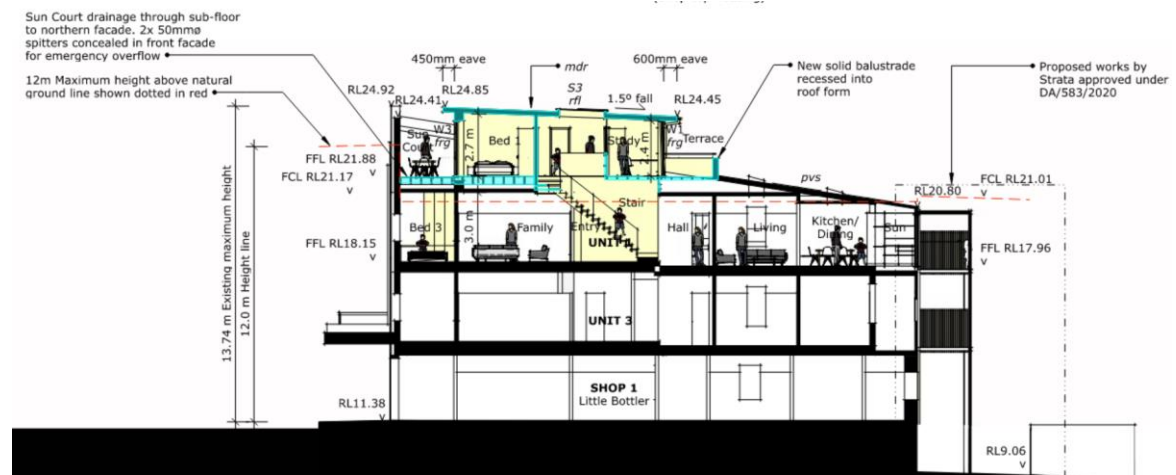


Figure 4: Proposed section plan (Source: Saltbush)

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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. No submissions were received as a result of the notification process.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022. The submitted BASIX Certificate includes a BASIX materials index which calculates the embodied emissions and therefore the consent authority can be satisfied the embodied emissions attributable to the development have been quantified.

6.2. SEPP (Housing) 2021

Chapter 2 – Development for Affordable Housing

Pursuant to section 46(2), Chapter 2, Part 3 of the Housing SEPP does not apply to a building approved for Strata subdivision. Noting that approval was granted under DA/583/2020 for Strata subdivision of the existing building, further consideration of Chapter 2, Part 3 is not required.

Chapter 4 – Design of Residential Apartment Development

The provisions of the now-repealed SEPP 65 have been transferred to Chapter 4 of the Housing SEPP. The proposed development relates to a four (4) storey shop top housing development comprising four (4) residential units. In this regard, Chapter 4 of the Housing SEPP is applicable.

Section 147 of the Housing SEPP states:

“(1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—

- (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
- (b) the Apartment Design Guide,*
- (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.”*

Assessing officer's comment: An assessment has been carried out against the Design Principles of Schedule 9 and the Design Criteria of the Apartment Design Guide (ADG) – refer below tables.

Assessment against Design Principles at Schedule 9 of Housing SEPP

Section	Design Principle	Proposal
1.	Context and neighbourhood character	<p>Coogee Bay Road is characterised by a mix of Art-Deco style apartments, Post War flats, high-density infill apartments, and clusters of semi-detached houses, punctuated by small scale neighbourhood retail shops.</p> <p>The proposal is an adaptive reuse of the roof space of an existing Inter War building, known as Aughton Flats. The building likely has some contributory value to the character of Coogee Bay Road but has not been assessed as having heritage value.</p> <p>The proposed upper addition is set back from, and lower than the existing parapet. This ensures that the new ridge line sits comfortably behind the existing front façade, while the</p>

		proposed roof slopes downwards toward the rear of the building. In this regard, the upper addition will not be readily visible from the street or surrounding public domain.
2.	Built form and scale	<p>The proposal seeks to reconfigure the existing roof storage space above Unit 1 to accommodate a bedroom, study, and two (2) outdoor terraces. No change is proposed to the perceived bulk and scale of the existing building as the upper addition is contained behind and below the existing front parapet.</p> <p>The proposal comprises a lightweight roof that is subserviently inset from the masonry street parapet wall and the masonry firewalls on the boundaries. It is noted that the proposed addition is sited below the upper addition at No. 230 Coogee Bay Road (directly to east of subject site), which was approved by way of DA/357/2019.</p>
3.	Density	The proposal will not increase the dwelling yield of the existing building but will contribute to the diversification of dwelling types by converting a two (2) bedroom unit into a three (3) bedroom unit. The minor increase in density is achieved with minimal impact to bulk and scale, overshadowing, and privacy. The proposed upper addition is setback from, and lower than the existing parapet and so will not be readily visible from the street or surrounding public domain.
4.	Sustainability	The proposed works have been designed to make efficient use of natural resources, energy, and water by retaining most of the existing apartment layout. The vertical circulation space serves to connect the upper and lower levels of Unit 1, whilst enhancing natural ventilation and sunlight. The proposed new materials are lightweight, with a smaller carbon footprint than their masonry equivalents. Additionally, the roof form slopes downwards towards the north providing an ideal surface for PV panels.
5.	Landscape	There is little opportunity for additional landscape planting at the subject site. Notwithstanding, there is suitable space at the proposed front and rear terraces for planter boxes, pots, and garden beds.
6.	Amenity	<p>The proposed works seek to improve amenity for current and future occupants of Unit 1. As existing, the unit has minimal access to private open space, dark entries off the lobby, and low levels of cross ventilation. The proposed works have been specifically designed to address these issues, ensuring that suitable private open space, passive heating and cooling, and natural ventilation and sunlight are provided to Unit 1.</p> <p>The submitted shadow diagrams demonstrate that any additional overshadowing (relative to the existing situation) will be to the roof of the properties at Nos. 222 and 226 Coogee Bay Rd. The proposal will not result in any additional overshadowing of habitable windows or private open space areas. Suitable solar access will be provided to the proposed upper addition, including the front and rear terraces.</p> <p>The proposal is unlikely to result in adverse visual privacy impacts. Any overlooking from the sides of the rear terrace</p>

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		will be to the roofs of adjoining properties. The front terrace will be suitably screened by way of the existing parapet. The rear terrace is setback more than 21m from the RFB located to the rear of the subject site (No. 11 Alfreda St). Additionally, the floor level of the rear terrace (RL 21.88) is significantly higher than the upper, south-facing window sill at No. 11 Alfreda St (approx. RL 17.04). On this basis, the proposal is unlikely to result in any additional visual privacy impacts relative to the existing situation.
7.	Safety	The proposed works are contained within Unit 1 only and will have no impact any communal spaces (i.e. lobby areas) which may be subject to safety concerns.
8.	Housing diversity and social interaction	The proposal seeks to diversify the mix of dwellings in the existing building by converting a two (2) bedroom unit into a three (3) bedroom unit.
9.	Aesthetics	The proposed works have been well-designed to ensure that the upper addition is subservient to the primary expression of the existing building and provides a positive aesthetic outcome.

Assessment against Design Criteria of Apartment Design Guide (ADG)

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.	No change to existing.	N/A	
	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).	No change to existing.	N/A	
3E-1	Deep Soil			
	Minimum 7% of site to be provided as deep soil zone.	No change to existing.	N/A	
3F-1	Visual Privacy			
	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:		On merit	
	Building Height	Habitable Rooms & Balconies		Non-Habitable Rooms
	Up to 12m	6m		3m
	Up to 25m	9m		4.5m
	Rear = 13.5m Side (west) = nil to 1.15m Side (east) = 5.1m The separation distances are acceptable noting that the sides of the front and rear terraces are suitably screened by way of existing masonry parapets and nib walls.			
Part 4: Designing the Building				
4A	Solar and Daylight Access			

Clause	Design Criteria	Proposal	Compliance
	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.	No change to existing level. Suitable solar access will be provided to the proposed upper addition.	N/A
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	No change to existing.	N/A
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	No change to existing. Suitable ventilation will be provided to the proposed upper addition.	N/A
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No change to existing.	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>	Proposed = 2.4m (study – non-habitable room) and 2.7m (bedroom – habitable room)	Yes
4D	Apartment Size and Layout		
	<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> 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 = 114m ²	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.	Complies	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Complies	Yes

Clause	Design Criteria	Proposal	Compliance
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Proposed = 6.95m	Yes
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	All bedrooms exceed 9m ² in area.	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Refer to discussion below.	On Merit
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 4m for 2 and 3 bedroom apartments 	Proposed = 6.95m	Yes
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Proposed = 4.5m	Yes
4E	Private open space and balconies		
	All apartments are required to have primary balconies as follows: <ul style="list-style-type: none"> 12m² area, 2.4m depth for 3+ bedroom unit. 	Proposed = total 18m ² (front + rear terrace) Front terrace = 2.4m depth Rear terrace = 2m depth	Yes

Section 148 of the Housing SEPP provides standards that cannot be used as grounds to refuse development consent, which include:

“(2) The following are non-discretionary development standards—

(a) the car parking for the building must 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: There is currently no off-street car parking provided at the subject site. No change is proposed to this existing arrangement, noting the site is located within the Coogee Commercial centre and is well serviced by public transportation.

“(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide”

Assessing officer's comment: The internal area of Unit 1 is greater than the requirement specified under Part 4D of the ADG for a 3 bedroom apartment.

“(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.”

Assessing officer's comment: Ceiling heights of 2.4m (non-habitable rooms) and 2.7m (habitable rooms) are provided, which comply with the minimum ADG requirement.

Bedroom Dimensions

Pursuant to Part 4D of the ADG, bedrooms must have minimum dimensions of 3m (excluding wardrobe space). The proposed development provides a total of three (3) bedrooms, with dimensions as follows:

- Bed 1 – 3.10m x 3.83m
- Bed 2 – 3.65m x 2.62m
- Bed 3 – 4.08m x 2.38m

Bed 1 complies with the ADG requirements; however, Bed 2 falls short of the 3m ADG control by 380mm. Minor numeric non-compliance is acceptable in this instance noting that suitable residential amenity will be afforded to occupants of Bed 2.

There is sufficient room width to accommodate a bed (with adequate circulation space), as well as any additional furniture. The reduced room dimension is resultant of the proposed addition of an internal stair, which has been specifically designed to ensure efficient circulation throughout the unit. The bedroom is constrained by the existing configuration and narrow width of the unit.

Bed 3 fails to provide sufficient room width due to a shortfall of 620mm (relative to the 3m ADG control) Council is not satisfied that suitable residential amenity will be afforded to future occupants of this bedroom. In this regard, consent is not granted for a bedroom in this location and a condition is included to ensure that this room is used as a sunroom instead, as per the existing arrangement.

6.3. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development does not involve the removal of any vegetation (including any trees). As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.4. 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 and commercial purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.5. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned E1 Local Centre under Randwick Local Environmental Plan 2012, and the proposal, being for alterations and additions to an existing shop top housing building, is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that it will enable residential development that contributes to a vibrant and active local centre. The proposal has been designed to protect the amenity of residents in the E1 Local Centre zone and in the adjoining and nearby residential zones.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.3: Building height (max)	12m	15.86m (max. existing) 15.79m (new works)	No
Cl 4.4: Floor space ratio (max)	1.5:1 (424.2m ²)	2.51:1 (709.1m ²)	No

Clause 4.3 – Height of buildings

Pursuant to clause 4.3 of RLEP 2012, a maximum building height of 12m is applicable. The existing building at the subject site has a maximum height of 15.86m (RL24.92 parapet above RL9.06 existing ground level), which does not comply with the 12m development standard.

The proposal will not alter the existing maximum height of the building. Notwithstanding, the new works have a maximum height of 15.79m (RL24.85 roof ridge above RL9.06 existing ground level), which does not comply with the 12m development standard.

Clause 4.4 – Floor space ratio

Pursuant to clause 4.4 of RLEP 2012, a floor space ratio (FSR) of 1.5:1 is applicable, equating to a gross floor area (GFA) of 424.2m². The existing building at the subject site has a GFA of 713.8m² and FSR of 2.52:1, which does not comply with the 1.5:1 development standard.

As shown in Figure 5, the proposed reconfiguration of attic storage space at Level 3 to accommodate the upper addition results in a minor reduction in GFA. In this regard, the proposal results in a GFA of 709.1m² and an FSR of 2.51:1, which does not comply with the 1.5:1 development standard.

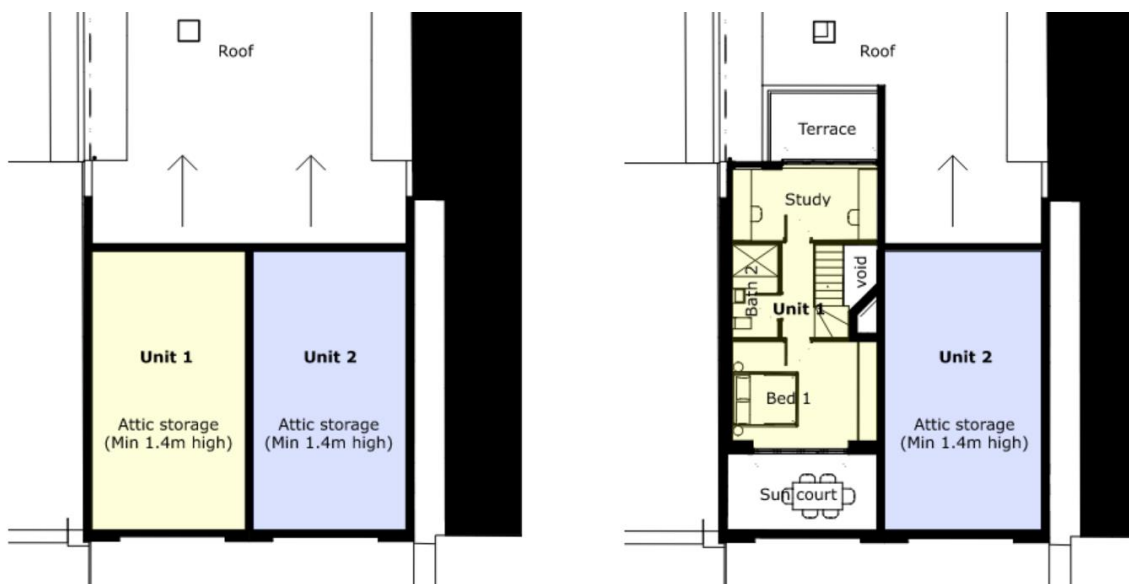


Figure 5: Existing (left) and proposed (right) GFA plans – Level 3 (Source: Saltbush)

Clause 4.6 - Exceptions to development standards

Refer to Section 7 of this report.

Clause 5.10 - Heritage conservation

The subject site directly adjoins two (2) heritage items at Nos. 218-222 Coogee Bay Rd (Item I481) and No. 230 Coogee Bay Rd (Item I482).

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

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

As outlined at Appendix 1 of this report, Council's Heritage Planner has reviewed the proposal and concludes that the works would not have any adverse visual or material impact on the heritage items. Therefore, the proposal is supported from a heritage perspective.

Clause 6.22 – Development in Local Centres

Pursuant to clause 6.22(3) of RLEP 2012, consent must not be granted to development on land in the E1 Local Centre zone unless the consent authority has considered:

- The impact of the development on the amenity of surrounding residential areas;
- The impact of the development on the desired future character of the local centre; and
- Whether the development is consistent with the hierarchy of centres.

The proposal will enable residential development that contributes to a vibrant and active local centre. The proposal has been designed to protect the amenity of residents in the E1 zone and in the adjoining and nearby residential zones.

As detailed in this report, the proposal is compatible with the desired future character of the local centre and is consistent with the hierarchy of centres. The proposal is consistent with the context of the site's locality, including established shop top housing development along Coogee Bay Rd.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.3: Building height (max)	12m	15.86m (max. existing)	3.86m	32.16%
		15.79m (new works)	3.79m	31.58%
CI 4.4: Floor space ratio (max)	1.5:1 (424.2m ²)	2.51:1 (709.1m ²)	284.9m ²	67.16%

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.

7.1. Exception to the Height of Buildings development standard (Clause 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 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 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, as follows:

"The height standard departure and the development generally is not inconsistent with the relevant objectives of the height standard because it does not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.

In this instance the current height standard in LEP 2012 effectively constrains any future development on the site because the existing development already exceeds the maximum permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event, the unaltered existing maximum height (despite works proposed above the threshold) and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality (see later).

As work to only Unit 1 are proposed, the existing scale, bulk and height of the building is largely retained. The site's existing building is tall and is at a height, bulk and scale (FSR) that cannot be replicated by virtue of the LEP 2012 height and FSR limits. Considering this condition, the proposal will not set a precedent, nor undermine the development guidelines within Randwick Development Control Plan 2013 (DCP 2013), nor lead to a proliferation of other buildings that depart from the standard.

Land to the site's east, west and south is zoned E1 Local Centre. It is all subject to a blanket 12m height standard and 1.5:1 FSR standard within LEP 2012 irrespective of the existing built form. Properties to the site's north are zoned R3 Medium Density Residential and have a 0.9:1 FSR standard, albeit with a 12m height standard. Numerous nearby buildings will depart from the standards. Coogee Bay Road is the main street that connects this beachside suburb with Randwick. Coogee Bay Road is characterised by a mixture of Art-Deco styled apartments, Post War flats, high-density infill apartment developments and clusters of semidetached houses, punctuated by small scale neighbourhood retail, schools and small shopping centres. At its Coogee Beach end, two storey buildings dominate until Vicar Street where there is a change in height to a mix of three and four storey buildings designed as Federation free style shops to mixed use Art Deco apartments. Two heritage listed buildings flank the site of the proposed alterations and additions. To the west are Federation free style shops ('The Douglass Buildings') at 218 - 222 Coogee Bay Road and to the east is an unnamed shop top housing building at 230 Coogee Bay Road.

The non-complying built form will not materially alter the locality's desired future character. The desired future character is to an extent derived from the current planning regime of zoning and development standards, and in particular to the extent those controls encourage redevelopment. The visual catchment contains several buildings that will present a similar height, bulk and scale and which set the future character. Consequently, the unaltered maximum departure and the new works above the height standard do not result in a scale of building that is out of character with the surrounding development and the emerging character as expected within the Coogee Bay Road local centre cluster. The existing and proposed relationship for the site and its neighbours to the east and west is shown at Figure 1, which clearly demonstrates the proposed works will not result in an altered built form that is incompatible with its established and likely future built form context.



Figure 1 – Proposed southern (Coogee Bay Road) elevation

Resulting from the site and locality's topographical characteristics, most buildings on the northern side of Coogee Bay Road are provided with a lower ground floor level or part basement level. The site has this existing built form condition. As such its existing ground level (where height is measured from) is actually a storey below the Coogee Bay Road footpath level. This condition clearly accentuates the departure to the standard, notwithstanding these areas of the buildings are generally not visible from the public domain and does not in any way have an impact relative to height, bulk and scale. The site's existing streetscape presentation to Coogee Bay Road is largely unaltered and the new works sit behind and are lower (RL 24.85 proposed v RL 24.92 existing and unaltered) than the retained high masonry wall parapet presented to Coogee Bay Road. and built form.

The building's scale does not change. The existing skillion roof is modified by the proposal which is configured as a rectangular 'storey' oriented north south. The new articulated roof is in keeping with the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee. A relative human scale is maintained considering the adjacent visual context.

The new works the height standard are inconsequential from a planning perspective as they do not materially add to the height, bulk and scale of the site's built form and provide amenity for the occupants of Unit #1, whilst not unreasonably impacting on the amenity of neighbouring properties or the public domain. The built form sits comfortably within its established context.

The non-complying works:

- are sited behind and are lower than the retained high masonry parapet roof wall to Coogee Bay Road;
- maintain an appropriate curtilage to or relationship with neighbouring and nearby built form;
- comprise lightweight materials and are subservient to the predominant building envelope / form;
- provide substantial amenity for the occupants of Unit 1, in terms of additional accommodation, a flexible floorplan, increased solar access and natural ventilation to deeper plan areas and provide two zones of private open space; and
- will not result in unreasonable amenity impacts to neighbouring and nearby properties."

- (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, as follows:

"The site is not an identified heritage item. The site is not within a heritage conservation area. The 'contributory' character to the local centre zone cluster's Coogee Bay Road frontage has been maintained.

Two heritage listed buildings flank the site of the proposed alterations and additions. To the west are Federation free style shops ('The Douglass Buildings') at 218 - 222 Coogee Bay Road and to the east is an unnamed shop top housing building at 230 Coogee Bay Road. The proposal has a clear manageable impact to the significance of the adjacent heritage items, particularly considering that approved under DA 357/2019 at 230 Coogee Bay Road.

The proposal is an adaptive reuse of the roof space of an existing Inter War building, Aughton Flats. The building likely has some contributory value to the character of Coogee Bay Road but has not been assessed as having heritage value. Architecturally, the proposed work comprises a simple lightweight roof 'pavilion' that is subserviently set back from and is lower than the masonry street parapet wall and the masonry firewalls on the boundaries. This ensure that the new ridge line sits comfortably behind the existing facades, while the proposed roof slopes downwards to the south towards Coogee Oval. The materials are considerate of the local character of the street and draw on the existing steel roof sheeting as a precedent.

The proposed works reconfigure the existing roof storage space above Unit 1 into habitable rooms. The building's scale does not change overall. The existing skillion roof is modified by the proposal which is configured as a rectangular 'storey' oriented north south. The new articulated roof is in keeping with the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee. Considering the works are screened from view by the unaltered high masonry parapet wall to Coogee Bay Road, there is no adverse visual impact and the largely retained altered shop top housing built form is clearly not incompatible with its existing and likely future built form context that provide similar accommodation within the same land use zone, including that adjacent (see Figure 1)."

- (c) to ensure that 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, as follows:

"Essentially, the objective of the height standard (in conjunction with the 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 height 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 altered built form without an adverse visual impact or perceived built form dominance. The existing and proposed departure to the height standard has been arranged considering the site's existing built form and its neighbouring context. In this regard and as demonstrated by the applicant's additional information submission(s), the proposed new level of accommodation, which departs from the height standard nonetheless maintains 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 height standard departure (existing maximum unaltered) and the development generally is not inconsistent with the relevant objectives of the height standard because it does not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.

The expression of the built form is adjusted to respond to:

- the site's locational context;
- the design and built form character of the adjoining and adjacent development;

- *solar access and the site's orientation; and*
- *internal and external amenity for the future occupants.*

The altered built form exhibits a high quality architectural design solution within an evolving local centre cluster that positively contributes to the locality's character, 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 or unreasonable amenity related impacts."

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 as the objectives of the development standard are achieved notwithstanding numeric non-compliance.

The proposal will not alter the maximum height of the existing building. The upper addition is set behind and lower than the front parapet of the existing building, which fronts Coogee Bay Road. The proposed works maintain an appropriate relationship with neighbouring built form and as detailed in this report, will not result in unreasonable amenity impacts.

The proposed works have been designed to improve amenity for occupants of Unit 1, with little to no impact on the amenity of neighboring residents. As existing, the unit has minimal access to private open space, dark entries off the lobby, and low levels of cross ventilation. The proposed works have been specifically designed to address these issues, ensuring that suitable private open space, passive heating and cooling, and natural ventilation and sunlight are provided to Unit 1.

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 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:

"As addressed earlier in this report and in the additional information documentation prepared by the applicant and its consultant's, the proposal is well considered and pays due regard to the site's important characteristics. In this instance the current height standard in LEP 2012 constrains any future development on the site because the existing development already exceeds the permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event the unaltered existing maximum height and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality. The altered built form enables visual interest and a relative human scale within a local centre zone.

The non complying works:

- *clearly do not alter the 'contributory' streetscape appearance to Coogee Bay Road;*
- *are sited behind and are lower than the retained high masonry parapet roof wall to Coogee Bay Road;*
- *maintain an appropriate curtilage to or relationship with neighbouring and nearby built form;*
- *comprise lightweight materials and are subservient to the predominant building envelope / form;*
- *provide substantial amenity for the occupants of Unit 1, in terms of additional accommodation, a flexible floorplan, increased solar access and natural ventilation to deeper plan areas and provide two zones of private open space; and*
- *will not result in unreasonable amenity impacts to neighbouring and nearby properties.*

The supporting documentation 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 revised documentation demonstrates that despite the contravention to the height standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context;

The existing built form departs from the standard. The site's constraints preclude any redevelopment of the site being able to comply with the standard. Additionally, compliance with the standard would require demolition of the existing built form, which is undesirable, is economically impractical and would be inconsistent with the objects of the Act

The existing built form, its benched level and the locality's topography clearly accentuates the departure.

The proposal provides for enhanced amenity to the occupants of Unit 1 through alterations and additions to the existing built form through a relatively modest increase in GFA and a height non-compliant new level of accommodation comprising a bedroom, bathroom, study, north facing terrace and southern open to the sky sun court that does not result in any unreasonable impact to neighbouring properties and the surrounding public domain. Works to the remainder the building are not proposed.

The building's scale does not change. The existing skillion roof is modified by the proposal which is configured as a rectangular 'storey' oriented north south. The new articulated roof is in keeping with the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee. Building bulk is further reduced with the choice of finishes and materials, which promote visual interest. Materials and finishes are lightweight and subservient. A relative human scale is maintained considering the adjacent visual context.

The existing non-residential tenancies that provide a daily service remains unaltered.

The maintained shop top housing land use is not incompatible with the existing and likely future land uses surrounding the site. Active ground floor level, street front non-residential land uses serving the needs of local residents / community are maintained to Coogee Bay Road. Works are not proposed to any other apartment.

Appropriate environmental initiatives are proposed."

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 non-compliant portion of works do not alter the streetscape appearance of the building (to Coogee Bay Road) and will not be readily perceived from the street and surrounding public domain. The upper addition is set behind and below the front parapet and comprises lightweight materials which are subservient to the predominant built form.

The proposed works have been designed to improve amenity for occupants of Unit 1, with little to no impact on the amenity of neighboring residents.

On this basis, there are sufficient environmental planning grounds to justify contravening the Height of Buildings development standard.

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.

7.2. Exception to the Floor Space Ratio (FSR) development standard (Clause 4.4)

The applicant's written justification for the departure from the FSR standard is contained in Appendix 3.

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 FSR development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

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

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

The applicant's written justification demonstrates that this objective is satisfied, as follows:

"The decreased departure to the FSR standard and the development generally are not inconsistent with the standard's objectives because they do not materially alter the existing correlation between building height (maximum unaltered), massing, form, bulk and scale (density), and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.

In this instance the current FSR standard in LEP 2012 effectively constrains any future development on the site because the existing development already exceeds the maximum permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event, the unaltered maximum height and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality (see later).

As work to only Unit 1 are proposed, the existing scale, bulk and height of the building is largely retained. The site's existing building is tall and is at a height, bulk and scale (reduced FSR) that cannot be replicated by virtue of the LEP 2012 height and FSR limits. The building's FSR is actually reduced. Considering this condition, the proposal will not set a precedent, nor undermine the development guidelines within Randwick Development Control Plan 2013 (DCP 2013), nor lead to a proliferation of other buildings that depart from the standard.

Resulting from the site and locality's topographical characteristics, most buildings on the northern side of Coogee Bay Road are provided with a lower ground floor level or part basement level. The site has this existing built form condition which also comprises 63.3m² (8.9%) of GFA. This condition clearly accentuates the departure to the standard, notwithstanding these areas of the buildings are generally not visible from the public domain and does not in any way have an impact relative to height, bulk and scale. The site's existing streetscape presentation (or overall building scale) to Coogee Bay Road is largely unaltered (see Figure 1).

Land to the site's east, west and south is zoned E1 Local Centre. It is all subject to a blanket 12m height standard and 1.5:1 FSR standard within LEP 2012 irrespective of the existing built form. Properties to the site's north are zoned R3 Medium Density Residential and have a 0.9:1 FSR standard, albeit with a 12m height standard. Numerous nearby buildings will depart from the standards. Coogee Bay Road is the main street that connects this beachside suburb with Randwick. Coogee Bay Road is characterised by a mixture of Art-Deco styled apartments, Post War flats, high-density infill apartment developments and

clusters of semidetached houses, punctuated by small scale neighbourhood retail, schools and small shopping centres. At its Coogee Beach end, two storey buildings dominate until Vicar Street where there is a change in height to a mix of three and four storey buildings designed as Federation free style shops to mixed use Art Deco apartments. Two heritage listed buildings flank the site of the proposed alterations and additions. To the west are Federation free style shops ('The Douglass Buildings') at 218 - 222 Coogee Bay Road and to the east is an unnamed shop top housing building at 230 Coogee Bay Road.

The existing non-compliant (albeit FSR reduced) built form will not materially alter the locality's desired future character. The desired future character is to an extent derived from the current planning regime of zoning and development standards, and in particular to the extent those controls encourage redevelopment. The visual catchment contains several buildings that will present a similar height, bulk and scale and which set the future character. Consequently, the reduced departure to the FSR standard and the building's unaltered maximum height does not result in a scale of building that is out of character with the surrounding development and the emerging character as expected within the Coogee Bay Road local centre cluster. The existing and proposed relationship for the site and its neighbours to the east and west is shown at Figure 1, which clearly demonstrates the proposed works will not result in an altered built form that is incompatible with its established and likely future built form context.



Figure 1 – Proposed southern (Coogee Bay Road) elevation

The FSR standard departure and the development generally is not inconsistent with the relevant objectives of the height standard because it does not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.

The maintained (shop top housing) is not incompatible with the existing and likely future land uses surrounding the site and as desired by the planning controls. An active ground floor level, street front non-residential tenancies serving the needs of local residents / community is maintained to Coogee Bay Road. At the upper floors are existing apartments which remain unaltered except for that as proposed to Unit 1. This ensures a vibrant and active local neighbourhood. The works to Unit 1 which are primarily within an existing roof storage zone and behind and below the retained front high masonry wall parapet are clearly not incompatible with its existing and likely future built form context. The altered built form maintains a positive streetscape contribution.

The site is suitably located to provide additional floorspace above that technically permitted under LEP 2012, although the departure to the standard is reduced from that existing. The site is centrally located within the Coogee Bay Road local centre cluster. It has excellent access to amenities, infrastructure, services and facilities (public transport, shops, parks, etc) which will clearly be able to cope with any perceived increase in demand resulting from the works to Unit 1. The built form's architecture provides an appropriate height and mass relationship to the existing and likely future character within a local centre mixed use cluster.

Although the site cannot provide off street car parking spaces or designated loading zone(s), it is nonetheless ideally located to encourage alternative means of transport. It has excellent access to public transport and amenities, services and facilities are within easy and relatively flat walking distance. Use of designated loading areas along Coogee Bay Road for the existing and unaltered non-residential tenancies will continue as existing. This is a similar condition (parking and loading) for most buildings on the northern side of Coogee Bay Road."

- (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, as follows:

"The design intent is to undertake alterations and additions to Unit 1, including a new level of accommodation that seamlessly connects to new external areas with good access to natural light and ventilation. The works have been designed to respond to, not only with urban design rationale, but also to make the overall built form efficient in terms of its energy use. The site is developed in accordance with its environmental capacity given:

- retention of an appropriate portion of the existing built form and materials enables ESD. It is noted that works are not proposed to the site's contributory Coogee Bay Road façade / elevation;*
- works are not proposed to any other part of the shop top housing building, other than to Unit 1;*
- it provides an urban framework that supports the principles of ESD/environmental initiatives and is BASIX compliant;*
- the use of sustainable materials and energy efficient systems enhances the built form's functionality and promotes environmentally friendly living;*
- appropriate floor to ceiling heights for the new level of accommodation and retention of existing floor to ceiling heights for the existing lower floor level;*
- vertical circulation space (stairs) serves to connect the upper and lower levels of the dwelling, while enhancing natural ventilation. This is achieved through the design of natural cross-ventilation into the upper level, which in turn will drive a new stack-effect air movement. This will improve natural ventilation for the lower level as well, by drawing prevailing breezes through the northern and southern windows and up into the stack;*
- the newly introduced internal stairwell (in effect a void) opens up the entrance of the apartment drawing natural light down into the heart of the lower level of the apartment;*
- provision of rooftop skylights to enable increased natural daylight to deeper plan areas at the upper floor level and through the central stair void to the lower floor level;*
- provision of rooftop photovoltaic solar panels;*
- primary living areas are connected to the external facades and glazing for solar heat gain at varying times;*
- provision of a north facing upper floor level terrace and provision of a southern side upper floor level open to the sky sun court that is screened from view by the existing unaltered high masonry parapet wall to Coogee Bay Road. These areas are designed as extension of the room to which they are connected and to encourage outdoor and indoor living, while at same time acting as a transition space to modulate temperature;*
- the sun court allows warmer air to escape out the southern end of the plan without compromising acoustic separation on the busy Coogee Bay Road;*
- both the sun court and terrace are sized to enable the unit's occupants to curate small microclimates through significant plantings in pots and garden beds;*
- the design minimises reliance on artificial lighting and mechanical ventilation;*
- provision of operable doors and windows enables the use of natural ventilation;*
- the internal reconfiguration of the apartment's lower floor level enables north facing open plan primary living rooms with direct connection to a sunroom and large landing zones to the rear stairs useable external private open space;*

- the occupants will enjoy good amenity through the separation of living, sleeping, and service zones;
- the tactful additions that stitch the proposed work into that which already exists. New materials will be lightweight with a smaller carbon footprint than their masonry equivalents. The roof form itself slopes downwards towards the north providing ideal surfaces for photovoltaic panels;
- the building is surrounded by existing neighbouring built form that screen any perception of visual impact or visual connection with the surrounding public domain;
- where required, energy efficient fixtures and finishes are provided;
- water overflows will be channelled into Council's existing stormwater system; and
- the engagement with the outdoors, the natural ventilation, the increase in natural light and the passive solar controls will reduce energy consumption.

The existing visually interesting and articulated façade to Coogee Bay Road is not altered. This maintains the site's positive contribution to the character of the local centre cluster. The proposed works to Unit 1 reinterpret 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 additions are clearly not incompatible with its existing and likely future built form context. The altered built form will clearly maintain a positive streetscape contribution."

- (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, as follows:

"The site is not an identified heritage item. The site is not within a heritage conservation area. The 'contributory' character to the local centre zone cluster's Coogee Bay Road frontage has been maintained.

Two heritage listed buildings flank the site of the proposed alterations and additions. To the west are Federation free style shops ('The Douglass Buildings') at 218 - 222 Coogee Bay Road and to the east is an unnamed shop top housing building at 230 Coogee Bay Road. The proposal has a clear manageable impact to the significance of the adjacent heritage items, particularly considering that approved under DA 357/2019 at 230 Coogee Bay Road.

The proposal is an adaptive reuse of the roof space of an existing Inter War building, Aughton Flats. The building likely has some contributory value to the character of Coogee Bay Road but has not been assessed as having heritage value. Architecturally, the proposed work comprises a simple lightweight roof 'pavilion' that is subserviently set back from and is lower than the masonry street parapet wall and the masonry firewalls on the boundaries. This ensure that the new ridge line sits comfortably behind the existing facades, while the proposed roof slopes downwards to the south towards Coogee Oval. The materials are considerate of the local character of the street and draw on the existing steel roof sheeting as a precedent.

The proposed works reconfigure the existing roof storage space above Unit 1 into habitable rooms. The building's scale does not change overall. The existing skillion roof is modified by the proposal which is configured as a rectangular 'storey' oriented north south. The new articulated roof is in keeping with the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee.

Considering the works are screened from view by the unaltered high masonry parapet wall to Coogee Bay Road, there is no adverse visual impact and the largely retained altered shop top housing built form is clearly not incompatible with its existing and likely future built form context that provide similar accommodation within the same land use zone, including that adjacent (see Figure 1)."

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

The applicant's written justification demonstrates that this objective is satisfied, as follows:

"Essentially, the objective of the FSR standard, in conjunction with the height standard and detailed development controls, 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 altered built form without an adverse visual impact or perceived built form dominance. The existing and proposed (reduced) departure to the FSR standard has been arranged considering the site's existing built form and the neighbouring / nearby context. In this regard and as demonstrated by the applicant's additional information submission(s), the non-compliant built form nonetheless provides for an acceptable and equitable planning outcome 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; and*
- structural integrity, natural drainage patterns, watercourses and landform in general.*

The decreased departure to the FSR standard and the development generally are not inconsistent with the standard's objectives because they do not materially alter the existing correlation between building height (maximum unaltered), massing, form, bulk and scale (density), and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.

Despite the numerical extent of the reduced departure, the existing built form and its known impacts is largely retained. The works to Unit 1 have had specific regard to:

- the site's locational context;*
- the design and built form character of the adjoining and adjacent development;*
- solar access and the site's orientation; and*
- internal and external amenity for the future occupants.*

The altered built form exhibits a high quality architectural design solution within an evolving local centre cluster that positively contributes to the locality's character, 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 or unreasonable amenity related impacts.

The site is suitably located to provide additional floorspace above that technically permitted under LEP 2012, although the departure to the standard is reduced from that existing. The site is centrally located within the Coogee Bay Road local centre cluster. It has excellent access to amenities, infrastructure, services and facilities (public transport, shops, parks, etc) which will clearly be able to cope with any perceived increase in demand resulting from the works to Unit 1. The built form's architecture provides an appropriate height and mass relationship to the existing and likely future character within a local centre mixed use cluster."

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 as the objectives of the development standard are achieved notwithstanding numeric non-compliance.

The proposal results in a reduction in GFA relative to the existing building as the proposal seeks to reconfigure the existing attic space at Level 3 to accommodate the upper addition. The upper addition is set behind and lower than the front parapet of the existing building, which fronts Coogee Bay Road. The proposed works maintain an appropriate relationship with neighbouring built form and as detailed in this report, will not result in unreasonable amenity impacts.

The proposed works have been designed to improve amenity for occupants of Unit 1, with little to no impact on the amenity of neighboring residents. As existing, the unit has minimal access to private open space, dark entries off the lobby, and low levels of cross ventilation. The proposed works have been specifically designed to address these issues, ensuring that suitable private open space, passive heating and cooling, and natural ventilation and sunlight are provided to Unit 1.

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 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:

"As addressed earlier in this report and in the additional information documentation prepared by the applicant and its consultant's, the proposal is well considered and pays due regard to the site's important characteristics. In this instance the current FSR standard in LEP 2012 constrains any future development on the site because the existing development already exceeds the permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event the unaltered maximum height and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality. The altered built form enables visual interest and a relative human scale within a local centre zone.

Despite the numerical extent of the reduced departure, the existing built form and its known impacts is largely retained. The works to Unit 1 have had specific regard to:

- *the site's locational context and not altering the 'contributory' streetscape appearance to Coogee Bay Road;*
- *ensuring they are subservient to the predominantly retained building envelope / form;*
- *the design and built form character of the adjoining and adjacent development;*
- *maintaining an appropriate curtilage to or relationship with neighbouring and nearby built form;*
- *provide substantial amenity for the occupants of Unit 1, in terms of additional accommodation, a flexible floorplan, increased solar access and natural ventilation to deeper plan areas and provide two zones of private open space; and*
- *maintaining existing amenity (in an equitable manner) to neighbouring and nearby properties.*

The supporting documentation 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 revised documentation demonstrates that despite the existing and reduced contravention to the FSR standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context;

The existing built form departs from the standard. The site's constraints preclude any redevelopment of the site being able to comply with the standard. Additionally, compliance with the standard would require demolition of the existing built form, which is undesirable, is economically impractical and would be inconsistent with the objects of the Act.

The departure to the standard is in fact reduced in the proposed development. The reduced size of the numerical departure is inconsequential from a planning perspective as the predominant building envelope has been retained and there is no increase in its bulk or scale.

The proposed works reconfigure the existing roof storage space above Unit 1 into habitable rooms. The building's scale does not change overall. The proposal provides for enhanced amenity to the occupants of Unit 1 through alterations and additions to the existing built form for a new level of accommodation comprising a bedroom, bathroom, study, north facing terrace and southern open to the sky sun court that does not result in any unreasonable impact to neighbouring properties and the surrounding public domain. Works to the remainder the building are not proposed.

The building's scale does not change. The existing skillion roof is modified by the proposal which is configured as a rectangular 'storey' oriented north south. The new articulated roof is in keeping with the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee. Building bulk is further reduced with the choice of finishes and materials, which promote visual interest. Materials and finishes are lightweight and subservient. A relative human scale is maintained considering the adjacent visual context.

The existing non-residential tenancies that provide a daily service remains unaltered.

The maintained shop top housing land use is not incompatible with the existing and likely future land uses surrounding the site. Active ground floor level, street front non-residential land uses serving the needs of local residents / community are maintained to Coogee Bay Road. Works are not proposed to any other apartment.

Appropriate environmental initiatives are proposed."

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 proposed works do not alter the streetscape appearance of the building (to Coogee Bay Road) and will not be readily perceived from the street and surrounding public domain. The upper addition is set behind and below the front parapet and comprises lightweight materials which are subservient to the predominant built form. The proposed works have been designed to improve amenity for occupants of Unit 1, with little to no impact on the amenity of neighboring residents.

On this basis, there are sufficient environmental planning grounds to justify contravening the FSR development standard.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have been satisfied and that development consent may be granted for development that contravenes the FSR development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed below.

Part D6 – Neighbourhood Centres

Site Planning – Section 2

Pursuant to Part D6, Section 2.3 of RDCP 2013, development must not exceed three (3) storeys in height, with the exception of habitable roof space/partial floor which must be setback so as not to be visible from the street or incorporated into the roof design to have the appearance of a roof rather than an additional storey.

The proposal seeks to reconfigure the existing attic storage area at Level 3 (for Unit 1 only) to accommodate the upper addition. The upper addition is contained behind and below the front parapet, and as such, will not be visible from the street and surrounding public domain. The proposal has been incorporated into the roof design and comprises void areas (i.e. front terrace and rear terrace) to have the appearance of a roof rather than an additional storey.

Whilst the proposal does not strictly comply with the minimum 2.7m floor to ceiling height control, the extent of non-compliance is limited to the study only, which is a non-habitable room. Consistent with the ADG requirements, a 2.7m ceiling height is provided for habitable rooms (bedroom) and a 2.4m ceiling height is provided for non-habitable rooms (study).

No change is proposed to the setbacks of the existing building. The upper addition has been designed to align with the south (front) and west (side) alignment of the existing building below.

Building Design – Section 3

No change is proposed to the streetscape presentation or façade design of the existing building. The upper addition is contained behind and below the front parapet, and as such, will not be visible from the street and surrounding public domain.

Consistent with the DCP requirements, the proposed roof form has been designed to generate a visually interesting skyline, while minimising apparent bulk and potential for overshadowing. The selected materials and finishes, comprising grey metal cladding and framed glazing, are lightweight in nature and are appropriate.

Public Domain – Section 4

No change is proposed to the public domain presentation of the existing building in terms of active frontages, pedestrian and vehicular access, or loading areas.

Amenity – Section 5

The submitted shadow diagrams demonstrate that any additional overshadowing (relative to the existing situation) will be to the roof of the properties at Nos. 222 and 226 Coogee Bay Rd. The proposal will not result in any additional overshadowing of habitable windows or private open space areas. Suitable solar access will be provided to the unit, including the proposed terraces.

The proposal is unlikely to result in adverse visual privacy impacts. Any overlooking from the sides of the rear terrace will be to the roofs of adjoining properties. The front terrace will be suitably screened by way of the existing parapets. The proposed rear terrace is setback more than 21m from the RFB located to the rear of the subject site (No. 11 Alfreda St). Additionally, the floor level of the rear terrace (RL 21.88) is significantly higher than the upper, south-facing window sill at No. 11 Alfreda St (approx. RL 17.04). On this basis, the proposal is unlikely to result in any additional visual privacy impacts relative to the existing situation.

Shop Top Housing – Section 6

No change is proposed to pedestrian and vehicular access or waste management arrangements. Consistent with Part D6, Section 6 of RDCP 2013, the proposal seeks to provide additional private open space for Unit 1 by way of two (2) new terraces. The terraces have been designed to maximise solar access and ensure visual and acoustic privacy is maintained.

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	Refer to Sections 6 & 7 of this report.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Not applicable.
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 Section 8 of this report.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	Not applicable.
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 the addition of an upper storey (Level 3) to Unit 1 to accommodate two (2) bedrooms and one (1) bathroom 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 matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed regarding the height of buildings and floor space ratio development standards in clauses 4.3 and 4.4 of Randwick Local Environmental Plan 2012.
- The proposal is consistent with the specific objectives of the zone in that it will enable residential development that contributes to a vibrant and active local centre.

- The proposal has been designed to protect the amenity of residents in the E1 zone and in the adjoining and nearby residential zones.
- 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.

D30/24

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

Council's Heritage Planner has reviewed the proposal and raises no concerns, as outlined below:

"The Site

The subject site is not a heritage item nor located within a heritage conservation area. However it is adjoining heritage items I481, "Douglass Buildings", Federation free style shops, and I482, an Inter-war residential flat building.

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 2023 provided Objectives and Controls in relation to heritage properties.

Comments

The proposed development does not have any adverse visual or material impact on the heritage items. Therefore, the proposal is supported from a heritage perspective.

Recommendation

The proposed development is supported from a heritage perspective no further condition is required."

1.2. Development Engineer

Council's Development Engineer has reviewed the proposal and raises no concerns, as outlined below:

"General Comments

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

Parking Comments

Sec 3.2 Part B7 of Council's DCP 2013 states;

"Where Development comprises an extension, modification or change of use to an existing development, Council will generally only require that additional parking be provided to cater for the additional demands arising from increases in floor space or changes in use"

When assessed against the parking rates specified in Part B7 of Council's DCP the proposed development will increase parking demand for this unit from 1.2 spaces to 1.5 spaces. Council recognises that off-street carparking has not been provided in the past and that the parking provision for this development is primarily on-street carparking. Council is of the opinion that the increase in on-street carparking demand due to this proposed development will be negligible."

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

Alterations and Additions (Height Cl. 4.6 Submission) • 1/224-228 Coogee Bay Road, Coogee

8 March 2024

1.0 INTRODUCTION

This Written Request to Development Standards Submission supports Development Application (DA) 95/2024 proposing alterations and additions to the existing shop top housing development at 224-228 Coogee Bay Road, Coogee (the **site**). Specifically, the proposal only seeks works to Unit 1.

Calculations in this submission are based on plans and information provided by Saltbush and Cristina Garduno Freeman. This submission should be read in conjunction with all documentation submitted with the DA, whether originally or as part of additional information requested by Randwick City Council (the **Council**).

As noted within a separate letter by LPDS, the existing and proposed to be altered built form departs from the Height of Buildings Development Standard (the **height standard**) at Clause 4.3(2) of Randwick Local Environmental Plan 2012 (**LEP 2012**). **It is noted the building's existing maximum height is not altered.**

As required pursuant to Clause 4.6(3) of LEP 2012, this request seeks to justify the existing and proposed departure to the height standard on the basis that the variation sought is acceptable as compliance with the standard is both unreasonable and unnecessary given the circumstances of the case; and the departure from the standard is justified on environmental planning grounds.

2.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

2.1 What is the name of the environmental planning instrument that applies to the land?

Randwick Local Environmental Plan 2012 (LEP 2012).

2.2 What is the zoning of the land?

The land (the site) is zoned E1 Local Centre.

2.3 What are the objectives of the zone?

The 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 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.*

2.4 What is the development standard being varied?

Development Standards are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the **Act**) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*
- (l) *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and*
- (o) *such other matters as may be prescribed. (my emphasis)*

The height control at Clause 4.3(2) of LEP 2012 is clearly a development standard as it relates to:

- the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work as specified by **subclause (c)**.

2.5 Is the development standard a performance based control? Give details.

The height standard is both a numerical standard and a performance-based standard, as it contains objectives to which compliance with the standard is targeted to achieve.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The height standard is listed at Clause 4.3(2) of LEP 2012.

2.7 What are the objectives of the development standard?

The objectives of the height standard are expressly stated at Clause 4.3(1) of LEP 2012 and are:

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

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3(2) of LEP 2012, establishes a maximum height of 12m for the site.

2.9 What is the proposed numeric value of the development standard in the development application?

Council (as per their letter dated 23 February 2024) has calculated the existing building to have a maximum height of 13.74m (RL 24.92 parapet projection above RL 11.18 being existing ground level).

However, the existing lower ground floor / basement level has an RL 9.06. Given this floor level is existing and notwithstanding it is below the level of Coogee Bay Road, it nonetheless by definition is the site's existing ground level. Therefore, the existing built form has a maximum height of 15.86m, which departs from the standard.

Although the building's existing maximum height is not altered, works (the new level of accommodation) are nonetheless proposed above the 12m height standard to a maximum of 15.79m (RL 24.85 new roof above RL 9.06 being existing ground level).

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

The **existing and unaltered** maximum percentage variation is 32.2% (rounded up) or 3.86m.

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 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.

The site may be developed with the stated variations to the height standard. Consistency is not readily quantifiable in absolute numerical terms. The proposal despite its existing and unaltered maximum departure from the height standard is nonetheless consistent with the stated objectives of the E1 Local Centre zone and is a suitable and appropriate redevelopment of the site as it:

- maintains existing small scale business use and an active frontage to Coogee Bay Road;
- maintains existing non-residential tenancies that provide facilities and services to meet the daily needs of residents and the community in general;
- undertakes works to an existing apartment (#1 only) which do not adversely or unreasonably reduce the amenity of neighbouring and nearby properties and the surrounding public domain;
- is located on a site of sufficient size to appropriately accommodate the altered built form;
- it 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 altered apartment has been designed to cater for a family household with flexible living arrangements. 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;

- the new works do not alter the site's streetscape presentation to Coogee Bay Road. They are contemporary in form and detail and are largely screened from view from the public domain and are not incompatible with the established and likely built form context of neighbouring properties;
- provides an altered built form that is not incompatible considering the locality's existing or desired future built form character (see later);
- maintains a safe public domain;
- as works at the site's Coogee Bay Road frontage are not proposed, existing pedestrian amenity is maintained;
- although the site cannot provide on street parking, it is ideally located to encourage alternative means of transport; and
- the occupants of the Unit can work from home as/if required and utilise other land uses that provide facilities or services meeting their day to day needs. There is no identifiable impact to other local centres or non-residential precincts.

3.1.2 Objectives of the Height standard

The objectives of the height standard are expressly stated at Clause 4.3(1) of LEP 2012. Despite its departure from the height standard, the proposal is nonetheless consistent with its objectives and therefore provides an appropriate planning outcome for the following reasons:

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

- The height standard departure and the development generally is not inconsistent with the relevant objectives of the height standard because it does not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.
- In this instance the current height standard in LEP 2012 effectively constrains any future development on the site because the existing development already exceeds the maximum permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event, the unaltered existing maximum height (despite works proposed above the threshold) and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality (see later).
- As work to only Unit 1 are proposed, the existing scale, bulk and height of the building is largely retained. The site's existing building is tall and is at a height, bulk and scale (FSR) that cannot be replicated by virtue of the LEP 2012 height and FSR limits. Considering this condition, the proposal will not set a precedent, nor undermine the development guidelines within Randwick Development Control Plan 2013 (DCP 2013), nor lead to a proliferation of other buildings that depart from the standard.
- Land to the site's east, west and south is zoned E1 Local Centre. It is all subject to a blanket 12m height standard and 1.5:1 FSR standard within LEP 2012 irrespective of the existing built form. Properties to the site's north are zoned R3 Medium Density Residential and have a 0.9:1 FSR standard, albeit with a 12m height standard. Numerous nearby buildings will depart from the standards. Coogee Bay Road is the main street that connects this beachside suburb with Randwick. Coogee Bay Road is characterised by a mixture of Art-Deco styled apartments, Post War flats, high-density infill apartment developments

and clusters of semidetached houses, punctuated by small scale neighbourhood retail, schools and small shopping centres. At its Coogee Beach end, two storey buildings dominate until Vicar Street where there is a change in height to a mix of three and four storey buildings designed as Federation free style shops to mixed use Art Deco apartments. Two heritage listed buildings flank the site of the proposed alterations and additions. To the west are Federation free style shops ('The Douglass Buildings') at 218 - 222 Coogee Bay Road and to the east is an unnamed shop top housing building at 230 Coogee Bay Road.

- The non-complying built form will not materially alter the locality's desired future character. The desired future character is to an extent derived from the current planning regime of zoning and development standards, and in particular to the extent those controls encourage redevelopment. The visual catchment contains several buildings that will present a similar height, bulk and scale and which set the future character. Consequently, the unaltered maximum departure and the new works above the height standard do not result in a scale of building that is out of character with the surrounding development and the emerging character as expected within the Coogee Bay Road local centre cluster. The existing and proposed relationship for the site and its neighbours to the east and west is shown at **Figure 1**, which clearly demonstrates the proposed works will not result in an altered built form that is incompatible with its established and likely future built form context.



Figure 1 – Proposed southern (Coogee Bay Road) elevation

- Resulting from the site and locality's topographical characteristics, most buildings on the northern side of Coogee Bay Road are provided with a lower ground floor level or part basement level. The site has this existing built form condition. As such its existing ground level (where height is measured from) is actually a storey below the Coogee Bay Road footpath level. This condition clearly accentuates the departure to the standard, notwithstanding these areas of the buildings are generally not visible from the public domain and does not in any way have an impact relative to height, bulk and scale. The site's existing streetscape presentation to Coogee Bay Road is largely unaltered and the new works sit behind and are lower (RL 24.85 proposed v RL 24.92 existing and unaltered) than the retained high masonry wall parapet presented to Coogee Bay Road. and built form.
- The building's scale does not change. The existing skillion roof is modified by the proposal which is configured as a rectangular 'storey' oriented north south. The new articulated roof is in keeping with

the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee. A relative human scale is maintained considering the adjacent visual context.

- The new works the height standard are inconsequential from a planning perspective as they do not materially add to the height, bulk and scale of the site's built form and provide amenity for the occupants of Unit #1, whilst not unreasonably impacting on the amenity of neighbouring properties or the public domain. The built form sits comfortably within its established context.
- The non-complying works:
 - are sited behind and are lower than the retained high masonry parapet roof wall to Coogee Bay Road;
 - maintain an appropriate curtilage to or relationship with neighbouring and nearby built form;
 - comprise lightweight materials and are subservient to the predominant building envelope / form;
 - provide substantial amenity for the occupants of Unit 1, in terms of additional accommodation, a flexible floorplan, increased solar access and natural ventilation to deeper plan areas and provide two zones of private open space; and
 - will not result in unreasonable amenity impacts to neighbouring and nearby properties.

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 site is not an identified heritage item.
- The site is not within a heritage conservation area.
- The 'contributory' character to the local centre zone cluster's Coogee Bay Road frontage has been maintained.
- Two heritage listed buildings flank the site of the proposed alterations and additions. To the west are Federation free style shops ('The Douglass Buildings') at 218 - 222 Coogee Bay Road and to the east is an unnamed shop top housing building at 230 Coogee Bay Road. The proposal has a clear manageable impact to the significance of the adjacent heritage items, particularly considering that approved under DA 357/2019 at 230 Coogee Bay Road.
- The proposal is an adaptive reuse of the roof space of an existing Inter War building, Aughton Flats. The building likely has some contributory value to the character of Coogee Bay Road but has not been assessed as having heritage value. Architecturally, the proposed work comprises a simple lightweight roof 'pavilion' that is subserviently set back from and is lower than the masonry street parapet wall and the masonry firewalls on the boundaries. This ensure that the new ridge line sits comfortably behind the existing facades, while the proposed roof slopes downwards to the south towards Coogee Oval. The materials are considerate of the local character of the street and draw on the existing steel roof sheeting as a precedent.
- The proposed works reconfigure the existing roof storage space above Unit 1 into habitable rooms. The building's scale does not change overall. The existing skillion roof is modified by the proposal which is configured as a rectangular 'storey' oriented north south. The new articulated roof is in keeping with the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee.

- Considering the works are screened from view by the unaltered high masonry parapet wall to Coogee Bay Road, there is no adverse visual impact and the largely retained altered shop top housing built form is clearly not incompatible with its existing and likely future built form context that provide similar accommodation within the same land use zone, including that adjacent (see **Figure 1**).

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.

- Essentially, the objective of the height standard (in conjunction with the 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 height 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 altered built form without an adverse visual impact or perceived built form dominance. The existing and proposed departure to the height standard has been arranged considering the site's existing built form and its neighbouring context. In this regard and as demonstrated by the applicant's additional information submission(s), the proposed new level of accommodation, which departs from the height standard nonetheless maintains 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 height standard departure (existing maximum unaltered) and the development generally is not inconsistent with the relevant objectives of the height standard because it does not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.
- The expression of the built form is adjusted to respond to:
 - the site's locational context;
 - the design and built form character of the adjoining and adjacent development;
 - solar access and the site's orientation; and
 - internal and external amenity for the future occupants.
- The altered built form exhibits a high quality architectural design solution within an evolving local centre cluster that positively contributes to the locality's character, 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 or unreasonable amenity related impacts.

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

A development at 1/224-228 Coogee Bay Road, Coogee that strictly complies with the 12m height standard is unreasonable or unnecessary given the following presented circumstances:

- The existing built form departs from the standard. The site's constraints preclude any redevelopment of the site being able to comply with the standard.
- The maximum departure to the standard is not altered.
- Compliance with the standard would require demolition of the existing built form which is undesirable, economically impractical and would be inconsistent with the objects of the Act.
- In this instance the current height standard in LEP 2012 constrains any future development on the site because the existing development already exceeds the permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event the unaltered existing maximum height and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality. The altered built form enables visual interest and a relative human scale within a local centre zone
- The unaltered maximum height is accentuated by the existing benched lower ground floor / part basement level. This part of the building is not readily visible from the public domain.
- Although new works are proposed above the standard, architecturally, they comprise a simple lightweight roof 'pavilion' that is subserviently set back from and is lower than the masonry street (Coogee Bay Road) parapet wall and the masonry firewalls on the boundaries. This ensures that the new ridge line sits comfortably behind the existing facades, while the proposed roof slopes towards the south.
- The visual catchment contains several buildings that will present a similar height, bulk and scale and which set the future character. Consequently, the unaltered maximum departure and the new works above the height standard do not result in a scale of building that is out of character with the surrounding development and the emerging character as expected within the Coogee Bay Road local centre cluster. The existing and proposed relationship for the site and its neighbours to the east and west is shown at **Figure 1**, which clearly demonstrates the proposed works will not result in an altered built form that is incompatible with its established and likely future built form context.
- The proposal is consistent with the relevant environmental and planning objectives pertaining to the height standard and the E1 Local Centre zone (as discussed in greater detail earlier). Although the underlying objectives for the height standard are a valid and relevant matter for consideration, the unaltered variation would not result in a scale, character or identity that is not compatible with the surrounding or future desired locality.
- The non-complying works:
 - are sited behind and are lower than the retained high masonry parapet roof wall to Coogee Bay Road;
 - maintain an appropriate curtilage to or relationship with neighbouring and nearby built form;
 - comprise lightweight materials and are subservient to the predominant building envelope / form;

- provide substantial amenity for the occupants of Unit 1, in terms of additional accommodation, a flexible floorplan, increased solar access and natural ventilation to deeper plan areas and provide two zones of private open space; and
- will not result in unreasonable amenity impacts to neighbouring and nearby properties.
- A development, compliant with the height provisions contained in the LEP 2012, would not necessarily achieve a different or better planning outcome given that the unaltered maximum breach of the height standard is attributed to what is an existing and unaltered building height.
- The bulk and scale of the altered built form will not set an undue precedent. Following a rigorous merit based assessment, approval of a largely unaltered building envelope that relates to the locality's existing character but which exceeds the LEP 2012 height 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 are achieved notwithstanding non-compliance with the standard?

See above detailed assessment of the proposal by reference to the standard's objectives in Sections 3.1 and 3.2. That assessment demonstrates that the standard's objectives are achieved notwithstanding the non-compliance with the standard.

The altered built form will not be incompatible considering the site's existing locational built form context and that desired by the planning controls. On this occasion the non-compliance better achieves the objectives by allowing for an architecturally altered built form that enables high (improved) internal amenity for the occupants of Unit 1, whilst reasonably maintaining 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?

The impacts of the largely retained built form are already known. Compliance with the stated objectives of the 12m height standard would be thwarted if strict compliance was required in the circumstances as the quality and internal / external amenity for the occupants of Unit 1 would be compromised for no sound planning reason and would require demolition of the existing non-compliant built form. This alone would be inconsistent with the objects of the Act, particularly the economic and orderly use of land.

The site's contribution to the local centre cluster is maintained given the existing streetscape presentation to Coogee Bay Road is retained.

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 height standard cannot said to be abandoned. The proposal does not rely on this provision, given its site specific circumstances.

However, and notwithstanding the standard's non-abandonment, the neighbouring property at 230 Coogee Bay Road has a DA approval (357/2019), where the approved built form departed from the height and the FSR standard. The approved height of this building was 18.9m. Additionally, it is also known, there is numerous built form that is zoned E1 Local Centre that departs from the current height standard.

Is the zoning of the land unreasonable or inappropriate?

The site is zoned E1 Local Centre. This zoning is appropriate given the site's central location within Coogee Bay Road mixed use high street shopping village. 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? (Clause 4.6(3)(b) test)

This section demonstrates that there are sufficient environmental planning grounds to justify contravening the height standard as required by clause 4.6(3)(b) of LEP 2012.

It is noted that in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

Additionally, it is noted that in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

Although the term 'environmental planning grounds' is not defined in the Act or the Standard Instrument – Principal Local Environmental Plan, they refer to grounds that relate to the subject matter, scope and purpose of the Act, including the objects in section 1.3 of the Act. The scope of environmental planning grounds is wide as exemplified by the NSW LEC decisions in this area.

Regarding the proposal at 1/224-228 Coogee Bay Road, Coogee, there are sufficient environmental planning grounds to justify contravening the height standard being:

- As addressed earlier in this report and in the additional information documentation prepared by the applicant and its consultant's, the proposal is well considered and pays due regard to the site's important characteristics. In this instance the current height standard in LEP 2012 constrains any future development on the site because the existing development already exceeds the permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event the unaltered existing maximum height and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality. The altered built form enables visual interest and a relative human scale within a local centre zone.

- The noncomplying works:
 - clearly do not alter the ‘contributory’ streetscape appearance to Coogee Bay Road;
 - are sited behind and are lower than the retained high masonry parapet roof wall to Coogee Bay Road;
 - maintain an appropriate curtilage to or relationship with neighbouring and nearby built form;
 - comprise lightweight materials and are subservient to the predominant building envelope / form;
 - provide substantial amenity for the occupants of Unit 1, in terms of additional accommodation, a flexible floorplan, increased solar access and natural ventilation to deeper plan areas and provide two zones of private open space; and
 - will not result in unreasonable amenity impacts to neighbouring and nearby properties.
- The supporting documentation 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 revised documentation demonstrates that despite the contravention to the height standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context;
- The existing built form departs from the standard. The site’s constraints preclude any redevelopment of the site being able to comply with the standard. Additionally, compliance with the standard would require demolition of the existing built form, which is undesirable, is economically impractical and would be inconsistent with the objects of the Act
- The existing built form, its benched level and the locality’s topography clearly accentuates the departure.
- The proposal provides for enhanced amenity to the occupants of Unit 1 through alterations and additions to the existing built form through a relatively modest increase in GFA and a height non-compliant new level of accommodation comprising a bedroom, bathroom, study, north facing terrace and southern open to the sky sun court that does not result in any unreasonable impact to neighbouring properties and the surrounding public domain. Works to the remainder the building are not proposed.
- The building’s scale does not change. The existing skillion roof is modified by the proposal which is configured as a rectangular ‘storey’ oriented north south. The new articulated roof is in keeping with the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee. Building bulk is further reduced with the choice of finishes and materials, which promote visual interest. Materials and finishes are lightweight and subservient. A relative human scale is maintained considering the adjacent visual context.
- The existing non-residential tenancies that provide a daily service remains unaltered.
- The maintained shop top housing land use is not incompatible with the existing and likely future land uses surrounding the site. Active ground floor level, street front non-residential land uses serving the needs of local residents / community are maintained to Coogee Bay Road. Works are not proposed to any other apartment.
- Appropriate environmental initiatives are proposed.

The above environmental planning grounds relate specifically to the additional height attributed to the proposed development, which contributes to the contravention of the height standard. The above points warrant the exceedance, are not generic, but rather, specific to the site and circumstances of the proposal. An appropriate and equitable planning outcome results.

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 existing and unaltered maximum departure to the height standard relates to local and contextual conditions and the site's existing built form and benched levels.

The variation sought is responding to the new level of accommodation to an existing non-compliant built form, which does not accentuate the existing departure, is subservient in form and scale and is largely screened from view. Works to the primary Coogee Bay Road façade / streetscape presentation are not proposed. This clearly maintains its contribution to the local built form character.

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 require demolition of the existing non-compliant built form which is unquestionably economically impractical and highly unlikely. Considering demolition of the existing built form, 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.

In this instance the current height standard in LEP 2012 constrains any future development on the site because the existing development already exceeds the permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event the unaltered existing maximum height and reduced FSR does not render the proposal incompatible with the desired future character for the broader locality. The altered built form enables visual interest and a relative human scale within a local centre zone.

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 height standard is not achievable given the existing non-compliant 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 an architecturally altered unit within an existing shop top housing development. A high internal amenity for the occupants of Unit 1 will result without any unreasonable environmental or amenity related impacts to neighbours or the surrounding public domain.

There are no reasons why it is not in the public interest and its refusal based on the standard's unaltered maximum departure is not warranted. Under the presented circumstances the unaltered variation to the height standard is in the public interest because it is not inconsistent with the objectives of the height standard and neither is it inconsistent with the objectives for development in the E1 Local Centre zone.

On balance the variation to the height standard is an appropriate use of the provisions of Clause 4.6 and the development is therefore capable of being granted consent. Accordingly, there is in the specific circumstances of the case, no public benefit in strictly maintaining the development standard.

3.7 Is the objection well founded?

For the reasons outlined in previous sections, it is considered the objection (written request) is well founded and the granting of 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.

4.0 CONCLUSION

The proposed variation to the height standard is based on the reasons contained within this written request for an exception to the standard. It is concluded that the written request:

- is well founded and demonstrates the existing built form departs from the standard and the built form's maximum height is not altered;
- demonstrates consistency with the standard's objectives;
- demonstrates consistency with the E1 Local Centre zone's objectives;
- 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
- demonstrates that improved amenity will be provided to the occupants of Unit 1, without unreasonably impacting the amenity of neighbouring properties or the surrounding public domain.

Considering the above, the consent authority would be satisfied that the applicant to the DA has demonstrated that the matters set out in clause 4.6(3)(a) and (b) of the LEP 2012 have been appropriately addressed to warrant a variation to the development standard and the granting of development consent.

Appendix 3: Applicant's written request seeking to justify the contravention of the floor space ratio development standard

Alterations and Additions (FSR Cl. 4.6 Submission) • 1/224-228 Coogee Bay Road, Coogee

8 March 2024

1.0 INTRODUCTION

This Written Request to Development Standards Submission supports Development Application (DA) 95/2024 proposing alterations and additions to the existing shop top housing development at 224-228 Coogee Bay Road, Coogee (the **site**). Specifically, the proposal only seeks works to Unit 1.

Calculations in this submission are based on plans and information provided by Saltbush and Cristina Garduno Freeman. This submission should be read in conjunction with all documentation submitted with the DA, whether originally lodged or as part of additional information requested by Randwick City Council (the **Council**).

As noted within a separate letter by LPDS, the existing and proposed to be altered built form departs from the FSR Standard (the **FSR standard**) at Clause 4.4(2) of Randwick Local Environmental Plan 2012 (**LEP 2012**). Despite the proposed works, **a reduction in FSR is proposed**.

As required pursuant to Clause 4.6(3) of LEP 2012, this request seeks to justify the existing and reduced departure to the FSR standard on the basis that the variation sought is acceptable as compliance with the standard is both unreasonable and unnecessary given the circumstances of the case; and the departure from the standard is justified on environmental planning grounds.

2.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

2.1 What is the name of the environmental planning instrument that applies to the land?

Randwick Local Environmental Plan 2012 (LEP 2012).

2.2 What is the zoning of the land?

The land (the site) is zoned E1 Local Centre.

2.3 What are the objectives of the zone?

The 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 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.*

2.4 What is the development standard being varied?

Development Standards are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the **Act**) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*

- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed. (my emphasis)*

The FSR control at Clause 4.4(2) of LEP 2012 is clearly a development standard as it relates to:

- the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work as specified by **subclause (c)**; and
- the cubic content or floor space of a building as specified by **subclause (d)**.

2.5 Is the development standard a performance based control? Give details.

The FSR standard is both a numerical standard and a performance-based standard, as it contains objectives to which compliance with the standard is targeted to achieve.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The FSR standard is listed at Clause 4.4(2) of LEP 2012.

2.7 What are the objectives of the development standard?

The objectives of the height standard are expressly stated at Clause 4.3(1) of LEP 2012 and are:

- (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.*

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.4(2) of LEP 2012, establishes a maximum FSR of 1.5:1 for the site. Based on a site area of 282.8m², a maximum GFA of 424.2m² is permitted.

2.9 What is the proposed numeric value of the development standard in the development application?

GFA calculations plans are submitted separately and detail the existing building has a GFA of 713.8m², which equates to an FSR of 2.52:1. Therefore the existing built form departs from the FSR standard.

Resulting from the roof level alterations, the proposal technically decreases the GFA to 709.1m² (4.7m² decrease), which equates to an altered FSR of 2.51:1.

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

The **existing** percentage variation is 68% or 289.6m².

The **proposed reduced** percentage variation is 67.3% or 284.9m².

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 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.

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 existing and proposed albeit reduced departure to the FSR standard is nonetheless consistent with the stated objectives of the E1 Local Centre zone and is a suitable and appropriate redevelopment of the site as it:

- maintains existing small scale business use and an active frontage to the site's primary frontage, being Coogee Bay;
- maintains existing non-residential land uses that provide facilities and services to meet the daily needs of residents and the community in general;
- undertakes works to an existing apartment (#1 only) which do not adversely or unreasonably reduce the amenity of neighbouring and nearby properties and the surrounding public domain;
- is located on a site of sufficient size to appropriately accommodate the altered built form;
- it enables the provision of improved and additional housing close to public transport, employment opportunities and services, which will provide good quality accommodation that is suitable for the intended occupants. The altered apartment has been designed to cater for a family household with flexible living arrangements. 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;

- the new works do not alter the site's streetscape presentation to Coogee Bay Road. They are contemporary in form and detail and are largely screened from view from the public domain and are not incompatible with the established and likely built form context of neighbouring properties;
- provides an altered built form that is not incompatible considering the locality's existing or desired future built form character (see later);
- maintains a safe public domain;
- as works at the site's Coogee Bay Road frontage are not proposed, existing pedestrian amenity is maintained;
- although the site cannot provide on street parking, it is ideally located to encourage alternative means of transport; and
- the apartment's occupants can work from home as/if required and utilise other land uses that provide facilities or services meeting their day to day needs. There is no identifiable impact to other local centres or non-residential precincts.

3.1.2 Objectives of the FSR standard

The objectives of the height standard are expressly stated at Clause 4.4(1) of LEP 2012. Despite its departure from the height standard, the proposal is nonetheless consistent with the relevant objectives and therefore provides an appropriate planning outcome for the following reasons:

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

- The decreased departure to the FSR standard and the development generally are not inconsistent with the standard's objectives because they do not materially alter the existing correlation between building height (maximum unaltered), massing, form, bulk and scale (density), and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.
- In this instance the current FSR standard in LEP 2012 effectively constrains any future development on the site because the existing development already exceeds the maximum permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event, the unaltered maximum height and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality (see later).
- As work to only Unit 1 are proposed, the existing scale, bulk and height of the building is largely retained. The site's existing building is tall and is at a height, bulk and scale (reduced FSR) that cannot be replicated by virtue of the LEP 2012 height and FSR limits. The building's FSR is actually reduced. Considering this condition, the proposal will not set a precedent, nor undermine the development guidelines within Randwick Development Control Plan 2013 (DCP 2013), nor lead to a proliferation of other buildings that depart from the standard.
- Resulting from the site and locality's topographical characteristics, most buildings on the northern side of Coogee Bay Road are provided with a lower ground floor level or part basement level. The site has this existing built form condition which also comprises 63.3m² (8.9%) of GFA. This condition clearly accentuates the departure to the standard, notwithstanding these areas of the buildings are generally

not visible from the public domain and does not in any way have an impact relative to height, bulk and scale. The site's existing streetscape presentation (or overall building scale) to Coogee Bay Road is largely unaltered (see **Figure 1**).

- Land to the site's east, west and south is zoned E1 Local Centre. It is all subject to a blanket 12m height standard and 1.5:1 FSR standard within LEP 2012 irrespective of the existing built form. Properties to the site's north are zoned R3 Medium Density Residential and have a 0.9:1 FSR standard, albeit with a 12m height standard. Numerous nearby buildings will depart from the standards. Coogee Bay Road is the main street that connects this beachside suburb with Randwick. Coogee Bay Road is characterised by a mixture of Art-Deco styled apartments, Post War flats, high-density infill apartment developments and clusters of semidetached houses, punctuated by small scale neighbourhood retail, schools and small shopping centres. At its Coogee Beach end, two storey buildings dominate until Vicar Street where there is a change in height to a mix of three and four storey buildings designed as Federation free style shops to mixed use Art Deco apartments. Two heritage listed buildings flank the site of the proposed alterations and additions. To the west are Federation free style shops ('The Douglass Buildings') at 218 - 222 Coogee Bay Road and to the east is an unnamed shop top housing building at 230 Coogee Bay Road.
- The existing non-compliant (albeit FSR reduced) built form will not materially alter the locality's desired future character. The desired future character is to an extent derived from the current planning regime of zoning and development standards, and in particular to the extent those controls encourage redevelopment. The visual catchment contains several buildings that will present a similar height, bulk and scale and which set the future character. Consequently, the reduced departure to the FSR standard and the building's unaltered maximum height does not result in a scale of building that is out of character with the surrounding development and the emerging character as expected within the Coogee Bay Road local centre cluster. The existing and proposed relationship for the site and its neighbours to the east and west is shown at **Figure 1**, which clearly demonstrates the proposed works will not result in an altered built form that is incompatible with its established and likely future built form context.



Figure 1 – Proposed southern (Coogee Bay Road) elevation

- The FSR standard departure and the development generally is not inconsistent with the relevant objectives of the height standard because it does not materially alter the existing correlation between

building height and density, and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.

- The maintained (shop top housing) is not incompatible with the existing and likely future land uses surrounding the site and as desired by the planning controls. An active ground floor level, street front non-residential tenancies serving the needs of local residents / community is maintained to Coogee Bay Road. At the upper floors are existing apartments which remain unaltered except for that as proposed to Unit 1. This ensures a vibrant and active local neighbourhood. The works to Unit 1 which are primarily within an existing roof storage zone and behind and below the retained front high masonry wall parapet are clearly not incompatible with its existing and likely future built form context. The altered built form maintains a positive streetscape contribution.
- The site is suitably located to provide additional floorspace above that technically permitted under LEP 2012, although the departure to the standard is reduced from that existing. The site is centrally located within the Coogee Bay Road local centre cluster. It has excellent access to amenities, infrastructure, services and facilities (public transport, shops, parks, etc) which will clearly be able to cope with any perceived increase in demand resulting from the works to Unit 1. The built form's architecture provides an appropriate height and mass relationship to the existing and likely future character within a local centre mixed use cluster.
- Although the site cannot provide off street car parking spaces or designated loading zone(s), it is nonetheless ideally located to encourage alternative means of transport. It has excellent access to public transport and amenities, services and facilities are within easy and relatively flat walking distance. Use of designated loading areas along Coogee Bay Road for the existing and unaltered non-residential tenancies will continue as existing. This is a similar condition (parking and loading) for most buildings on the northern side of Coogee Bay Road.

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

- The design intent is to undertake alterations and additions to Unit 1, including a new level of accommodation that seamlessly connects to new external areas with good access to natural light and ventilation. The works have been designed to respond to, not only with urban design rationale, but also to make the overall built form efficient in terms of its energy use. The site is developed in accordance with its environmental capacity given:
 - retention of an appropriate portion of the existing built form and materials enables ESD. It is noted that works are not proposed to the site's contributory Coogee Bay Road façade / elevation;
 - works are not proposed to any other part of the shop top housing building, other than to Unit 1;
 - it provides an urban framework that supports the principles of ESD/environmental initiatives and is BASIX compliant;
 - the use of sustainable materials and energy efficient systems enhances the built form's functionality and promotes environmentally friendly living;
 - appropriate floor to ceiling heights for the new level of accommodation and retention of existing floor to ceiling heights for the existing lower floor level;
 - vertical circulation space (stairs) serves to connect the upper and lower levels of the dwelling, while enhancing natural ventilation. This is achieved through the design of natural cross-ventilation into

- the upper level, which in turn will drive a new stack-effect air movement. This will improve natural ventilation for the lower level as well, by drawing prevailing breezes through the northern and southern windows and up into the stack;
- the newly introduced internal stairwell (in effect a void) opens up the entrance of the apartment drawing natural light down into the heart of the lower level of the apartment;
 - provision of rooftop skylights to enable increased natural daylight to deeper plan areas at the upper floor level and through the central stair void to the lower floor level;
 - provision of rooftop photovoltaic solar panels;
 - primary living areas are connected to the external facades and glazing for solar heat gain at varying times;
 - provision of a north facing upper floor level terrace and provision of a southern side upper floor level open to the sky sun court that is screened from view by the existing unaltered high masonry parapet wall to Coogee Bay Road. These areas are designed as extension of the room to which they are connected and to encourage outdoor and indoor living, while at same time acting as a transition space to modulate temperature;
 - the sun court allows warmer air to escape out the southern end of the plan without compromising acoustic separation on the busy Coogee Bay Road;
 - both the sun court and terrace are sized to enable the unit's occupants to curate small microclimates through significant plantings in pots and garden beds;
 - the design minimises reliance on artificial lighting and mechanical ventilation;
 - provision of operable doors and windows enables the use of natural ventilation;
 - the internal reconfiguration of the apartment's lower floor level enables north facing open plan primary living rooms with direct connection to a sunroom and large landing zones to the rear stairs useable external private open space;
 - the occupants will enjoy good amenity through the separation of living, sleeping, and service zones;
 - the tactful additions that stitch the proposed work into that which already exists. New materials will be lightweight with a smaller carbon footprint than their masonry equivalents. The roof form itself slopes downwards towards the north providing ideal surfaces for photovoltaic panels;
 - the building is surrounded by existing neighbouring built form that screen any perception of visual impact or visual connection with the surrounding public domain;
 - where required, energy efficient fixtures and finishes are provided;
 - water overflows will be channelled into Council's existing stormwater system; and
 - the engagement with the outdoors, the natural ventilation, the increase in natural light and the passive solar controls will reduce energy consumption.
- The existing visually interesting and articulated façade to Coogee Bay Road is not altered. This maintains the site's positive contribution to the character of the local centre cluster. The proposed works to Unit 1 reinterpret 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 additions are 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 not an identified heritage item.
- The site is not within a heritage conservation area.
- The 'contributory' character to the local centre zone cluster's Coogee Bay Road frontage has been maintained.
- Two heritage listed buildings flank the site of the proposed alterations and additions. To the west are Federation free style shops ('The Douglass Buildings') at 218 - 222 Coogee Bay Road and to the east is an unnamed shop top housing building at 230 Coogee Bay Road. The proposal has a clear manageable impact to the significance of the adjacent heritage items, particularly considering that approved under DA 357/2019 at 230 Coogee Bay Road.
- The proposal is an adaptive reuse of the roof space of an existing Inter War building, Aughton Flats. The building likely has some contributory value to the character of Coogee Bay Road but has not been assessed as having heritage value. Architecturally, the proposed work comprises a simple lightweight roof 'pavilion' that is subserviently set back from and is lower than the masonry street parapet wall and the masonry firewalls on the boundaries. This ensure that the new ridge line sits comfortably behind the existing facades, while the proposed roof slopes downwards to the south towards Coogee Oval. The materials are considerate of the local character of the street and draw on the existing steel roof sheeting as a precedent.
- The proposed works reconfigure the existing roof storage space above Unit 1 into habitable rooms. The building's scale does not change overall. The existing skillion roof is modified by the proposal which is configured as a rectangular 'storey' oriented north south. The new articulated roof is in keeping with the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee.
- Considering the works are screened from view by the unaltered high masonry parapet wall to Coogee Bay Road, there is no adverse visual impact and the largely retained altered shop top housing built form is clearly not incompatible with its existing and likely future built form context that provide similar accommodation within the same land use zone, including that adjacent (see **Figure 1**).

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 the FSR standard, in conjunction with the height standard and detailed development controls, 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 altered built form without an adverse visual impact or perceived built form dominance. The existing and proposed (reduced) departure to the FSR standard has been arranged considering the site's existing built form and the neighbouring / nearby context. In this regard and as demonstrated by the applicant's additional information submission(s), the non-compliant built form nonetheless provides for an acceptable and equitable planning outcome 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; and
- structural integrity, natural drainage patterns, watercourses and landform in general.
- The decreased departure to the FSR standard and the development generally are not inconsistent with the standard's objectives because they do not materially alter the existing correlation between building height (maximum unaltered), massing, form, bulk and scale (density), and the correlation is appropriate under the circumstances, considering the site's existing and largely retained built form.
- Despite the numerical extent of the reduced departure, the existing built form and its known impacts is largely retained. The works to Unit 1 have had specific regard to:
 - the site's locational context;
 - the design and built form character of the adjoining and adjacent development;
 - solar access and the site's orientation; and
 - internal and external amenity for the future occupants.
- The altered built form exhibits a high quality architectural design solution within an evolving local centre cluster that positively contributes to the locality's character, 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 or unreasonable amenity related impacts.
- The site is suitably located to provide additional floorspace above that technically permitted under LEP 2012, although the departure to the standard is reduced from that existing. The site is centrally located within the Coogee Bay Road local centre cluster. It has excellent access to amenities, infrastructure, services and facilities (public transport, shops, parks, etc) which will clearly be able to cope with any perceived increase in demand resulting from the works to Unit 1. The built form's architecture provides an appropriate height and mass relationship to the existing and likely future character within a local centre mixed use cluster.

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

A development at 1/224-228 Coogee Bay Road, Coogee that strictly complies with the 1.5:1 FSR standard is unreasonable or unnecessary given the following presented circumstances:

- The existing built form departs from the standard. The site's constraints preclude any redevelopment of the site being able to comply with the standard.

- The departure to the standard in the proposed development presents a reduction to the FSR from that of the existing building. The reduced size of the numerical departure is inconsequential from a planning perspective as the predominant building envelope has been retained.
- Compliance with the standard would require demolition of the existing built form which is undesirable, economically impractical and would be inconsistent with the objects of the Act.
- In this instance the current FSR standard in LEP 2012 constrains any future development on the site because the existing development already exceeds the permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event the unaltered existing maximum height and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality. The altered built form enables visual interest and a relative human scale within a local centre zone.
- Although the building's FSR is reduced, the overall GFA/FSR is accentuated by the existing benched lower ground floor / part basement level, which comprises 63.3m² or 8.9% of GFA. This part of the building is not readily visible from the public domain and does not influence / contribute to its bulk and scale in an unreasonable way.
- The visual catchment contains several buildings that will present a similar height, bulk and scale and which set the future character. Consequently, the unaltered maximum departure and the new works above the height standard do not result in a scale of building that is out of character with the surrounding development and the emerging character as expected within the Coogee Bay Road local centre cluster. The existing and proposed relationship for the site and its neighbours to the east and west is shown at **Figure 1**, which clearly demonstrates the proposed works will not result in an altered built form that is incompatible with its established and likely future built form context.
- The proposal is consistent with the relevant environmental and planning objectives pertaining to the FSR standard and the E1 Local Centre zone (as discussed in greater detail earlier). Although the underlying objectives for the FSR standard are a valid and relevant matter for consideration, the reduced variation would not result in a scale, character or identity that is not compatible with the surrounding or future desired locality.
- The height, bulk and scale (density) of the altered built form will not set an undue precedent. A highly articulated and visually interesting built form is maintained. Following a rigorous merit based assessment, approval of a largely retained building envelope that relates to the immediate and surrounding locality's existing character and is not dissimilar to that which exists, will not set an unreasonable / undesirable precedent for other non-conforming applications. The proposed reduced FSR clearly does not preclude the appropriate redevelopment of any neighbouring or nearby property.
- Although it departs from the FSR standard (reduced as compared to existing), the largely retained built form and the new works to Unit 1 do not result in any unreasonable amenity or environmental impacts to neighbours or the surrounding public domain. An acceptable and equitable planning outcome is provided 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 and / or traffic generation; and
- structural integrity, natural drainage patterns, watercourses and landform in general.

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 standard's objectives in Sections 3.1 and 3.2. That assessment demonstrates that the standard's objectives are achieved notwithstanding the non-compliance with the standard.

The altered built form will not be incompatible considering the site's existing locational built form context and that desired by the planning controls. On this occasion the non-compliance better achieves the objectives by allowing for an architecturally altered built form that enables high (improved) internal amenity for the occupants of Unit 1, whilst reasonably maintaining 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?

The impacts of the largely retained built form are already known. Compliance with the stated objectives of the 1.5:1 FSR standard would be thwarted if strict compliance was required in the circumstances as the quality and internal / external amenity for the occupants of Unit 1 would be compromised for no sound planning reason and would require demolition of the existing non-compliant built form. This alone would be inconsistent with the objects of the Act, particularly the economic and orderly use of land.

The site's contribution to the local centre cluster is maintained given the existing streetscape presentation to Coogee Bay Road is retained.

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. The proposal does not rely on this provision, given its site specific circumstances.

However, and notwithstanding the standard's non-abandonment, the neighbouring property at 230 Coogee Bay Road has a DA approval (357/2019), where the approved built form departed from both the height and the FSR standard. The approved FSR of this building was 2.34:1. Additionally, it is also known, there is numerous built form that is zoned E1 Local Centre that departs from the current FSR standard.

Is the zoning of the land unreasonable or inappropriate?

The site's E1 Local Centre zoning. This zoning is appropriate given the site's central location within Coogee Bay Road mixed use high street shopping village. 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? (Clause 4.6(3)(b) test)

This section demonstrates that there are sufficient environmental planning grounds to justify contravening the height standard as required by clause 4.6(3)(b) of LEP 2012.

It is noted that in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

Additionally, it is noted that in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

Although the term 'environmental planning grounds' is not defined in the Act or the Standard Instrument – Principal Local Environmental Plan, they refer to grounds that relate to the subject matter, scope and purpose of the Act, including the objects in section 1.3 of the Act. The scope of environmental planning grounds is wide as exemplified by the NSW LEC decisions in this area.

Regarding the proposal at 1/224-228 Coogee Bay Road, Coogee, there are sufficient environmental planning grounds to justify contravening the FSR standard being:

- As addressed earlier in this report and in the additional information documentation prepared by the applicant and its consultant's, the proposal is well considered and pays due regard to the site's important characteristics. In this instance the current FSR standard in LEP 2012 constrains any future development on the site because the existing development already exceeds the permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event the unaltered maximum height and the reduced FSR does not render the proposal incompatible with the desired future character for the broader locality. The altered built form enables visual interest and a relative human scale within a local centre zone.
- Despite the numerical extent of the reduced departure, the existing built form and its known impacts is largely retained. The works to Unit 1 have had specific regard to:
 - the site's locational context and not altering the 'contributory' streetscape appearance to Coogee Bay Road;
 - ensuring they are subservient to the predominantly retained building envelope / form;
 - the design and built form character of the adjoining and adjacent development;
 - maintaining an appropriate curtilage to or relationship with neighbouring and nearby built form;

- provide substantial amenity for the occupants of Unit 1, in terms of additional accommodation, a flexible floorplan, increased solar access and natural ventilation to deeper plan areas and provide two zones of private open space; and
- maintaining existing amenity (in an equitable manner) to neighbouring and nearby properties.
- The supporting documentation 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 revised documentation demonstrates that despite the existing and reduced contravention to the FSR standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context;
- The existing built form departs from the standard. The site's constraints preclude any redevelopment of the site being able to comply with the standard. Additionally, compliance with the standard would require demolition of the existing built form, which is undesirable, is economically impractical and would be inconsistent with the objects of the Act.
- The departure to the standard is in fact reduced in the proposed development. The reduced size of the numerical departure is inconsequential from a planning perspective as the predominant building envelope has been retained and there is no increase in its bulk or scale.
- The proposed works reconfigure the existing roof storage space above Unit 1 into habitable rooms. The building's scale does not change overall. The proposal provides for enhanced amenity to the occupants of Unit 1 through alterations and additions to the existing built form for a new level of accommodation comprising a bedroom, bathroom, study, north facing terrace and southern open to the sky sun court that does not result in any unreasonable impact to neighbouring properties and the surrounding public domain. Works to the remainder the building are not proposed.
- The building's scale does not change. The existing skillion roof is modified by the proposal which is configured as a rectangular 'storey' oriented north south. The new articulated roof is in keeping with the existing structure on the roof area of 230 Coogee Bay Road, and many other Art Deco apartment blocks in Coogee. Building bulk is further reduced with the choice of finishes and materials, which promote visual interest. Materials and finishes are lightweight and subservient. A relative human scale is maintained considering the adjacent visual context.
- The existing non-residential tenancies that provide a daily service remains unaltered.
- The maintained shop top housing land use is not incompatible with the existing and likely future land uses surrounding the site. Active ground floor level, street front non-residential land uses serving the needs of local residents / community are maintained to Coogee Bay Road. Works are not proposed to any other apartment.
- Appropriate environmental initiatives are proposed.

The above environmental planning grounds relate specifically to the FSR proposed. The above points warrant the exceedance, are not generic, but rather, specific to the site and circumstances of the proposal. An appropriate and equitable planning outcome results.

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 existing and reduced departure to the FSR standard relates to local and contextual conditions and the site's existing built form.

The variation sought is responding to the new level of accommodation to an existing non-compliant built form, which technically reduces the existing departure, is subservient in form and scale and is largely screened from view. Works to the primary Coogee Bay Road façade / streetscape presentation are not proposed. This clearly maintains its contribution to the local built form character.

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 require demolition of the existing non-compliant built form which is unquestionably economically impractical and highly unlikely. Considering demolition of the existing built form, 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.

In this instance the current FSR standard in LEP 2012 constrains any future development on the site because the existing development already exceeds the permissible limit to a considerable amount. Substantial redevelopment is therefore unlikely on this site in the foreseeable future. In any event the unaltered maximum height and reduced FSR does not render the proposal incompatible with the desired future character for the broader locality. The altered built form enables visual interest and a relative human scale within a local centre zone.

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 non-compliant 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 an architecturally altered unit within an existing shop top housing development. A high internal amenity for the occupants of Unit 1 will result without any unreasonable environmental or amenity related impacts to neighbours or the surrounding public domain.

There are no reasons why it is not in the public interest and its refusal based on the reduced departure to the standard is not warranted. Under the presented circumstances the reduced 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 E1 Local Centre zone.

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. Accordingly, there is in the specific circumstances of the case, no public benefit in strictly maintaining the development standard.

3.7 Is the objection well founded?

For the reasons outlined in previous sections, it is considered the objection (written request) is well founded and the granting of 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.

4.0 CONCLUSION

The proposed variation to the FSR standard is based on the reasons contained within this written request for an exception to the standard. It is concluded that the written request:

- is well founded and demonstrates the existing built form departs from the standard and the proposal technically reduces the departure to the standard, despite the new level of accommodation;
- demonstrates consistency with the standard's objectives;
- demonstrates consistency with the E1 Local Centre zone's objectives;
- 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
- demonstrates that improved amenity will be provided to the occupants of Unit 1, without unreasonably impacting the amenity of neighbouring properties or the surrounding public domain.

Considering the above, the consent authority would be satisfied that the applicant to the DA has demonstrated that the matters set out in clause 4.6(3)(a) and (b) of the LEP 2012 have been appropriately addressed to warrant a variation to the development standard and the granting of development consent.

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/95/2024

D30/24

**Development Consent Conditions
(Mixed use)**

Folder /DA No:	DA/95/2024
Property:	224-228 Coogee Bay Road, COOGEE NSW 2034
Proposal:	Addition of an upper storey (Level 3) to Unit 1 to accommodate two (2) bedrooms and one (1) bathroom.
Recommendation:	Approval

GENERAL CONDITIONS**Condition**

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
DA04, Rev. A, Floor Plans	Saltbush	27/02/2024	06/03/2024
DA05, Rev. A, Elevations (North, South & West)	Saltbush	27/02/2024	06/03/2024
DA06, Rev. A, Elevations (East) & Section AA	Saltbush	27/02/2024	06/03/2024

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
A1376761	20/11/2023	20/02/2023

In the event of any inconsistency between the approved plans and supplementary documentation, the approved drawings will prevail.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Amendment of Plans & Documentation**
The approved plans and documents must be amended in accordance with the following requirements:

- a. The room identified as 'Bed 3' shall not be used as a bedroom. Consent is granted for use of this room as a sunroom only.

Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

BUILDING WORK**BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE****Condition**

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

	Condition
	documentation.
	Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.
4.	<p>External Colours, Materials & Finishes</p> <p>The colours, materials and finishes of the external surfaces are to be compatible with the existing building and adjacent development to maintain the integrity and amenity of the building and the streetscape.</p> <p>External materials, finishes and colours of the building are required to match, as closely as possible, the existing building and any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
5.	<p>Section 7.12 Development Contributions</p> <p>In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$295,383 the following applicable monetary levy must be paid to Council: \$2,953.83.</p> <p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> $IDC = ODC \times CP2/CP1$ <p>Where:</p> <p>IDC = the indexed development cost</p> <p>ODC = the original development cost determined by the Council</p> <p>CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment</p> <p>CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p>
6.	<p>Long Service Levy Payments</p> <p>Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with section</p> <p><i>At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p>
7.	<p>Security Deposits</p>

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	Condition
	<p>The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p>
	<ul style="list-style-type: none"> • \$600.00 - Damage / Civil Works Security Deposit
	<p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p>
	<p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p>
	<p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p>
	<p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
8.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
9.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p>

Condition	
	<p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
10.	<p>Structural Adequacy</p> <p>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 new works.</p> <p>Condition Reason: To ensure the structural integrity of the building is maintained.</p>
11.	<p>BASIX Requirements</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
12.	<p>Stormwater Drainage</p> <p>Surface water/stormwater (from the redeveloped portion of the site) must be drained and discharged to the street gutter in front of 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.</p> <p>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.</p> <p>Condition Reason: To control and manage stormwater run-off.</p>

BEFORE BUILDING WORK COMMENCES

Condition	
13.	<p>Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):</p> <ol style="list-style-type: none"> a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. 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 <i>Principal</i>

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- | Condition |
|---|
| <p><i>Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</p> <p>c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</p> <p>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</p> <p>e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</p> <p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p> |
| <p>14. Home Building Act 1989
In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>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.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p> |
| <p>15. Construction Noise & Vibration Management Plan
Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>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.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p> |
| <p>16. Public Utilities
A <i>Public Utility Impact Assessment</i> 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.</p> <p>Documentary evidence from the relevant public utility authorities confirming that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Energy Australia, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p> |

Condition

DURING BUILDING WORK

Condition

17. **Site Signage**
It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:
- showing the name, address and telephone number of the principal certifier for the work, and
 - showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and
 - stating that unauthorised entry to the work site is prohibited.
- The sign must be—
- maintained while the building work is being carried out, and
 - removed when the work has been completed.
- This section does not apply in relation to—
- building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or
 - Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.
- Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

18. **Restriction on Working Hours**
Building, demolition and associated site works must be carried out in accordance with the following requirements:

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

Condition reason: To protect the amenity of the surrounding area.

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	Condition
19.	<p>Public Safety & Site Management</p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ul style="list-style-type: none"> a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction. d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council. f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident. g) 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. <p>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.</p> <p><i>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.</i></p> <ul style="list-style-type: none"> 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

Condition	
	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.
	Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.
20.	Building Encroachments There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place. Condition Reason: To ensure no encroachment onto public land and to protect Council land.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
21.	Occupation Certificate Requirements An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> . Condition reason: Statutory requirement. To ensure the site is authorised for occupation.
22.	BASIX Requirements In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> , 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. Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.

OCCUPATION AND ONGOING USE

Condition	
23.	External Lighting External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance. Condition reason: To protect the amenity of the surrounding area and residents.
24.	Plant & Equipment Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i> . Condition reason: To protect the amenity of the surrounding area and residents.
25.	Use of Premises The room identified as 'Bed 3' shall not be used as a bedroom. Consent is granted for use of this room as a sunroom only.

Condition

Condition reason: To ensure the development is used for its intended purpose.

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Development Application Report No. D31/24

Subject: 56 Sackville Street, Maroubra (DA/551/2023)

Executive Summary

Proposal:	Substantial alterations and additions to existing dwelling including new swimming pool and site works
Ward:	Central Ward
Applicant:	Ms A Massain
Owner:	Mrs R H M Bindner and Mr M R G Bindner
Cost of works:	\$2,200,000.00
Reason for referral:	Non-compliance with LEP Height Standard >10%.

Recommendation

That the Randwick Local Planning Panel (RLPP) refuses consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/551/2022 for substantial alterations and additions to existing dwelling including new swimming pool and site works at 56 Sackville Street, Maroubra, for the following reasons:

- The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it does not satisfy the Aims of Chapter 2 - Vegetation in Non-Rural Areas of State Environmental Planning Policy (Biodiversity and Conservation) 2021 in that the resulting loss of vegetation from the site as a whole and in terms of particular trees, does not:
 - protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
 - preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*
- The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it does not satisfy the Aims of State Environmental Planning Policy (BASIX: Building Sustainability Index: BASIX) 2004 in that it is not accompanied by a list of commitments by the Applicant as to the manner in which the development will be carried out.
- The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it is incompatible with the following specific Aims of the Randwick Local Environmental Plan 2012 with respect to the amenity of a residential neighbourhood:
 - to achieve a high standard of design in the private and public domain that enhances the quality of life of the community,*
 - to facilitate sustainable population and housing growth,*
 - to encourage the provision of housing mix and tenure choice, including affordable and adaptable housing, that meets the needs of people of different ages and abilities in Randwick,*
 - to promote the importance of ecological sustainability and resilience in the planning and development process,*
 - to protect, enhance and promote the environmental qualities of Randwick,*
 - to ensure the conservation of the environmental heritage, aesthetic and coastal character of Randwick,*
- The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it does not satisfy the following

objectives of the R2 Low Density Residential zone of the Randwick Local Environmental Plan 2012:

- *To provide for the housing needs of the community within a low density residential environment.*
 - *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.*
5. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development exceeds the stipulated Maximum Height of Buildings Development Standard contained in Clause 4.3 of the Randwick Local Environmental Plan 2012.
 6. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to provide any better outcomes to warrant flexibility and does not provide a suitably prepared written request to vary the development standards contained in Clause 4.3 (Height of Buildings) of the Randwick Local Environmental Plan 2012 pursuant to Clause 4.6(1)(b) and (3).
 7. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the plans and supporting documents do not provide adequate and accurate information with respect to the extent of earthworks to be undertaken in order to determine whether the proposal will have acceptable outcomes having regards to the matters specified at Clause 6.2 (3) of Randwick Local Environmental Plan 2012.
 8. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the plans and supporting documents do not provide adequate and accurate information with respect to the compatibility of the development in the context of the Foreshore Scenic Protection Area in accordance with Clause 6.7 (3) of Randwick Local Environmental Plan 2012. The proposal has not demonstrated that it has been located and designed to minimise its visual impact on public areas of the coastline (including views to the coast) or that it contributes to the scenic quality of the coastal area.
 9. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to demonstrate the following Objectives of the Randwick Comprehensive Development Control Plan 2013 will be achieved:
 - *Ensure quality design that reflects a site's character and context;*
 - *Ensure development demonstrates architectural merit and incorporates high quality materials and finishes;*
 - *Protect and enhance remnant native vegetation, habitat corridors, biodiversity and wetland areas.*
 10. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to demonstrate compliance with the objectives and specific provisions of the Randwick Comprehensive Development Control Plan 2013 with respect to the following matters:
 - *Section 2.4 – Landscaping and permeable surfaces - as the plans and supporting documents do not demonstrate adequate Deep Soil Areas are provided.*
 - *Section 3.2 – Building Height - as the plans and supporting documents indicate the proposal exceeds the Maximum Height of Building standard of 9.5m or and that the Maximum Wall Height control of 7m has been complied with. In addition, the proposal fails to achieve a compliant minimum internal floor to ceiling height for the secondary dwelling.*
 - *Section 3.3.1 – Front Setback – The proposal does not provide a compliant front setback, which has been determined in this instance to be a minimum of 6.625m.*

- *Section 3.3.3 – Rear Setback – The proposal does not provide a compliant rear setback in relation to the proposed swimming pool has been sited inappropriately, results in the loss of existing vegetation, has a relative height that will adversely affect the privacy afforded to adjoining No 54 Sackville Street, and fails to provide any landscaping to improve privacy.*
 - *Section 4.1 – Building Design - General - as the proposal fails to respect and follow the natural topography of the site and therefore enhance the streetscape; will present a built form that does not provide adequate articulation with excessive wall lengths that exceed the maximum length of 12m resulting in a bulk, scale and external appearance that is incompatible with the streetscape and amenity of the surrounding area.*
 - *Section 4.4 – Roof Design - as the proposed roof form, exceeds the maximum building height limit of 9.5m and is therefore not sympathetic to the overall design of the dwelling and the streetscape.*
 - *Section 4.5 – Colours, Material and Finishes - as the proposed dark colour scheme is inconsistent with a coastal environment.*
 - *Section 4.6 – Earthworks - as the plans and supporting documents do not provide adequate and accurate information pertaining to the extent of earthworks being undertaken and the adverse impacts on the removal of vegetation of the Site.*
 - *Section 5.1 – Solar Access - as the plans and supporting documents do not provide adequate and accurate information pertaining the full extent of the shadows cast by the proposal, whether it would have an adverse impact on the amenity of adjoining properties and whether the secondary will receive adequate internal solar access for a minimum of 3 hours during midwinter.*
 - *Section 5.2 – Energy Efficiency and Natural Ventilation - as the proposed secondary dwelling does not provide adequate natural ventilation.*
 - *Section 5.6 – View Sharing - as the plans and supporting documents do not provide adequate and accurate information pertaining to the potential loss of views from adjoining properties.*
 - *Section 6.1 – Location of Parking Facilities - The proposal does not provide a compliant front setback, which has been determined in this instance to be a minimum of 6.625m. The proposal also fails to provide adequate and accurate information in relation to excavation required to accommodate the car parking.*
 - *Section 7.2 – Front Fencing - as the solid panel on the eastern side of the proposed gate does not comply with the maximum height and transparency controls.*
 - *Section 7.3 – Side and Rear Fencing - as the proposal also fails to provide adequate and accurate information in relation to proposed fencing to the side and rear boundaries.*
 - *Section 7.5 – Swimming pools and Spas - as the location, loss of vegetation, lack of adequate new landscaping, relative height above ground level; loss of privacy and overall amenity impacts will not result in any good planning outcomes.*
 - *Section 7.7 – Air Conditioning – the proposal does not contain adequate details of the location of any air conditioning equipment to determine whether there will be acceptable impacts on the built environment, streetscape and acoustic amenity.*
 - *Section 7.8 – Clothes Drying Facilities – the proposal does not contain adequate details of the location of any clothes drying areas to ensure that there will be acceptable impacts on the built environment, streetscape and general residential amenity.*
 - *Section B10 – Foreshore Scenic Protection Area - as the plans and supporting documents do not provide adequate and accurate information with respect to the compatibility of the development in the context of the Foreshore Scenic Protection Area. Likewise, the proposal has not demonstrated that it has been located and designed to minimise its visual impact on public areas of the coastline (including views to the coast) or that it contributes to the scenic quality of the coastal area.*
11. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* as it does not satisfy the provisions of Clause 27 (1)(b) of the *Environmental Planning and Assessment Regulation 2021* as the application does not provide a list of the necessary BASIX Commitments or document those commitments on the application drawings.
 12. The proposed development does not satisfy the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the impacts on the general residential

amenity or the biophysical environment as a result of the height, scale, setback and external appearance of the development are not acceptable.

13. The proposed development does not satisfy the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the impacts on the biophysical environment cannot be accurately determined given the lack of adequate, accurate and consistent information.
14. The proposed development does not satisfy the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that the supporting documentation has not demonstrated the site is suitable for the intended development, given the failure to address and comply with the applicable statutory and policy controls intended to ensure development is designed, located and operated in a manner that does not affect the amenity of the surrounding residential environment.
15. The proposed development does not satisfy the provisions of Section 4.15(1)(e) approval of the development is not in the public interest as it would set an undesirable precedent, given the circumstances of the case, for similar inappropriate development, resulting in substandard residential accommodation.

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 maximum height of buildings by more than 10%.

The proposal seeks development consent for substantial alterations and additions to existing dwelling including new swimming pool and site works that results in a proposed variation to maximum height of buildings development standard. It is noted that the Applicant failed to provide a written request to vary the above development standard. As such, development consent cannot be granted to the proposed development as Council (the consent authority) is not satisfied that the Applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and there are sufficient environmental planning grounds to justify the contravention of the development standard.

In addition to the above non-compliance, a number of key issues have been identified during the assessment of the proposal, including variations to objectives and controls under Council policy pertaining to landscaped area (permeable surfaces), front setback, rear setback, building design, roof design, solar access, fencing and colours/materials.

The proposed development due to the above issues. It is considered an overdevelopment of the site with insufficient articulation, modulation and visual break-up of the bulk, scale and massing. The resultant scheme is not considered comparable nor consistent with the prevailing development pattern and streetscape character of the locality. Consequently, it fails to demonstrate consistency with the objectives of the R2 Zone as well as a number of other relevant objectives and provisions under Council policy.

The proposal is recommended for refusal.

2. Site Description and Locality

The subject site is legally described as Lot A in DP 329228 and is commonly known as No. 56 Sackville Street, Maroubra. The site has a frontage to Sackville Street of 15.09m, a maximum depth of 41.15m, and a total area of 620.9m². The site slopes from the west to the east by approximately 2.5m and from the street frontage towards the rear boundary by an average of approximately 200-400mm.

The rectangular allotment is primarily modified, containing a one and 2-storey masonry detached dwelling house and ancillary structures such as an attached carport in front of the building line and an attached timber deck at the rear (refer to Figures 1 and 2). Several stone walls are evident across the site, which form part of the landscaping.

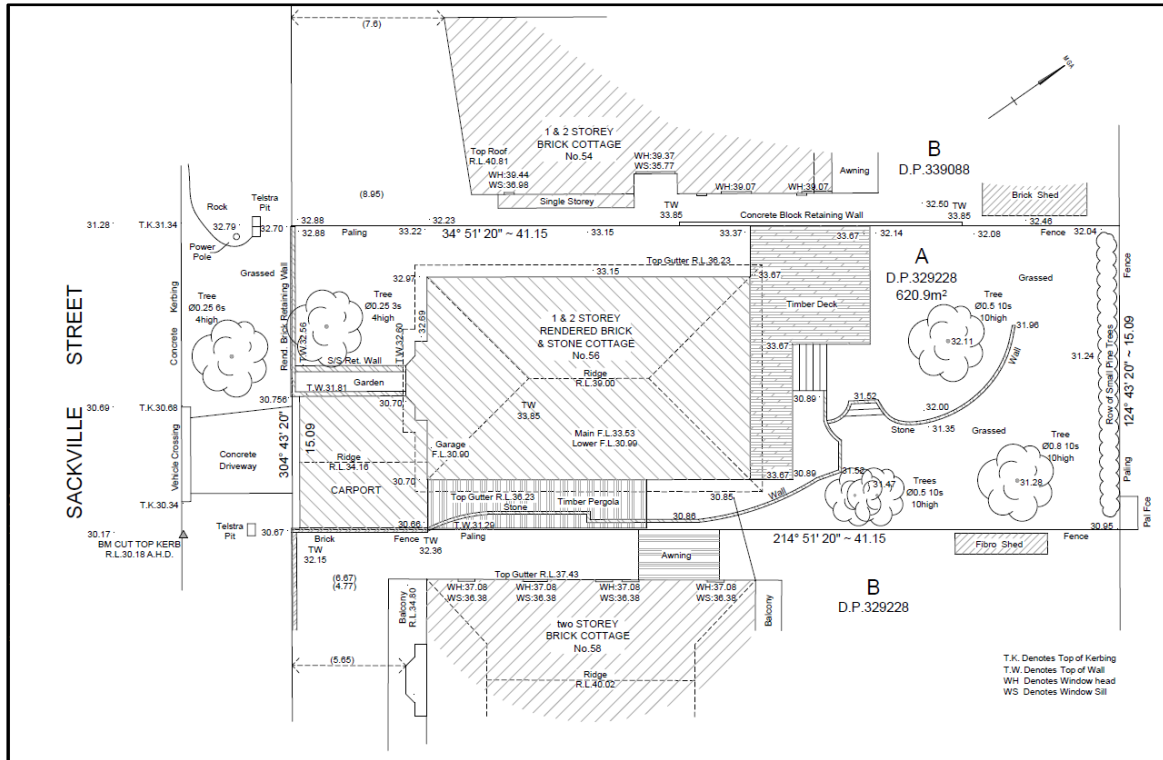


Figure 1: Survey Plan



Figure 2: Front of existing dwelling and carport within subject site

3. Relevant history

CDC/82/2008 for minor alterations and replacement of the existing car port with a garage was refused by Council on 22 November 2010.

The subject DA was lodged on 21 August 2023 and notified in accordance with Council's policy for a period of fourteen days, ending on 8 November 2023. A single submission was received from the owners of No. 54 Sackville Street during this time. The application was subsequently allocated to the author of this report on 9 November 2023.

An extensive Information Request was issued on 31 January 2023 (Refer to Appendix B). The issues identified in the Request are such that the Applicant was requested to withdraw the DA until such times as the concerns had been resolved. The concerns raised/ information requested related to the following matters:

- Clarification of what parts of the original dwelling were to be retained to qualify the proposal as alterations and additions.
- Amendments to the drawings to accurately delineate the secondary dwelling, demonstrate compliance with the maximum building height, refinement of large areas of blacked out features on the plans.
- Provision of additional sections to accurately characterise the topography.
- Clarification of details in the Arborists Report, including trees to be removed and retained, justification of a tree that had been identified as having a high landscape value, architectural drawings relied upon for assessment and impact of proposed pool and yard levelling on structural root zones of retained trees.
- Consistency of the SEE in relation to reports relied upon and extent of proposed works.
- Unauthorised removal of trees in order to justify elements of the proposal and their (lack of) impacts.
- Clarification of the gross floor area, deep soil and site coverage calculations
- Submission of full details of all proposed earthworks.

- Submission of a landscape plan.
- Building envelope issues including excessive bulk, scale, wall length, depth of excavation, failure to achieve the required front setback and maintain stepping along the streetscape.
- Submission of a waste management plan with realistic quantities of materials.
- Inadequate details of the proposed finishes and colour scheme and omission of details regarding the proposed window hoods.
- Submission of amended shadow diagrams that show the full extent of the shadows cast in order to determine the off-site impacts.
- Loss of privacy caused by the excessive height of the pool above ground level.
- Lack of details of ancillary plant and equipment such as the A/C unit, waste storage areas, location of a clothesline, solar hot water system as notated in the BASIX

The Applicant was advised to withdraw the application and resubmit once the significant number of issues had been resolved or to respond within 21 days of the date of the Request. On 23 February 2024, a further letter was issued to the Applicant, requiring the information to be submitted by 1 March 2023 or the application may be assessed against the information provided and potentially refused. The Applicant indicated by return email on the same date that a response would be provided imminently.

No further communication has been received from the Applicant since, with the extended deadline expiring on 1 March 2024.

4. Proposal

Council received a development application seeking consent for substantial alterations and additions to existing dwelling including new swimming pool and site works. It is noted that the plans assessed do not identify any fabric of the existing dwelling that is to be retained. More specifically, the proposal involves the following:

- Demolition of the existing 1 and 2 storey dwelling, front fence and attached carport.
- Removal of eleven (11) trees including one exempt species.
- Construction of a new three storey building containing a principal dwelling and a secondary dwelling, accessed from the basement level.
- Construction of a new swimming pool and front fence.

The building would be configured as follows:

Basement Level

- Landscaped front garden area.
- Double driveway leading from Sackville Street to a double garage.
- Screened outdoor shower adjacent to the garage.
- Secondary dwelling (studio unit) at the rear of the Basement Level comprising of an open plan living and kitchenette, sleeping area, bathroom, and outdoor patio area.
- Stairs leading to the Ground Floor of the dwelling.
- Store room for rainwater tank and pool equipment.

Ground Floor

- Landscaped front garden area.
- Footpath and stairs leading from the driveway to the dwelling entry.
- Study, Bathroom and laundry.
- Open plan living, dining, kitchen and family area.
- Stairs leading to the levels below and above.
- Rear alfresco area accessed directly from the family and dining areas.
- Rear landscaped yard with a semi-inground swimming pool.

First Floor

- Master bedroom with ensuite, walk-in-robe and rear-facing balcony.
- Bedroom 2 with ensuite.
- Bedroom 3 with walk-in-robe.

- Lounge room with front-facing balcony.
- Study.
- Bathroom.
- Stairs leading to the level below.

Figures 3 to 11 illustrate the proposed development.

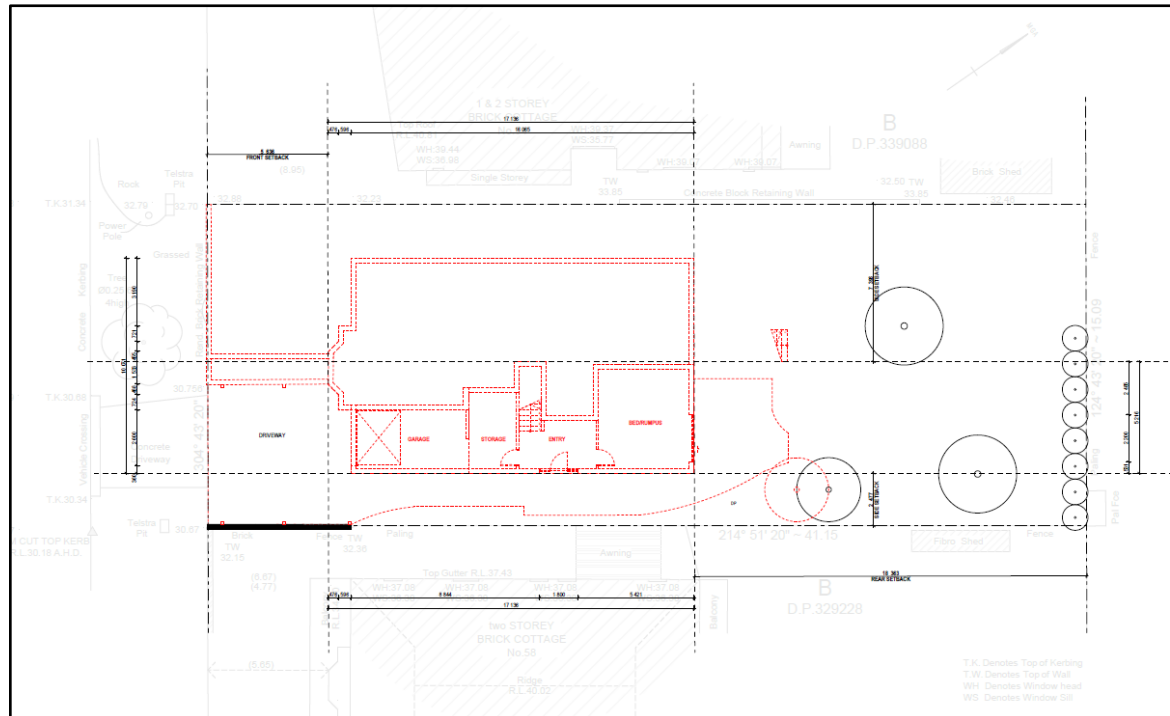


Figure 3: Demolition Plan – Basement

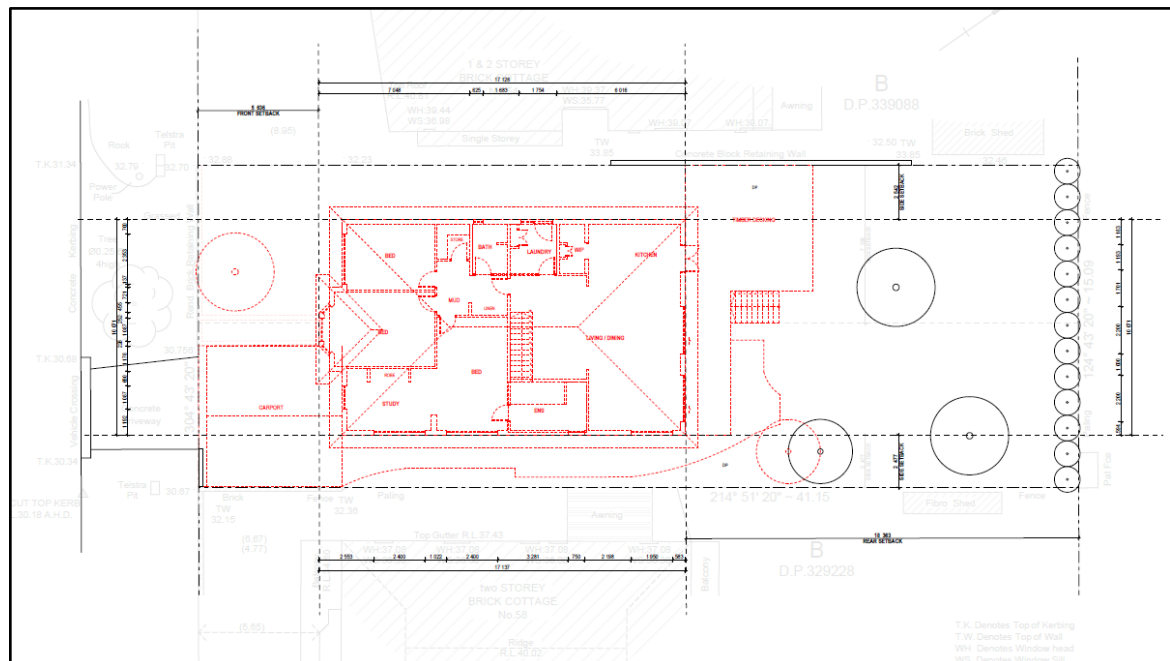


Figure 4: Demolition Plan – Ground Floor

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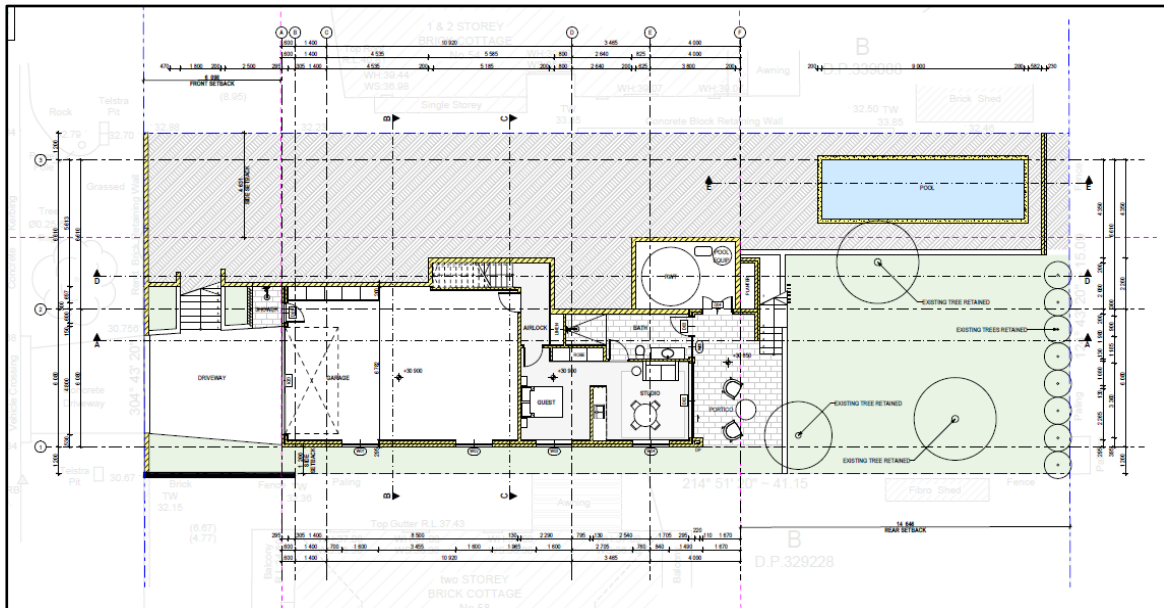


Figure 5: Proposed Basement

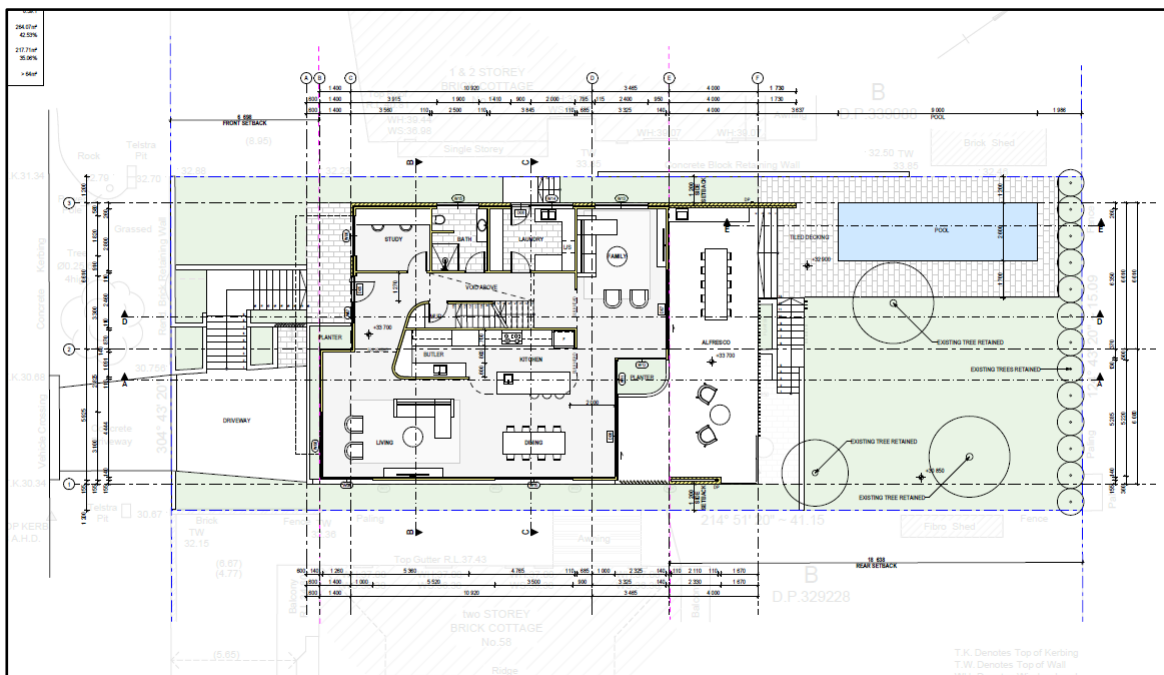


Figure 6: Proposed Ground Floor

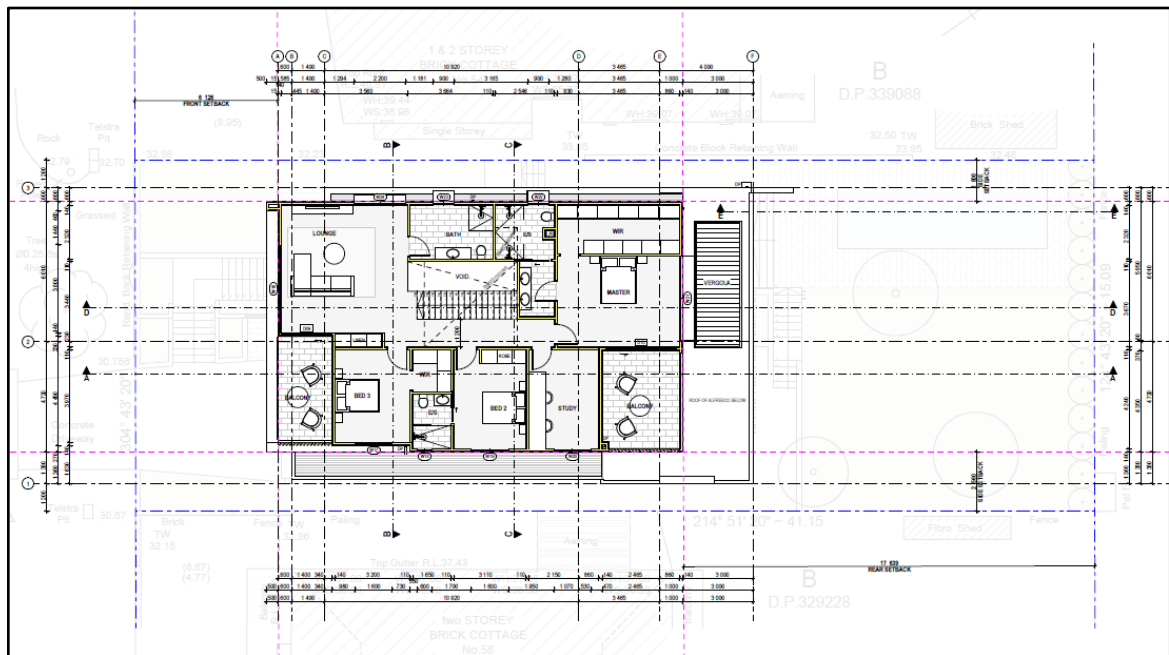


Figure 7: Proposed First Floor

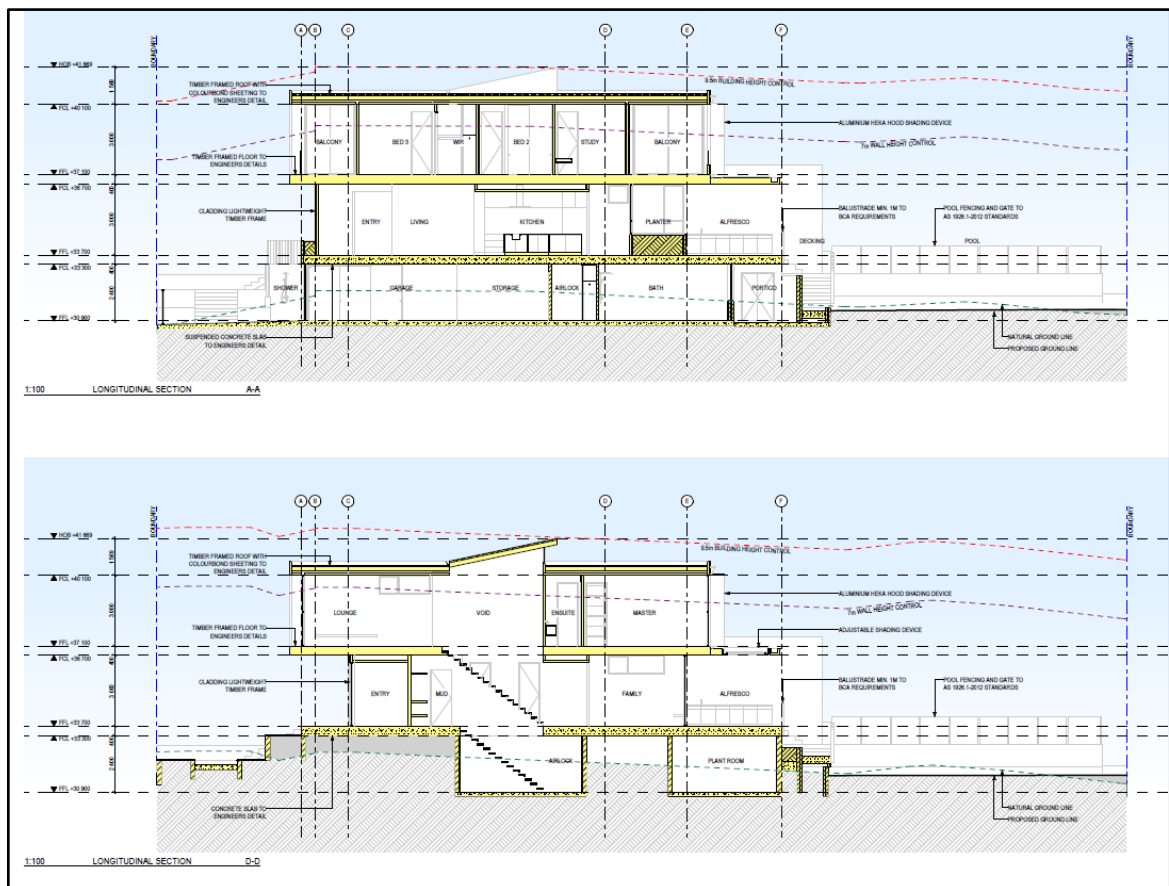


Figure 8: Proposed Longitudinal Sections (A-A and D-D)

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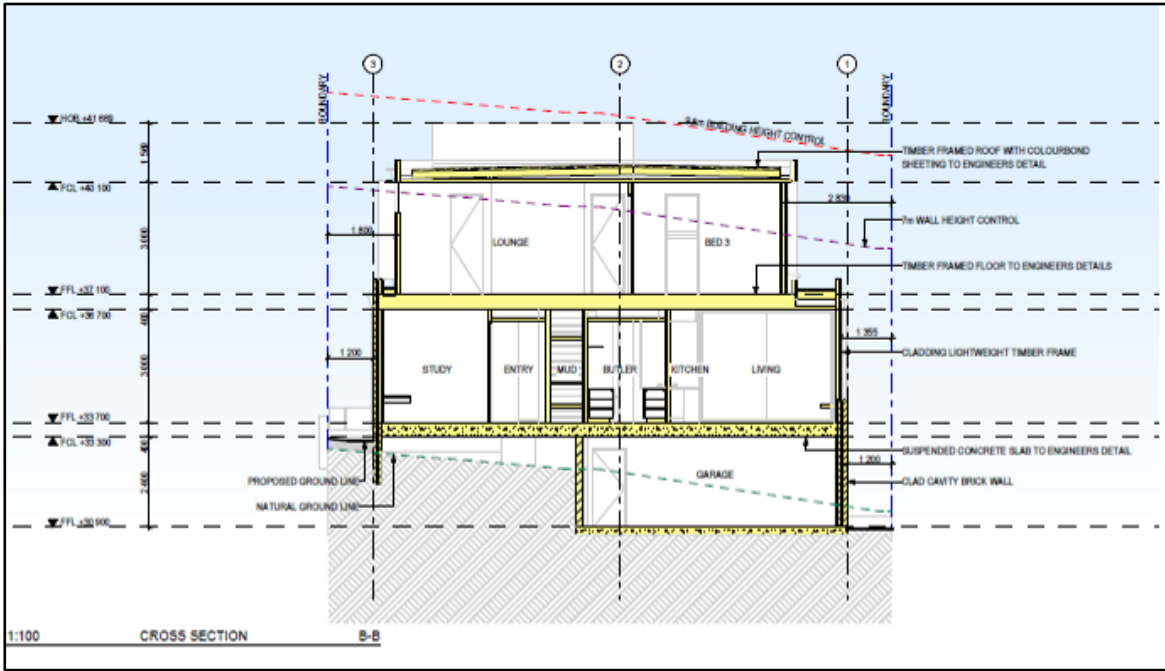


Figure 9: Proposed Cross Section (B-B)

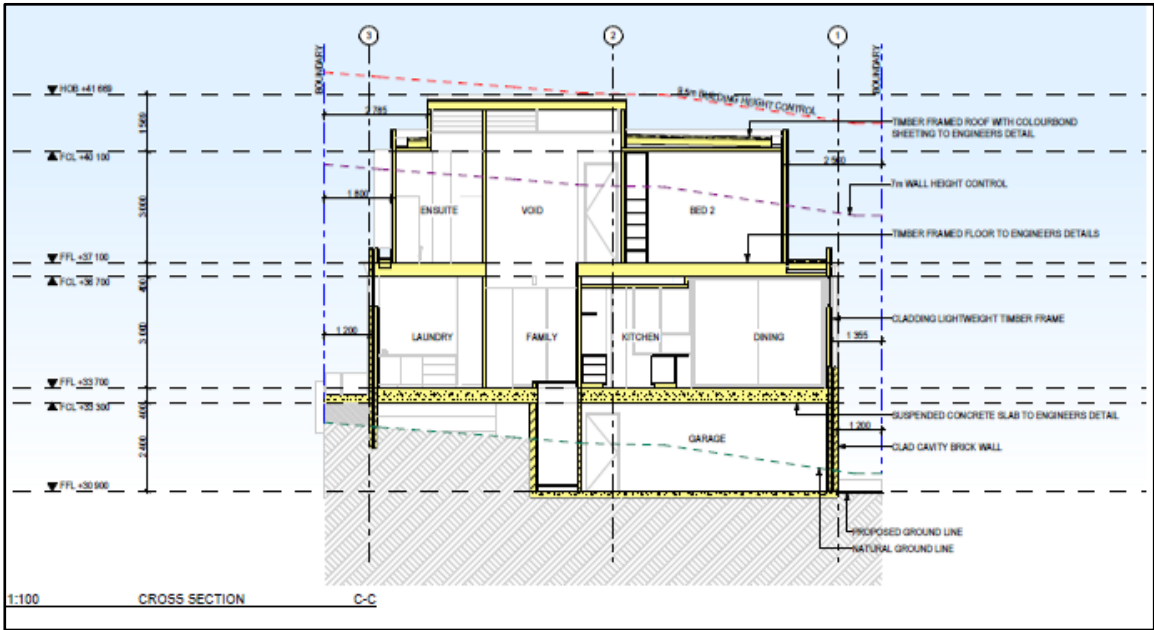


Figure 10: Proposed Cross Section (C-C)

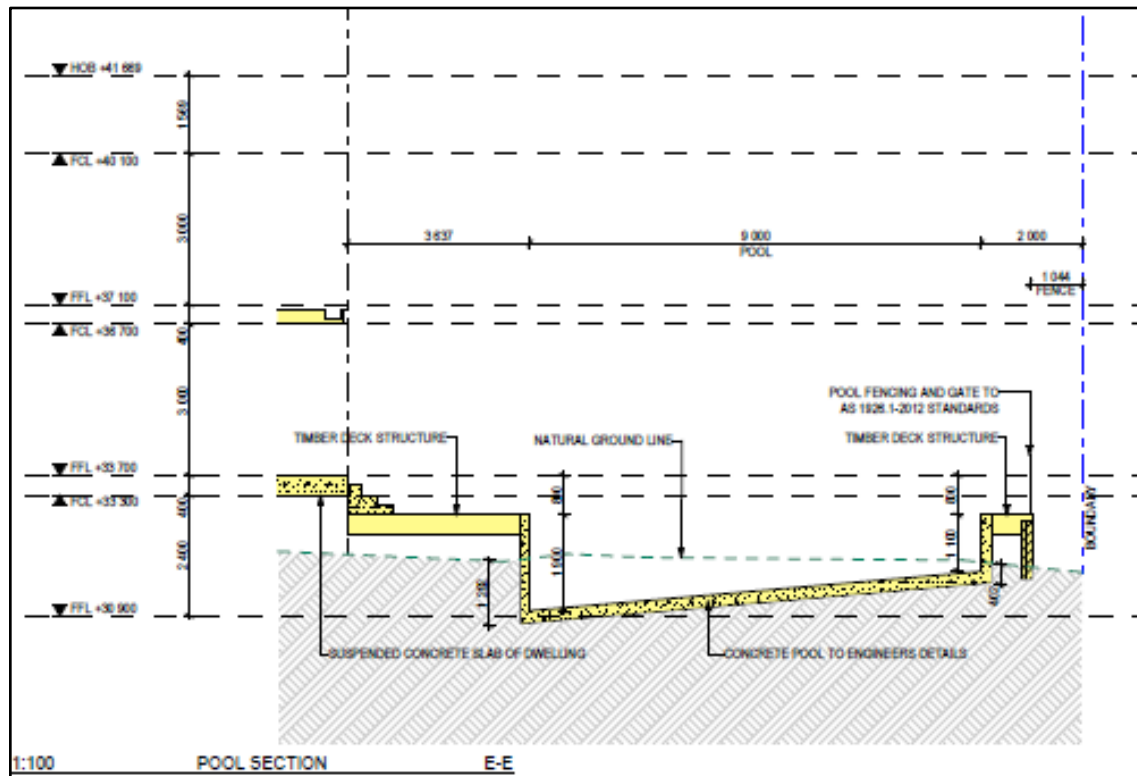


Figure 11: Proposed Pool Section

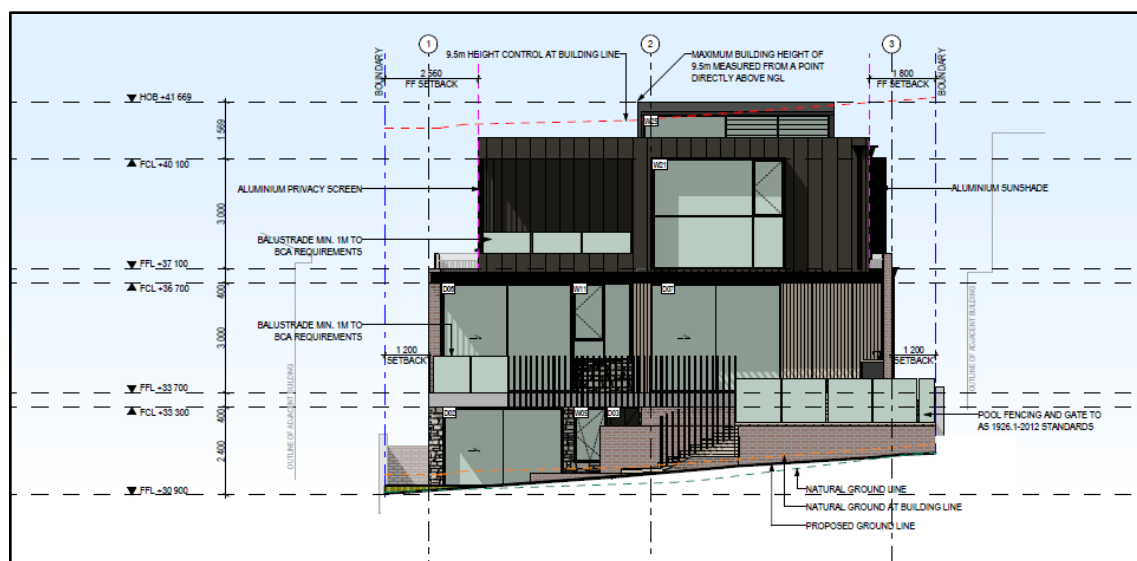


Figure 12: Proposed North Elevation

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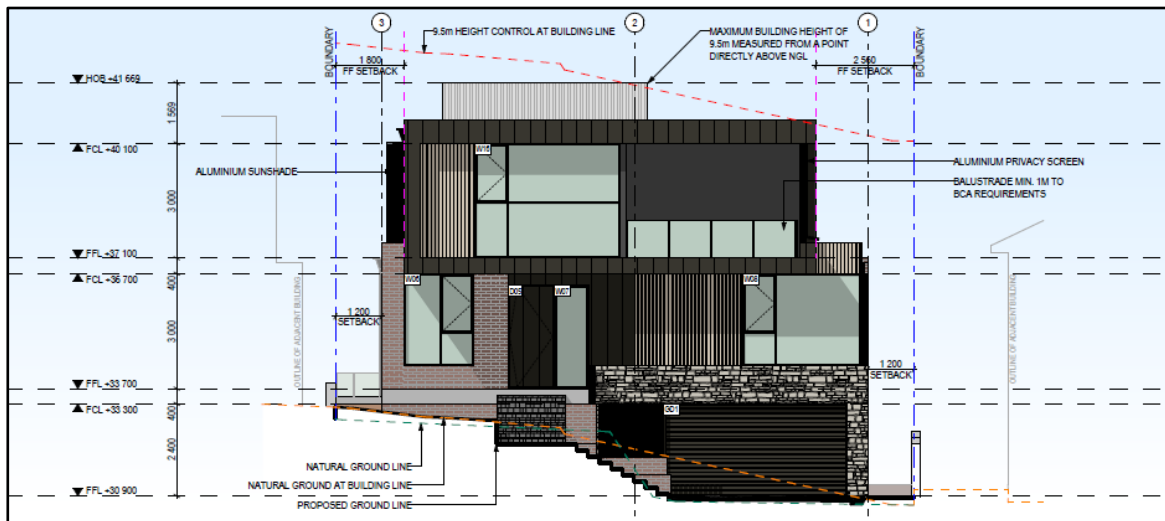


Figure 13: Proposed South Elevation

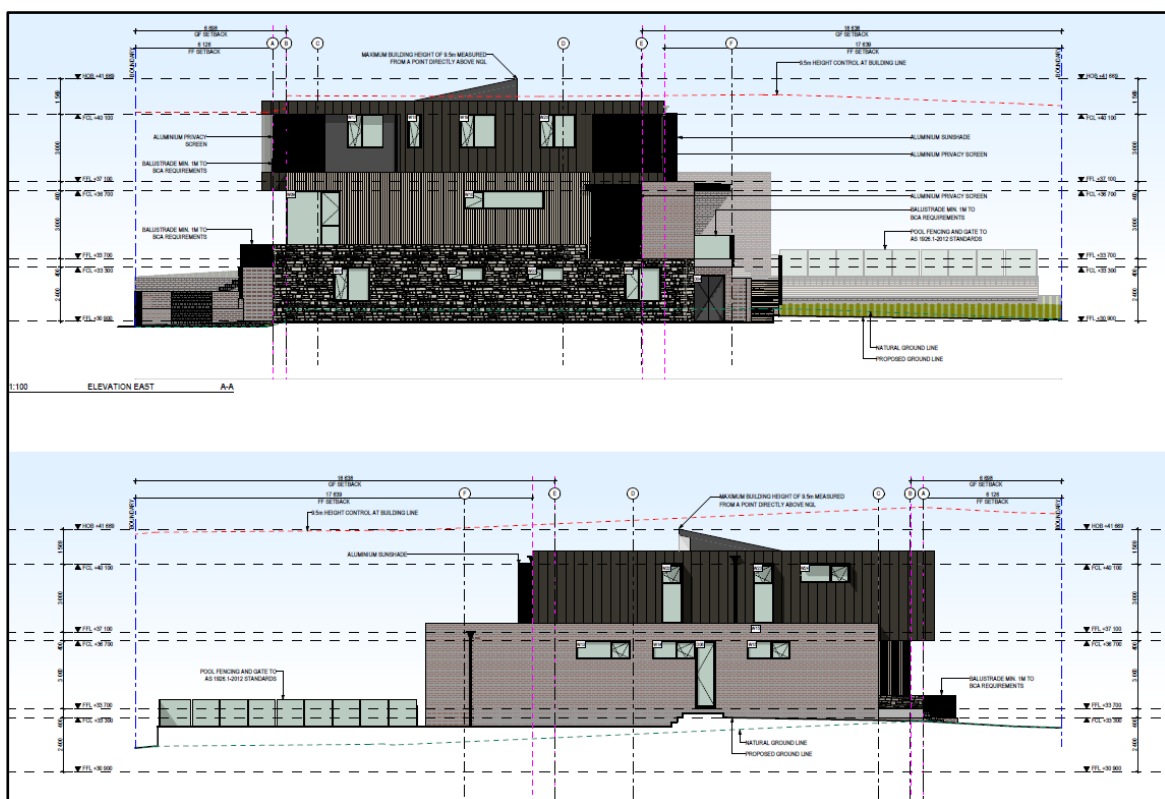


Figure 14: Proposed East and West Elevations

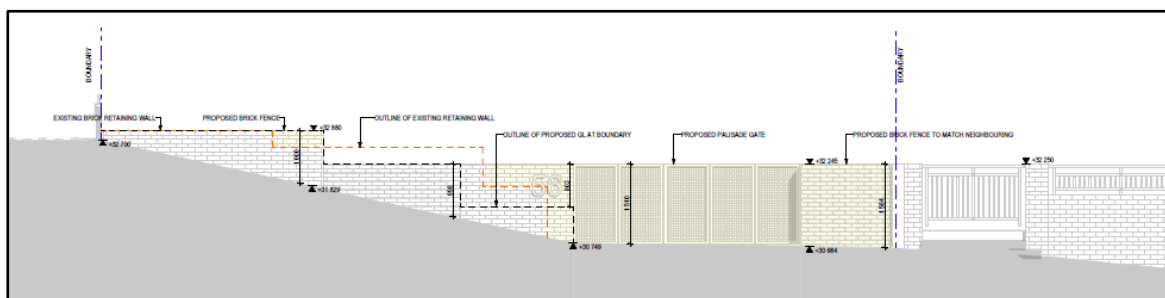


Figure 15: Proposed Fence Elevations

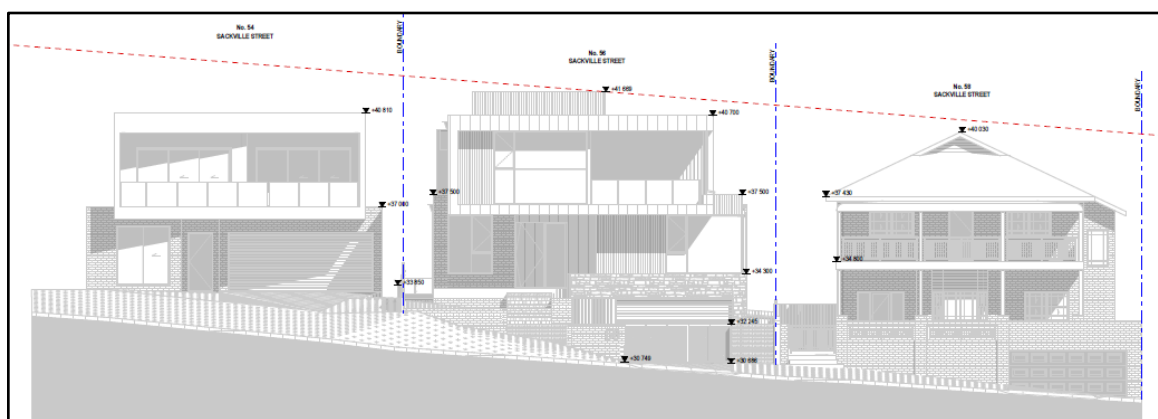


Figure 16: Proposed Street Elevation

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. The following submissions were received as a result of the notification process:

- 54 Sackville Street, Maroubra (Submission also supported by letter of objection prepared by MQD Urban).

Issue	Comment
Loss of views of the ocean from the first floor rooms and balconies as a result of the non-compliant front setback.	Review of the Applicant's view loss diagrams indicates that the potential impacts are not as significant as stated by the objector, however the proposal did have a non-compliant front setback. The preliminary assessment of the proposal identified that it presented a number of non-compliances relating to the overall building envelope and relative levels (as noted in the Information Request). The Applicant has been requested to make a number of changes which if undertaken correctly, would alleviate the concerns raised in this instance.
Excessive height, bulk and scale of the proposed dwelling	As above.

The objector's planning consultant has also prepared a submission referencing the *Tenacity* judgment and Planning Principle, however the photos depicting the claimed view loss do not appear to show the entire view available from the identified positions and the views are across side boundaries the front setback.

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. The submitted BASIX Certificate also stipulates a solar hot water system is to be installed and a pool with a maximum capacity of 46.8kl however the architectural drawings fail to identify the mandatory information. Accordingly, the application fails to demonstrate the required BASIX Commitments have been included in the proposal.

6.2. SEPP (Housing) 2021

Secondary dwellings are permissible in all residential zone by virtue of Cl. 52(2)(b) of the SEPP so long as the total floor area of the Secondary and Primary Dwellings does not exceed the maximum floor area for a dwelling house under any Environmental Planning Instrument. Further, the floor area of the secondary dwelling must not exceed 60m² (Cl. 52(2)(c)). The proposal complies in both respects however the plans the subject of this assessment do not identify the GFA of the secondary dwelling. In this particular instance, the SEPP holds no further controls relative to the proposal.

6.3. SEPP (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas applies as the application proposes to remove a street tree, which is not supported as it would be inconsistent with the following aim of Subclause 2.01:

- (b) *to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

Council's Landscape and Tree Officer has identified a number of concerns, as per the referral contained in Appendix 1, which is encapsulated in previous RFI correspondence to the Applicant.

Although the proposal does not trigger the need for a Biodiversity Development Assessment Report, it fails however, to provide sufficient information or in some instances provides conflicting information with respect to the retention of trees and provision of final landscaping.

6.4. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

Chapter 4 of the SEPP requires the consent authority to consider whether the land is contaminated. Having regard to Section 4.6(4), the site is not within an investigation area nor contain land uses referred in Table 1 of the contaminated land planning guidelines. Further, the proposal will continue the on-going residential use with potential hazardous substances such as asbestos and lead being easily dealt with via standard conditions in the event of approval.

Accordingly, ongoing use of the site for residential purposes is acceptable and there appears to be no remediation necessary.

6.5. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 – Low Density Residential under Randwick Local Environmental Plan 2012 (RLEP 2012) and the proposal, comprising a dwelling house and secondary dwelling are permissible land uses with Council's consent.

In light of the various non-compliances and lack of adequate or consistent documentation, the proposal cannot be considered to be consistent with the following specific objectives or numerical criteria:

- *To provide for the housing needs of the community within a low density residential environment.*
- *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 following development standards contained in the RLEP 2012 apply to the proposal:

Description	Council Standard	Proposed	Compliance (Yes/No/NA)
Floor Space Ratio (Maximum)	0.6:1 (372.54m ²)	0.59:1 (366.33m ²) See discussion below.	Yes
Height of Building (Maximum)	9.5m	10.769m See discussion below.	No (13.6% or 1.289m variation)

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Clause 4.4 – Floor Space Ratio

The initial assessment undertaken by the author of this report indicated the FSR calculation provided by the Applicant was incorrect as follows. In relation to the basement level, Drawing DA101 shows a pink rectangular-shaped area as being 36.00m² in area (see Figure 17 below), within a larger, unshaded area that is not hatched to denote it as gross floor area, as per Figure 18 below (red outlined area).

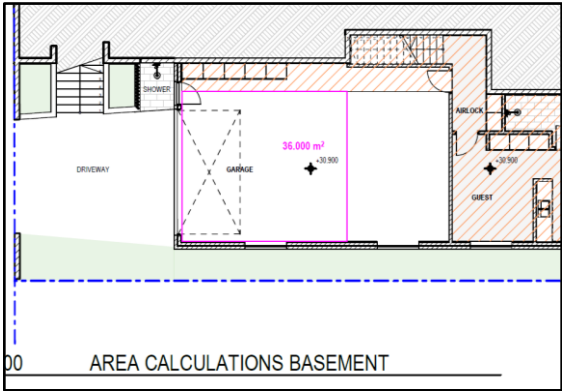


Figure 17

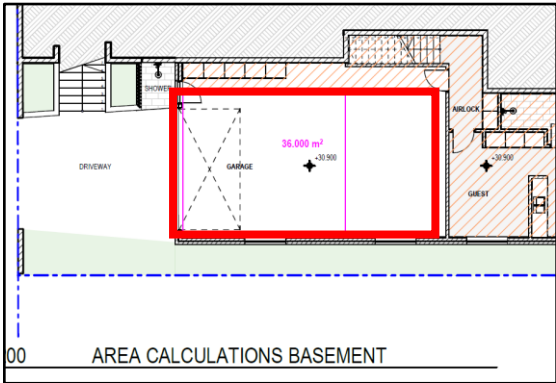


Figure 18

When using the dimensions provided on Drawing DA204, the area that has been omitted from the FSR calculations (as shown by Figure 2 above) equates to approximately 55m² – or a difference of 19m². This would then result in a gross floor area (GFA) of 383.85m² or an FSR of 0.62:1, which exceeds the maximum GFA of 372.54m² or FSR of 0.6:1. The Applicant was requested to clarify the FSR in the Information Request. It is noted that the SEE claims the FSR to be 0.59:1 (364.85m²).

To support this assessment, Council's Coordinator – Development Assessment advised via email on 18 March 2024 that the proposed FSR had been calculated at 366.33m² (0.59:1). Despite there being no calculations, diagrams or methodology to quantify the calculation, compliance with the FSR is accordingly, accepted as per Council's advice.

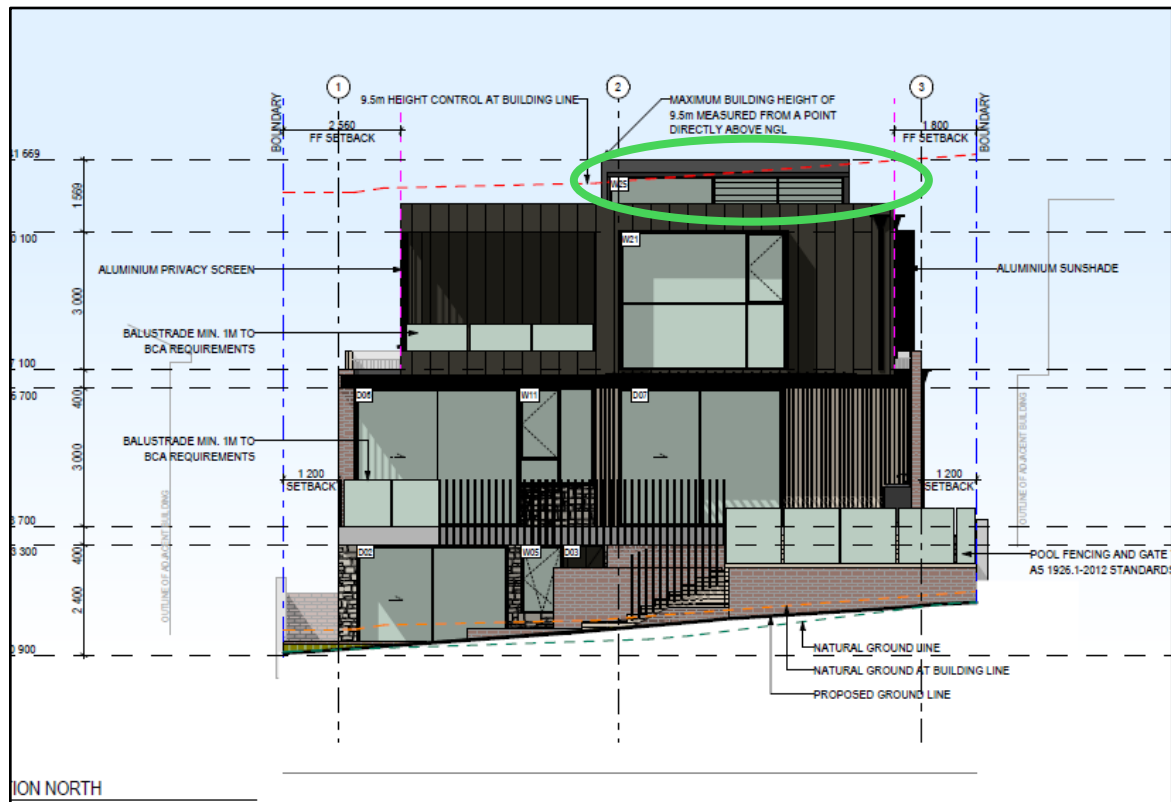


Figure 20

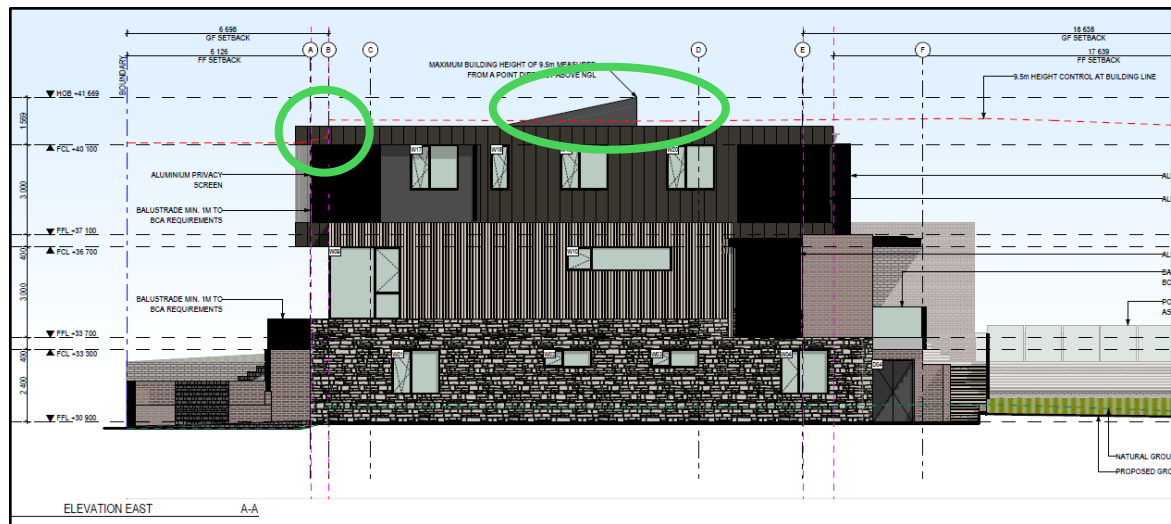


Figure 20

D31/24

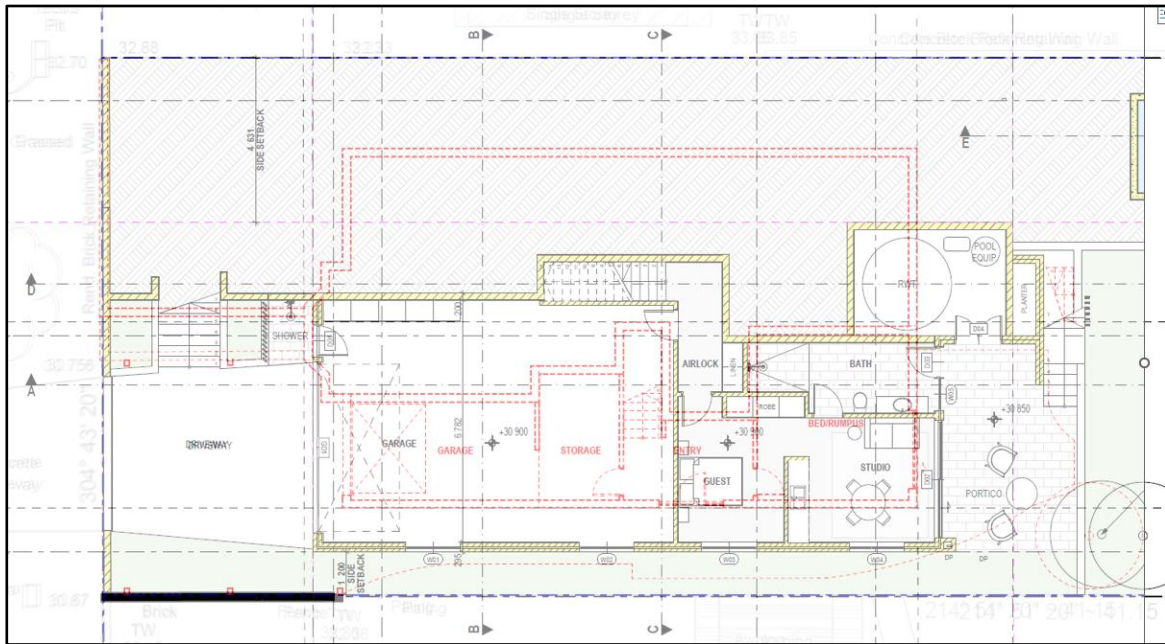


Figure 21

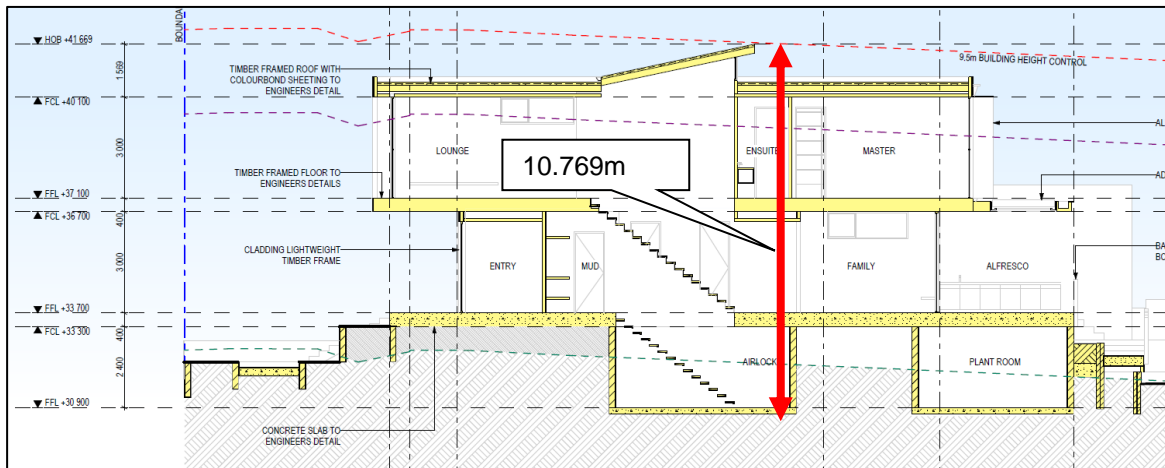


Figure 22

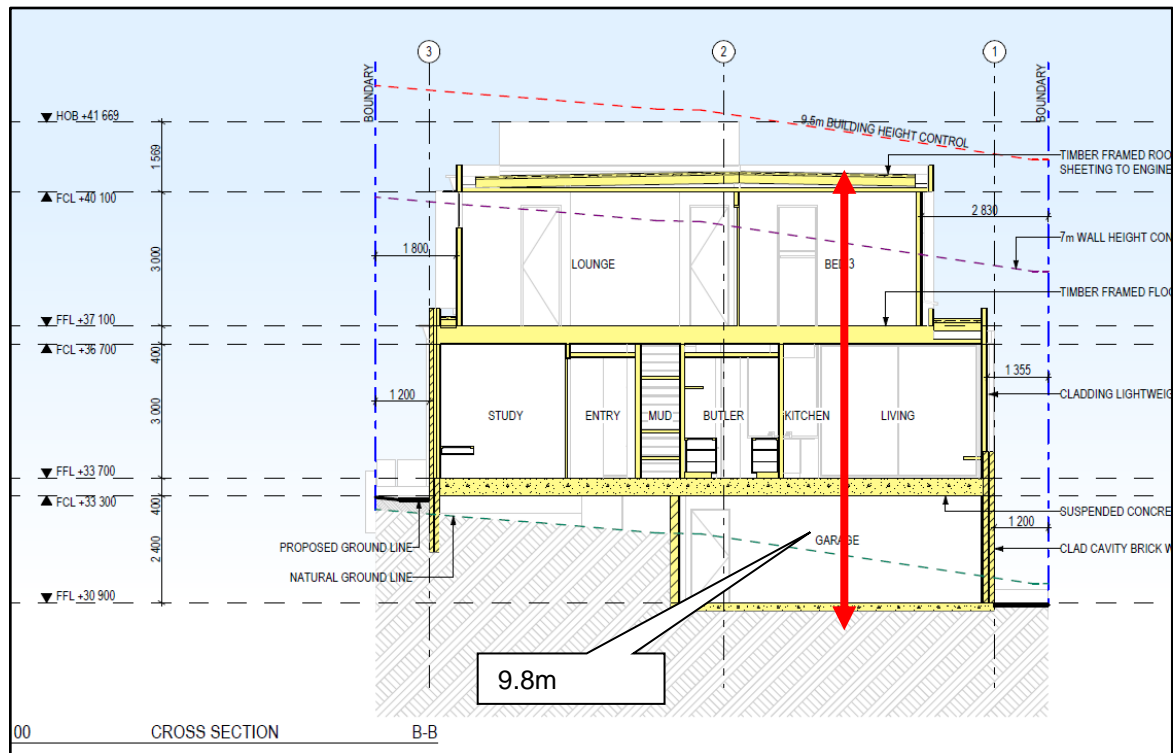


Figure 23

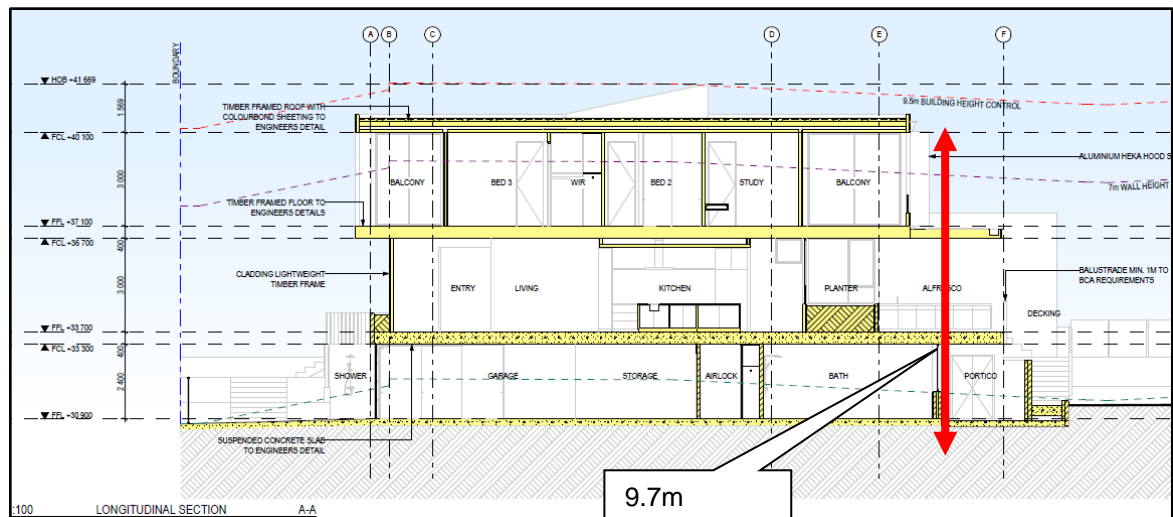


Figure 24

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Other relevant provisions of the Randwick LEP are set out in the table below:

Section	Control	Proposal	Compliance
2.7	Demolition	The application states the proposal is for “significant alterations and additions”, although all documents indicate total demolition with no original fabric is to be retained. Clarification has been sought from the Applicant, without any response. Nonetheless, the requisite consent has been sought.	Yes
6.2	Earthworks – Council must consider whether the proposal satisfies the matters listed in Subclause (3).	The proposal has not submitted sufficient, clear and concise information to determine the relevant matters can be satisfied. The proposed excavation is considered excessive and it is unclear what trees will be removed as a consequence, which impacts on the potential stability of the Site. Extensive excavation and the positioning/ height of the pool mean that amenity outcomes, in particular the provision of adequate privacy cannot be achieved. The proposal also seeks to undertake “levelling” of the rear yard but has not provided any details of the existing and finished contours or the implications for the retention of the nominated trees.	No
6.4	Stormwater Management – Council must consider whether the proposal satisfies the matters listed in Subclause (3).	The proposal provides only a preliminary stormwater management plan that has not been prepared by an appropriately qualified engineer. The proposal fails to provide the required quantum of deep soil.	No
6.7	Foreshore Scenic Protection Area (FSPA)	The site is located within the FSPA. The SEE however states on p.38 that the site is not within the FSPA and provides no assessment. The proposal as submitted has not demonstrated that it has been located and designed to minimise its visual impact on public areas of the coastline (including views to the coast) or that it contributes to the scenic quality of the coastal area. Given the concerns regarding the potential view impacts on the adjoining No. 54 Sackville Street (and potentially other locations), loss of vegetation, non-compliant setbacks, height, wall height, wall length and landscaping, the proposal has not satisfied subclause (3).	No

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the Applicant

successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal fails to satisfy the key objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(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.</p> <p>The proposal will result in detrimental impacts associated with general residential amenity and the biophysical environment as a result of the height, scale, setback and external appearance of the development being not acceptable.</p>
Section 4.15(1)(c) – The suitability of the site for the development	An assessment of the proposal has determined that the subject site is not suitable for the intended development, given the failure to address and comply with the applicable statutory and policy controls intended to ensure development is designed, located and operated in a manner that does not affect the amenity of the surrounding residential environment.
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 fails to promote the objectives of the zone and will result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

8.1. Discussion of key issues

The proposed development and subject application comprises a number of critical issues. These issues have been provided to the Applicant; however, the current information and final scheme fail to address these issues. These issues include (but not limited to) the following:

- Consistency, accuracy and completeness of the submitted documentation.
- Failure to demonstrate compliance with building envelope controls including height, setbacks, maximum wall length and height.
- Unacceptable siting, bulk and scale and incompatibility with the streetscape.
- Excessive earthworks.
- Inadequate deep soil.
- Loss of vegetation/ lack of justification for removal of trees/ avoidable impact on existing trees and lack of a landscape plan.
- Poor residential amenity in terms of tree removal, loss of privacy/ overlooking, solar access to the dwelling and private open space area.

The lack of a significant volume of information demonstrating compliance and inconsistencies between the documents means that Council is unable to be satisfied that the proposal, complies with the relevant planning controls and would have an acceptable impact.

9. Conclusion

The proposal is not satisfactory and does not meet the applicable statutory and non-statutory environmental planning requirements. The proposal will cause significant adverse impacts on the character, streetscape and amenity of the surrounding area and adjoining properties.

Additionally, the Applicant has failed to submit the requested information or modify the proposal to achieve compliance with a number of key planning controls. The proposal is also not supported by a Clause 4.6 Submission to justify the variation of the Maximum Building Height Development Standard. Accordingly, the proposal in its current form is such that Council cannot be satisfied the proposal will meet the necessary statutory requirements or achieve good planning outcomes.

The subject application is recommended for refusal.

10. Recommendation

1. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it does not satisfy the Aims of Chapter 2 - Vegetation in Non-Rural Areas of State Environmental Planning Policy (Biodiversity and Conservation) 2021 in that the resulting loss of vegetation from the site as a whole and in terms of particular trees, does not:
 - (a) *protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
 - (b) *preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*
2. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it does not satisfy the Aims of State Environmental Planning Policy (BASIX: Building Sustainability Index: BASIX) 2004 in that it is not accompanied by a list of commitments by the Applicant as to the manner in which the development will be carried out.
3. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it is incompatible with the following specific Aims of the Randwick Local Environmental Plan 2012 with respect to the amenity of a residential neighbourhood:
 - (d) *to achieve a high standard of design in the private and public domain that enhances the quality of life of the community,*
 - (f) *to facilitate sustainable population and housing growth,*
 - (g) *to encourage the provision of housing mix and tenure choice, including affordable and adaptable housing, that meets the needs of people of different ages and abilities in Randwick,*
 - (h) *to promote the importance of ecological sustainability and resilience in the planning and development process,*
 - (i) *to protect, enhance and promote the environmental qualities of Randwick,*

- (j) *to ensure the conservation of the environmental heritage, aesthetic and coastal character of Randwick,*
4. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it does not satisfy the following objectives of the R2 Low Density Residential zone of the Randwick Local Environmental Plan 2012:
 - *To provide for the housing needs of the community within a low density residential environment.*
 - *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.*
 5. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development exceeds the stipulated Maximum Height of Buildings Development Standard contained in Clause 4.3 of the Randwick Local Environmental Plan 2012.
 6. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to provide any better outcomes to warrant flexibility and does not provide a suitably prepared written request to vary the development standards contained in Clause 4.3 (Height of Buildings) of the Randwick Local Environmental Plan 2012 pursuant to Clause 4.6(1)(b) and (3).
 7. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the plans and supporting documents do not provide adequate and accurate information with respect to the extent of earthworks to be undertaken in order to determine whether the proposal will have acceptable outcomes having regards to the matters specified at Clause 6.2 (3) of Randwick Local Environmental Plan 2012.
 8. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the plans and supporting documents do not provide adequate and accurate information with respect to the compatibility of the development in the context of the Foreshore Scenic Protection Area in accordance with Clause 6.7 (3) of Randwick Local Environmental Plan 2012. The proposal has not demonstrated that it has been located and designed to minimise its visual impact on public areas of the coastline (including views to the coast) or that it contributes to the scenic quality of the coastal area.
 9. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to demonstrate the following Objectives of the Randwick Comprehensive Development Control Plan 2013 will be achieved:
 - *Ensure quality design that reflects a site's character and context;*
 - *Ensure development demonstrates architectural merit and incorporates high quality materials and finishes;*
 - *Protect and enhance remnant native vegetation, habitat corridors, biodiversity and wetland areas.*
 10. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to demonstrate compliance with the objectives and specific provisions of the Randwick Comprehensive Development Control Plan 2013 with respect to the following matters:
 - *Section 2.4 – Landscaping and permeable surfaces - as the plans and supporting documents do not demonstrate adequate Deep Soil Areas are provided.*
 - *Section 3.2 – Building Height - as the plans and supporting documents indicate the proposal exceeds the Maximum Height of Building standard of 9.5m or and that the Maximum Wall*

Height control of 7m has been complied with. In addition, the proposal fails to achieve a compliant minimum internal floor to ceiling height for the secondary dwelling.

- *Section 3.3.1 – Front Setback – The proposal does not provide a compliant front setback, which has been determined in this instance to be a minimum of 6.625m.*
- *Section 3.3.3 – Rear Setback – The proposal does not provide a compliant rear setback in relation to the proposed swimming pool has been sited inappropriately, results in the loss of existing vegetation, has a relative height that will adversely affect the privacy afforded to adjoining No 54 Sackville Street, and fails to provide any landscaping to improve privacy.*
- *Section 4.1 – Building Design - General - as the proposal fails to respect and follow the natural topography of the site and therefore enhance the streetscape; will present a built form that does not provide adequate articulation with excessive wall lengths that exceed the maximum length of 12m resulting in a bulk, scale and external appearance that is incompatible with the streetscape and amenity of the surrounding area.*
- *Section 4.4 – Roof Design - as the proposed roof form, exceeds the maximum building height limit of 9.5m and is therefore not sympathetic to the overall design of the dwelling and the streetscape.*
- *Section 4.5 – Colours, Material and Finishes - as the proposed dark colour scheme is inconsistent with a coastal environment.*
- *Section 4.6 – Earthworks - as the plans and supporting documents do not provide adequate and accurate information pertaining to the extent of earthworks being undertaken and the adverse impacts on the removal of vegetation of the Site.*
- *Section 5.1 – Solar Access - as the plans and supporting documents do not provide adequate and accurate information pertaining the full extent of the shadows cast by the proposal, whether it would have an adverse impact on the amenity of adjoining properties and whether the secondary will receive adequate internal solar access for a minimum of 3 hours during midwinter.*
- *Section 5.2 – Energy Efficiency and Natural Ventilation - as the proposed secondary dwelling does not provide adequate natural ventilation.*
- *Section 5.6 – View Sharing - as the plans and supporting documents do not provide adequate and accurate information pertaining to the potential loss of views from adjoining properties.*
- *Section 6.1 – Location of Parking Facilities - The proposal does not provide a compliant front setback, which has been determined in this instance to be a minimum of 6.625m. The proposal also fails to provide adequate and accurate information in relation to excavation required to accommodate the car parking.*
- *Section 7.2 – Front Fencing - as the solid panel on the eastern side of the proposed gate does not comply with the maximum height and transparency controls.*
- *Section 7.3 – Side and Rear Fencing - as the proposal also fails to provide adequate and accurate information in relation to proposed fencing to the side and rear boundaries.*
- *Section 7.5 – Swimming pools and Spas - as the location, loss of vegetation, lack of adequate new landscaping, relative height above ground level; loss of privacy and overall amenity impacts will not result in any good planning outcomes.*
- *Section 7.7 – Air Conditioning – the proposal does not contain adequate details of the location of any air conditioning equipment to determine whether there will be acceptable impacts on the built environment, streetscape and acoustic amenity.*
- *Section 7.8 – Clothes Drying Facilities – the proposal does not contain adequate details of the location of any clothes drying areas to ensure that there will be acceptable impacts on the built environment, streetscape and general residential amenity.*
- *Section B10 – Foreshore Scenic Protection Area - as the plans and supporting documents do not provide adequate and accurate information with respect to the compatibility of the development in the context of the Foreshore Scenic Protection Area. Likewise, the proposal has not demonstrated that it has been located and designed to minimise its visual impact on public areas of the coastline (including views to the coast) or that it contributes to the scenic quality of the coastal area.*

11. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* as it does not satisfy the provisions of Clause 27 (1)(b) of the *Environmental Planning and Assessment Regulation 2021* as the application does not provide a list of the necessary BASIX Commitments or document those commitments on the application drawings.

12. The proposed development does not satisfy the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the impacts on the general residential amenity or the biophysical environment as a result of the height, scale, setback and external appearance of the development are not acceptable.
13. The proposed development does not satisfy the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the impacts on the biophysical environment cannot be accurately determined given the lack of adequate, accurate and consistent information.
14. The proposed development does not satisfy the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that the supporting documentation has not demonstrated the site is suitable for the intended development, given the failure to address and comply with the applicable statutory and policy controls intended to ensure development is designed, located and operated in a manner that does not affect the amenity of the surrounding residential environment.
15. The proposed development does not satisfy the provisions of Section 4.15(1)(e) approval of the development is not in the public interest as it would set an undesirable precedent, given the circumstances of the case, for similar inappropriate development, resulting in substandard residential accommodation.

Appendix 1: Referrals

1. External referral comments:

No external referrals were required for this application.

2. Internal referral comments:

2.1. Landscape Development Officer

Council's Landscape Development Officer evaluated the proposed development and provided the following commentary pertaining to tree removal and landscaping:

Tree Removal

1. *The submitted Arboricultural Impact Assessment (AIA) prepared by Abnoba Arbor states that they were commissioned on 10th June 2023, however the date of issue of the report (2nd June 2023) pre-dates the engagement.*
 - *Aware of inconsistencies in the documentation but ultimately, these do not alter the intent of the Report or the recommendations that have been made.*
2. *The AIA states tree T2 – a Coast Banksia, which is listed for removal, has a high STARS retention value and high landscape value. The only justification provided for the removal of the tree is due to being within the development footprint. Notwithstanding this, the site is located within the Foreshore Scenic Protection Area. The application fails to provide any assessment of the impact of the removal of the tree in terms of the visual impact and landscape significance, or how the objectives of Cl.6.7(1) or provisions of Cl. 6.7(3) of the Randwick LEP 2012 have been achieved.*

Furthermore, the proposal has not demonstrated why it is necessary to remove the tree (other than it must be removed for the development to occur) or what design options have been explored to retain the tree. Additionally, there is no assessment to demonstrate how the proposed landscaping will compensate for the loss of this tree, given its significance. Accordingly, the proposal is to be redesigned to facilitate the retention of the tree. Where it can be demonstrated there is no feasible option for the retention of the tree, a visual impact assessment is to be prepared by a suitably qualified person, to address the visual and landscape impacts of its removal.

- *While being an endemic coastal species, they are also well known as having a low tolerance to disturbance, meaning that if it was to remain, a major re-design of the whole development would be needed so that all works were setback a greater distance than shown to minimize the encroachment of its TPZ.*
- *This was not pursued because the exclusion zones required would be so large that it would affect the layout of the whole development.*
- *The tree is growing within the subject site retaining wall, which is 1 metre lower than the tree base, this retaining wall probably pre dates the tree, this wall causes a barrier, to which the roots will be growing along the wall, which will then direct most of the roots further west, which will see greater amount within the subject site.*
- *The Retention Value & Landscape Significance Rating Systems (STARS) is used by a certain collection of professional Arborists that belong to a particular industry body & is not an Australian Standard. Other industry bodies also have also developed their own similar category rating systems. The High ratings were presumably based only on its size/visual presence, as while no photos were provided in the Arborists Report, my own site*

inspection confirmed the presence of major faults with T2 that significantly reduce its stability/longevity and suitability for retention, even irrespective of the works proposed in this application. A deep, large wound exists on the western side of its trunk which has not properly sealed, and due to its position is critical for keeping the tree stable and upright, with noticeable swelling in this same area being an indication of internal structural deficiencies, see **(Figure 3 photo)**. There are also differences in ground levels surrounding its trunk which are supported by masonry walls. These would have acted as physical barriers to restrict/re-direct normal radial root growth, meaning that the majority of root activity will likely be encountered in the same area as the works.

- T2 was measured to be only 2.4m from existing dwelling at its base, with the southern leader then leaning even closer to the house. Our DCP has an Exemption clause allowing the removal of trees without consent when within 2m of a dwelling. I don't believe tree has safe longevity, would be threatened/de-stabilized by demolition of existing structures or excavations for new footprints.

Lastly, due to the root plates of T2 & T3 being intertwined/co-joined/dependent, this means it would not be possible to remove one & keep the other (in any permutation) as the remaining tree would then be left exposed, rendering it unstable.

3. Section 6.2.4 of the SEE states that 3 trees will be retained and only 2 trees are to be removed, referring to a report prepared by "Prompt Tree Services". This is not supported by the AIA submitted by Abnoba Arbor, which states that 11 trees are to be removed and only 2 trees to be retained. Please update the SEE and provide an accurate assessment referencing the relevant supporting documents.

- Same as the first point at the start, inconsistencies in documentation are acknowledged but I have based my position only on the Abnoba Arbor Report, plans & the findings of my own site inspection.

4. The AIA identifies Tree T3(Coast Banksia) and Tree T4 (Tuckeroo), for removal due to poor health (both trees) and levelling of the rear yard.

- T3(Coast Banksia) has been identified as in poor structure, major lean to the west, excessive deadwood, severe dieback, is also in close conflict with the proposed rear retaining wall, with a TPZ encroachment of 46%, the rear existing natural ground levels will be cut and filled to achieve a level area of private open space for the occupants. So combined with **its poor health**, close vicinity to subject site retaining wall, which is causing a barrier, to which the roots will be growing along the wall, which then directs most of the roots further west, seeing greater amount within the subject site.
- T4(Tuckeroo) **Is a hazardous structure, in very poor health**, major deadwood, decay, dieback, included union, wounds and previous failures, leaning westward, due to the weight of the western aspect trunk, the eastern aspect surrounds of the base, was showing lifting upwards, **(see Figure 4)** this is due to the eastern retaining wall acting as a physical barrier to restrict/re-direct normal radial root growth, meaning that the majority of root activity will likely be to the west, thus leaving minimal root system to the east which is un stabling the tree, so while not directly impacted by the works, there is already seen to be justification for its removal, irrespective of this application, with the relevant consent provided. Also providing replacement trees as part of the DA will at least ensure amenity into the future.
- T5 (Kentia Palm) to be retained, subject to no earthworks within 1.5m of the tree.

The plan on p.44 of the Report however indicates that both T3 and T4 are to be retained, which also correlates to the trees to be retained on Drawings DA002, DA100, DA200-DA205, DA803, DA804 and DA902.

- *As above – there are inconsistencies between the different consultants reports that they need to sort out themselves. Trees 3 & 4 are definitely recommended for removal in the Arborist Report – both in the assessment tables and at page 44 – Location Plan, indicated by the red circles. Their over-lapping outlines of these red circles aren't easy to delineate. Disregard the notations on the Location Plan at page 44 of the Arborist Report which state: 'Existing Tree Retained', as the Arborist has simply overlaid the TPZ radius' over the architectural plan which has that incorrect information/notation, as already discussed in the points above.*
5. *The survey, architectural plans and Arboricultural Impact Assessment all identify a tree to be retained adjacent to the proposed pool, however this is not identified in the actual assessment of the AIA, particularly as the pool and decking and proposed levelling of the yard will impact significantly on the SRZ.*
- *Not assessed in Arborist Report, with site inspection confirming it no longer exists. Any reference to this tree needs to be removed/deleted from all plans in the interests of consistency.*

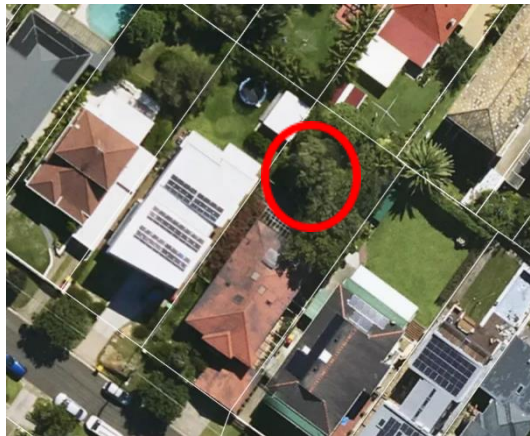


Figure 1: Aerial photo (17 March 2023)



Figure 2: Aerial photo (26 July 2023)



Figures 3 and 4: Coast Banksia – Tree (T2) and Tuckeroo – Tree (T4)

Landscaping

6. *A Landscape Plan, prepared by a suitably qualified Landscape Architect is to be provided. The Landscape Plan is to demonstrate compliance with the objective criteria and controls within Section B4 of Part B and Section 2.6 of Part C (dated 27 June 2023) of the Randwick DCP 2013. The SEE is to be updated accordingly.*
 - *I support a suitably qualified Landscape Architect for the above, with all conditions in the plan to address replacement/compensatory native tree plantings to meet the biodiversity objectives of our DCP.*

2.2. Development Engineer

Council's Development Engineer raised no objections to the proposed development and provided the following commentary:

This report is based on the following plans and documentation:

- Architectural Plans & Landscaping by Superior Designs dated 22/7/23;
- Statement of Environmental Effects by ABC Planning dated July 2023;
- Arborist Report by Abnoba Arbor dated 02/06/23;
- Detail & Level Survey by S J Dixon Surveyors dated 20/12/2022.

Drainage Comments

Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer, and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council if Council is not the Principal Certifier.

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 site is located within 15m of a mains power distribution pole on the same side of the street however due to the presence of rock on Council's nature strip the requirement to underground the power feed is considered an onerous expense in this instance and thus a condition/requirement has not been included.

Should the application be approved, relevant engineering conditions shall be imposed.

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

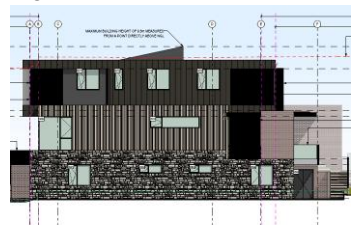
DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2 Low Density Residential	No – see assessment above
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): • R2 = 400sqm	620.9m ²	Complies
	Minimum frontage		
	Min frontage R2 = 12m	15.09m	Complies
2.3	Site coverage		
	601 sqm or above = 45%	Site = 620.9m ² Existing = 206.24m ² (33.2%) Proposed (by SEE) = 264.07m ² (42.53%) Proposed (by Council) = 254.85m ² (40.88%)	Although the SEE and Council's calculations are different, the proposal complies.
2.4	Landscaping and permeable surfaces		
	Deep Soil Permeable Surfaces: i) 601 sqm or above = 35% ii) Deep soil minimum width 900mm. iii) Maximise permeable surfaces to front iv) Retain existing or replace mature native trees v) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. vi) Locating paved areas, underground services away from root zones.	Site = 620.9m ² Existing = Not known but estimated at 50% Proposed = Not stated. Required = 217.314m ² Calculations on the architectural plans state "Deep Soil Area 217.71m ² ", however the areas shaded on a drawings titled "Area Calculations Ground Floor" refer to "Calculated Landscaped Area". The plans appear to include areas less than 900mm in width and concrete pathways in what they describe as "Landscaped Area".	Plans accurately demonstrating Deep Soil as per the definition have not been prepared. To support this assessment, Council's Coordinator – Development Assessment advised via email on 18 March 2024 that the proposed Deep Soil (Permeable Surface) Landscaped Area had been calculated at 213m ² (34.3%), which is below the required standard. It is noted that no calculations, diagrams or methodology was supplied to quantify the calculation however, given the failure of the application to adequately delineate Deep Soil areas, Council's advice is accepted.
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	601 sqm or above = 8m x 8m	Existing = approx. 15m x 15m Proposed = approx. 12 m x 15m	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 =	Proposed FSR = 0.62:1	No
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Proposed = appears to be 9.5m	Refer to LEP assessment above.

DCP Clause	Controls	Proposal	Compliance
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed = 9.02m	No. The proposal is seeking to apply the skillion/ butterfly roof form measurement of wall height. A significant portion of the upper level breaches the wall height control, as shown in the Sections. Internal floor to ceiling levels are 3m for the ground an first floor, while the lower ground secondary dwelling will be just 2.4m, which does not satisfy the requirement of 2.7m, minimum.
3.3	Setbacks		
3.3.1	Front setbacks Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment.	Minimum = 6.625m Proposed: Garage – 6.098m Ground floor – 6.098m (planter box) and 6.698m (front wall) First Floor – 5.626m to parapet/ eaves/ column and 6.126m to the wall	Based on the supplied survey information, the average of the setbacks of the adjoining properties is 6.625m. Only the front wall of the ground floor complies and accordingly, the design of the proposal is to be amended to comply on all three levels. The parapet, eaves and planter box contribute distinct horizontal elements that reinforce the bulk, scale, massing and scale of the dwelling and accordingly, the proposed front setback is not supported.
3.3.2	Side setbacks: Frontage over 12m = 1200mm (Gnd & 1 st floor), 1800mm above.	Minimum = 1.2m/1.8m Proposed (West)= 1.2m/ 1.8m Proposed (East)= 1.2m / 1.8m	Yes
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: - Existing predominant rear setback line - reasonable view sharing (public and private)	Minimum = 8m (25% = 9.14m) Existing = 18.638m Proposed = 14.646m to rear wall.	For the dwelling – Yes. For the swimming pool - it will be set back approximately 1.2m from the western side boundary and 1.986m from the rear boundary. The pool will project above the natural; ground level approximately 1m-1.2m, with adverse impacts on the privacy of adjoining properties as the paving around the pool area would be about 400mm higher than the rear yard of No. 54.

D31/24

D31/24

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - 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. 		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 	<p>The proposed development does not respect the pattern of development along the streetscape as it steps down Sackville Street with the topography. The proposed horizontal elements give the building the appearance that it is positioned higher than the adjoining development at 54 Sackville Street. This is exacerbated by the fact that the ground floor level sits proud of the existing ground line, instead of being at grade along the western side boundary, the internal floor- ceiling heights and the depth of the floor/ ceiling systems on each level. Further, the proposal demonstrates a number of noncompliant areas where the maximum wall length of 12m is exceeded, including:</p> <ul style="list-style-type: none"> • western elevation - ground floor (20.115m). • western elevation - first floor (17.885m). • eastern elevation - basement (18.715m). • eastern elevation - ground floor (13.32m). <p>While the justification provided in the SEE is noted, there is reliance upon using different materials for each level and windows. Nonetheless, the design exhibits a general lack of</p>	<p>No.</p> <p>Taking into account the other identified non-compliances with the building envelope (setbacks, maximum wall height, wall length, depth of cut and fill and deep soil), the design of the development is not suitable for the Site.</p> <p>While the justification provided in the SEE is noted, there is nonetheless a general lack of modulation provided in a manner that results in any significant visual relief, particularly in a horizontal context.</p>

DCP Clause	Controls	Proposal	Compliance
		modulation with the resulting massing and scale of the built form exhibiting a sense of simply stacking three long, rectilinear boxes on top of each other.	
4.4	Roof Design and Features		
	<i>Clerestory windows and skylights</i> vii) Sympathetic to design of dwelling	The proposal incorporates a large Clerestory window which appears to breach the maximum building height control.	No 
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)	Insufficient details of the proposed colour scheme provided insofar as materials are described as being “dark paint” or “dark powder coat”, given the site is within a Scenic Protection Area. The colour and finish of the proposed roof material has not been provided is also to be documented on a plan of the proposed roof, which appears to have been omitted from the drawing set.	No - proposed dark colour scheme would appear to be inconsistent with a coastal environment. Aside from the lower level of No.54, no other black/ dark-coloured houses were observed in the local area during the site inspection.
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	A plan demonstrating the full extent and depth of cut and fill across the site was requested from the Applicant.	No - Insufficient information.

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DCP Clause	Controls	Proposal	Compliance
	<p>landscaping)</p> <p>vi) cut and fill for POS is terraced <i>where site has significant slope:</i></p> <p>vii) adopt a split-level design</p> <p>viii) Minimise height and extent of any exposed under-croft areas.</p>		
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<p>i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June</p> <p>ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p>	<p>Although the north-facing living areas are covered by a deep overhang from the proposed upper level, the highlight window on the eastern elevation allows adequate internal solar access to the main living areas. In addition, the north-facing clerestory window will allow light to penetrate the ground floor hallway which provides access to the study, bathroom, laundry and linen, as well as the upstairs loungeroom.</p> <p>The north-facing outdoor private open space easily achieves the required minimum sunlight hours.</p>	Complies.
	Solar access to neighbouring development:		
	<p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If</p>	<p>Shadow diagrams are incomplete with full and clear amended shadow diagrams requested, but not provided by the Applicant.</p> <p>It appears that the adjoining No. 58 will have some unquantified impacts over and above the shadows cast by the existing dwelling.</p> <p>Only Window W04 provides any chance of solar access to the living area of the secondary dwelling, however this appears to be overshadowed at all hours of the day in Midwinter.</p>	<p>No. - Insufficient information to determine the full extent of the shadows cast by the proposal.</p> <p>From the Author's site inspection and the survey plan, it was established that there were windows, habitable rooms and solar panels on the adjoining properties. A review of the plans also indicated that the relative level of the proposed dwelling, the angle of the sun and the fact that no major habitable room had any direct exposure to the exterior of the northern elevation, that penetration of sunlight into the dwelling may not be achieved. The</p>

DCP Clause	Controls	Proposal	Compliance
	<p>no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 		<p>Applicant's SEE provided no actual assessment of solar access, simply stating it complied.</p> <p>It terms of the impacts on adjoining dwellings the submitted diagrams indicated that shadows would fall on adjoining dwellings but again, this could not be demonstrated.</p>
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window</p>	<p>Clerestory window as per above comments.</p> <p>Secondary dwelling appears to require mechanical ventilation and lighting.</p>	<p>No – solar access to secondary dwelling would appear to be compromised, given the relative level of the floor level.</p>

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DCP Clause	Controls	Proposal	Compliance
	for natural lighting and ventilation is not acceptable		
5.3	Visual Privacy		
	Windows		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	<p><u>Western Elevation:</u> Windows are generally highlight windows, with sill heights of 2.2m above floor level. Windows W22 and W23 on the upper level are full length, and despite providing no other details will be to a bathroom and ensuite so of little risk of being a privacy concern.</p> <p>Relative height of the landing outside the laundry door and immediate proximity to the boundary mean that overlooking potential into No. 56 is significant.</p> <p><u>Eastern Elevation:</u> Similar to the western elevation, the window sill to the dining room will have a floor height of 2.2m. There are no privacy concerns with the windows to the lower ground floor secondary dwelling, given the setback, sill heights and function of the rooms they serve.</p> <p>Living rooms on each level are primarily orientated towards the street or rear boundary.</p>	Generally compliant or could be made compliant by way of conditions to install fixed obscure glazing.
	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% opaqueness (glass, timber or metal slats and louvers)</p> <p>v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure)</p> <p>vi) For sloping sites, step</p>	Balconies to each level generally face the street or rear yard with fixed, angled metal louvres.	Complies

DCP Clause	Controls	Proposal	Compliance
	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	The pool filter is to be located in a basement plant room. No details of any A/C equipment.	Yes – A/C equipment not shown however.
5.5	Safety and Security		
	i) Dwelling's main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	Main entry and living room easily identifiable from the street. Street numbering can be conditioned. Proposed front fence and gates to be a maximum height of 1.584m high and will not restrict casual surveillance.	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)	Objection from No. 56 raises concerns of loss of views. Applicant requested to provide a view loss assessment.	No - Insufficient information provided however preliminary assessment indicates some view loss likely from No. 56. The Applicant was requested to provide a View Loss Assessment but failed to do so.
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular	Proposal utilises existing	No – setback from the street

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DCP Clause	Controls	Proposal	Compliance
	<p>access</p> <p>ii) Locate off rear lanes, or secondary street frontages where available.</p> <p>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></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>	<p>crossing. The garage provides ample room for four stacked car parking spaces, located within the building footprint.</p> <p>The garage is to be setback 6.098m from the front boundary however the required setback in this instance is 6.625m.</p> <p>The existing pattern in the street includes double garages</p> <p>The garage and lower level of the existing house is at RL 30.90/ RL 30.99 respectively. The proposed basement level is located at RL 30.90 however the extent of additional excavation is not known. It would appear that additional excavation would be up to approximately 1.5m in depth with at least 50% of the basement level requiring excavation.</p>	<p>is not compliant.</p> <p>Insufficient information regarding the extent of cut and fill over the Site.</p> <p>The excessive basement size over and above that necessary to accommodate the required car parking contributes to the overall bulk and scale of the dwelling.</p>
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 	Located within dwelling footprint.	Complies.
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>	Driveway widens from existing 4.44m at the property boundary to approximately 5.2m at the garage	Width has not been clearly identified but this could be conditioned.
6.5	Garage Configuration		
	<p>i) recessed behind front of dwelling</p> <p>ii) The maximum garage width (door and piers or columns):</p> <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m <p>iii) 5.4m minimum length of</p>	<p>No – see setbacks above.</p> <p>Garage door would be approximately 5m wide.</p> <p>Internal dimensions of garage = 6.1m x 10.2m.</p>	No – refer to previous comments regarding front setback.

DCP Clause	Controls	Proposal	Compliance
	a garage iv) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1	The garage door appears to be flush with the outer face of the basement wall.	
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	Brick fence incorporating some elements of the existing brick fence,	Yes
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance	Existing front fence is approximately 1m high with proposed additions to the fence bringing the height up to 1.584m. The proposed brick fence is compatible with the streetscape in terms of materials however the solid portions exceeding 1.584m on either side of the proposed gate are neither lightweight.	No. The solid panel on the eastern side of the gate is excessive in terms of height and could be amended to comply.

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DCP Clause	Controls	Proposal	Compliance
	<p>(above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p>		
7.3	Side and rear fencing		
	<p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p>	No details provided.	No – insufficient information to determine compliance.
7.4	Outbuildings		
7.5	Swimming pools and Spas		
	<p>i) Locate behind the front building line</p> <p>ii) Minimise damage to existing tree root systems on subject and adjoining sites.</p> <p>iii) Locate to minimise noise impacts on the adjoining dwellings.</p> <p>iv) Pool and coping level related to site topography (max 1m over lower side of site).</p> <p>v) Setback coping a minimum of 900mm from the rear and side boundaries.</p>	<p>The proposed pool is located in the rear yard at it's highest point in the Site's crossfall.</p> <p>According to the Arborists report, a number of trees will be removed for the proposed pool (trees 11-13). These however are non-native conifers that have a low retention value, however the landscape plan shows these as being retained.</p> <p>The design of the pool and surrounding decking is such that there are no</p>	No. Proposed location, impacts on existing vegetation, lack of landscaping, height above ground level and overall adverse amenity impacts will not result in an acceptable outcome or amenity impacts.

DCP Clause	Controls	Proposal	Compliance
	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.	opportunities for perimeter plantings to the side or rear boundaries to help alleviate overlooking. The pool decking has been pitched from the highest point of it's footprint, meaning that at a level of RL32.9, it sits higher than the ground level in the rear yard of No. 54, which is about RL32.5.	
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.	No details	Details requested in the Information Request.
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	No details	Details requested in the Information Request.

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3.3 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) Integrated outbuildings and ancillary structures with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore	As detailed above – inadequate consideration/ level of detail to demonstrate the proposal will be compatible with the Foreshore Scenic Protection Area.	No

	Building Line) must be constructed or clad with sandstone.		
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Responsible officer: Michael Brewer (Urban Planning Solutions), Consultant

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