

# Randwick Local Planning Panel (Electronic) Meeting

Thursday 9 May 2024



## **RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)**

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Teams on Thursday, 9 May 2024 at 1pm

### **Declarations of Pecuniary and Non-Pecuniary Interests**

#### **Development Application Reports**

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Kerry Kyriacou  
**DIRECTOR CITY PLANNING**

## Development Application Report No. D37/24

**Subject:** 76 Bream Street, Coogee (DA/4/2021/A)

### Executive Summary

<b>Proposal:</b>	Section 4.55(2) - Modification to the approved development for the alterations and additions to residential apartment building, unit 7 and 8 to have attic conversions.
<b>Ward:</b>	East Ward
<b>Applicant:</b>	Complete Trade Pty Ltd
<b>Owner:</b>	Luxembourg Flats Pty Ltd
<b>Cost of works:</b>	\$398,265.56 (Generally consistent with original works scope).
<b>Reason for referral:</b>	Exceedance of development standards for floor space ratio and building height by more than 10%.

### Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. DA/4/2021/A for modification to the approved development for the alterations and additions to residential apartment building, for addition of attics to unit 7 and 8, at No. 76 Bream Street Coogee NSW 2034, in the following manner:

- **Amend Condition 1 to read:**

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp:

<b><i>Plan</i></b>	<b><i>Drawn by</i></b>	<b><i>Dated</i></b>
DA-00-00 Issue C	Hancock Architects	14.07.21
DA-02-01 Issue C	Hancock Architects	14.07.21
DA-02-02 Issue C	Hancock Architects	14.07.21
DA-02-03 Issue C	Hancock Architects	14.07.21
DA-02-04 Issue C	Hancock Architects	14.07.21
DA-02-05 Issue C	Hancock Architects	14.07.21
DA-03-01 Issue C	Hancock Architects	14.07.21
DA-03-02 Issue C	Hancock Architects	14.07.21
DA-03-03 Issue C	Hancock Architects	14.07.21
DA-03-04 Issue C	Hancock Architects	14.07.21
DA-03-05 Issue C	Hancock Architects	14.07.21
DA-03-06 Issue C	Hancock Architects	14.07.21
DA-07-01 Issue C	Hancock Architects	14.07.21

<b><i>BASIX Certificate No's.</i></b>	<b><i>Dated</i></b>
A394499	12 November 2020
A394528	12 November 2020
A394530	12 November 2020
A394532	12 November 2020
A394537	12 November 2020
A394543	12 November 2020
<b>A394545</b>	<b>12 November 2020</b>

**A394549****12 November 2020****EXCEPT where amended by:**

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

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
D0201 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D0202 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D0203 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D0204 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D0302 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D0303 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D0304 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D0305 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D0306 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D0307 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D2004 Rev 04	K.P.D.O.	12/03/2024	18 March 2024
D2005 Rev 04	K.P.D.O.	12/03/2024	18 March 2024
D2006 Rev 04	K.P.D.O.	12/03/2024	18 March 2024
D3001 Rev 03	K.P.D.O.	12/03/2024	18 March 2024
D3002 Rev 01	K.P.D.O.	12/03/2024	18 March 2024
D2007 Rev 02	K.P.D.O.	12/03/2024	18 March 2024
D4001 Rev 01	K.P.D.O.	'SEPT 23	18 March 2024
D4002 Rev 01	K.P.D.O.	SEPT 23	18 March 2024

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A394528	12 November 2020
A394530	12 November 2020
A394532	12 November 2020
A394537	12 November 2020
A394543	12 November 2020
A1733073_02	14 March 2024
A1733093_02	14 March 2024

- **Add the following conditions:**
2. h. The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
    - East facing attic room windows for APT 08
  2. i. The rear attic balconies shown on plan D0306 Revision 2 are to be deleted and reinstated as a hipped roof form generally consistent with the current roof form and the configuration shown at the front (northern elevation). The exposed southern elevation wall planes of the attic addition can either be provided as a blank wall or



incorporate additional operable windows outside of the retained pitched roof form as a part of this amended design.

The above amendments are to be submitted to and approved by Council's Manager Development Assessment prior to the issue of a Construction Certificate.

**Attachment/s:**

Nil

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1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) because it is made under Section 4.55(2) of the Environmental Planning and Assessment Act (1979) and seeks to modify a development previously approved by the Panel where the development contravened the development standards for floor space ratio and building height by more than 10%.

The development consent was issued for alterations and additions to the existing residential flat building, including the demolition of the rear fire stairs, enclosure of fire stairs, and 2 remaining front-facing balconies, rear balconies, new fencing, changes to windows, strata subdivision, and demolition of existing outbuilding.

This modification application (as “amended”) seeks consent for a new roof attic to units 7 and 8 below comprising one bedroom and bathroom. The modification application as originally submitted was amended with a reduced size, scale and location by setting it further back from the rear and sides of the building below as well as lowering it to be below the existing roof ridge.

Whilst the amended scheme further exceeds the existing and LEP maximum standards for Floor Space Ratio (FSR) and Height of Buildings (HOB) it is considered to satisfy the objectives of the FSR and HOB standards and the R3 medium density zone.

In brief, the modification application as amended via consent conditions is more representative of an “attic” that is a minor building element as opposed to the original proposal which was largely a part new level addition which extended from the walls below. The proposed modification application as amended will not result in any adverse impacts on the amenity of neighbouring properties and has been conditioned to be predominantly contained within the existing hipped roof form, similar to adjoining development.

No submissions were received following the notification of the subject application.

The amended development is considered supportable as it distributes visual bulk more centrally with the main roof and further away from the lower hipped parts of the rear roof, thus reducing overshadowing to the south and visual bulk, in a configuration that is more consistent with the attic approved at No. 78 Bream Street.

The amended modification application is recommended for approval, subject to revised consent conditions.

## **2. Site Description and Locality**

The subject site is known as 76 Bream Street, Coogee and has a legal description of Lot 100 DP in Deposited Plan 1115587. The site is rectangular in shape and has a total area of 450.7m<sup>2</sup>. The site is located on the southern side of Bream Street. Pedestrian access is gained via the 13.715m frontage to Bream Street and there is currently no vehicular access to the site. The site experiences a fall of approximately 5m from the front northern boundary down towards the rear southern boundary, with an average slope of approximately 15%.

The site is zoned R3 - Medium Density Residential and is currently occupied by an existing four (4) storey Residential Flat Building (RFB) where the lowest level is sited around 2.7m below street level. The property is surrounded by residential properties to the north, south, east and west. Coogee Oval is located to the far south of the site beyond the adjoining rear neighbours fronting Dolphin Street. Coogee Beach located to the far south-east of the site. The existing streetscape is predominantly older style Residential Flat Buildings of three (3) and four (4) storeys. The site is located around 32m away from a heritage item at the corner of Bream Street and Arden Street. An aerial view is shown above on Page 1 of this report.

## **3. Site history**

The land has been used for residential purposes for an extended period of time. A search of Council's records revealed the following recent or relevant development applications for the subject site.

- DA/560/2007

Strata subdivision of the RFB was granted development consent on 15 August 2007. A search of Council's records did not reveal any commencement of the development consent and it appears that the consent was never acted upon. As such the subject building remains under one (1) company title ownership.

- DA/651/2019

DA/651/2019 was approved by the RLPP on 1 December 2020. The development consent was issued for alterations and additions to the existing residential flat building including the provision of new rear balconies that replaced existing sunroom and rear fire stairs. This current approval (DA/4/2021) differs as it provides additional floor area at the rear with balconies beyond. This DA was required to be surrendered as part of the approval of DA/4/2021.

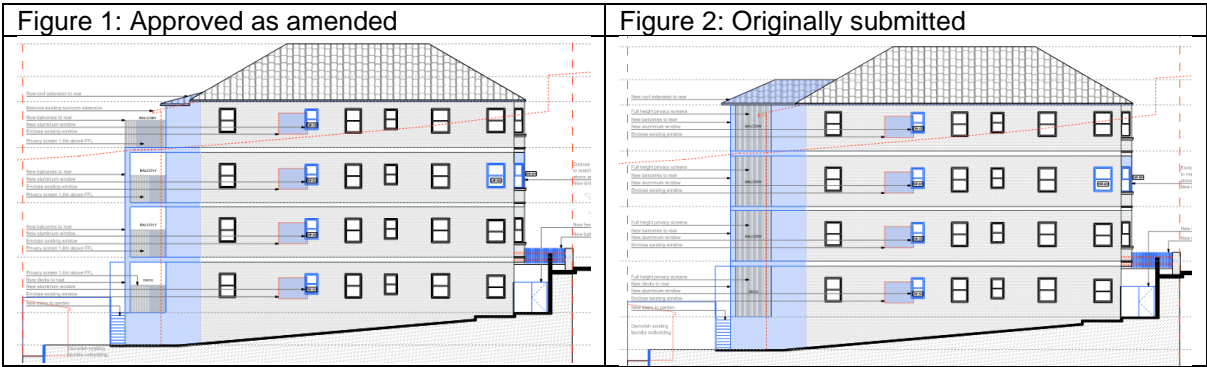
## **4. Details of Current Approval**

- DA/4/2021

The original development application was determined by the RLPP on 9 September 2021 granting consent for demolition of the rear fire stairs and sunrooms and provision of open plan living dining and kitchen area and new rear projecting balconies. It also approved the enclosure of units 5 and 6 balconies at the front to mirror the existing built form above and below as well as strata subdivision of the 8 units. A contribution under the Affordable Housing SEPP was included in the original consent.

The approved development differed from that which was originally submitted by reducing the scale at the rear – as shown in the two images below.

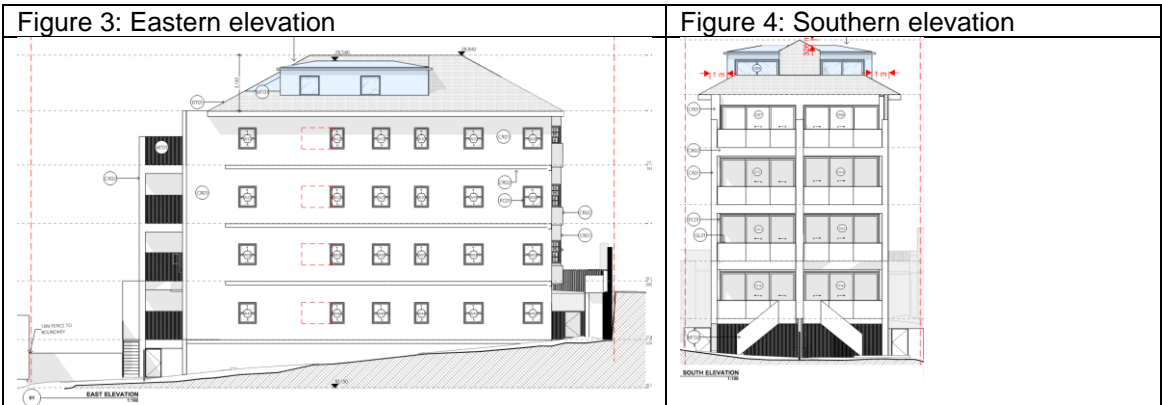
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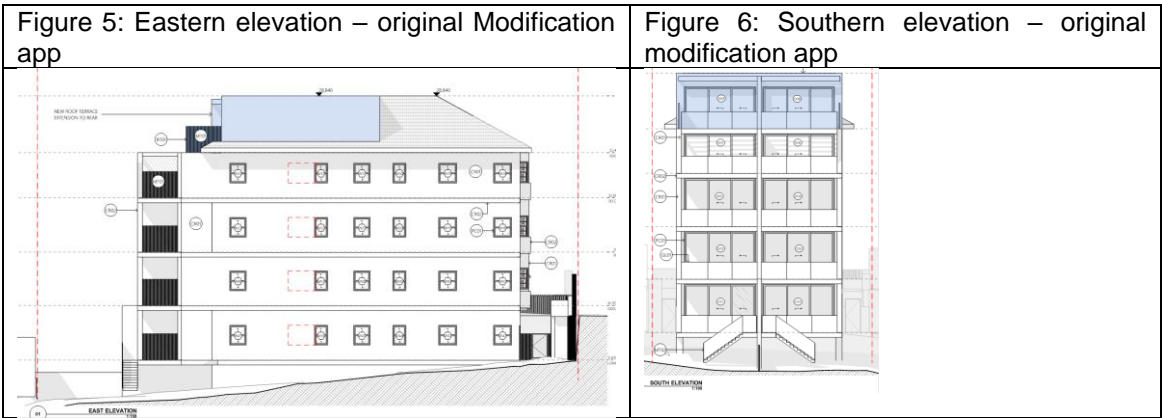
The reason for the original applications amendments and support for the clause 4.6 variations to the FSR and Height of Buildings standard were that the proposed additions would not result in any unreasonable overshadowing and visual bulk and would satisfy the objectives of the LEP - FSR and HOB standard and R3 zone. In particular, it was found that the rear additions would contain appropriate visual bulk as the development would maintain its presentation to the street as a 3-storey building and from the rear as a 4-storey building. There would be no privacy impacts and overshadowing impacts were limited to a non-habitable bathroom thereby retaining sufficient solar access to neighbouring property to the rear.

5. Proposal

The modification application (as amended) seeks attic additions to units 7 and 8 with each attic area containing a bedroom, ensuite and balcony as shown in images of eastern and rear southern elevations below.



Originally submitted Modification application shown in images below was not supported as it didn't resemble an attic rather it was more so a part level extension of the levels below – see S4.55(3) assessment discussion further below.



## 6. Section 4.55 Assessment

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

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

An assessment against the above criteria is provided below:

### a. Substantially the Same Development

The proposed modifications are not considered to result in a development that will fundamentally alter the originally approved development. Noting that roof form additions at the rear of the proposal formed a component of the original application, the number of approved apartments would not be altered in the amended scheme and the proposed attic additions have been conditioned to predominantly be contained within the existing hipped roof form, including the deletion of the rear attic balconies under of Condition 2 i).

### b. Consultation with Other Approval Bodies or Public Authorities:

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

### c. Notification and Consideration of Submissions:

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

### S4.55(3) of the Act

In determining an application for modification of a consent under section S4.55(3), the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Assessment comments: S4.55(3) requires an assessment of the following:

1. Such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

Assessment comments: Throughout this report an assessment is carried out against the provisions of S4.15(1) of the act.

2. The reasons given by the consent authority for the grant of the consent that is sought to be modified.

Assessment comments: As indicated earlier in the proposal section of this report, the original submitted modification application was not supported because it was considered excessive and constituted a size and scale representing an upper-level part addition from the levels below resulting a greater visual bulk than that which would be associated with a habitable attic. As shown in the image further below, it included a bulk and scale that was larger than



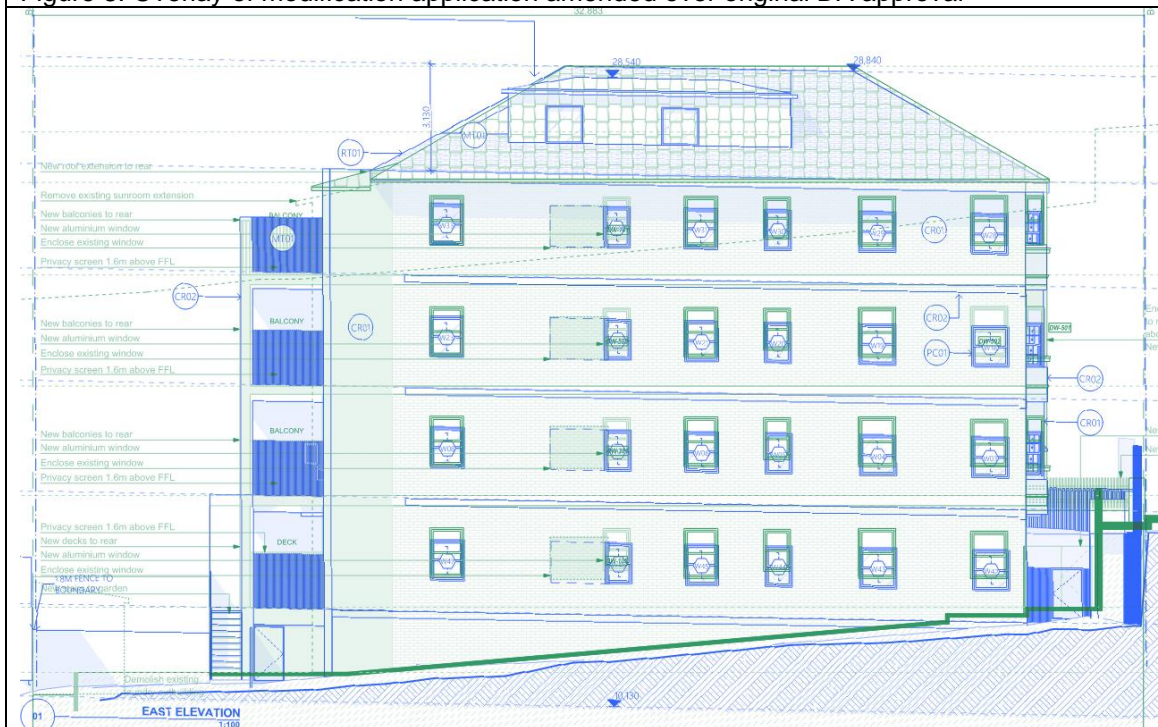
that which wasn't supported in the original DA that was reduced in scale and extent and ultimately led to the approval by the RLPP on 9 September 2022. The first overlay image below shows the original modification application (Green shading) over the original DA submission (red shading).

Figure 7: Overlay of original modification application over original DA application



The overlay below shows the amended Modification application (blue outline) over the DA approval (green outline) showing that the as amended modification sought under this application contains a scale that's predominately within the profile of the existing roof.

Figure 8: Overlay of modification application amended over original DA approval



As a result of the abovementioned concerns, assessment staff requested the reduction of the attic addition and have also recommended Condition 2i for the deletion of the attic balconies to enable

the reinstatement of the rear hipped roof form. The condition amendments are considered to result in attic form that is recessive and predominantly contained within the pitched roof form configuration to mitigate the presentation of an additional storey from adjoining development and the public domain, including Coogee Oval further to the south of the site (Refer to Figure 9 below, which depicts a similar addition approved at 78 Bream Street).

Figure 9: Southern Perspective of the Site and Similar from Coogee Oval.



## 7. Key Issues

### Height of Building (HOB)

The proposed height is determined by the height of the existing building 16.21m (RL28.84-12.63) and alterations and additions to the existing building for the attic have a height of 15.91m resulting in a variation to the 12m maximum development standard. An assessment is carried out against the HOB standard in the LEP:

- (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.*

In consideration of the above objectives, the proposed attic additions are lower than the existing roof height and designed as a minor building element which is of a size and scale that is compatible with the future character of the locality. It is noted that a similar attic scheme is approved at the adjoining building to the east at No. 78 Bream Street.

Subject to the recommended amendments, the proposed location and size is also not considered to be immediately noticeable from street level or the public domain and will not result in any appreciable or adverse impacts on the significance of heritage items located in the area.

In consideration of the size and scale of the existing building within the existing roof line, the proposed non-complaint height is not considered unwarranted, and the additional height can be accommodated on the site without resulting in adverse amenity impacts on neighbouring properties in terms of overshadowing noting it is very small and largely cast onto non-habitable components

such as walls and fire stairs. There is not anticipated to be any view loss associated with the scheme. The rear balcony is recommended to be deleted and the privacy from the side facing windows can be suitably ameliorated by requiring fixed and obscured glazing up to 1.6m above the internal floor level noting that these are bedrooms and would largely contain their own privacy measures. The proposal is also consistent with Council's publication Design Ideas for Rejuvenating Residential Flat Buildings with particular regard to amenity, environmental performance and streetscape. The publications notes that variation to controls may be appropriate in some instances.

In view of the above, it is considered that the height of the proposed attic addition is responsive to the existing building, the proposal can achieve the objectives of the development standard subject to conditions and there is sufficient reasoning to justify contravening the development standard.

Floor space ratio (FSR)

The existing FSR on site is 1.6:1 and the proposed attic areas add 59sqm resulting in a GFA of 783.4sqm or an FSR of 1.73:1. An assessment is carried out against the FSR standard in the LEP:

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

While it is acknowledged the proposed FSR results in a significant variation to the development standard, the extent of variation relates to the pre-existing building which pre-dated the FSR standard applicable to the site and was already over the maximum FSR standard. The extent of the variation is much less in relation to the GFA of the existing development representing only 7.4%. It is important to also note that the original consents additional floor area was largely contained within the envelope of the pre-existing building.

The proposed attic areas (as amended) essentially seek to utilise the existing generous roof space, which provides adequate height to accommodate habitable roof space and is capable of integration with the originally approved changes of the original consent, which improved the amenity, functionality and floor layout of the apartments, contributed to the upgrade of the façade of the development as viewed from the neighbouring properties and the streetscape. The extent of the attic within the roof has been maximised to reduce the external visual bulk associated with the additions and to ensure no unreasonable impacts upon the amenity of adjoining properties.

The proposed works are largely retained within the existing built form - shown in **Figure 8**, whereby the proposed attic areas are sited within the existing roof profile inclusive of additional setbacks from the sides, rear and roof. When viewed from the surrounding public and private domain, the roof form (including habitable roof space, shall retain its predominant appearance of a roof as shown in the CGI images below. The originally proposed additions had a continuous flat roof with habitable space extending vertically from the level below with no setbacks which was considered unsatisfactory in relation to the design objectives for habitable attic spaces and the objectives of the standard. The deletion of the rear balconies and retention of the rear hipped roof element shall ensure that the attic space presents as a roof form and not an additional storey.

Figure 10: Computer generated images of the proposed attic spaces.





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Furthermore, the surrounding developments are of a similar level of bulk and scale, and the proposal shall maintain a built form that is not inconsistent with the existing streetscape or the character of the area, subject to the recommended balcony deletion under Condition 2 i).

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

In conclusion, it is considered that the proposed additional gross floor area and resultant floor space ratio is not unreasonable in the circumstances of the case.

8. Referral comments

Not applicable given the proposed scope of works.

9. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p><b>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</b></p> <p>The proposed modification application is not considered to represent substantial alterations to a Residential flat building.</p> <p><b>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</b></p> <p>Clause 37 of the EP&amp;A Regulation requires that a new BASIX certificate be lodged for amended plans or where a section 4.55 modification makes a material change to the BASIX commitments as originally approved.</p>

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Section 4.15 'Matters for Consideration'	Comments
	<p>The applicant has submitted a new BASIX certificate for unit's 7 and 8. The plans have been checked with regard to this new certificate and they are consistent with the requirements indicated for DA stage. Standard conditions of consent requiring the continued compliance of the development with the SEPP: BASIX were included in the original determination.</p> <p><b>Randwick Local Environmental Plan 2012</b></p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.</p> <p><u>Zone R3 Medium Density Residential</u></p> <p>1 Objectives of zone</p> <ul style="list-style-type: none"> <li>• To provide for the housing needs of the community within a medium density residential environment.</li> <li>• To provide a variety of housing types within a medium density residential environment.</li> <li>• To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>• 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.</li> <li>• To protect the amenity of residents.</li> <li>• To encourage housing affordability.</li> <li>• To enable small-scale business uses in existing commercial buildings.</li> </ul> <p>Assessment comments: The proposed attic spaces provide for the housing needs of the community within the medium density residential environment. It provides additional housing variety within the existing apartment building. The original approval recognised the desirable elements of the existing streetscape, and the proposed modification application does not compromise this outcome. The proposed attic is largely contained within a habitable roof form that reads as a roof and will not result in any unreasonable adverse impacts on the amenity of residents or the public domain, subject to the proposed balcony deletion.</p> <p><u>Clause 6.7 Foreshore scenic protection area</u></p> <p>The subject site is identified as being within a Foreshore Scenic Protection Area. Clause 6.7 of RLEP states that development consent must not be granted for development on land identified as foreshore scenic protection area unless the development is located and designed to minimise the visual impact as viewed from the public domain of the coastline, and that the development contributes to the scenic quality of the coastal foreshore.</p> <p>The proposed development is not considered to be out of context with the existing area including development along the coastline and within the immediate vicinity, which includes older style flat buildings of three (3), four (4) and five (5) storeys. The original scheme enhanced the façades by removing dilapidated fire stairs and provided additional articulation through the proposed balconies</p>

Section 4.15 'Matters for Consideration'	Comments
	including upgrading of the façade and providing a more consistent built form particularly across the front. The proposed roof additions are modest and not considered to be visually obtrusive as viewed from the public domain, including the foreshore area and Coogee Oval subject to recommended condition revisions. As such, the proposal is seen to be consistent with the provisions of clause 6.7.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The development generally remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013 – see habitable roof space provisions.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore, the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received in response to the subject modification.
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

Subject to the recommendations, the application is recommended for approval for the following reasons:

- The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.
- The proposed modifications variation to the height of buildings development standard is minor compared with the existing building on the site. The attic has been designed to integrate with

the existing roof profile without unreasonably impacting upon neighbouring properties and remains consistent with the objectives of the standard and zone.

- d) The proposed modification's variation to the FSR development standards is associated with an attic that is a minor building element, which is generally consistent with the habitable roof space provisions in the DCP. The visual bulk of the building will be integrated with the existing roof form profile. The proposal will not result in unreasonable adverse impacts and is consistent with the objectives of the standard and zone.
- e) The proposed modifications are consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013. The proposal is consistent with the specific objectives of the R3 medium density residential zone in that it will protect residential amenity and provide for housing needs of the community within a medium density residential environment.
- f) The scale and design of the proposed modifications are suitable for the location and compatible with the desired future character of the locality.

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**Appendix 1: DCP Compliance Table****3.1 Section C2: Medium Density Residential**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>2. Site Planning</b>			
<b>2.3</b>	<b>Private and communal open space</b>		
<b>2.3.1</b>	<b>Private open space</b>		
	<b>For residential flat buildings:</b> (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m <sup>2</sup> and a minimum dimension of 2m.	The proposed balcony areas have been conditioned for deletion. The approved rear balconies have been retained in the modified scheme.	<b>Addressed via condition. Overall compliance retained regardless of attic balcony deletion.</b>
<b>3. Building Envelope</b>			
<b>3.1</b>	<b>Floor space ratio</b>		
	<b>0.9:1</b>	The proposed development results in a further increase in floor area from that approved in the original.	<b>Does not comply. See key issues section of this report.</b>
<b>3.2</b>	<b>Building height</b>		
	<b>12m</b>	The proposed development results in a variation to the development standard.	<b>Does not comply. See key issues section of this report.</b>
<b>3.4</b>	<b>Setbacks</b>		
<b>3.4.1</b>	<b>Front setback</b>		
	(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries. (ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.	The existing front setback shall not be altered as a result of the proposed development.	<b>Yes</b>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.		
<b>3.4.2</b>	<b>Side setback</b>		
	<b>Residential flat building</b> (i) Comply with the minimum side setback requirements stated below: - 12m ≤ Width < 14m 2.0m (ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to: - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. (iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.	The proposed additional roof components shall be setback 2.56m and 2.9m from the side boundaries.	<b>Complies.</b>
<b>3.4.3</b>	<b>Rear setback</b>		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.	The rear setback is 12.26m	<b>Complies.</b>
<b>4.</b>	<b>Building Design</b>		
<b>4.1</b>	<b>Building façade</b>		
	(i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.	The proposed attic is orientated appropriately, does not contain any significant unrelieved walls, and has proportions that integrate well within the existing	<b>Complies.</b>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p> <p>(vi) Conceal building services and pipes within the balcony slabs.</p>	<p>roof profile. The attic is sited a significant distance from the street frontage such that it will not be immediately noticeable from the street and has been conditioned to remove visibility from Coogee Oval at the rear.</p>	
<b>4.3</b>	<b>Habitable roof space</b>		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> <li>- Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation.</li> <li>- Has a maximum floor space of 65% of the storey immediately below.</li> <li>- Wholly contain habitable areas within the roof space.</li> <li>- When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement.</li> <li>- Design windows to habitable roof space as an integrated element of the roof.</li> <li>- Submit computer generated perspectives or photomontages showing the front and rear elevations of the development.</li> </ul>	<p>In response to initial concerns raised by Council regarding the extent of the proposed roof additions and associated bulk and scale, the Applicant provided amended plans which substantially reduced the extent of habitable roof space. The proposal, as amended, shall be contained largely within the existing roof form with the exception of dormers on the eastern and western sides, noting that the balconies have been conditioned for deletion.</p> <p>The dormers shall protrude a maximum of 3.19m from the existing roof for a length of approximately 8.77m. However, the proposed protruding elements are not considered to be excessive in view of the size of the existing roof form, being setback in excess of 10m from the front and rear roof gutter, setback 14m from the rear, and larger than minimum side setbacks.</p> <p>The floor space of the roof addition shall be approximately 33.9% of</p>	<b>Acceptable.</b>

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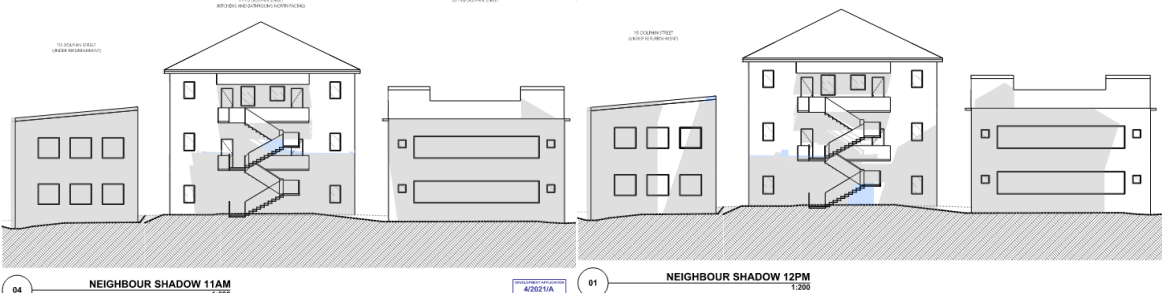
DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		<p>the floor space of the storey immediately below.</p> <p>The proposed development shall largely retain a roof-like appearance, particularly as viewed from the public domain, with the protrusions minimal and not considered to be excessive, subject to recommended conditions.</p>	
<b>4.4</b>	<b>External wall height and ceiling height</b>		
	(ii) Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.	There shall be no change to the existing wall height of the building. The proposed works (as modified) are not considered to adversely attribute to the overall bulk and scale of the development.	<b>Complies.</b>
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	The proposed development shall maintain minimum floor-to-ceiling heights of between 2.27m and 2.66m, which is considered acceptable noting that this is a secondary room within an attic space and not a principal living space.	<b>Acceptable.</b>
<b>4.7</b>	<b>Apartment layout</b>		
	<p>(i) Maximise opportunities for natural lighting and ventilation through the following measures:</p> <ul style="list-style-type: none"> <li>- Providing corner, cross-over, cross-through and double-height maisonette / loft apartments.</li> <li>- Limiting the depth of single aspect apartments to a maximum of 6m.</li> <li>- Providing windows or skylights to kitchen, bathroom and laundry areas where possible.</li> </ul> <p>Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.</p> <p>(ii) Design apartment layouts to accommodate flexible use of rooms</p>	The attic integrates with the existing apartment layout and will be provided with sufficient natural light and ventilation via associated windows incorporated in the design.	<b>Acceptable.</b>



DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>and a variety of furniture arrangements.</p> <p>(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.</p> <p>(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.</p>		
<b>4.8</b>	<b>Balconies</b>		
	<p>(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m<sup>2</sup> and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.</p>	The approved balcony configuration will remain unaltered under the subject modification.	<b>Complies.</b>
<b>4.9</b>	<b>Colours, materials and finishes</b>		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> <li>- Changes of colours and surface texture</li> <li>- Inclusion of light weight materials to contrast with solid masonry surfaces</li> <li>- The use of natural stones is encouraged.</li> </ul> <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> <li>- Reflective wall cladding, panels and tiles and roof sheeting</li> <li>- High reflective or mirror glass</li> <li>- Large expanses of glass or curtain wall that is not protected by sun shade devices</li> <li>- Large expanses of rendered masonry</li> <li>- Light colours or finishes where they may cause adverse glare or reflectivity impacts</li> </ul> <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p>	Condition recommended for final details to be provided prior to CC.	<b>Acceptable, subject to condition in the original consent.</b>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.		
4.11	Alterations and additions to residential flat buildings		
	<p><b>General Comments</b></p> <p>The original development involves the removal of the existing external stairs and the installation of new balconies and upgraded façade of the building. This modification application seeks conversion of the existing roof space into a habitable attic roof space. The amended proposal results in a substantial reduction to the extent of the roof additions, which are now largely contained within the existing roof form, with dormers on the eastern and western sides to accommodate the additional headroom/space. As such the proposed development is not considered to be a comprehensive refurbishment of the existing flat building for the application of clause 4.11.</p> <p>Notwithstanding, the original development was considered to improve the visual impact of the existing building, provide better articulation of the rear facade and better amenity for occupants due to the additional floor space at the rear and the new attic roof additions sought as part of this modification application are considered to be consistent with the objectives of clause 4.11 and the aims of “<i>Design Ideas for Rejuvenating Residential Flat Buildings</i>”.</p>		
5. Amenity			
5.1	Solar access and overshadowing		
	Solar access for surrounding development		
	<p><b>General Comments</b></p> <p>3 hours of solar access to neighbours living rooms and 50% of neighbouring POS from 8am and 4pm mid-winter.</p>		Acceptable see assessment below.
<p>Objectives:</p> <ul style="list-style-type: none"><li>– To ensure the design, orientation and siting of development maximises solar access to the living areas of dwellings and open spaces and is encouraged to all other areas of the development.</li><li>– To ensure development retains reasonable levels of solar access to the neighbouring properties and the public domain.</li><li>– To provide adequate ambient lighting and minimise the need for artificial lighting during daylight hours.</li></ul> <p>The original application addressed concerns in relation to additional overshadowing. The additional shadowing was considered an acceptable outcome for the following reasons:</p> <ul style="list-style-type: none"><li>• The additional shadowing to a first-floor rear facing balcony was acceptable as the proposal was skillfully designed in relation to the existing built form and current minimum standards for floor to ceiling heights; and</li><li>• Similar levels of solar access would be retained to this balcony and kitchen doorway.</li></ul> <p>The proposed attic will result in additional shadowing however it is also considered acceptable for the following reasons:</p> <ul style="list-style-type: none"><li>• The additional shadowing during mid-winter is minor cast mostly over walls between 9am and 12 (noon) with little to no impacts after this time. The most pronounced overshadowing occurs at 11am however this shadowing is minor retaining solar access to balconies and upper half of the kitchen doorway of first floor level unit. This overshadowing dissipates from 11am and at 12noon, there is no impact on the kitchen doorway or balconies – see elevation shadow diagrams below.</li></ul>			

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
			
<p>In accordance with the planning principal <i>The Benevolent Society v Waverley Council [2010] NSWLEC 1082</i> the proposal is considered a skillful design as it is sited well away from the rear boundary, the side walls of the balconies are lower than the living space and there are no roof elements over the proposed rear balconies.</p>			
<b>5.2</b>	<b>Natural ventilation and energy efficiency</b>		
	<ul style="list-style-type: none"> <li>(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.</li> <li>(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.</li> <li>(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.</li> <li>(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.</li> <li>(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.</li> <li>(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.</li> <li>(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.</li> </ul>	<p>A BASIX Certificate has been submitted with the application.</p> <p>Natural lighting and ventilation shall be facilitated through the design of the units.</p>	<b>Complies.</b>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>5.3</b>	<b>Visual privacy</b>		
	<ul style="list-style-type: none"> <li>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</li> <li>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</li> <li>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</li> <li>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</li> <li>(v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> <li>- Translucent glazing</li> <li>- Fixed timber or metal slats</li> <li>- Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings</li> <li>- Screen planting and planter boxes as a supplementary device for reinforcing privacy protection</li> </ul> </li> </ul>	<p>The side facing windows have the capacity for an outlook to the windows for the attic at No. 78 Bream Street and will be addressed via privacy mitigation conditions.</p>	<b>Complies – subject to condition.</b>
<b>5.5</b>	<b>View sharing</b>		
	<ul style="list-style-type: none"> <li>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</li> <li>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</li> <li>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</li> </ul>	<p>The proposed roof additions are not considered to unreasonably obstruct view corridors, being below the height of the existing roof. As such, it is considered that the proposed development shall not result in any unreasonable impacts upon adjoining properties with regards to view loss. It is noted that no objections were received in relation to view loss impacts.</p>	<b>Acceptable.</b>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain. (vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.		

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**B7 Transport, Traffic and Access**

B7	Transport, Traffic, Parking and Access		
3.	Parking & Service Delivery Requirements		
	Car parking requirements: 1 space per 2 studios 1 space per 1-bedroom unit (over 40m <sup>2</sup> ) 1.2 spaces per 2-bedroom unit 1.5 spaces per 3- or more bedroom unit 1 visitor space per 4 dwellings	0.6 (say 1) additional space required for the two attic rooms within the existing 2-bedroom apartments (7 & 8)	Refer to comments below
The proposed development does not provide parking on site and does not meet the requirements under Part B7 of the RDCP 2013 which requires 1 space (0.5 x 2) be provided for the conversion of the 2 x two-bedroom apartments into three-bedroom apartments. The non-provision of parking is supported as it is difficult to provide parking on site without substantially requiring alterations that would detract from the existing layout, land topography and building configuration within the streetscape. This situation is similar for other properties along this side of Bream Street whose ground level sits below street level and contain existing buildings close to the site frontage. The site is in very close proximity to a well-connected public transport network of buses that service the Coogee Beach area to mitigate concerns for secondary parking.			

**Responsible officer:** Louis Coorey, Senior Environmental Planning Officer

**File Reference:** DA/4/2021/A



## Development Application Report No. D38/24

**Subject:** 7 Ingram Street KENSINGTON (DA/192/2023)

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### Executive Summary

<b>Proposal:</b>	Partial demolition of existing stables at the rear of the site and construction of a 2-storey attached dual occupancy with swimming pools and associated site works (Heritage Conservation Area).
<b>Ward:</b>	West Ward
<b>Applicant:</b>	Mr J Long
<b>Owner:</b>	Mr K Cheong & Mrs F S C Scott
<b>Cost of works:</b>	\$1,554,557.00
<b>Reason for referral:</b>	The development contravenes the development standard for floor space ratio by more than 10%.

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the FSR development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Planning Secretary may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No.192/2023 for the partial demolition of existing stables at the rear of the site and construction of a 2-storey attached dual occupancy with swimming pools and associated site works, at No. 7 Ingram Street, Kensington, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Conditions - DA/192/2023 - 7 Ingram Street, KENSINGTON

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1. Executive Summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for floor space ratio (FSR) by more than 10%.

The proposal seeks development consent for the partial demolition of existing stables at the rear of the site and construction of a dual occupancy with swimming pools and associated site works.

The key issues associated with the proposal relate to:

- Floor Space Ratio (FSR)
- Heritage
- Site Coverage
- Deep soil area
- Side setbacks
- Garage design

The proposal is recommended for approval subject to non-standard conditions that require:

- Side and rear boundary fencing restricted to a height of 1.8m.
- Minimum 1.6m sill heights or fixed obscured glazing to certain windows.

2. Site Description and Locality

The subject site is known as 7 Ingram Street, Kensington and is legally described as Lot 37 in DP 5759. The site is 689.6m<sup>2</sup> by calculation, is regular in shape and has a 15.24m frontage to Ingram Street to the north-west. The site is currently vacant except for the brick and tiled roof stables located at the rear of the site. The stables are shared with 5 Ingram Street.

The site is generally level with a gradual slope of approximately 1.2m from south-east to north-west.





**Figure 2:** View of subject site from the opposite side of Ingram Street.



**Figure 3:** View of existing stables at the rear of the site.



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**Figure 4:** Outlook from rear of subject site facing towards Ingram Street.

### 3. Relevant History

#### **10 March 2021**

DA/112/2021 was withdrawn. This application sought consent for the construction of a two storey attached dual occupancy with 2 front carports, 2 swimming pools at the rear, conversion of existing rear outbuilding to the studio, landscaping, tree removal and associated works.

#### **26 May 2023**

DA/192/2023 (the current application) was lodged. At the time of lodgement, the proposal sought consent for the following:

- *Partial demolition of existing stables at the rear of the site and construction of 2 x 2-storey semi-detached dwellings with swimming pools and associated Torrens title subdivision.*

#### **4 December 2023**

Following a review of the application, a request for information was sent to the Applicant on 4 December 2023. The following request for additional information/concerns were raised:

#### ***Randwick Local Environmental Plan 2012***

##### **1. Minimum Subdivision Lot Size**

*While there is no objection, in principle, for the development of the site for two dwellings, the subdivision cannot be supported. Pursuant to Clause 4.1(3) under the Randwick LEP 2012, the site is prescribed a minimum lot size of 400m<sup>2</sup>. The extent of variation is considered significant and the subdivision proposed is inconsistent with the prevailing subdivision pattern of the immediate locality.*

*The submitted Clause 4.6 variation statement referred to a previous subdivision at 13 & 15 Ingram Street. A review of Council's records show that the lots were created circa 1953 and the controls would have been different from the current controls. Furthermore, the lot size is not considered to be reflective of the broader locality. Therefore, the variation is not supported as there is insufficient environmental planning grounds to justify this variation.*

*Note that the maximum floor space ratio is dependent on the lot size of the site for the development of a dwelling house or semi-detached dwelling on land zoned R2 Low Density Residential and R3 Medium Density Residential, pursuant to Clause 4.4 (2A) under the Randwick LEP 2012.*

*Notwithstanding the above, the following issues are raised:*

### **Randwick Development Control Plan 2013**

#### **2. Solar Access and Overshadowing**

*Pursuant to Control (ii) of Section 5.1 Solar Access and Overshadowing under the Randwick Comprehensive DCP 2013, The private open space of proposed development must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The private open space of Dwelling 7B is overshadowed and does not receive the minimum amount of sunlight required under this control. An amended design is required to improve solar access of the private open space for Dwelling 7B.*

### **Planning**

#### **3. Demolition of Stables**

*While the built form is supported by Council's Heritage officer, details on the proposed demolition is to be provided to address its impact on the adjoining stable at the rear of 5 Ingram Street.*

#### **4. Window Schedule**

*A window schedule is to be submitted to provided details of the proposed windows, including the dimensions and glass treatment.*

#### **5. Relocation of Service Pit**

*The proposed driveway on Lot 7B is in conflict with two Telstra service pits. Details are to be provided to demonstrate whether the service pits will be relocated or retained.*

The Applicant subsequently provided additional information on 13 December 2023.

### **21 December 2023**

The additional information provided in response to the first RFI was unclear on what works are sought as part of the amended proposal. Therefore, a second request for information was sent to the Applicant seeking clarification of the following points:

### **Randwick Local Environmental Plan 2012**

#### **1. Minimum Lot Size**

*The amended information submitted on 13.12.2023 has not clearly demonstrated whether any subdivision is proposed. The submitted Clause 4.6 Variation in regard to Floor Space Ratio has referred to the proposal as a dual-occupancy. Conversely, the submitted amended architectural plans refer to the proposal as semi-detached dwellings.*

*It is to be clarified whether any subdivision is proposed to create semi-detached dwellings, noting that this will not be supported. If no subdivision is proposed, the Applicant is to amend the proposal to the construction of a Dual Occupancy. In addition, the Applicant is to submit an amended Statement of Environmental Effects, which provides a specific response to the proposal as a Dual Occupancy and its compliance with the applicable controls of the Randwick Local Environmental Plan (RLEP) 2012 and the Randwick Development Control Plan 2013.*

A Clause 4.6 Variation has also been submitted in relation to non-compliance with the Floor Space Ratio development standard of Clause 4.4 of the RLEP 2012. The Clause 4.6 Variation is not supported as there are insufficient planning grounds to justify the extent of the variation. In particular, there are issues relating to overshadowing and demolition, which are outlined below.

### **Randwick Development Control Plan 2013**

#### **2. Solar Access and Overshadowing**

Pursuant to Control (ii) of Section 5.1 Solar Access and Overshadowing under the Randwick Comprehensive DCP 2013, the private open space of proposed development must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.

Amended shadow diagrams have been submitted, showing the extent of solar access within the POS and the shadows cast by the proposed fencing. However, the extent of overshadowing is unclear as the shadows cast from the proposed fencing overlap with the area shown to receive sunlight. Furthermore, there is no information on solar access from 11 am onwards.

It is recommended that a full set of shadow plans be submitted that clearly identifies the shadow impacts from 8am to 4pm on 21 June. Both proposed dwellings are requested to comply with the requirements outlined above.

#### **3. Demolition of Stables**

Some details of demolition of the stables have been provided. However, there are no details on how the brick wall to be retained will be supported. The Applicant is to submit an elevation that shows details of the retained brick wall as viewed from within the site (i.e. looking to the southwestern boundary). In addition, greater detail on the structural support of the neighbouring stables is to be submitted, as well as a complete demolition plan, notating the structures to be demolished on site and what walls of the stables are to be retained.

The proposed works appears to occur on the neighbouring property at 5 Ingram Street. Note that consent from this neighbouring property will be required for any works occurring on their land.

The Applicant provided additional information in response to the RFI above on 25 January 2024. The additional information provided by the Applicant made it clear that the proposal now sought consent for an attached dual occupancy development, with the subdivision of the site **no longer** proposed.

### **18 March 2024**

Following a thorough review of the amended dual occupancy proposal against the relevant controls, a final request for information was sent to the Applicant on 18 March 2024. The following request for additional information/concerns were raised:

#### **1. Floor Space Ratio**

The proposal seeks variation to the floor space ratio (FSR) standard that applied at the time of lodgement (0.5:1). Variation to this FSR standard is considered acceptable provided the proposal does not exceed the current FSR standard of 0.6:1 which applies to attached dual occupancies on sites with an area greater than 600m<sup>2</sup> and within the R2 Low Density Residential zone.

The calculation plan provided at this time states that the gross floor area (GFA) of the proposal equates to 412m<sup>2</sup>, representing an FSR of 0.597:1. However, my calculation of the plans provided indicates that the GFA equates to approximately 427m<sup>2</sup>. The calculation plan appears to have incorrectly excluded the party walls from the calculation of GFA, however this does not appear to account for the 15m<sup>2</sup> difference.



*It is requested that a revised FSR calculation plan be prepared which includes the party walls within the calculation. If the revised calculation indicates that the proposal exceeds the current FSR standard of 0.6:1, the GFA of the proposal must be reduced to ensure consistency with the recently gazetted FSR control.*

*An updated Clause 4.6 variation statement will need to be prepared to reflect the revised FSR calculation.*

*No variation that results in an FSR which is above 0.6:1 will be supported.*

## **2. Site Coverage**

*Pursuant to Control (i) of Section 2.3 of the Randwick Comprehensive DCP 2013, the maximum site coverage permitted is 45% of the total site area (310.32m<sup>2</sup>).*

*The calculation plan provided states that the total site coverage of the built form equates to 43.3% (298.54m<sup>2</sup>). However, my calculation of the plans provided indicates that the site coverage equates to 49.8% (340.5sqm).*

*Reference is made to the definition of site coverage specified under Section 2.3 of the Randwick Comprehensive DCP 2013.*

*“Site coverage”, for development, does not include any of the following:*

- (a) an access ramp,*
- (b) any part of an awning, blind or canopy that is outside the outer wall of a building,*
- (c) a balcony, deck, patio, pergola, terrace or verandah **attached** to the dwelling that is not enclosed by a wall higher than 1.4m above the floor level,*
- (d) the eaves,*
- (e) a driveway,*
- (f) a fence or screen,*
- (g) a pathway or paving,*
- (h) a rainwater tank that is attached to the dwelling,*
- (i) a swimming pool or spa pool.*

*The calculation plan provided appears to have incorrectly excluded the detached rear alfresco areas from the calculation of site coverage. The definition of site coverage under the DCP states that a deck, patio or the like can only be excluded from site coverage calculations if it is attached to the dwelling.*

*Given the proposal is within a heritage conservation area and seeks variation to the FSR standard and deep soil area control, a variation to the site coverage control will not be supported.*

## **3. Deep Soil Area**

*A minimum deep soil area control of 35% applies to the proposal. My calculation of the plans provided indicates that the deep soil area equates to 31.4% (216.27sqm). This calculation is based on areas indicated as landscape on the calculation plan. However, the deep soil area may be lower when factoring likely site treatment along the side boundaries, bin storage areas and areas around the swimming pool.*

*It is recommended that a revised deep soil calculation plan is prepared which takes into consideration areas that will be occupied by surfaces and structures which are unlikely to facilitate plantings/ landscaping.*

*Given the site is vacant (with the exception to the rear stables), compliance with the minimum deep soil area control is recommended. A reduced built form which takes into consideration items 1 and 2 of this RFI letter may result in the proposal achieving compliance with the minimum deep soil area.*

*If the proposal complies with the maximum site coverage control and has an FSR no greater than 0.6:1, variation to the deep soil area requirement may be considered.*

#### **4. Solar Access**

*Based on the shadow diagrams provided, the private open space (P.O.S) of dwelling 7B does not achieve the required amount of direct solar access during the winter solstice. The plans provided illustrate that overshadowing is generated by the proposed 1.8m boundary fence between 9am – 12pm and the proposed built form between 12pm – 3pm.*

*If the built form of the proposal is amended in response to items 1 and 2 of this RFI letter, it is requested that revised shadow diagrams be provided to illustrate the extent of overshadowing generated by the revised built form.*

*Given the orientation of the site, variation to the Randwick DCP solar access control may be considered provided the proposal does not exceed the current FSR standard of 0.6:1 and maximum site coverage of 45%.*

#### **5. Privacy**

*The proposal includes large, first-floor bedroom windows that directly face the P.O.S of adjoining properties (identified as windows W11, W12 and W13).*

*It is recommended that these windows are either;*

- *Fixed with a sill height of at least 1.5m above finished floor level (FFL),*
- *Fixed with opaque glazing.*

#### **6. Swimming Pool Details**

*Greater details of the proposed swimming pools are required. It is not clear whether pool coping has been incorporated into the design as landscaping has been shown on three boundaries of the swimming pool waterline.*

*Any pool coping proposed around the swimming pool must be shown within the submitted plans, with RL's of the coping provided.*

#### **Structural Requirements – Stables**

*A referral was sent to Council's Building and Compliance Unit confirm whether any specific conditions and requirements (in terms of structural adequacy) are needed for the stables. The design of the scheme may require modification depending on the outcomes of the referral.*

The Applicant provided additional information in response to the RFI above on 22 March 2024.

#### **4. Proposal**

The proposal seeks development consent for the partial demolition of existing stables at the rear of the site and construction of a dual occupancy with swimming pools and associated site works. A break down of the proposal is provided below.

##### **Demolition**

- The existing rear stables at the rear of the site will be partially demolished and converted into a detached alfresco area and plant room for each dwelling within the dual-occupancy.

##### **Attached dual occupancy**

The proposal seeks the construction of a two (2) storey attached dual occupancy. The following layout is sought for both dwellings:

##### **Ground floor**

- Entry foyer;
- An attached, single-width garage;
- Laundry and powder room;

- An open-plan kitchen, dining and living room;
  - Walk-in pantry accessible from kitchen;
- Attached deck directly accessible from living room;
- External courtyard located within building recess along the side boundary; and
- Set of stairs providing access to the first floor.

#### First Floor

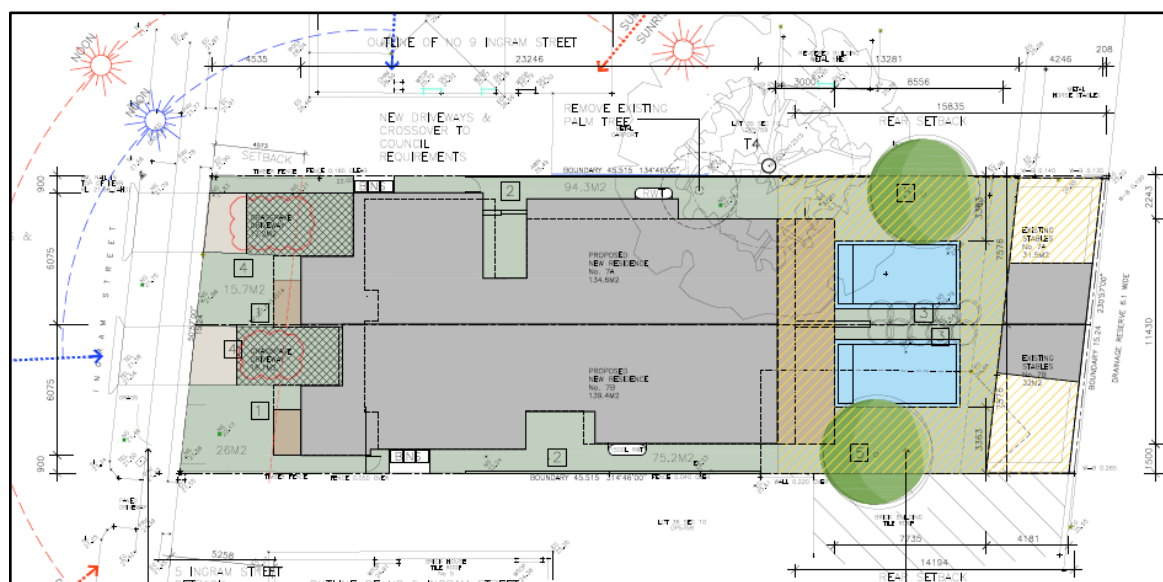
- 4 x bedrooms;
  - Bedroom 1 is provided with an ensuite and walk-in robe;
  - Bedroom 4 is provided with an ensuite;
- Bathroom; and
- Set of stairs providing access to the ground floor.

#### Site works

- An in-ground swimming pool is proposed for each dwelling.
- Rainwater tank, clothes drying area and bin storage proposed within the side setback of each dwelling.
- Associated fencing including:
  - 1.2m high open paling front fence.
  - Internal 1.6m high masonry or timber fence between dwellings within the dual occupancy development.
  - Timber lapped and capped side boundary fencing
- Removal of one (1) tree to accommodate proposed development (Bangalow Palm).
- New landscaping and plantings proposed throughout the site.

**Note:** Torrens title subdivision was proposed as part of the original submission lodged to Council. However, in response to Council's second request for information (RFI), subdivision was removed from the application.

Figures 5 to 14 illustrate the proposed development.



**Figure 5:** Extract of Site Analysis & Landscape Plan

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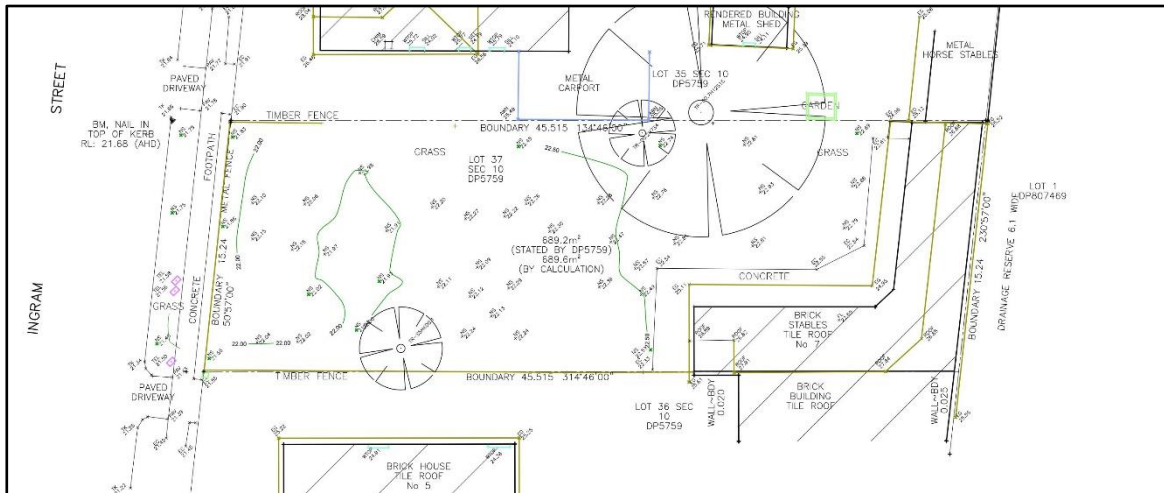


Figure 6: Survey Plan showing existing site conditions and stables

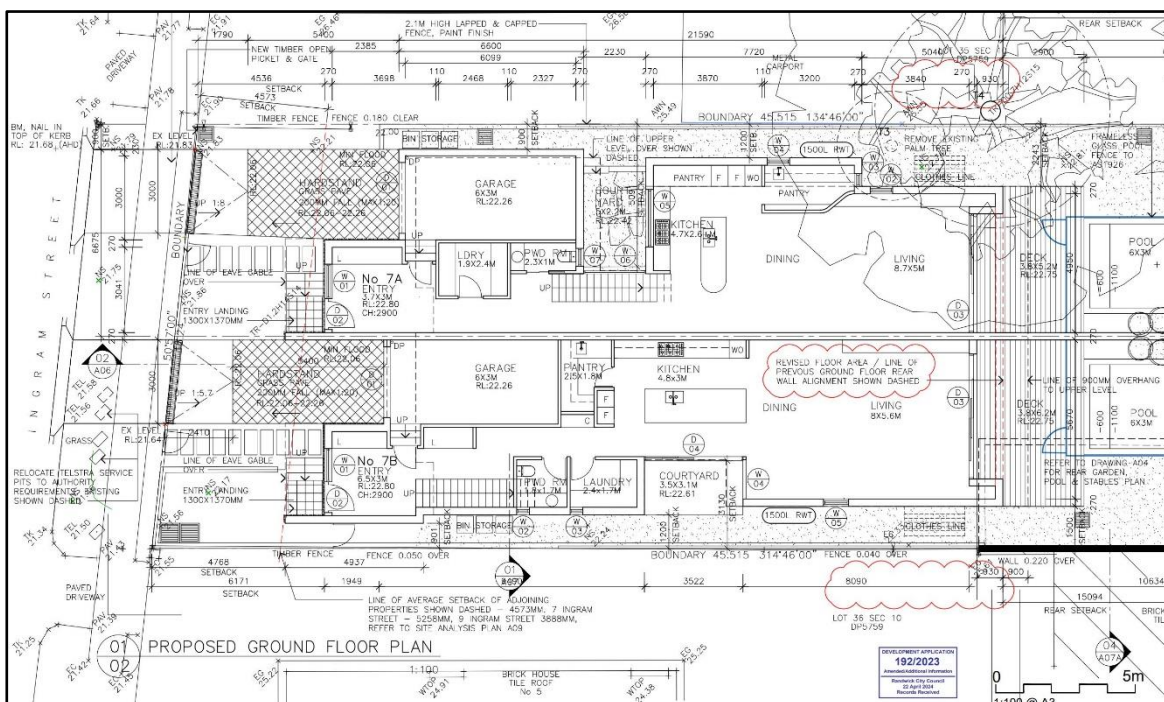


Figure 7: Ground Floor Plan – Attached Dual Occupancy



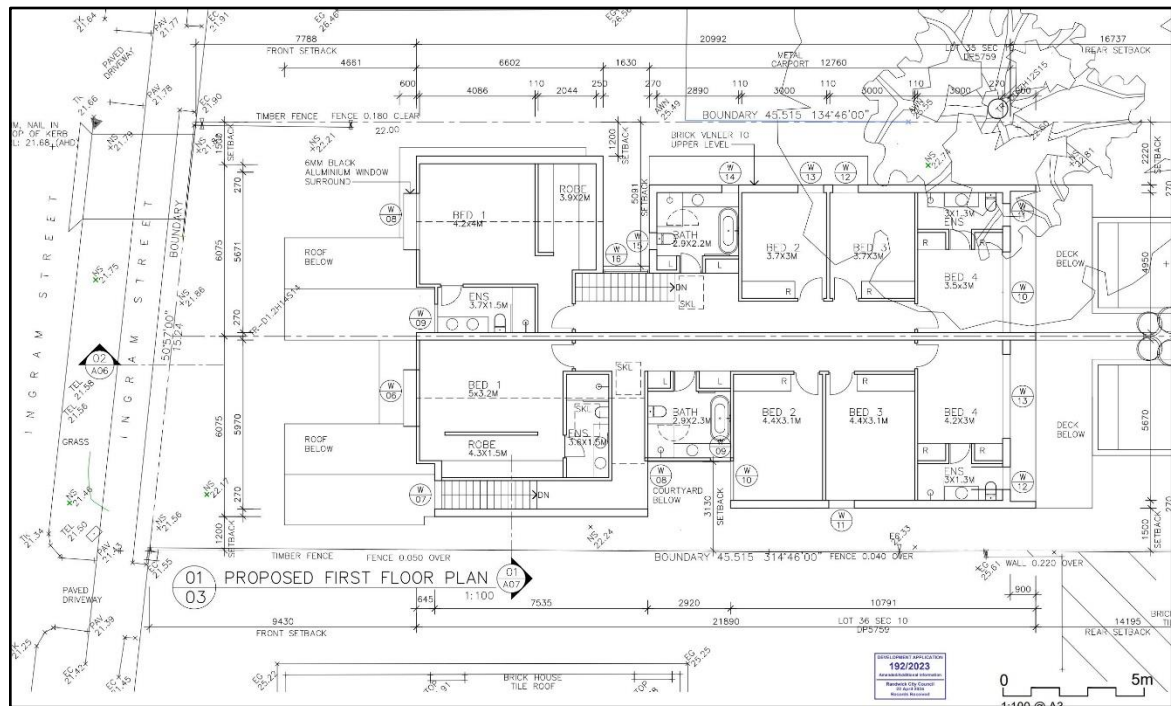


Figure 8: First Floor Plan – Attached Dual Occupancy

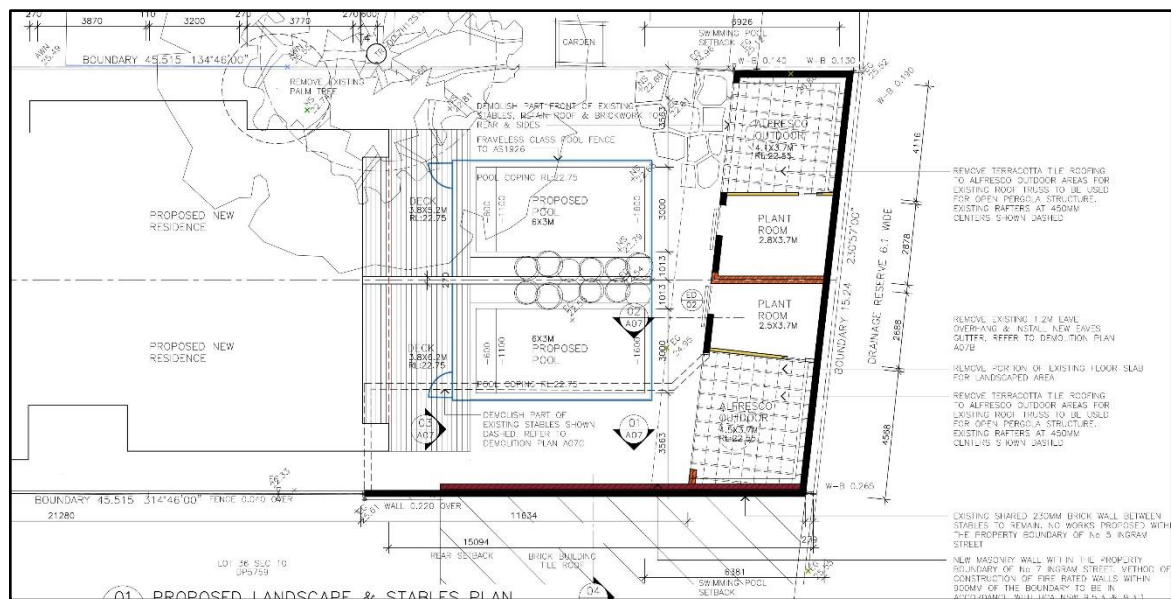


Figure 9: Rear Yard Plan – showing pools and ancillary structures at the rear

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Figure 10: North-west Elevation (Street Elevation)

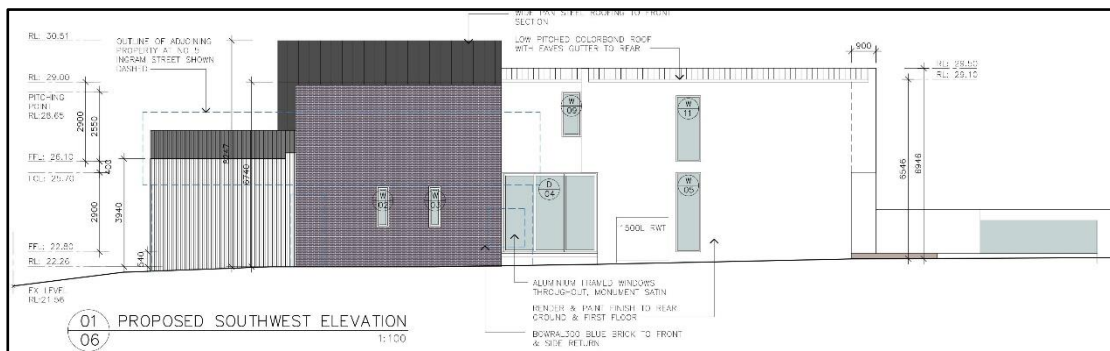


Figure 11: South-west Elevation

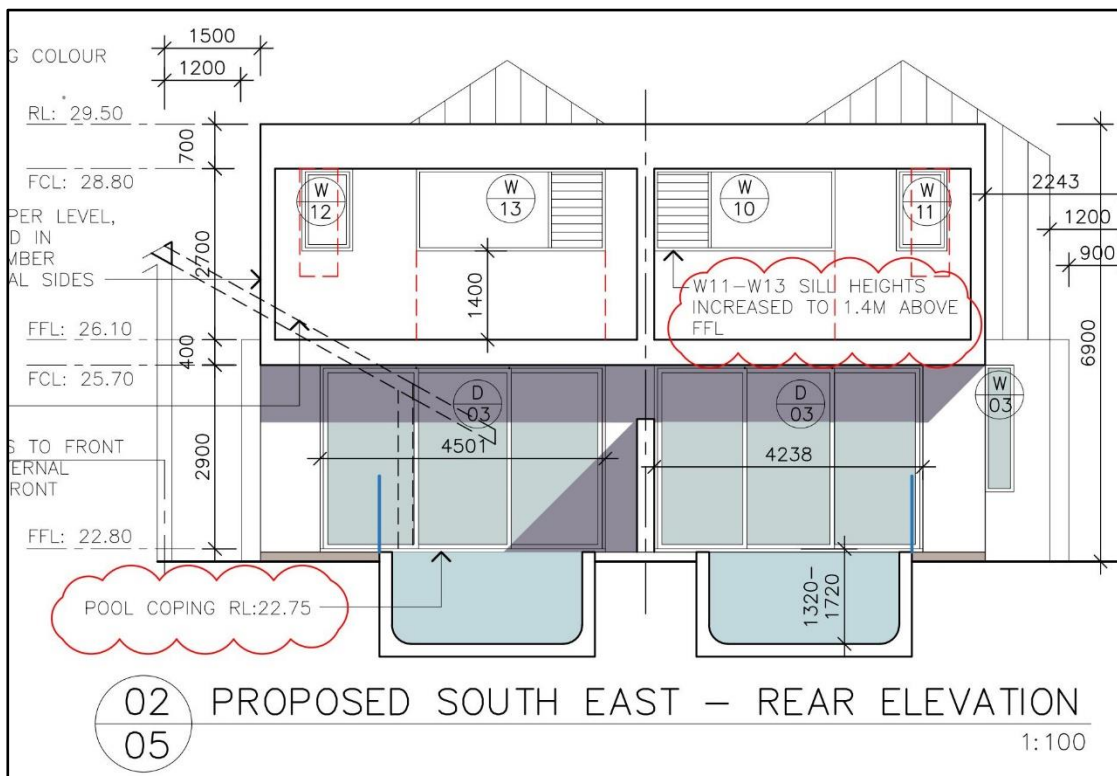


Figure 12: South-east Elevation (Rear Elevation)

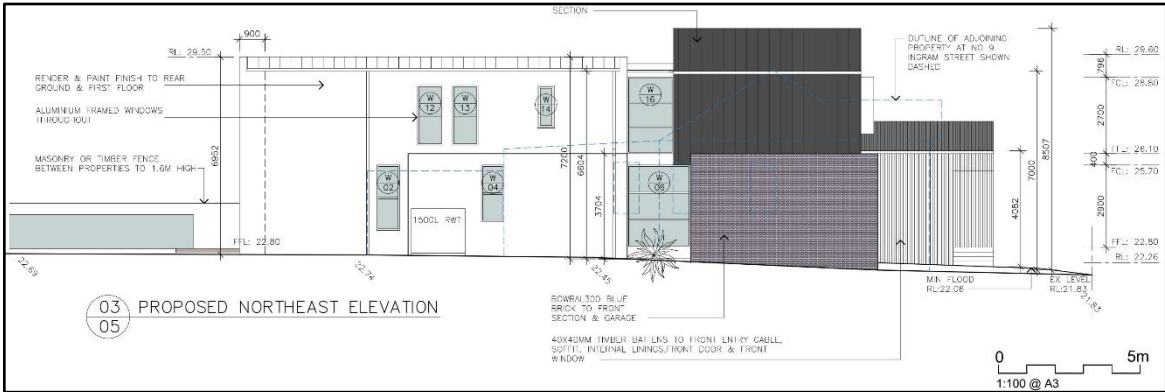


Figure 13: North-east Elevation

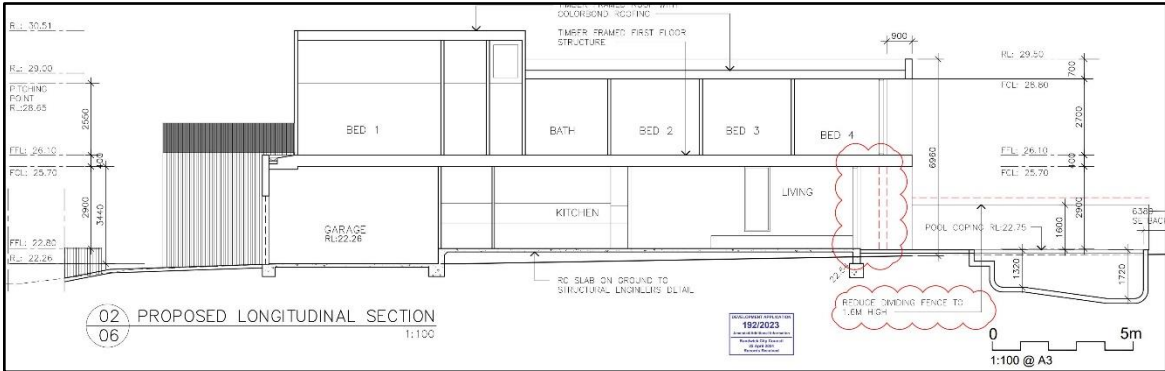


Figure 14: Long Section

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:

- 23 Lenthall Street, Kensington

Issue	Comment
<b>Character of the street</b> The submission raises concern that the proposed height of the building does not respond to the character of the street or the heritage conservation area.	The proposal complies with the maximum building height afforded to the site under the Randwick LEP 2012. The application was referred to Council's heritage planner for comment who raised no objection subject to conditions of consent.
<b>Privacy</b> The proposed dwellings will have bedrooms on the first floor which will be in a position to overlook the living areas of our property.	The proposed dual occupancy notably complies with the rear setback requirements specified under the Randwick Comprehensive DCP 2013 and 2023. A minimum 8m rear setback is required to be provided, with the proposed first floor setback approximately 15m from the rear boundary. The rear facing windows servicing the first floor bedrooms include sill heights that are 1.4m above finished floor level. Considering the above, no adverse overlooking opportunities will be generated by the proposal.

- 3 Ingram Street. Kensington

Issue	Comment
<p><b><u>Design and height does not align with the Heritage Conservation Area</u></b></p> <p>The design and height of the proposed dwellings does not accord with the West Kensington Heritage Conservation Area. Dwellings constructed at 7 Ingram Street should not have a visible frontage of a full two-storey height and should not be permitted to have large front-facing windows at the second storey level.</p> <p><b><u>Subdivision non-compliance</u></b></p> <p>The proposal does not comply with the Randwick LEP 2012 minimum subdivision lot size of 400m<sup>2</sup>.</p> <p><b><u>Parking Impacts</u></b></p> <p>The townhouses at 1C Ingram Street already create a street parking space shortage (and a severe bin space storage) as residents and visitors to 1C Ingram Street are forced to use the limited number of street parking spaces, including those along the front of the site and the surrounding dwellings. The creation of two new driveways at the Site will exacerbate the street parking and bin space shortage at the western end of Ingram Street,</p>	<p>The proposal complies with the maximum building height afforded to the site under the Randwick LEP 2012. The application was referred to Council's heritage planner for comment who raised no objection to the design and form of the proposal subject to conditions of consent.</p> <p>The subdivision of the subject site was removed from the application during the assessment process.</p> <p>The proposed dual occupancy provides the minimum number of off street car parking spaces as required under Part B7 of the Randwick Comprehensive DCP 2013. Council's development engineer has reviewed the proposal and raised no objection in relation to car parking.</p>

- 5 Ingram Street, Kensington

Issue	Comment
<p><b><u>Demolition works</u></b> The proposed development shows the demolition of part of the stables that lie on the common boundary. Insufficient information has been provided to determine if the demolition will impact the side of the stables located on 5 Ingram Street. It is not clear how the shared portion of the roof to be demolished and rectified to stay in keeping with the appearance of the Heritage Conservation Area.</p> <p><b><u>Dual occupancy design</u></b> Even though the design and concept of the dual occupancy are aesthetically pleasing, they are completely out of character for the Heritage Conservation Area. They do not relate to the streetscape facades and are far too contemporary in styling to be in keeping with the character of the area.</p>	<p>A referral to Council's Building and Compliance Unit was undertaken in regard to the structural works proposed to the stables. No objection was raised subject to recommended conditions of consent.</p> <p>Council's Heritage Planner has reviewed the proposed works to the stables and has raised no objections to the proposed works subject to conditions of consent.</p> <p>The application was referred to Council's heritage officer for comment who raised no objection subject to conditions of consent. Council's heritage planner notably stated; <i>"The proposal for a dual occupancy adopts an appropriate contemporary style. It is not feasible or perhaps even possible that the proposed development would mimic the established gracious single-storey forms and styles. Rather, it addresses in a considered manner the challenge of providing infill medium-density housing in a Heritage Conservation Area, while being not out of character with the area"</i>.</p>
<p><b><u>Inaccuracy of 3D streetscape perspective</u></b> The 3D streetscape perspective prepared by the Applicant inaccurately identifies how the proposal will be viewed in relation to adjoining properties. The 3D perspective illustrates that the adjoining California Bungalow dwellings will be shielded from the subject site by trees that do not exist.</p> <p><b><u>Overshadowing</u></b> The June shadow study for 5 Ingram Street indicates the amount of overshadowing this development will cause which is not ideal.</p> <p><b><u>Privacy</u></b> The windows at the higher level of the building will provide opportunities for direct sightlines into windows at 5 Ingram Street. Can these windows be obscured or opaque glass?</p>	<p>It is acknowledged that the 3D perspective drawing prepared by the Applicant does not accurately reflect the relationship of the proposed built form to the existing built form on adjoining properties. This assessment has not exclusively relied upon the 3D perspective prepared.</p> <p>The proposed overshadowing has been assessed against the relevant solar access provisions contained within the Randwick Comprehensive DCP 2013 and 2023. The proposal satisfies the required solar access requirements for neighbouring properties.</p> <p>A condition of consent has been imposed requiring first floor windows alongside boundaries with sill heights of less than 1.6m to be fixed with opaque glazing.</p>

- 9 Ingram Street, Kensington



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Issue	Comment
<p><b><u>Heritage Character</u></b></p> <p>The submission raises concern that the proposal will have an impact on the heritage character of the area as the proposed form and design does not align with the predominant single storey, Federation and Inter-War housing.</p>	<p>The application was referred to Council's heritage planner for comment who raised no objection subject to conditions of consent. Council's heritage officer notably stated; <i>"The proposal for a dual occupancy adopts an appropriate contemporary style. It is not feasible or perhaps even possible that the proposed development would mimic the established gracious single-storey forms and styles. Rather, it addresses in a considered manner the challenge of providing infill medium-density housing in a Heritage Conservation Area, while being not out of character with the area"</i>.</p>
<p><b><u>Minimum frontage width</u></b></p> <p>Under Council's current planning controls, clause 4.1C of the Randwick Local Environmental Plan 2012 permits development consent for a dual occupancy (attached) in the R2 Low Density Residential zone on a lot size that is at least 450m<sup>2</sup>. The minimum frontage width required for a dual occupancy (attached) is 15m. However, it is important to note, that to be able to potentially subdivide a greater land size and frontage width is required.</p>	<p>The subject site has a frontage of 15.24m and thus satisfies the minimum 15m lot width requirement specified under the Randwick Comprehensive DCP 2013 and 2023.</p> <p>The subdivision of the subject site was removed from the application during the assessment process.</p>
<p><b><u>Torrens Title subdivision</u></b></p> <p>Under Clause 4.1 of the Randwick LEP 2012 the minimum subdivision requirements are indicated on the lot size map. The submission notes that the proposal does not comply with these requirements.</p>	<p>As above, the subdivision of the subject site was removed from the application during the assessment process.</p>

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

### 6.2. SEPP (Resilience and Hazards) 2021

#### Chapter 4 - Remediation of Land

The subject site has been a vacant block of land within an established residential area for a significant period of time.

The proposal relates to the construction of a dual occupancy, ensuring the continued use of residential zoned land for residential purposes. An inspection of the site has not revealed any land uses that suggest contamination of the land has occurred. No significant risk is posed and therefore under Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered suitable for the continued use as attached dwellings.

### 6.3. SEPP (Biodiversity and Conservation) 2021

#### Chapter 2 – Vegetation in non-rural areas

Chapter 2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 relates to the clearing of vegetation in non-rural areas.

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

### 6.4. Randwick Local Environmental Plan 2012 (LEP)

The application has been assessed against the provisions of the Randwick Local Environmental Plan (LEP) 2012 which applied at the time the application was formally lodged to Council.

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community within a low density residential environment.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.5:1 (344.8m <sup>2</sup> )	0.59:1 (413.3m <sup>2</sup> )	No
Cl 4.3: Building height (max)	9.5m	8.5m	Yes

#### 6.4.1. Clause 4.6 - Exceptions to development standards

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

#### 6.4.2. Clause 5.10 - Heritage conservation

The subject is not identified as containing or adjoining a heritage item. However, the site is located in the West Kensington Heritage Conservation Area.

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

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

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

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

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

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.5:1 (344.8m <sup>2</sup> )	0.59:1 (413.3m <sup>2</sup> )	68.5m <sup>2</sup>	19.86%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:

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

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

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

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

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

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

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

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

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

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

- *The proposed built form is consistent with that contemplated by the suite of LEP and DCP controls. The proposal consistently or outperforms the LEP height limit and complies with the DCP site coverage of front, side and rear setback controls. The proposal is also compliant with the private open space and landscaping controls, which adds further weight to demonstrate that the extent of the built form and density is in accordance with the controls for future development in this area.*
- *Both of the proposed dwellings are of a high-quality design with open plan layouts, pleasant outlooks, well-sized rooms, access to sunlight, daylight, ventilation, storage, on-site parking and private open space areas.*
- *The development will also be consistent and compatible with the current FSR standard of 0.6:1, noting the DA was lodged prior to these controls. The FSR variation is thereby considered to be reasonable in such circumstances.*

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

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

- *The proposed development provides for articulated and modulated façades. The incorporation of a variety of materials, finishes and indentions reflects the function of the building. It represents a contemporary design that makes a positive contribution to the streetscape character of Ingram Street.*



- *The articulated nature of the built form allows for solar access, daylight and cross-ventilation to both dwellings, notwithstanding the FSR variation.*
- *The building is articulated not unreasonably to add to the bulk and scale of the development. Landscaping is provided to soften the built form around the perimeter of the site.*

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

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

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

- *There are no heritage items located within the vicinity of the subject site. The nearest heritage item is well separated to the south (addressed to Lenthall Street).*
- *The proposed design has been sensitively designed in the conservation area, as evidenced by the montage and the supporting statements in the accompanying Heritage Impact Statement by Archnex.*

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

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

- *The lack of external impact on surrounding properties in regard to overshadowing, privacy and view loss/visual bulk confirms that the extent of the built form is appropriate for the site.*
- *The removal of the additional FSR beyond what is permitted would not result in an appreciable benefit to surrounding properties.*
- *In this regard, it is confirmed that both adjoining properties will continue to receive well in excess of 3 hours of solar access between 8am and 4pm on June 21. The side and rear setbacks also maintain the outlook for both adjoining neighbours whilst reiterating that there is no residential neighbour to the rear.*
- *The ground and 1<sup>st</sup> floor setbacks are far greater than required by the DCP, which fragments the built form and reduces the apparent bulk when viewed from adjoining properties. Both neighbouring properties have limited side-facing windows towards the site, whilst each also has a driveway adjoining the site. The spatial separation achieved by these factors is far greater than anticipated by the controls, reducing the effect of the visual bulk (and proposed FSR variation).*
- *Compliance with the wall height and overall height standards also ensures that the proposed FSR variation will not be responsible for any view impacts.*

#### Assessing officer's comment:

The Applicant's written request has adequately demonstrated that despite the variation to the FSR standard, the proposal remains compliant with the objectives of Clause 4.4. Although the proposal must be assessed under the FSR standard which applied at the time of lodgement (0.5:1), the proposal notably complies with the current FSR of 0.6:1 (this is further discussed below). As such, the overall bulk and scale of the proposal is reflective of the built form that is currently achievable on the site.

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

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

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

- *The current FSR standard (post-DA lodgement) is 0.6:1. The proposed FSR would comply with such FSR, representing the desired future character. Such a factor is considered to be legitimate environmental planning grounds. The temporary variation associated with the subject development is similar to Council's granting of lot size variations submitted before September 1, 2023. In this regard, the Council have granted approval to lot sizes less than the pre-September 1, 2023 control (400sqm) on the basis that the lot sizes would comply with the post-September 1, 2023, control (275sqm).*
- *The proposal retains substantially greater than 3 hours of solar access between 8am and 4pm to both adjoining properties with the north-facing living and private open space of 5 and 9 Ingram Street. Such an outcome demonstrates that additional FSR can be accommodated on this site and in this context.*
- *The proposed built form is consistent with that contemplated by the suite of LEP and DCP controls. In this regard, the proposal is consistent with the LEP height limit and complies with the DCP site coverage front, side and rear setback controls. The proposal is also compliant with the private open space and landscaping controls, which adds further weight to demonstrate that the extent of the built form and density can be accommodated on the subject site.*
- *The high-quality nature of the design in the conservation area, which provides for a substantial degree of articulation and architectural merit, is also considered to contribute to the above points of justification.*
- *The above points area also considered to achieve the objectives of the FSR standard whilst also maintaining consistency with the R2 Low-Density Residential zone and objectives.*

Assessing officer's comment:

Although most of the reasons provided with the Applicant's written request outline the overall benefits of the development, these reasons are not sufficient planning grounds that justify contravention to the FSR development standard. Nevertheless, the Applicant's written request does state a sufficient environmental planning ground; *the current FSR standard (post-DA lodgement) is 0.6:1. The proposed FSR would comply with such FSR, representing the desired future character.*

Currently, clause 4.4A of the Randwick LEP 2012 affords dual occupancies (attached) within the R2 zone a maximum FSR of 0.6:1 if the site area is greater than 600m<sup>2</sup>. As the subject site is 689.6m<sup>2</sup> in area, the proposed dual occupancy (attached) development would be afforded a maximum FSR of 0.6:1, representing a maximum GFA of 413.76m<sup>2</sup>. However, as the application was lodged before the gazette of clause 4.4A of the Randwick LEP 2012, the application must be assessed against the FSR standard of 0.5:1.

Considering the proposal complies with the current FSR standard, strict compliance with the FSR standard that applied at the time of lodgement is unreasonable in the circumstances. If the application was lodged after 1 September 2023, the proposal would comply with the FSR standard of 0.6:1 and would not require a clause 4.6 variation. Therefore, the overall form and scale of the proposal is in keeping with the desired future character of the area.

In conclusion, the Applicant's written request has adequately demonstrated that there is a sufficient environmental planning ground to justify contravening the development standard.

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

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

**Assessment against objectives of floor space ratio standard**

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

### **Assessment against objectives of the R2 Low Density Residential zone**

The objectives of the R2 zone are:

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

#### Assessing officer's comment:

The proposed development will provide for the housing needs of the community within a low density residential setting and will be compatible with the desired future character of the area, demonstrated by the fact that the proposal complies with the current FSR afforded to the site. As will be addressed within this report, the proposal protects the residential amenity of surrounding properties.

Therefore, the development is consistent with the objectives of the floor space ratio standard and the R2 low density residential zone and will be in the public interest.

#### **4. Has the concurrence of the Secretary been obtained?**

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

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

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

*Is there public benefit from maintaining the development standard?*

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

### **Conclusion**

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

## **8. Detailed Assessment**

### **8.1. Randwick Comprehensive DCP 2013 and 2023**

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

Council has commenced a comprehensive review of the 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. While the subject application was lodged prior to 1 September 2023, there are no savings provisions applicable to the new DCP and therefore 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	During the assessment process, the Randwick Comprehensive Planning Proposal (RCCP) was gazetted. Although the R2 zoning of the site remains unchanged, the changes to the Randwick LEP 2012 include the addition of Clause 4.4A which affords dual occupancy developments within R2 zoned land with a maximum FSR of 0.6:1. This assessment report has taken into consideration this change to FSR.
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 and 2023. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development represents an infill development on substantially vacant land. The proposal adopts building forms and materials that are generally compatible with the building stock and character of the area.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

### 9.1. Discussion of key issues

### Floor Space Ratio

As previously noted within part 7.1 of this report, the proposal seeks variation to the maximum permissible FSR standard of 0.5:1 which applied at the time of lodgement. Currently, clause 4.4A of the Randwick LEP 2012 affords dual occupancies (attached) within the R2 zone a maximum FSR of 0.6:1 if the site area is greater than 600m<sup>2</sup>. As the subject site is 689.6m<sup>2</sup> in area, the proposed dual occupancy (attached) development would be afforded a maximum FSR of 0.6:1, representing a maximum GFA of 413.76m<sup>2</sup>. However, as the application was lodged before the gazette of clause 4.4A of the Randwick LEP 2012, the application must be assessed against the FSR standard of 0.5:1.

Considering the proposal complies with the current FSR standard, strict compliance with the FSR standard that applied at the time of lodgement is unreasonable in the circumstances. If the application was lodged after 1 September 2023, the proposal would comply with the FSR standard of 0.6:1 and would not require a clause 4.6 variation. Therefore, the overall form and scale of the proposal is in keeping with the desired future character of the area.

Reference should be made to part 7.1 of this report for further analysis.

### Site coverage

Part 2.34, control i) of the Randwick Comprehensive DCP 2023 requires development on lots greater than 601m<sup>2</sup> to not exceed a maximum site coverage of 45% of the site area. The proposed development seeks a site coverage of 337.75m<sup>2</sup>, representing 48.9% of the site area. It should be noted that 63.36m<sup>2</sup> of site coverage is generated by the existing rear stables.

The site coverage generated by the proposed dual occupancy equates to 274.39m<sup>2</sup>, representing 39.7% of the site area. The proposed dual occupancy notably complies with the current FSR standard of 0.6:1 afforded to the site and thus cannot be considered as an overdevelopment of the site. Additionally, the variation proposed to the site coverage is primarily a result of the proposed conversion of the rear stables into a plant room and rear alfresco area. Reference is made to the definition of site coverage specified under Section 2.4 of the Randwick Comprehensive DCP 2023.

*“Site coverage”, for development, does not include any of the following:*

- (a) an access ramp,*
- (b) any part of an awning, blind or canopy that is outside the outer wall of a building,*
- (c) a balcony, deck, patio, pergola, terrace or verandah **attached** to the dwelling that is not enclosed by a wall higher than 1.4m above the floor level,*
- (d) the eaves,*
- (e) a driveway,*
- (f) a fence or screen,*
- (g) a pathway or paving,*
- (h) a rainwater tank that is attached to the dwelling,*
- (i) a swimming pool or spa pool.*

Alfresco areas can only be excluded from site coverage if they are attached to the dwelling. Therefore, the proposed conversion of the existing rear stables into a detached alfresco area must be included in site coverage calculations. If these alfresco areas were attached to the dwelling, the proposal would comply with the maximum site coverage afforded to the site.

In assessing the merits of the proposed variation, it is important to consider the objective of the Randwick Comprehensive DCP site coverage control, which states;

- *To ensure new development and alterations and additions to existing dwellings reserve adequate unbuilt upon areas for the purpose of private open space, deep soil planting, permeable surfaces and ancillary development.*

The following comments are provided in response to the above objective:

- Both dwellings within the dual occupancy are provided with private open space areas that far exceed the minimum requirements specified under the Randwick Comprehensive DCP (refer to DCP compliance table in Appendix 3).



- The proposal provides 211.34m<sup>2</sup> of the site as deep soil area, with a further 33.3m<sup>2</sup> of permeable surfaces provided in the form of grasspave driveways. In total, permeable surfaces occupy 35.47% of the site area. New trees and plantings are proposed throughout the subject site.
- The proposed dual occupancy well exceeds the minimum 8m rear setback requirement specified for the site.
- A number of ancillary structures can be accommodated within this site. This is demonstrated by the fact that the proposal includes an attached deck, swimming pool, detached alfresco area and plant room for each dwelling.

Based on the comments above, the proposal has satisfied the overall objective of the Randwick DCP site coverage control. Therefore, considering the proposal complies with the current FSR standard of 0.6:1 and will allow for the retention and redevelopment of the dilapidated historical stables, variation to the site coverage control is considered acceptable on merit.

#### Deep-soil area

Part 2.5, control i) of the Randwick Comprehensive DCP 2023 requires development on lots greater than 601m<sup>2</sup> to provide a minimum of 45% of the site area as deep soil permeable surfaces. The submitted calculation plan indicates that the proposed deep soil area is provided to 244.64m<sup>2</sup> or 35.47% of the site area. However, 33.3m<sup>2</sup> of the deep soil area identified includes the grasspave driveways. Therefore, only 211.34m<sup>2</sup> of deep soil area (30.6% of the site area) that is capable of accommodating tree and vegetation plantings has been provided. It is noted that the deep soil requirement under the 2013 RDCP required a minimum deep soil area of 35% which the applicant has aimed to achieve, however the current control requires a minimum of 45%.

The proposed grasspave driveway will allow for stormwater infiltration, minimising the extent of stormwater runoff from the site. This satisfies the following key objective of the Randwick Comprehensive DCP deep soil area control:

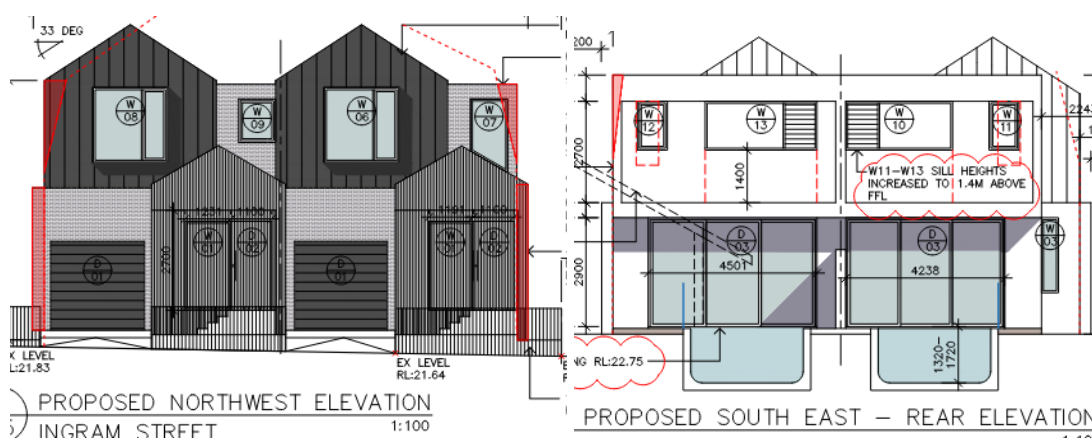
- *To assist with stormwater infiltration and reduction of overland flow.*

Furthermore, the grasspave driveways satisfy a recommendation made by Council's Heritage Planner who advised that "the hardstand parking area forward of the dwelling be ameliorated with soft open-style permeable paving." Reference should be made to the Heritage referral in Appendix 1 of this report. It is also noted that the rear stables footprint equates to approximately 9.34% of the site area, and the readaptation of the stables does restrict the landscaping on site.

Therefore, considering the proposed dual occupancy complies with the current FSR standard of 0.6:1 and allows for the retention and reuse of the existing stables, the proposed deep soil area is considered acceptable on merit. The 33.3m<sup>2</sup> of grasspave driveways excluded from the calculation in this assessment still allow for stormwater infiltration, thereby satisfying a key objective part 2.4 of the Randwick Comprehensive DCP.

#### Side setback

The subject site provides an allotment width greater than 12m, and therefore the minimum side setback required by part 3.3.2 of RDCP 2023 is 1.2m for a height up to 4.5m, increasing to 1.8m for a height of up to 7m. Generally the development has a maximum height of 7m to the external façade/wall of the building. The majority of the proposal complies and provides a greater setback than the minimum 1.2m and 1.8m requirement. However, minor variations are sought and the garage of dwelling 7A and entry foyer of dwelling 7B are only setback 900mm. The extent of the proposed variation to the side setback can be seen in Figures 15 and 16 below:



**Figure 15:** extent of variation at front shown in red



**Figure 16:** Extend of variation at rear shown in red

The proposed design includes staggered wall planes and setbacks along the side boundaries, with the development proposing for the following setbacks:

North-eastern side setbacks: 0.9m, 5.91m, 1.2m and 2.243m at ground level,  
1.2m, 5.091m, and 2.22m at first floor level.

South-western Side setbacks: 0.9m, 1.2m, 3.13m and 1.5m at ground level,  
1.2m, 3.13m and 1.5m at first floor level.

As such, the proposal provides for setbacks in excess of the minimum requirements for portions of the development, and creates a highly articulated building façade along the side elevations and as viewed from the front and rear.

Despite the variation proposed, the proposed setback of the garage and entry foyer to the north-eastern and south-western side boundaries, and minor variations at the first floor level, respectively are considered acceptable for the following reasons:

- The variation to the 1.2m setback is limited to a 4.9m - 6.6m portion of the ground floor, with the majority of the ground floor and the entirety of the first floor compliant with the 1.2m setback requirement. The minor variation to the 1.8m setback at first floor level is offset by the generous setbacks provided in centre and rear, providing recessed and protruding elements to minimise the massing of the development.
- The variation proposed helps create a well-articulated side elevation, reducing the visual impact of the building, and the proposal maintains a two-storey presentation from all elevations.
- The amenity of neighbouring properties is not compromised by the proposed variations, noting that the shadow diagrams demonstrate that the adjoining properties receive the minimum amount of direct solar access. Additionally, no windows are proposed to the non-complaint portions within the required setback, ensuring no privacy impacts to adjoining properties.
- The proposed 900mm side setback at the front ground floor level is not incompatible with the streetscape with many dwellings located along Ingram Street exhibiting a similar setback.

For the reasons above, variation to the side setback control for a portion of the dual occupancy development is considered acceptable on merit.

#### Garage configuration and design

The proposed garages include a parapet wall above the garage entry that measures 1.5m in height. Part 6.5, control vii) of the Randwick Comprehensive DCP 2023 states that parapet walls above the garage entry are not to exceed 600mm, to minimise the visual bulk of the garage.

Variation to the abovementioned control is considered acceptable as the parapet walls assist in the creation of a well-articulated front façade that reduces the visual impact of the proposal to Ingram Street. This is achieved through the recessed setback of the garage parapet wall from the entry

foyer of the dwelling as well as different materials and colours between the ground and first floor. This can be seen in the 3D perspective prepared by Justin Long Design (see Figure 17 below).



**Figure 17:** Extract of 3D perspective prepared by Justin Long Design.

Consideration should also be given to the objectives of the Randwick DCP car parking and access controls, which are as follows:

- *To ensure car parking and access facilities do not visually dominate the property frontage or streetscape.*
- *To ensure parking facilities are integrated with the architectural expression of the dwelling as an integrated element.*
- *To minimise hard paved surfaces occupied by driveways and parking facilities, and maximise opportunities for deep soil planting and permeable surfaces for stormwater infiltration.*
- *To ensure the location and design of parking and access facilities do not pose undue safety risks on building occupants and pedestrians.*
- *To ensure the location and design of parking and access facilities do not adversely impact on the amenity of neighbouring properties.*

The proposed parapet walls above the garage integrate with the architectural expression of the dwelling, with the recessive design reducing the visual dominance of the garage to the streetscape. The variation proposed to the parapet wall height has no bearing on hard paved surfaces, safety or the amenity of neighbouring properties.

Therefore, as the proposed development complies with the objectives of the Randwick DCP car parking and access control, variation to part C1 6.5, control vii) is considered acceptable on merit.

## 10. Conclusion

That the application to the partial demolition of existing stables at the rear of the site and construction of a dual occupancy with swimming pools and associated site works be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013 and 2023
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed development will provide for the housing needs of the community within a low density residential setting and will be compatible with the desired future character of the area

- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape

The following non-standard conditions have been included within the conditions of consent:

***Amendment of Plans & Documentation***

2. *The approved plans and documents must be amended in accordance with the following requirements:*
  - a. *All side and rear boundary fencing is restricted to a maximum height of 1.8m from existing ground level.*
  - b. *The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:*
    - *W11 – Southwest elevation*
    - *W12 – Northwest elevation*
    - *W13 – Northwest elevation*
  - c. *The landscape plan prepared by A Total Concept, (Drawing L/01, Revision A) is to be amended to reflect the new site and landscape plan layout shown on Plan A09, Revision D, prepared by Justin Long Design, dated 18.04.2024.*

## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Heritage planner

##### **The Site**

*The subject site is known as 7 Ingram Street, Kensington and located on the south side of the street. It has a legal land parcel identity as Lot 37 DP 5759. The site is regular in shape and relatively flat, with a total area of 689.6m<sup>2</sup>. It has a 15.24m north frontage to Ingram Street, side boundaries of 45.515 along the east and west sides, and a rear south boundary of 15.24m.*

*The subject site is located within a residential area and surrounded by a mix of one and two-storey detached and attached dwellings and townhouses of varying architectural styles.*

*The site is not a heritage item nor is it in the vicinity of any individually listed heritage item. However, it is within the West Kensington Heritage Conservation Area (HCA) (C4). This HCA is listed in Schedule 5 of the Randwick Local Environmental Plan (LEP) 2012 as an area of local heritage significance. It is generally bounded by Dowling Street to the west, Todman Avenue to the north, and the Australian Golf Course to the south. In summary, its significance consists in its geometry of subdivision and street formation, vistas and views, and an established development character, largely comprising a streetscape scale of single-story, interwar domestic architecture of masonry construction with tiled and slated roofing.*

##### **Background**

*A previous DA/112/2021 for this substantially vacant site was lodged at Council in March 2021. The proposal was for the construction of a two-storey attached dual occupancy residence, with two carports at the front side and two swimming pools at the rear. It also involved the conversion of the existing rear outbuilding/stables into a studio. It proposed landscaping, tree removal and associated works as necessary. It also proposed a variation to FSR of the RLEP 2012, for this Heritage Conservation Area.*

*This former application (DA/112/2021) was withdrawn on 4 August 2021 due to a Randwick City Council Flood Report of 28 March 2023. Concerns pertained to the base levels for car-parking, with an indicated minimum floor planning level of 22.68m AHD. Consequently, the new application has been redesigned to comply with this requirement, and it now incorporates the garage spaces within the dwelling, designed at an appropriate elevation, but with a reduced front setback.*

*Notably, it also now proposes Torrens title subdivision for the two dwellings.*

##### **Proposal**

*The new and current proposal is for two semi-detached dwellings of two-storeys, on a Torrens title subdivision. Single garages, recessed from the front building line are provided to each dwelling, each with hard-stand driveway and crossover. The front setback has been reduced from the previous DA and a tree removal is proposed to the front side (Ingram Street).*

*The general presentation of the proposed dwellings is in gable formation, and in a combination of utilitarian fabric – masonry, timber and metal. It is designed to be in character with the historical connections to the equine use of the property as well as its connection to the semi-rural presentation of the extensive parklands. The existing stables at the rear of the site are to be partially demolished and adaptively reconfigured to accommodate an alfresco outdoor area and shed/pool equipment storeroom for each dwelling. Swimming pools are proposed for the rear yard of each dwelling.*

##### **Submission**

*For the purposes of this Development Application the following documentation is provided:*

- *The proposed subdivision plan by Justin Long Design, dated as 27 April 2023, (and received by Council 26 May 2023)*



- *A full set of architectural drawings (residence and former stables) by Justin Long Design, dated as 27 April 2023, (and received by Council 26 May 2023)*
- *Landscape plans) by Justin Long Design, dated as 27 April 2023, (and received by Council 26 May 2023)*
- *A schedule of material and finishes by Justin Long Design, dated as 27 April 2023, (and received by Council 26 May 2023)*
- *A set of photo montages by Justin Long Design, dated as 27 April 2023, (and received by Council 26 May 2023)*
- *A professionally prepared and highly detailed Statement of Environmental Effects by ABC Planning, Surry Hills NSW, dated as April 2023 (and received by Council 26 May 2023)*
- *A professionally prepared Statement of Heritage Impact, prepared Archnex Haberfield NSW, dated as April 2023 (and received by Council 26 May 2023)*

### **Controls**

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

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

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

### **Comments**

- *From a heritage perspective this proposal essentially represents an infill development on substantially vacant land.*
- *The only built element on site is the historical stables building at the rear boundary of the property, and with some of its footprint extending into the neighbouring property at number 5 Ingram Street. This neighbouring portion is currently used as a studio.*
- *While the site is a relatively deep land parcel for a sufficient built footprint, it is encumbered by its width in terms of the minimum required dimension for subdivision. This means that the both the frontage dimension (7.62m as opposed to 12m) as well as the requisite square meterage of site (344.8m<sup>2</sup> as opposed to 400m<sup>2</sup>, i.e. a 13.8% variation) are both short of requirement.*
- *This heritage referral therefore assesses the proposal only in terms of its presentational merits as a pair of semi-detached dual occupancy houses. Notably, the land parcel is a substantially vacant lot, and this referral assumes that an un-subdivided dual occupancy is permissible on the subject site. It deems however that the question of Torrens title subdivision is more properly within the remit of Council planning.*
- *The proposal for a dual occupancy adopts an appropriate contemporary style. It not feasible or perhaps even possible that this proposed development would mimic the established gracious single-story forms and styles. Rather, it addresses in a considered manner the challenge of providing infill medium-density housing in a Heritage Conservation Area, while being not out of character with the area.*
- *The dual occupancy presents to Ingram Street in a gable formation that relates appropriately to historical forms in semi-rural spaces. And with a selection of utilitarian fabric and finishes in brickwork and metal, as well as appropriate colours. It presents as*

*an acceptable barn-like design, that is well-articulated at the front and side facades, and with high quality fine-grain architecture.*

- *It is particularly noted that the garaging spaces are set well back from the front façade and the building height of the principal building is below the acceptable limit.*
- *However, it is advised that the hardstand parking area forward of the dwelling be ameliorated with soft open-style permeable paving.*
- *Provision of a contemporary-style design that incorporates a masonry/brickwork base and metal roof above as presented to the street is supported. It adopts the street-facing gable and transverse building body configuration of the older building stock in the area and is generally compatible with the building stock and character of the area.*
- *The substantial retaining and redevelopment of the dilapidated historical stables is a positive aspect of the development, and such retention is recommended by the DCP. The 1920s stables building in bungalow style continues to inform the historical use of the site and its established height – while at variance with prescription - is an elemental given.*
- *The make-good of the stable elements will necessarily involve a detailed address of the component that is part of the adjoining property.*

### **Recommendation**

*From a heritage perspective the Development Application can be supported as a Dual Occupancy infill development on what is currently substantially vacant land. This referral does not address the issue of Torrens title subdivision in this case, which it considers to be more within the remit of Council Planning. However, the following conditions should be included in any consent:*

- *A digital photographic archival recording of the 1925 stables internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture.*
- *Details are to be submitted to Council as to the appropriate address of the adjoining stable area – especially the intersection of that element – at number 5 Ingram Street.*
- *Details are to be submitted to Council for the partial demolition and the adaptation of the existing stables footprint. These details must include an appropriate introduced division (consistent with fire rating requirements).*
- *New materials for making good and repairs of the stable element, are to match the existing in terms of colours, finishes, sizes, profile and properties. Details are to be submitted to Council for the recycling of materials in so far as possible.*
- *Original/historical unpainted surfaces are not to be painted.*
- *Existing mortar joints should be repointed if necessary, using a soft mortar mix.*
- *Details of any changes to the proposed schedule of materials colours and finishes are to be submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.*
- *In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act.*

## 1.2. Development Engineer

### ***Flooding Comments***

*The Planning Officer is advised that the subject development site is located adjacent to a localised low point and the Council commissioned West Kensington/Green Square Flood Study indicates the property will be subject to flooding during major storm events.*

*A flood report has been obtained by the Applicant which specifies the following max flood levels and other relevant information on the site.*

- ***The level of the 5% AEP (1 in 20yr) Flood is RL 22.06 AHD***
- ***The level of the 1% AEP (1 in 100yr) Flood is RL 22.18 AHD***
- ***Part of the property is located within a flood storage area.***

*A flood plot of the property for the 1% AEP Flood has also been obtained from Council's Wateride software (accessed 11/10/2023) to illustrate the nature of the flooding. See Picture 1 below.*

*The flooding is generally contained to the northern part of the site closest to Ingram street. It can also be seen that there is also a minor overland path in the adjoining drainage reserve at the rear of the site but this is predicted to be contained within the reserve and should not impact the site for all storm events up to and including the 1% AEP (1 in 100yr) storm event.*

**Picture 1 - Flood Depths 1% AEP Storm Event**



### Proposed Development

*Part B8 of Council's DCP specifies the following controls in relation to development on flood impacted properties.*

- *Open hardstand car spaces are to be provided at or above the level of the 5% AEP (1 in 20yr) flood being RL 22.06 in this instance.*
- *Garage floor levels are to be provided at or above the level of the 1% AEP (1 in 100yr) flood being RL 22.18 AHD in this instance.*
- *All habitable floor area is to be provided at or above the level of the 1% AEP (1 in 100yr) flood + 0.5m freeboard being RL 22.68 AHD in this instance.*

*The submitted plans indicate the following in response to the above flood controls.*

- *The level of the proposed hardstand car spaces in front of the garages are between RL 22.06 and RL 22.26 being in compliance with the DCP.*
- *The level of the proposed garages are indicated as RL 22.26 AHD being in compliance with the DCP.*
- *The level of the ground floor is indicated as RL 22.80 AHD being in compliance with the DCP.*

*The footprint of the proposed dwellings partially intrudes into the flood storage area however the flood depths are less here and the impact on flood storage is not considered to be significant. No objections are therefore raised and the proposal is acceptable from a flood management perspective.*

#### **Parking Comments**

*Under Part B7 of Council's DCP 2013 each of the proposed 4-bedroom residences is required to provide a minimum of 2-off-street car spaces. The submitted plans demonstrate compliance with this requirement with one space provided within the proposed garage while a second space is provided on the internal driveway immediately in front of the garages for each dwelling. The proposed garages and driveways **comply** with the minimum requirements of Australian Standard 2890.1:2004 in regards to size, grades, and overhead clearances.*

#### **Drainage Comments**

*On site stormwater detention is required for this development.*

*The Planning Officer is advised that the submitted drainage plans should not be approved in conjunction with the DA, rather, the Development Engineer has included a number of conditions in this memo that relate to drainage design requirements. The Applicant is required to submit detailed drainage plans to the Principal Certifier for approval prior to the issuing of a construction certificate.*

*The stormwater must be discharged (by gravity) either:*

- i. *Directly to the kerb and gutter in front of the subject site in Ingram street; or*
- ii. *To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system),*

#### **Undergrounding of power lines to site**

*At the ordinary Council meeting on the 27<sup>th</sup> 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 not** located within 15m of a mains power distribution pole on the same side of the street hence the above clause **is not** applicable.*



**Waste Management Comments**

*The Planning Officer is advised that the submitted waste management plan should not be approved in conjunction with the DA, rather, the Development Engineering has included a condition that details a new Demolition and Construction waste management to be provided prior to CC.*

*Each dwelling will require the provision of 3 x 240L bins. The submitted plans demonstrate compliance with this requirement.*

**Tree Management & Landscape Comments**

*The only vegetation remaining within this vacant development site is a 9m tall Archontophoenix cunnighamiana (Bangalow Palm, T2) halfway along the length of the northeast side boundary, which while protected by the DCP, is not significant in anyway and does not make any contribution to the landscape or environmental amenity.*

*As the plans show the footprint of the new dual occupancy being constructed less than 1 metre from its trunk, its retention will not be possible, and as a re-design is also not warranted, no objections are raised to its removal, as shown and sought, subject to suitable replacement planting being provided in its place.*

*Immediately to its east, wholly within the adjoining private property at no.9, adjacent the neighbours carport and common boundary is a mature, 15m tall Eucalyptus robusta (Swamp Mahogany, T1) which is an endemic species to this LGA that provides a food and benefit source for native fauna, so benefits the local environment, and has been assigned a 'High Priority for Retention' in the Arborist Report.*

*The southwest aspect of its crown overhangs the subject site, with its root plate assumed to also extend into the development site to a similar degree.*

*Council has a common law responsibility in these cases to ensure the tree is not affected in any way by these works, and while no specific threats have been discussed in the Arborist Report, a TPZ encroachment of 16% has been calculated, which is categorised as major in AS4970-2009: Protection of trees on development sites.*

*When scaled off the Proposed Ground Floor Plan, dwg A02, the closest works will be excavations for both the eastern wall of Dwelling A as well as the Above Ground OSD Basin (A) right on the common boundary, which are both offset around 2500mm from the centre of its trunk, which is right at its SRZ.*

*However, following discussions with Council's Development Engineer, it has been confirmed that this encroachment can be reduced to around a more acceptable 10% by re-designing the northern OSD Basin (A) so that a greater offset of around 5 metres is provided from its trunk, with the same applying to the drainage pipe and pit that are currently shown as extending past (to the east of its trunk), and as the rear deck will also be supported on localised pad footings only, the level of impact will be minimised.*

*Lastly, minor clearance pruning of some lower limbs from its western aspect will also be required to avoid conflict with the first floor, scaffolding and similar during works, and as this should be an amount that would not threaten the tree (10%), the relevant consent has been provided for this.*

**1.3. Building and Compliance Unit**

*No objections are raised subject to the imposition of conditions.*



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

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UPDATED CLAUSE 4.6 TO CLAUSE 4.4 OF RANDWICK LEP 2012

EXCEPTIONS TO DEVELOPMENT STANDARDS – **FSR VARIATION**

*Demolition of the existing structures on the site and construction of an attached dual occupancy development*

7 Ingram Street, Kensington

PREPARED BY

ABC PLANNING PTY LTD

April 2024

Updated Clause 4.6 (FSR)7 Ingram Street, Kensington**RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 variation request has been prepared to accompany the development application for demolition of existing structures and the construction of a 2-storey attached dual occupancy development at 7 Ingram Street, Kensington.

Clause 4.6 of the Randwick LEP 2019 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement in *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, and more recently the decision of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112.

It is noted in particular that in the SJD decision, the Court at [73] held that “it should be noted cl 4.6 of [LEP] is as much a part of [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.”

Clause 4.6 is reproduced in full immediately below, and each aspect of the clause is addressed in this written request.

**Clause 4.6 Exceptions to development standards**

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

**Development Standard to be Varied.**

The proposal seeks a variation to the development standard contained within clause 4.4 of the Randwick LEP 2012 – maximum FSR of 0.5:1 (GFA: 344.8sqm). Refer to the LEP FSR map in the figure below.

The proposed development will have a maximum FSR of 0.599:1 (GFA: 413.3sqm), representing a variation of 19.86% (68.5sqm) from the numerical FSR standard in the LEP.



Figure 11: Floor Space Ratio Map

**Justification for Contravention of the Development Standard**

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

**Assessment:** It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- **Temporary nature of the variation/desired future character**

It is noted that the subject application was lodged prior to September 1, 2023 (lodged April 2023) and that the FSR in Council's LEP (Amendment No. 9, which came into effect on September 1 2023) now permits an FSR of 0.6:1. On this basis, the subject application would have a compliant FSR, based upon the current planning controls. It is considered that the proposed FSR of 0.599:1 is consistent with the desired future character as it aligns with the FSR envisaged by the current controls.



The temporary variation associated with the subject development is similar to Council's granting of lot size variations submitted before September 1, 2023. In this regard, Council have granted approval to lot sizes less than the pre-September 1, 2023, control (400sqm) on the basis that the lot sizes would comply with the post-September 1, 2023 control (275sqm).

- **Streetscape**

As shown in the following photomontage, the proposed built form presents to Ingram Street as single-storey forms with recessed 2<sup>nd</sup> storeys whilst the façade composition is also articulated and fragmented. Using brick at the ground level with lightweight cladding above further contributes to a desirable and attractive streetscape outcome that will positively affect the Ingram Street streetscape. The following image also demonstrates the extent of built form that would be visible from the Ingram Street frontage and that the excess FSR beyond 0.5:1 would be indiscernible.



Figure 2: Excerpt of photomontage

- **Heritage**

The proposal is accompanied by a Heritage Impact Statement prepared by Archnex. The Statement supports the proposed design and built form in the conservation area in which the site is located, as shown below:

*The proposed development seeks to utilise the allotment as the site of a pair of semi-detached houses in a Modern style influenced design that incorporates a masonry/brickwork base and metal roof above as presented to the street. It adopts the street-facing gable and transverse building body configuration of the older building stock in the area and is compatible with the buildings stock and character of the area.*

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*The stables building is to be retained in part and utilised as outdoor alfresco area and pool plant for the proposed dwellings.*

*In my opinion the proposal will result in a compatible element within the streetscape of Ingram Ave and will introduce a contemporary infill element to the character of the West Kensington HCA, whilst retaining sufficient of the stables building to inform the historical use of the site. There will be no adverse effects of either of these elements on the conservation area at large, and the proposal is supportable in terms of potential heritage impacts.*

On this basis, it is considered that the proposed FSR variation will not generate any adverse heritage impacts.

- **Overshadowing**

The proposed additional FSR is not responsible for any adverse or unreasonable shadow impacts to the adjoining properties on either side at 5 and 9 Ingram Street or to the properties to the rear addressed to 21/21a, 23 and 25 Lenthall Street.

More than 3 hours of sunlight is available to the north-facing windows and rear private open space area of the adjoining dwellings to the east and west between 8am and 4pm on June 21.

Drawing A10 of the architectural plans confirms that No. 5 to the northeast is unaffected, whilst the property to the southwest at 5 Ingram Street shall retain solar access to its front north-west facing openings and to its rear yard for more than 3 hours. There is minimal impact to the properties to the rear addressed to Lenthall Street.

On this basis, it is confirmed that the additional FSR is not responsible for any adverse shadow impacts.

- **Visual Privacy**

The proposed design and layout minimise privacy impacts through the limitation of side-facing openings, particularly at the 1<sup>st</sup>-floor level. All primary living and open space areas are at ground level. The incorporation of the central indents to the floor plates also minimises side-facing windows, with only one first-floor side-facing bedroom (passive use) window on each side elevation. All other 1<sup>st</sup>-floor windows are non-habitable or are oriented to the street or rear yard, whereby an extensive separation distance exists to the neighbouring properties addressed to Lenthall Street (15-17m setback to the rear boundary).

On this basis, it is confirmed that the additional FSR is not responsible for any adverse visual privacy impacts.

- **Views**

The proposed FSR is provided within a built form that complies with the front, side, and rear setbacks whilst also being within compliant walls and overall heights. Furthermore, the site is not within the vicinity of any particular views of any note.

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On this basis, the proposed FSR is not responsible for adverse view impacts.

- **Building Envelope**

The proposed built form is consistent with that contemplated by the suite of LEP and DCP controls. The proposal is consistent with the LEP height limit and complies with the DCP site coverage and front, side and rear setback controls. In this regard, the 2-storey built form elements are setback to a greater extent than permitted, which reduces the bulk of the proposal. In particular, the rear setbacks of 14-16.7m to the 1<sup>st</sup> floor are well beyond the 8m numeric setbacks. It is noted that the built form protrudes further south than the adjoining dwellings. However, these dwellings are under-developed and could be reasonably be developed to a similar alignment as proposed. The rear setback also maintains sunlight, privacy and outlook for both neighbouring properties, noting that each property also has extensive outbuildings in their rear yard areas. The proposal is also compliant with the private open space and landscaping controls, which adds further weight to demonstrate that the extent of the built form and density can be accommodated on the subject site.

The above points are also considered to achieve the objectives of the FSR standard while maintaining consistency with the R2 Low-Density Residential zone objectives.

- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the FSR development standard in the LEP	
Objectives	Assessment
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	<p>The proposed built form is consistent with that contemplated by the suite of LEP and DCP controls. The proposal consistently or outperforms the LEP height limit and complies with the DCP site coverage of front, side and rear setback controls. The proposal is also compliant with the private open space and landscaping controls, which adds further weight to demonstrate that the extent of the built form and density is in accordance with the controls for future development in this area.</p> <p>Both of the proposed dwellings are of a high-quality design with open plan layouts, pleasant outlooks, well-sized rooms, access to sunlight, daylight, ventilation, storage, on-site parking, and private open space areas.</p> <p>The development will also be consistent and compatible with the current FSR standard of 0.6:1, noting the DA was lodged prior to these controls. The FSR variation is thereby considered to be reasonable in such circumstances.</p> <p>On this basis, the proposed FSR variation will not generate any inconsistency with this objective.</p>
(b) to ensure that buildings are well articulated and respond to environmental and energy needs,	<p>The proposed development provides for articulated and modulated façades. The incorporation of a variety of materials, finishes and indentions reflects the function of the building. It represents a contemporary design that</p>

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	<p>makes a positive contribution to the streetscape character of Ingram Street.</p> <p>The articulated nature of the built form allows for solar access, daylight and cross-ventilation to both dwellings, notwithstanding the FSR variation.</p> <p>The building is articulated not unreasonably to add to the bulk and scale of the development. Landscaping is provided to soften the built form around the perimeter of the site.</p>
<i>(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</i>	<p>There are no heritage items located within the vicinity of the subject site. The nearest heritage item is well separated to the south (addressed to Lenthall Street).</p> <p>The proposed design has been sensitively designed in the conservation area, as evidenced by the montage and the supporting statements in the accompanying Heritage Impact Statement by Archnex.</p> <p>On this basis, the proposed FSR variation will not generate any inconsistency with this objective.</p>
<i>(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.</i>	<p>The lack of external impact on surrounding properties in regard to overshadowing, privacy and view loss/visual bulk confirms that the extent of the built form is appropriate for the site.</p> <p>The removal of the additional FSR beyond what is permitted would not result in an appreciable benefit to surrounding properties.</p> <p>In this regard, it is confirmed that both adjoining properties will continue to receive well in excess of 3 hours of solar access between 8am and 4pm on June 21. The side and rear setbacks also maintain the outlook for both adjoining neighbours whilst reiterating that there is no residential neighbour to the rear.</p> <p>The ground and 1<sup>st</sup>-floor setbacks are far greater than required by the DCP, which fragments the built form and reduces the apparent bulk when viewed from adjoining properties. Both neighbouring properties have limited side-facing windows towards the site, whilst each also has a driveway adjoining the site. The spatial separation achieved by these factors is far greater than anticipated by the controls, reducing the effect of the visual bulk (and proposed FSR variation).</p> <p>Compliance with the wall height and overall height standards also ensures that the proposed FSR variation will not be responsible for any view impacts.</p> <p>On this basis, the objectives of the standard are met, notwithstanding the FSR variation.</p>
<b>Consistency with the objectives of the R2 Low-Density zone</b>	



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Objectives	Assessment
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a low-density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>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.</li> <li>To protect the amenity of residents.</li> <li>To encourage housing affordability.</li> <li>To enable small-scale business uses in existing commercial buildings.</li> </ul>	<p>The proposal is consistent with the objectives of the zoning as follows:</p> <ul style="list-style-type: none"> <li>The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area.</li> <li>The proposed height, bulk and scale are consistent with the character of the surrounding development.</li> <li>The proposal will not inhibit other land uses in the area that provide facilities or services to meet the day-to-day needs of residents.</li> <li>The proposal will not compromise the amenity of other residents in terms of privacy, solar access or views. The proposed floor layout has been designed to maintain mutual privacy between neighbours within the building and neighbouring properties.</li> <li>The proposal will not create any additional demand for infrastructure.</li> <li>The proposed development is considered suitable for the subject site.</li> </ul> <p>On this basis, the FSR variation will not generate any inconsistency with the zone objectives.</p>

Based on the above assessment, strict compliance with the LEP FSR standard is considered unreasonable and unnecessary in this instance.

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

**Assessment:** It is considered that there are sufficient environmental planning grounds to justify varying the FSR development standard, which includes:

- The current FSR standard (post-DA lodgement) is 0.6:1. The proposed FSR would comply with such FSR, representing the desired future character. Such a factor is considered to be legitimate environmental planning grounds. The temporary variation associated with the subject development is similar to Council's granting of lot size variations submitted before September 1, 2023. In this regard, the Council have granted approval to lot sizes less than the pre-September 1, 2023, control (400sqm) on the basis that the lot sizes would comply with the post-September 1, 2023, control (275sqm).
- The proposal retains substantially greater than 3 hours of solar access between 8am and 4pm to both adjoining properties with the north-facing living and private open

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space of 5 and 9 Ingram Street. Such an outcome demonstrates that additional FSR can be accommodated on this site and in this context.

- The proposed built form is consistent with that contemplated by the suite of LEP and DCP controls. In this regard, the proposal is consistent with the LEP height limit and complies with the DCP site coverage front, side and rear setback controls. The proposal is also compliant with the private open space and landscaping controls, which adds further weight to demonstrate that the extent of the built form and density can be accommodated on the subject site.
- The high-quality nature of the design in the conservation area, which provides for a substantial degree of articulation and architectural merit, is also considered to contribute to the above points of justification.
- The above points are also considered to achieve the objectives of the FSR standard whilst also maintaining consistency with the R2 Low-Density Residential zone objectives.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the FSR variation in this instance.

#### **Other Matters for Consideration**

*4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

**Assessment:** The above assessment demonstrates that the proposed FSR satisfies the objectives of the FSR standard and the R2 Low-Density Residential zone.

Furthermore, the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the minor FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:  
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

**Assessment:** The proposed FSR variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.



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The proposed FSR allows for the achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area in this conservation area.

The proposed FSR is, therefore, consistent with the State and Regional Policies, particularly urban consolidation principles, which seek to provide additional height and density near transport and established services.

### **Concurrence**

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated February 21, 2018, attached to the Planning Circular PS 18-003 issued on February 21 2018. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

#### *(b) the public benefit of maintaining the development standard*

**Assessment:** There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

#### *(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

**Assessment:** There are not considered to be any additional matters to consider beyond those discussed above

Generally, as to concurrence, for the reasons outlined above – and particularly having regard to the site-specific nature of this clause 4.6 variation request – there is nothing about this proposed FSR variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. No other relevant matters are requested to be considered before granting concurrence.

### **Conclusion**

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 7 Ingram Street, Kensington. It is requested to be looked upon favourably by the consent authority.



## Appendix 3: DCP Compliance Table

### 3.1 Section B General Controls

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>B1 Design</b>			
3.2 Site analysis	(i) Submit a site analysis with all DAs for a new building or external alterations or additions to an existing building.	A site analysis plan for the development has been submitted.	Yes
<b>B2 Heritage</b>			
2.1 Design and Character	<p><b>All Development</b></p> <p>(i) Development must demonstrate how it respects the heritage values of the heritage item or the heritage conservation area.</p> <p>(ii) Common elements and features of the streetscape are to be identified in a streetscape analysis and incorporated into the design.</p> <p>(iii) New development should be consistent with important horizontal lines of buildings in the streetscape, in particular ground floor levels and eaves lines, where appropriate.</p> <p>(iv) Large blank areas of brick or rendered walls should be avoided. Where this is not possible in the design, contrasting materials and treatments must be used to break up the expanse of wall.</p> <p><b>Heritage Items and Contributory Buildings</b></p> <p>(v) Street elevations and visible side elevations must not be significantly changed. Additions must be located to the rear or to one side of the building to minimise impact on the streetscape.</p> <p>(vi) The design of any proposed additions or alterations must complement the existing building in its scale, form and detailing. However, it should be possible to distinguish the new work</p>	<p>The subject site does not contain nor adjoin a heritage item. However, the site is located within the West Kensington Heritage Conservation Area.</p> <p>A Heritage Impact Statement has been submitted alongside the proposed development. The proposed works have been reviewed by Council's Heritage Planner who supports the proposal from a heritage perspective. Reference should be made to Appendix 1 for further comments.</p>	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>from the old, on close inspection, so that old and new are not confused of the boundaries/junctions blurred.</p> <p>(vii) All new work and additions must respect the proportions of major elements of significant existing fabric including doors, windows, openings and verandas.</p>		
2.4 Siting and Setbacks	<p>(i) Development must conform to the predominant front setbacks in the streetscape.</p> <p>(ii) Development must respect side setbacks and rear alignments or setbacks of surrounding development.</p> <p>(iii) Front and rear setbacks should be adequate to ensure the retention of the existing landscape character of the heritage item or conservation area and important landscape features.</p> <p>(iv) Any significant historical pattern of subdivision and lot sizes must be retained. Subdivision or site amalgamation involving heritage items or contributory buildings must not compromise the setting or curtilage of buildings on or adjoining the site.</p>	<p>The proposed development aligns with the average front setback of adjoining properties as illustrated within the site analysis plan.</p> <p>The proposed development is generally setback 900mm – 1,200mm from the side boundaries. These setbacks are in keeping with the surrounding developments.</p> <p>The proposed development notable complies with the minimum front and rear setbacks prescribed for low density residential areas under the Randwick Comprehensive DCP. Therefore, it is concluded that the setbacks proposed are appropriate for the West Kensington Heritage Conservation Area.</p> <p>No subdivision is proposed as part of this application.</p>	Yes
2.5 Detailing	<p><b>All Development</b></p> <p>(i) Only detailing which is known to have been original to your building is</p>	No detailing is proposed.	N/A

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>acceptable. Do not add what was never there.</p> <p><b>Heritage Items and Contributory Buildings</b></p> <p>(ii) Retain and repair original doors, windows, original sunhoods, awnings, gable detailing and other decorative elements to principal elevations. Original leadlight and coloured glass panes should be retained.</p> <p>(iii) Where original windows, doors and façade detailing have been removed and replaced with modern materials, consideration should be given to reconstructing original features.</p> <p>(iv) Authentic reconstruction is encouraged. Decorative elements must not be introduced unless documentary or physical evidence indicates the decorative elements previously existed. Undertake thorough research before attempting to reconstruct lost detail and elements.</p> <p>(v) Alterations and additions should incorporate new doors and windows which are compatible with the position, size, and proportions and detailing of original windows and doors.</p> <p>(vi) Alterations and additions should adopt a level of detailing which complements the heritage fabric and should be less elaborate than the original.</p>	<p>The only existing built form on the site is the rear stables. Council's Heritage Planner has reviewed the proposed works to the stables and has raised no objections subject to conditions of consent.</p>	<p>Yes, subject to conditions of consent.</p>
2.6 Materials, Finishes and Colour Schedules	<p><b>All Development</b></p> <p>(i) Materials for pathways and driveways must be consistent with the character of the heritage item or heritage conservation area.</p> <p><b>Heritage Items and Contributory Buildings</b></p>	<p>Council's Heritage Planner has reviewed the proposal and advised that the proposed materials and finishes are acceptable from a heritage perspective subject to conditions of consent.</p>	<p>Yes, subject to conditions of consent.</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(ii) Changes to materials on elevations visible from a public place are not favoured. Original face brickwork must not be rendered, bagged or painted. The removal of external brickwork skin is not supported.</p> <p>(iii) Matching materials must be used in repairing the fabric of external surfaces. In the case of new face brickwork, the colour and texture of the brick, the type of jointing and mortar colour should be carefully matched.</p> <p>(iv) New or replacement roof materials must match existing materials. Alternative materials may be considered appropriate to the architectural style of the building and the streetscape context, and must be submitted for approval.</p> <p>(v) Alterations and additions must use materials and colours similar to, or compatible with, the original material or colours.</p>		
2.9 Garages, Carports, Car spaces and Driveways	<p><b>All Development</b></p> <p>(i) Existing rear lane access or side street access must be utilised for carparking in preference to front access.</p> <p>(ii) Carparking structures are to be located to the side, or preferably to the rear of the building. Garages and carports must not be located forward of the building line.</p> <p>(iii) Open hard stand car spaces may be provided forward of the building line, but must be located adjacent to a side boundary, and generally not be greater than single car width.</p> <p>(iv) Existing building fabric, including verandahs and balconies, must not be altered to allow for the provision of a carparking structure or an open stand car space.</p>	<p>No existing parking structures are available on site. The proposal seeks to provide each dwelling within a dual occupancy with a single-width attached garage.</p> <p>The existing stables at the rear of the site will be retained and converted into an outdoor alfresco area and plant room.</p> <p>Council's Heritage Planner has raised no objections to garaging spaces. However, it has been advised that the hardstand parking area forward of the dwelling be ameliorated with soft open-style permeable paving. A condition of consent will be imposed.</p>	Yes, subject to conditions of consent.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> <li>(v) Open hard stand car spaces must not dominate the setting of the building in terms of loss of planting, fencing or retaining walls.</li> <li>(vi) Carparking structures are to be unobtrusive and must be of materials, form and details which harmonise with and do not obscure views of the building. They must not be made larger by the provision of a bulky pitched roof.</li> <li>(vii) Existing driveways constructed of two separate wheel strips contribute to the character of the streetscape and must be retained where possible.</li> <li>(viii) Large areas of concrete should be avoided and alternative materials such as pavers, gravel or permeable paving must be considered.</li> <li>(ix) Buildings housing original stables, coach houses and interwar motor garages should be retained and conserved wherever possible.</li> </ul>		
2.10 Fences	<b>All Development</b> <ul style="list-style-type: none"> <li>(i) New and replacement front fences must not obscure building facades. High solid front fences are not appropriate.</li> <li>(ii) New fence heights and form must be appropriate to the character of the heritage item, or to the heritage conservation area.</li> <li>(iii) Lych gates must not be provided unless there is evidence that they originally existed.</li> <li>(iv) Side fencing forward of the building line must be simple with a level of detail and of materials and height compatible with the heritage item, contributory building</li> </ul>	<p>The proposal includes a 1.2m high open paling front fence.</p> <p>Council's Heritage Planner has raised no objection to the proposed height and form of the fencing.</p> <p>None proposed.</p> <p>No side fencing is proposed forward of the building line.</p>	<p>Yes</p> <p>Yes.</p> <p>N/A.</p> <p>N/A</p>



DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>or heritage conservation area.</p> <p>(v) Side and rear boundary fences should be preferably of traditional timber construction or otherwise of masonry construction. Colorbond metal fences are not appropriate.</p>	The proposed fencing will be a mix of timber and masonry construction.	Yes
2.11 Gardens, Garden Elements and Swimming Pools	<p><b>All Development</b></p> <p>(i) Significant trees and landscape elements such as pathways, garden beds and structures must be retained.</p> <p>(ii) Large areas of hard paving are to be minimised.</p> <p>(iii) Garden and ancillary structures must be appropriate to primary buildings in terms of scale, style and materials.</p> <p>(iv) Swimming pools must be located at the rear of the property and where possible should retain important trees and areas of soft landscaping. Swimming pools must not result in significant changes to ground levels on the site.</p>	<p>As noted by Council's Landscape Officer, the only vegetation remaining within this vacant development site is a 9m tall <i>Archontophoenix cunnighamiana</i> (Bangalow Palm, T2) halfway along the length of the northeast side boundary, which while protected by the DCP, is not significant in anyway and does not make any contribution to the landscape or environmental amenity.</p> <p>The proposed development will minimise the extent of hardscape area and incorporate new landscaped and garden areas that are of a scale and style appropriate for the context of the site.</p> <p>Each dwelling within the dual occupancy is provided with a swimming pool that does not significantly alter the levels of the site. The tree required to be removed is not significant as stated by Council's Landscape Officer.</p>	<p>Yes</p> <p>Yes</p> <p>Yes.</p>
<b>B4 Landscaping and Diversity</b>			
3.1 Existing Vegetation and Natural Features	<p>(i) Maximise the retention and protection of existing vegetation including trees, shrubs and groundcover vegetation.</p> <p>(ii) Retain and incorporate existing natural features, such as cliffs and rock</p>	As previously stated, the only vegetation remaining within this vacant development site is a 9m tall <i>Archontophoenix cunnighamiana</i> (Bangalow Palm, T2) halfway along the length of the northeast side boundary, which	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>outcrops into the landscape design where possible.</p> <p>(iii) Retain and stockpile topsoil for reuse in the landscaped area.</p>	<p>while protected by the DCP, is not significant in anyway and does not make any contribution to the landscape or environmental amenity.</p>	
3.2 Selection and Location of Plant Species	<p>(i) Native species must comprise at least 50% of the plant schedule, incorporating a mix of locally indigenous trees, shrubs and groundcovers appropriate to the area and surrounds.</p> <p>(ii) Link, extend and enhance existing fauna and flora habitats through appropriate selection and location of plant species, where relevant.</p> <p>(iii) Where suitable, incorporate food growing areas as part of the landscape design.</p> <p>(iv) Select and locate plants to improve the environmental performance and living amenity.</p>	<p>66.6% (4 out of 6) of the new landscape species sought will be native species.</p> <p>Although the subject site is not located adjacent to any vegetation corridors, the proposed development provides for improved and enhanced landscaping through the inclusion of new native vegetation species on a substantially vacant block.</p> <p>There are ample landscaped areas provided throughout the site that are capable of being incorporated as food growing areas.</p> <p>The proposed landscaping integrates with the built form, creating attractive areas of private open space that improve living amenity.</p>	Yes
<b>B6 Recycling and Waste Management</b>			
4. On-going Operation	<p>(iv) Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street where possible.</p> <p>(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.</p> <p>(vi) Screen the waste storage facilities through fencing</p>	<p>The proposed waste storage areas are located within the side boundary of each dwelling within the dual occupancy. The bin storage areas will be screened from the streetscape.</p>	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.</p> <p>(vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step-free and unobstructed access to the collection point(s).</p> <p>(viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation.</p>		
<b>B7 Transport, Traffic, Parking and Access</b>			
3.2 Vehicle Parking Rates	<p>Dual occupancies: 2 spaces per dwelling house with 3 or more bedrooms.</p> <p><b>Note:</b> Tandem parking for 2 vehicles is allowed.</p>	<p>The proposal is required to provide two (2) on-site parking spaces for each dwelling.</p> <p>The submitted plans demonstrate compliance with this requirement with one space provided within the proposed garage while a second space is provided on the internal driveway immediately in front of the garages for each dwelling.</p>	Yes
3.7 Parking Layout Configuration and Dimensions	<p>i) An off-street car space must be a minimum of 2.4m by 5.4m long and comply with AS 2890.1.</p> <p>ii) Small car spaces as provided for in the Australian Standard are not permitted for dwelling houses, terraces, semi detached dwellings or attached dwellings.</p> <p>iii) Motor cycle parking spaces must be a minimum 2.5m by 1.2m and clearly marked.</p> <p>iv) Motor cycle spaces are to be designed and located so they are not vulnerable to being struck by maneuvering vehicles.</p> <p>v) Motor cycle spaces must be located on flat and even surfaces as they rely on side-stands to park.</p> <p>vi) In all development except dwelling houses, semi-</p>	<p>Council's Development Engineer has reviewed the proposal and notes that the proposed garages and driveways comply with the minimum requirements of Australian Standard 2890.1:2004 in regards to size, grades, and overhead clearances.</p>	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	detached dwellings, all vehicles must enter and exit in a forward direction. vii) Unless otherwise stated, development is to comply with the relevant Australian Standard and the RMS Guidelines for car parking layout, dimensions, aisle widths, grades, access requirements for different uses & users, driveway widths, service and delivery needs.		
<b>B8 Water Management</b>			
3 Stormwater Management	This section sets out objectives and controls relating to the management, collection and discharge of stormwater into the stormwater system.	Council's development engineer has reviewed the proposal and advised that the submitted drainage plans should not be approved in conjunction with the DA, rather, the Development Engineer has included a number of conditions in this memo that relate to drainage design requirements. The Applicant is required to submit detailed drainage plans to the Principal Certifier for approval prior to the issuing of a construction certificate.	Yes, subject to conditions.

### 3.2 Section C1 Low Density Residential 2023

DCP Clause	Controls	Proposal	Compliance
	<b>Classification</b>	Zoning = R2	
<b>2</b>	<b>Site planning</b>		
<b>2.4</b>	<b>Site coverage</b>		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% <b>601 sqm or above = 45%</b> *Site area is measured on the overall site area (not proposed allotment areas)	Max = 310.32m <sup>2</sup> (45%)  Proposed = 337.75m <sup>2</sup> (48.9%)	Refer to part 9.1 of this report for comments.
<b>2.5</b>	<b>Deep soil permeable surfaces</b>		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% <b>601 sqm or above = 45%</b> i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached	Min = 310.32m <sup>2</sup> (45%)  Proposed = 211.34m <sup>2</sup> (30.6%)  Trees capable of reaching a height of 8m have been proposed within the rear setback	The submitted calculation plan indicates that 244.64m <sup>2</sup> of deep soil area has been provided. However, the permeable

DCP Clause	Controls	Proposal	Compliance
	dwelling: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	of each dwelling.	driveways have not been included in the calculations within this assessment.  Refer to part 9.1 of this report for comments.
<b>2.6</b>	<b>Landscaping and tree canopy cover</b>		
	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	Proposed = 3 canopy trees, one in the front and two in the rear. And one street tree to be planted.	Acceptable.
	<b>Dual occupancies and semi-detached dwellings</b>		
	Calculated on the overall site area and must be evenly distributed between the pair of dwellings.		
	The front setback must contain at least one (1) tree per dwelling.	1 provided.	Acceptable given constraint site conditions of front of 7A.
<b>2.7</b>	<b>Private open space (POS)</b>		
	<b>Dual Occupancies POS</b>		
	451 to 600 sqm = 5m x 5m 601 or above sqm = 6m x 6m  POS satisfy the following criteria: <ul style="list-style-type: none"> <li>Situated at ground level (except for duplex)</li> <li>No open space on podiums or roofs</li> <li>Adjacent to the living room</li> <li>Oriented to maximise solar access</li> <li>Located to the rear behind dwelling</li> <li>Has minimal change in gradient</li> </ul> Includes landscaped areas, terraces, decks, paved surfaces and the like.	<b>Dwelling 7A</b> 11.5m x 7.5m.  <b>Dwelling 7B</b> 11m x 7m.	Complies.
<b>3</b>	<b>Building envelope</b>		
<b>3.1</b>	<b>Floor space ratio LEP 2012 = 0.5:1</b>	The proposal seeks to vary the 0.5:1 FSR standard which applies to the site at the time the application was lodged.	Variation sought – Refer to key issues section and Clause 4.6 variation assessment in this report.
<b>3.2</b>	<b>Building height</b>		
	<b>Building height LEP 2012 = 9.5m</b>	The proposed dual occupancy has a maximum building height of 8.5m.	Yes
	i) Habitable space above 1st floor level must be integrated into roofline	The proposal is a maximum of two	Yes



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DCP Clause	Controls	Proposal	Compliance																								
	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: <ul style="list-style-type: none"> <li>Topography</li> <li>Site orientation</li> <li>Lot configuration</li> <li>Flooding</li> <li>Lot dimensions</li> <li>Impacts on visual amenity, solar access, privacy and views of adjoining properties.</li> </ul>	storeys. 2.9m and 2.7m internal ceiling heights achieved with 400mm slab allocated.																									
<b>3.3</b>	<b>Setbacks</b>																										
<b>3.3.1</b>	<b>Front setbacks</b> 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"> <li>900mm for allotments with primary frontage width of less than 7m</li> <li>1500mm for all other sites</li> <li>Should align with setbacks of adjoining dwellings</li> </ul> iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.	The proposed development aligns with the average front setback distance of adjoining properties as illustrated within the site analysis plan prepared by Justin Long Architecture.	Yes.																								
<b>3.3.2</b>	<b>Side setbacks</b> <table border="1"> <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 &gt;4.5m to 7m</th> <th>Building heights &gt;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><math>0.9m + \frac{\text{building height} - 4.5m}{4}</math></td> <td><math>1.5m + 2 \times (\text{building height} - 7m)</math></td> </tr> <tr> <td>12m and above</td> <td>1.2m</td> <td><math>1.2m + \frac{\text{building height} - 4.5m}{4}</math></td> <td><math>1.8m + 2 \times (\text{building height} - 7m)</math></td> </tr> </tbody> </table> <small>Note: All building heights are measured from ground level (finished).</small>	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	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	The majority of the proposed development complies with the 1,200mm and 1,800mm side setback requirements.  Minor variations at first floor level and for the garage of dwelling 7A and the entry foyer of dwelling 7B which are setback 900mm from the side boundary.	Refer to key issues in part 9.1 of this report for comments.
Minimum side setbacks																											
Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m																								
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<b>3.3.3</b>	<b>Rear setbacks</b> 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"> <li>Existing predominant rear setback line</li> <li>Reasonable view sharing (public and private)</li> <li>Protect the privacy and solar access</li> </ul> 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	25% of allotment depth = 11.37m  Min rear setback = 8m  Proposed rear setback = 15.09m – 16.73m.  As per 3.3.3 iii), swimming pools may encroach into the rear setback so far as they comply with other relevant provisions.	Complies. As demonstrated in Part 7.5 Swimming Pools and Spas of the Randwick Comprehensive DCP 2013 addressed in this report, the proposed swimming pool is compliant																								

DCP Clause	Controls	Proposal	Compliance
	<p>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"> <li>- Compatibility</li> <li>- POS dimensions comply</li> <li>- minimise solar access, privacy and view sharing impacts</li> </ul> <p><i>*Definition: predominant rear setback is the average of adjacent dwellings on either side and is determined separately for each storey.</i></p> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings.</p>		<p>with the relevant controls. Therefore, the encroachment of the swimming pool into the rear setback can be supported.</p>
<b>4</b>	<b>Building design</b>		
<b>4.1</b>	<b>General</b>		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> <li>• articulated to enhance streetscape</li> <li>• stepping building on sloping site,</li> <li>• no side elevation greater than 12m</li> <li>• encourage innovative design</li> <li>• balconies appropriately sized</li> <li>• Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension).</li> </ul>	<p>The proposed alterations and additions integrate with the existing form and design of the building. The existing topography of the site will be retained.</p> <p>The side elevations have been divided into sections and bays in order to avoid the creation of any unarticulated side elevation walls greater than 12m in length.</p>	Yes.
<b>4.2</b>	<b>New semi-detached and dual occupancy (attached) dwellings</b>		
	<p>i) Architectural design must respect and enhance character of streetscape</p> <p>ii) Front facade designed to soften visual dominance of parking facilities:</p> <ul style="list-style-type: none"> <li>• Balconies above garages</li> <li>• Windows/ doorways on front elevation so garage entries are not sole façade elements</li> <li>• Recess garage entries below cantilevered elements</li> </ul> <p>iii) Predominant built form positioned towards shared boundary to reduce visual bulk</p> <p>iv) Main entrance recessed maximum 2m behind the front facade alignment</p> <p>v) Single car width garage to primary street</p> <p>vi) For corner allotment, each dwelling should independently address a street frontage</p> <p>vii) Maximise landscape planting and deep soil area</p> <p>viii) Incorporate PV rooftop solar and battery storage</p> <p>ix) Dwellings are encouraged to be 100% electric (no natural gas)</p>	<p>Each dwelling is provided with a single-width garage.</p> <p>The proposed garages are setback from the entry foyer of each dwelling and incorporate a variety of materials and building articulation to minimise the visual dominance to the streetscape.</p> <p>The driveways are restricted to a maximum width of 3m.</p> <p>The main entrance to each dwelling is</p>	Yes.

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DCP Clause	Controls	Proposal	Compliance
		located at the front façade alignment.  Landscaped areas have been proposed adjacent to driveways.	
<b>4.6</b>	<b>Colours, Materials and Finishes</b>		
	<ul style="list-style-type: none"> <li>i) Schedule of materials and finishes.</li> <li>ii) Finishing is durable and non-reflective and uses lighter colours.</li> <li>iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration)</li> <li>iv) Articulate and create visual interest by using combination of materials and finishes.</li> <li>v) Suitable for the local climate to withstand natural weathering, ageing and deterioration.</li> <li>vi) Recycle and re-use sandstone</li> </ul>	Council's Heritage Planner has imposed conditions of consent in relation to the materials and finishes.	Yes, subject to conditions of consent.
<b>4.7</b>	<b>Earthworks</b>		
	<ul style="list-style-type: none"> <li>i) Excavation and backfilling limited to 1m, unless gradient too steep</li> <li>ii) Minimum 900mm side and rear setback</li> <li>iii) Subterranean spaces must not be habitable</li> <li>iv) Step retaining walls.</li> <li>v) If site conditions require setbacks &lt; 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm.</li> <li>vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping)</li> <li>vii) cut and fill for POS is terraced <i>where site has significant slope:</i></li> <li>viii) adopt a split-level design</li> <li>ix) Minimise height and extent of any exposed under-croft areas.</li> </ul>	<p>The development involves excavation to accommodate the proposed swimming pool. The proposed swimming pool has been setback from the rear and side boundaries.</p> <p>With exception to the swimming pool, minimal earthworks will be required to facilitate the proposed development with the proposed floor levels of the dwelling set above the natural ground level.</p>	Yes.
<b>5</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access to proposed development:</b>		
	<ul style="list-style-type: none"> <li>i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June</li> <li>ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</li> </ul>	<p>Due to the orientation of the site, the proposed living room windows are orientated to face south.</p> <p>The POS of both dwellings are capable of receiving 3 hours of direct sunlight between 8am and 4pm on 21 June.</p>	Yes.
	<b>Solar access to neighbouring development:</b>		

DCP Clause	Controls	Proposal	Compliance
	<p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not &lt;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"> <li>Degree of meeting the FSR, height, setbacks and site coverage controls.</li> <li>Orientation of the subject and adjoining allotments and subdivision pattern of the urban block.</li> <li>Topography of the subject and adjoining allotments.</li> <li>Location and level of the windows in question.</li> <li>Shadows cast by existing buildings on the neighbouring allotments.</li> </ul>	<p>As demonstrated through the submitted shadow diagrams, the adjoining properties will continue to receive 3hrs of direct solar access to north facing living room windows and POS.</p> <p>No solar panels will be impacted by the proposed overshadowing generated.</p>	Yes.
<b>5.2</b>	<b>Energy Efficiency and Natural Ventilation</b>		
	<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"> <li>Skylights (ventilated)</li> <li>Clerestory windows</li> <li>Fanlights above doorways</li> <li>Highlight windows in internal partition walls</li> </ul> <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>The proposed layout and location and windows will allow for cross ventilation and daylight to enter the dwelling.</p> <p>A BASIX certificate has been submitted alongside the development application.</p>	Yes.
<b>5.3</b>	<b>Visual Privacy</b>		
	<b>Windows</b>		
	<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"> <li>windows are offset or staggered</li> <li>minimum 1600mm window sills</li> <li>Install fixed and translucent glazing up</li> </ul>	<p>The proposed habitable room windows have generally been orientated towards Ingram Street or the rear private open space area.</p>	Yes, subject to conditions of consent.

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DCP Clause	Controls	Proposal	Compliance
	<p>to 1600mm minimum.</p> <ul style="list-style-type: none"> <li>- Install fixed privacy screens to windows.</li> <li>- Creating a recessed courtyard (minimum 3m x 2m).</li> </ul> <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	A conditioned has been imposed which requires windows to habitable rooms on the first floor to be fixed with opaque glazing up to a height of at least 1600mm above finished floor level.	
	<b>Balcony</b>		
	<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>	No upper level balconies are existing or proposed.	N/A.
<b>5.4</b>	<b>Acoustic Privacy</b>		
	<p>i) Noise sources not located adjacent to adjoining dwellings bedroom windows</p> <p><i>Attached dual occupancies</i></p> <p>ii) Reduce noise transmission between dwellings by:</p> <ul style="list-style-type: none"> <li>- Locate noise-generating areas and quiet areas adjacent to each other.</li> <li>- Locate less sensitive areas adjacent to the party wall to serve as noise buffer.</li> </ul>	The proposed layout of the dual occupancy has been carefully considered to separate noise-generating areas and quiet areas. The proposed bedrooms sought do not share a wall with any noise generating rooms.	Yes.
<b>5.5</b>	<b>Safety and Security</b>		
	<p>i) Dwelling 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 sqm) overlooking the street or a public place.</p> <p>iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)</p>	<p>Both dwellings of the dual occupancy include entries and habitable windows which face Ingram Street. The proposed front fencing, landscaping and parking facilities do not obstruct casual surveillance of the streetscape.</p> <p>Street numbering will be provided as per standard conditions of consent.</p>	Yes.
<b>5.6</b>	<b>View Sharing</b>		
	<p>i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.</p> <p>ii) Retaining existing views from the living</p>	No significant views or vistas will be impacted by the proposed development.	Yes.



DCP Clause	Controls	Proposal	Compliance
	<p>areas are a priority over low use rooms</p> <p>iii) Retaining views for the public domain takes priority over views for the private properties</p> <p>iv) Fence design and plant selection must minimise obstruction of views</p> <p>v) Adopt a balanced approach to privacy protection and view sharing</p> <p>vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.</p>		
<b>6</b>	<b>Car Parking and Access</b>		
<b>6.1</b>	<b>Location of Parking Facilities:</b>		
	<b>All dwellings</b>		
	<p>i) Maximum 1 vehicular 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.</p> <p>iv) Single width garage/carport if frontage &lt;12m; Double width if: - Frontage &gt;12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard.</p> <p>v) Tandem parking may be considered</p> <p>vi) Avoid long driveways (impermeable surfaces)</p>	<p>Each dwelling is provided with a single vehicular crossing.</p> <p>The site is not located off a rear lane nor secondary frontage.</p> <p>The proposed garages are located behind the front façade of the building.</p> <p>A single width garage is provided to each dwelling.</p> <p>No basement is proposed.</p> <p>No long driveway are proposed.</p>	Yes.
	<b>Dual occupancies and new semi-detached dwellings</b>		
	<p>i) Single width garage or carport, including hard stand space in front.</p> <p>ii) Double garages permitted on dual street frontages or corner lots if consistent with predominant pattern.</p> <p>iii) One vehicle access per dwelling <u>only permitted</u> where:</p> <ul style="list-style-type: none"> <li>Minimum landscaping achieved;</li> <li>At least one parallel on-street parking space is maintained; and</li> </ul>	Single width garage provided, with one vehicle access per dwelling.	Yes

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> <li>No net loss of street trees.</li> </ul>		
<b>6.3</b>	<b>Setbacks of Parking Facilities</b>		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> <li>Nil side setback on adjoining property;</li> <li>Streetscape compatibility;</li> <li>Safe for drivers and pedestrians;</li> <li>Amalgamated driveway crossing.</li> </ul>	As previously addressed, the proposed garage complies with the required setbacks specified under subsection 3.3 of the Randwick DCP.	Yes
<b>6.4</b>	<b>Driveway Configuration</b>		
	Maximum driveway width: <ul style="list-style-type: none"> <li>Single driveway – 3m</li> <li>Double driveway – 5m</li> </ul> Must taper driveway width at street boundary and at property boundary	The proposed single width driveways each have a maximum width of 3m.  Council's Heritage Planner has recommended that the hardstand parking area forward of the dwelling be ameliorated with soft open-style permeable paving. On appropriate condition will be imposed.	Yes, subject to conditions of consent.
<b>6.5</b>	<b>Garage Configuration</b>		
	i) Recessed behind front of dwelling ii) Maximum garage width (door and piers or columns): <ul style="list-style-type: none"> <li>Single garage – 3m</li> <li>Double garage – 6m</li> </ul> iii) Min. 5.4m length of garage iv) Max. 2.6m wall height and 3m building height (for pitched roof) for 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 proposed garage is setback behind the front building line.  The proposed single garage has a width of 3m.  The proposed garage has a minimum length of 6m.  The proposal does not include a detached garage.  Proposed garage door is recessed 200mm.  A parapet wall of 1.5m is proposed.	Generally complies.  Refer to part 9.1 Discussions of key issues in the report for control vi).
<b>7</b>	<b>Fencing and Ancillary Development</b>		
<b>7.2</b>	<b>Front Fencing</b>		
	i) 1200mm max. (solid portion not exceeding 600mm), except for piers. <ul style="list-style-type: none"> <li>1800mm max. provided upper two-thirds partially open (30% min), except for piers.</li> </ul> ii) Light weight materials used for open design	A 1.2m high open paling front fence is proposed. The front fence will be evenly	Yes.

DCP Clause	Controls	Proposal	Compliance
	<p>and evenly distributed</p> <p>iii) 1800mm max solid front fence permitted in the following scenarios:</p> <ul style="list-style-type: none"> <li>- Site faces arterial road</li> <li>- Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment).</li> </ul> <p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> <p>iv) 150mm allowance (above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p>	<p>distributed and of an open design.</p> <p>The proposed materials for fencing are considered to be light weight and durable.</p>	
<b>7.3</b>	<b>Side and rear fencing</b>		
	<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>	<p>A condition of consent has been imposed restricting all proposed side and rear boundary fencing to a maximum height of 1.8m</p>	Yes.
<b>7.5</b>	<b>Swimming pools and Spas</b>		
	<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) Where pool coping height is above natural ground level, pool to be located to avoid pool boundary fencing exceeding 2.2m from existing ground level from adjoining properties.</p> <p>vi) Where above natural ground and has potential to create privacy impacts, appropriate screening or planting along full length of pool to be provided. Planting to comply with legislation for non-climbable zones.</p> <p>vii) Incorporate screening or planting for privacy as above, unless need to retain view corridors.</p>	<p>The swimming pools are located at the rear of the site.</p> <p>Council's landscape officer has reviewed the proposal and raised no objection to tree removal subject to conditions of consent.</p> <p>The proposed swimming pools are adequately setback from the living areas of the adjoining property and will be screened by appropriate fencing.</p> <p>The proposed pool and coping level generally</p>	Yes, subject to conditions of consent.

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DCP Clause	Controls	Proposal	Compliance
	viii) Position decking to minimise privacy impacts. ix) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	<p>respond to the site topography.</p> <p>Swimming pool coping is setback more than 900mm from rear and side boundaries.</p> <p>Screen planting has been proposed between the swimming pools of each dwelling.</p> <p>The proposed decking around the swimming pool is situated generally at ground level and will not provide any opportunities for overlooking into adjoining properties.</p> <p>A condition of consent will be imposed requiring the pool pump and filter to be located within an acoustic proof structure.</p>	
<b>7.6</b>	<b>Air conditioning equipment</b>		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.	Air conditioning units can be located within the boundaries of each building and away from the view of the streetscape.	Yes.
<b>7.8</b>	<b>Clothes Drying Facilities</b>		
	i) Located behind the front alignment and not be prominently visible from the street	Clothes drying facilities are provided within the side setback of each dwelling, away from the view of the streetscape.	Yes.

**Responsible officer:** GAT & Associates, Town Planners

**File Reference:** DA/192/2023

## Development Consent Conditions



<b>Folder / DA No:</b>	DA/192/2023
<b>Property:</b>	7 Ingram Street, KENSINGTON NSW 2033
<b>Proposal:</b>	Partial demolition of existing stables at the rear of the site and construction of a dual occupancy with swimming pools and associated site works. (Heritage Conservation Area).
<b>Recommendation:</b>	Approval

### Development Consent Conditions

#### GENERAL CONDITIONS

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

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

#### Approved Plans & Supporting Documentation

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

<i><b>Plan</b></i>	<i><b>Drawn by</b></i>	<i><b>Dated</b></i>	<i><b>Received by Council</b></i>
A01, amendment B	Justin Long Design	24.01.2024	24.04.2024
A02, amendment D		18.04.2024	24.04.2024
A03, amendment B		24.01.2024	24.04.2024
A04, amendment D		18.04.2024	24.04.2024
A05, amendment D		18.04.2024	24.04.2024
A06, amendment D		18.04.2024	24.04.2024
A07, amendment B		24.01.2024	24.04.2024
A07A, amendment B		24.01.2024	24.04.2024
A07B, amendment B		24.01.2024	24.04.2024
A07C, amendment D		18.04.2024	24.04.2024
A08, amendment B		24.01.2024	24.04.2024
A09, amendment D		18.04.2024	24.04.2024

<i><b>BASIX Certificate No.</b></i>	<i><b>Dated</b></i>	<i><b>Received by Council</b></i>
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1177458M_03	26.04.2023	26.05.2023
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#### **Amendment of Plans & Documentation**

2. The approved plans and documents must be amended in accordance with the following requirements:
  - a. All side and rear boundary fencing is restricted to a maximum height of 1.8m from existing ground level.
  - b. The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
    - W11 – Southwest elevation
    - W12 – Northwest elevation
    - W13 – Northwest elevation
  - c. The landscape plan prepared by A Total Concept, (Drawing L/01, Revision A) is to be amended to reflect the new site and landscape plan layout shown on Plan A09, Revision D, prepared by Justin Long Design, dated 18.04.2024.

Amended plans must be submitted to Council and approved by Council's Manager Development Assessment/Coordinator Development Assessment prior to the issue of any construction certificate.

The above amendment/s must be reflected in the final construction plans and any documentation submitted as part of any construction certificate.

#### **REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED**

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

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

#### **Consent Requirements**

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

#### **Section 7.12 Development Contributions**

4. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,554,557.00 the following applicable monetary levy must be paid to Council: \$15,545.57.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of

payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.

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

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

Where:

**IDC** = the indexed development cost

**ODC** = the original development cost determined by the Council

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

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

Council's Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at [www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au).

#### **Long Service Levy Payments**

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

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

#### **Security Deposits**

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

- **\$6,000.00 - Damage / Civil Works Security Deposit**

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

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

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

#### **Design Alignment Levels**

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

- **170mm above the top of the kerb at all points opposite the kerb, along the full site frontage.**

The design alignment levels at the property boundary as issued by Council and their relationship to the Council kerb must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

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

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881.

8. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$914** calculated at **\$60.00** per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

#### **Internal Driveway Design**

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

#### **Sydney Water 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.

#### **Stormwater Drainage**

11. Stormwater drainage plans have not been approved as part of this development

consent. Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier. A copy of the engineering calculations and plans are to be forwarded to Council, if the Council is not the Principal Certifier. The drawings and details shall include the following information:

- a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
  - b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
  - c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
    - i. Roof areas
    - ii. Paved areas
    - iii. Grassed areas
    - iv. Garden areas
  - d) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
  - e) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
  - f) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.
12. The site stormwater drainage system is to be provided in accordance with the following requirements;
- a) The stormwater drainage system must be provided in accordance with the relevant requirements of the Building Code of Australia and the conditions of this consent, to the satisfaction of the *Principal Certifier* and details are to be included in the construction certificate.
  - b) The stormwater must be discharged (by gravity) either:
    - i. Directly to the kerb and gutter in front of the subject site in Ingram Street; or
    - ii. To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system),

NOTES:

- Infiltration will not be appropriate if the site is subject to rock and/or a water table within 2 metres of the base of the proposed infiltration area, or the ground conditions comprise low permeability soils such as clay.
- If the owner/applicant is able to demonstrate to Council that he/she has been unable to procure a private drainage easement through adjoining premises and the ground conditions preclude the use of an infiltration system, a pump-out system may be permitted to drain the portion of the site that cannot be discharged by gravity to Council's street drainage system in front of the property.

Pump-out systems must be designed by a suitably qualified and experienced hydraulic consultant/engineer in accordance with the conditions of this consent and Council's Private Stormwater Code.

- c) Should stormwater be discharged to Council's street drainage system, an on-site stormwater detention system must be provided to ensure that the maximum discharge from the site does not exceed that which would occur during a **20% AEP (1 in 5 year)** storm of one hour duration for existing site conditions. All other stormwater run-off from the site for all storms up to the 5% AEP (1 in 20 year) storm is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the Principal Certifier.

An overland escape route or overflow system (to Council's street drainage system) must be provided for storms having an annual exceedance probability (AEP) of 1% (1 in 100 year storm), or, alternatively the stormwater detention system is to be provided to accommodate the 1% AEP (1 in 100 year) storm.

- d) Should stormwater be discharged to an infiltration system the following requirements must be met;
- i. Infiltration systems/Absorption Trenches must be designed and constructed generally in accordance with Randwick City Council's Private Stormwater Code.
  - ii. The infiltration area shall be sized for all storm events up to the 5% AEP (1 in 20 year) storm event with provision for a formal overland flow path to Council's Street drainage system.  
  
Should no formal overland escape route be provided for storms greater than the 5% AEP (1 in 20yr) design storm, the infiltration system shall be sized for the 1% AEP (1 in 100yr) storm event.
  - iii. Infiltration areas must be a minimum of 3.0 metres from any structure (Note: this setback requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure)
  - iv. Infiltration areas must be a minimum of 2.1 metres from any site boundary unless adjacent to Council land (eg. road, laneway or reserve).
- e) Determination of the required cumulative storage (in the on-site detention and/or infiltration system) must be calculated by the mass curve technique



as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.

Where possible any detention tanks should have an open base to infiltrate stormwater into the ground. Infiltration should not be used if ground water and/or any rock stratum is within 2.0 metres of the base of the tank.

- f) Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1% AEP (1 in 100 year), 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with Randwick City Council's Private Stormwater Code.

- g) Generally all internal pipelines must be capable of discharging a 5% AEP (1 in 20 year) storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.
- h) A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.

Sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements:

- The base of the pit being located a minimum 300mm under the invert level of the outlet pipe.
- The pit being constructed from cast in-situ concrete, precast concrete or double brick.
- A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes.
- A galvanised heavy-duty screen being provided over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent).
- The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system.
- A child proof and corrosion resistant fastening system being provided for the access grate (e.g. spring loaded j-bolts or similar).
- Provision of a sign adjacent to the pit stating, "This sediment/silt arrestor pit shall be regularly inspected and cleaned".

*Sketch details of a standard sediment/silt arrestor pit may be obtained from Council's Development or Drainage Engineer.*

- i) The floor level of all habitable, retail, commercial and storage areas located adjacent to any detention and/or infiltration systems with above ground

storage must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be provided.

*(In this regard, it must be noted that this condition must not result in any increase in the heights or levels of the building. Any variations to the heights or levels of the building will require a new or amended development consent from the Council prior to a construction certificate being issued for the development).*

- j) The maximum depth of ponding in any above ground detention areas and/or infiltration systems with above ground storage shall be as follows (as applicable):
  - i. 150mm in uncovered open car parking areas (with an isolated maximum depth of 200mm permissible at the low point pit within the detention area)
  - ii. 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10)
  - iii. 600mm in landscaped areas where the side slopes of the detention area have a maximum grade of 1 in 10
  - iv. 1200mm in landscaped areas where a safety fence is provided around the outside of the detention area
  - v. Above ground stormwater detention areas must be suitably signposted where required, warning people of the maximum flood level.

*Note: Above ground storage of stormwater is not permitted within basement car parks or store rooms.*

- k) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
- l) A 'V' drain (or equally effective provisions) are to be provided to the perimeter of the property, where necessary, to direct all stormwater to the detention/infiltration area.
- m) Mulch or bark is not to be used in on-site detention areas.
- n) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.

#### **Public Utilities**

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

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

**Amended Landscape Plan**

14. The Proposed Landscape Plan by ATC, dwg L/01, rev A, dated 28/04/23 must be amended to now include the following requirements:
- 1 x 100 litre** (pot/bag size at the time of planting) feature canopy tree (not a palm/bamboo) must be provided in deep soil in the front setback, at least 2.5m from any part of the buildings, selecting a species which will achieve a minimum height of 6 metres at maturity;
  - A garden bed measuring a minimum width of **1 metre** must also be provided at the rear, along the length of the side property boundaries of each Lot, for the areas between the corner of the rear decks and studios, to which, suitably decorative species must be added, with each of the Watergums that are currently shown here, planted in grass, to then also be incorporated into these newly created garden beds.
15. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the revised scheme, submitted for the Construction Certificate, complies with the requirements specified above, with both this statement and revised plans to then be submitted to, and be approved by, the Principal Certifier.

**New Street Tree**

16. The applicant must submit a payment of **\$107.25** (GST inclusive) to cover the costs for Council to supply, plant and maintain 1 x 25 litre street tree, *Callistemon viminalis* (Bottlebrush) on the Ingram Street verge, centrally between both new vehicle crossings at the completion of all works.

This fee must be paid into **Tree Amenity Income prior to a Construction Certificate being issued for the development.**

**The applicant must contact Council's Landscape Development Officer on 9093-6613 (quoting the receipt number), to arrange for planting upon completion of works, with any enquires after this, regarding scheduling/timing or completion of tree works, to be directed to Council's North Area Tree Preservation & Maintenance Coordinator on 9093-6964.**

**Protection of neighbouring tree**

17. In order to ensure retention of the *Eucalyptus robusta* (Swamp Mahogany, T1) that is located wholly in the rear setback of the adjoining private property to the east, no.9, close to the common boundary in good health, the following measures are to be undertaken:
- All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk, canopy, SRZ & TPZ, as taken from Arboricultural Impact Appraisal by Heartwood Tree Consulting, version 1, dated 19/04/23 ("*the Arborist Report*"), to be clearly and accurately shown in relation to the works.
  - Prior to the commencement of any site works, the Principal Certifier must ensure that an AQF Level 5 Consulting Arborist (who is eligible for membership with a nationally recognized organization/association) has been engaged as '*the Project Arborist*' for the duration of works, and will be responsible for both implementing and monitoring these conditions of development consent, as well as the 'Tree Protection Plan' at **Appendix 2** of the Arborist Report, along with any other instructions issued on-site.

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- c. The Project Arborist must be present on-site at the relevant stages of works and must keep a log of the dates of attendance and the works performed, which is to be presented as a 'Final Compliance Report' for the approval of the Principal Certifier, prior to any Occupation Certificate.
  - d. All Construction Certificate plans must show that the footprint of Dwelling A, as well as the rear deck and pool will all be consistent with the Proposed Ground Floor Plan by Justin Long Design, dwg A02, dated 27/04/23, with distances in millimetres between these works, the common boundary and its trunk to be included.
  - e. **The Project Arborist and Principal Certifier must ensure that the Above Ground OSD Basin (A) in the northeast side setback, as shown on the Ground Floor/Site Stormwater Drainage Plan by Loka Consulting Engineers, dwg D01, rev D, dated 28/04/23, will be re-designed so that any excavations associated with its construction are performed wholly outside of the trees 6m TPZ radius.**
  - f. **The drainage line and 450mm x 450mm pit that are also shown as being installed to the east of the OSD (A), directly past the tree, must also be deleted/re-designed so that they also comply with the requirement specified above.**
- Note: Refer also to the Development Engineers Stormwater conditions.*
- g. Notations and details must be provided confirming that other than the approved dwelling and pool, the area between the re-designed OSD (A) area and rear studio will be retained as undisturbed deep soil.
  - h. There can be no other excavations associated with the installation of any new services, pipes, stormwater systems or similar to the east of the re-designed OSD (A) area described in point 'e' above, with the Principal Certifier to ensure that all Services Plans are both prepared and then installed on-site to comply with this requirement.
  - i. Construction details must also be provided showing that the timber deck off the rear of Dwelling A will be supported on localised pad footings only.
  - j. Ground protection comprising strapped together rumble boards, sheets of plywood or similar must be provided in the eastern side setback, between the dwelling and property boundary, over the extent of its 6m TPZ that occupies the subject site, prior to the commencement of ANY site works, and must be maintained until such time as the approved landscaping is being installed.
  - k. There is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble in the area specified in point 'k' above, with all Site Management Plans to comply with this requirement.
  - l. In order to prevent soil/sediment being washed over its root system, erosion control measures must also be provided at ground level around the perimeter of the TPZ.

- m. If additional branch protection is required, this can be provided by way of wrapping layers of geo-textile, underfelt, carpet, hessian or similar around affected areas, to which, lengths of evenly spaced hardwood timbers shall be placed around their circumference and are then to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the tree.
- n. **All initial excavations associated with the eastern wall of the dwelling, the OSD basin, as well as footings for the rear deck, within its 6m TPZ radius, can only be undertaken or directly supervised by, the Project Arborist, and only by hand, not machinery, so as to minimise root damage.**
- o. Where major roots are encountered, which the Project Arborist determines must be retained, then alternative designs/footings, such as cantilevered, pier and beam style sections must be implemented, with the Project Arborist to authorise their use/design in writing, prior to proceeding further with these works on-site.
- p. The Construction Certificate plans must acknowledge (via the inclusion of relevant construction notes and details) that the presence of major roots may result in the need to provide alternative outcomes, with flexible systems that can be positioned around roots needing to be implemented instead.
- q. Where minor type roots are encountered which the Project Arborist allows to be pruned to accommodate the works, they may be cut cleanly by hand, with the affected area to then be backfilled with clean site soil as soon as practically possible, so that the cut ends are not left exposed to the atmosphere.
- r. To confirm compliance, the Project Arborist must take time stamped photos showing the location, size and quantity of roots that were left in-situ, and those which were pruned as a result of the works, which must then form part of the Final Compliance Report.
- s. Any new common boundary fencing within its 6 metre TPZ radius can only be a system which is supported on localised pads, not strip footings, with details confirming compliance to be shown, with these pad footings to be re-positioned where needed to allow preservation of roots.
- t. The Principal Certifier and Project Arborist must ensure compliance with all of these requirements, both on the plans as well as on-site during the course of works, and prior to any Occupation Certificate.

#### **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**

18. 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**

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

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

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

**Site stability, Excavation, Demolition and Construction work**

20. 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) 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 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 engineers report shall be implemented accordingly and be monitored during the course of the subject site work.
21. Swimming Pools and Spa Pools are to be designed and installed in accordance with the requirements of the Building Code of Australia and be provided with a child-resistant barrier in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).

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

Temporary pool safety fencing is also required to be provided to swimming pools pending the completion of all building work and swimming pools must not be

filled until a fencing inspection has been carried out and approved by the Principal Certifier.

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

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

#### **Heritage Conservation**

23. A digital photographic archival recording of the 1925 stables internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture
24. Details are to be submitted to Council as to the appropriate address of the adjoining stable area – especially the intersection of that element – at number 5 Ingram Street
25. Details are to be submitted to Council for the partial demolition and the adaptation of the existing stables footprint. These details must include an appropriate introduced division (consistent with fire rating requirements)
26. New materials for making good and repairs of the stable element, are to match the existing in terms of colours, finishes, sizes, profile and properties. Details are to be submitted to Council for the recycling of materials in so far as possible.
27. Original/historical unpainted surfaces are not to be painted
28. Existing mortar joints should be repointed if necessary, using a soft mortar mix
29. Details of any changes to the proposed schedule of materials colours and finishes are to be submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

30. In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act.

#### **REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS**

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

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

#### **Building Certification and Associated Requirements**

31. 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**

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

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

#### **Construction Site Management Plan**

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

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

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

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

#### **Sediment Control Plan**

34. 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**

35. A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:
- a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy.
  - b) The Demolition Work Plan must include the following details (as applicable):
    - The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor
    - 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 10m<sup>2</sup> 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**

36. 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.

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.

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.

#### **Public Liability**

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

#### **Demolition & Construction Waste**

38. The submitted waste management plan has not been approved in conjunction with the DA, rather a new 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](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.

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

#### REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

#### Site Signage

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

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

#### Building & Demolition Work Requirements

40. 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"> <li>• Monday to Friday - 7.00am to 5.00pm</li> <li>• Saturday - 8.00am to 5.00pm</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Excavations within rock, sawing of rock, use of jack-hammers, driven-type piling or the like	<ul style="list-style-type: none"> <li>• Monday to Friday - 8.00am to 3.00pm (maximum)</li> <li>• As may be further limited in Noise &amp; Vibration Management Plan</li> <li>• Saturday - No work permitted</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>

*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**

41. 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**

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

#### **Notes:**

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

#### **Site Management**

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

44. 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**

45. 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 10m<sup>2</sup> 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](http://www.randwick.nsw.gov.au) in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.

#### **Dust Control**

46. 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**

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

#### **Survey Requirements**

48. 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**

49. 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**

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

- A *Road / Asset Opening Permit* must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.
- The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a *final occupation certificate* for the development.
- Relevant *Road / Asset Opening Permit* fees, repair fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place.

For further information, please contact Council's Road / Asset Opening Officer on 9399 0691 or 1300 722 542.

**Drainage**

51. Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.

The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.

**Vegetation**

52. Approval is granted for the removal of all vegetation within this development site due to their small size and insignificance, as well as to accommodate the proposed works as shown, including the *Archontophoenix cunninghamiana* (Bangalow Palm, T2) halfway along the eastern boundary, subject to full implementation of the approved Landscape Plans.

**Pruning of neighbours tree**

53. Permission is granted for the minimal and selective pruning of only those lower growing, lower order branches from the western aspect of the *Eucalyptus robusta* (Swamp Mahogany, T1), that is located wholly in the rear setback of the adjoining private property to the east, at no.9, on the common boundary, only where they overhang above this site and need to be pruned in order to avoid damage to the tree or interference with the approved works.
54. This approval does not imply any right of entry onto a neighbouring property, nor does it allow pruning beyond a common boundary; however, where such measures are desirable in the best interests of correct pruning procedures, and ultimately, the ongoing health of this tree, the applicant must negotiate with the neighbour/tree owner for access to perform this work.
55. All pruning can only be undertaken by, or, under the direct supervision of, the Project Arborist, to the requirements of Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and NSW Work Cover Code of Practice for the Amenity Tree Industry (1998).



**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

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

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

**Post-construction Dilapidation Reports**

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

The dilapidation report shall detail whether:

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

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

**Occupation Certificate**

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

**BASIX Requirements & Certification**

58. 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**

59. 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**

60. 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*.

#### **Swimming Pool Barriers**

61. Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the Swimming Pools Act 1992; the Swimming Pools Regulation 2018 and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).
62. A 'warning notice' must be installed in a prominent position in the immediate vicinity of a Swimming Pool [or Spa Pool], in accordance with the provisions of the Swimming Pools Regulation 2018, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.
63. The owner of the premises must 'register' their Swimming Pool [or Spa Pool] on the NSW Swimming Pool Register, in accordance with the Swimming Pools Act 1992. The Swimming Pool Register is administered by the NSW Government and registration on the Swimming Pool Register may be made on-line via their website [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au).

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

#### **Council's Infrastructure, Vehicular Crossings & Road Openings**

64. The Prior to the issuing of an occupation certificate the applicant must meet the full cost for a Council approved contractor to:
- Construct concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site, to Council's specifications and requirements.
  - Re-construct kerb and gutter for the full site frontage except opposite the vehicular entrance and exit points, to Council's specifications and requirements including nay road reknit as required.
  - Re/construct a 1.3m wide concrete footpath along the full site frontage. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
65. 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.

66. 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.

#### **Sydney Water**

67. A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).

Go to [sydneywater.com.au/section73](https://sydneywater.com.au/section73) or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

A Section 73 Compliance Certificate must be completed before an occupation certificate or subdivision certificate is issued, whichever the sooner

#### **Stormwater Drainage**

68. A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration/pump-out system is maintained and that no works which could affect the design function of the detention/infiltration/pump-out system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and

"positive covenant" being executed by Council.

- c) Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.
69. A Works-As-Executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):
- Finished site contours at 0.2 metre intervals;
  - The location of any detention basins/tanks with finished surface/invert levels;
  - Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
  - Volume of storage available in any detention areas;
  - The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
  - Details of any infiltration/absorption systems; and
  - Details of any pumping systems installed (including wet well volumes).
70. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.
- The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.
- Waste Management**
71. The owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services to the additional premises.
- Subdivision Certificate**
72. A formal application for a subdivision certificate is required to be submitted to and approved by the Council and plans registered at NSW LRS prior to the issuing of a occupation certificate.
- Landscape Certification**
73. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the amended Proposed Landscape Plan by ATC, dwg L/01, rev A, dated 28/04/23, as well as any relevant conditions of consent, such as those requiring the planting of a feature tree and additional gardens.
74. Suitable strategies must then be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.
- 1.

75. The nature-strip upon Council's footway shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to the issue of any Occupation Certificate.

**Project Arborist Certification**

76. Prior to any Occupation Certificate, the Project Arborist must submit to, and have approved by, the Principal Certifier, written certification which confirms adherence with the conditions of consent, 'Tree Protection Plan' at **Appendix 2** of the Arborist Report, as well as the dates of attendance and works performed/supervised relating to retention of the Swamp Mahogany (T1), that is located on the adjoining private property at no.9, including the requirement for time-stamped photos throughout the course of works.

**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**

77. 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**

78. 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**

79. The operation of all plant and equipment (including air conditioners and pool pumps or other equipment) on the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.

**Use of parking spaces**

80. 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.

**Stormwater System**

81. The site stormwater system must be regularly cleaned and maintained to ensure it operates as required by the design.

**ADVISORY NOTES**

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other relevant legislation and Council's policies. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.



- Underground assets (eg pipes, cables etc) may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.
- The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.
- Further information and details on Council's requirements for trees on development sites can be obtained from the recently adopted Tree Technical Manual, which can be downloaded from Council's website at the following link, <http://www.randwick.nsw.gov.au> - Looking after our environment – Trees – Tree Management Technical Manual; which aims to achieve consistency of approach and compliance with appropriate standards and best practice guidelines.



## Development Application Report No. D39/24

**Subject:** 17 Flood Street Clovelly (DA/1084/2023)

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### Executive Summary

<b>Proposal:</b>	Alterations and additions to existing building involving enclosing existing balcony of Unit 1, internal reconfiguration and relocating window at ground level.
<b>Ward:</b>	North Ward
<b>Applicant:</b>	Mr M P Barr
<b>Owner:</b>	The Owners - Strata Plan No. 17726
<b>Cost of works:</b>	\$35,000.00
<b>Reason for referral:</b>	Development Standard exceeded by more than 10% (FSR).

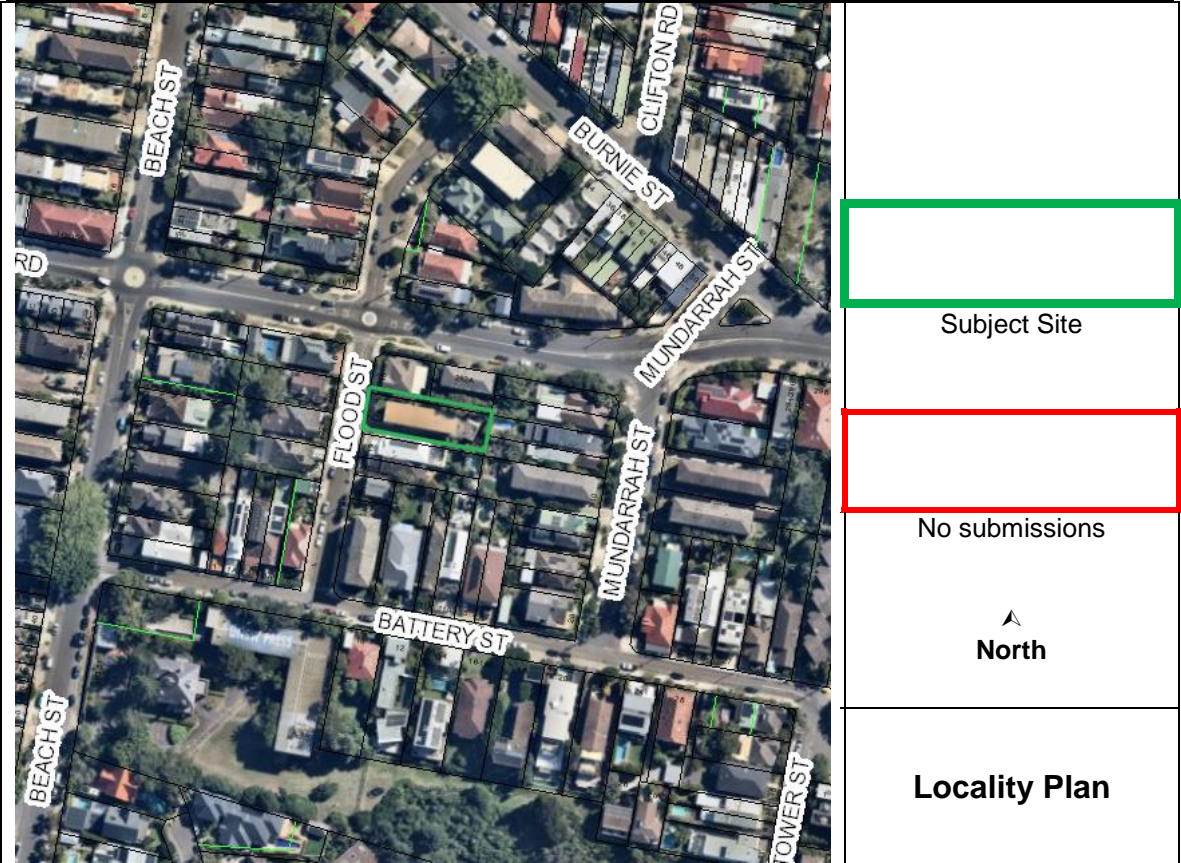
### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/1084/2023 for alterations and additions to existing building involving enclosing existing balcony of Unit 1, internal reconfiguration and relocating window at ground level at No. 17 Flood Street, Clovelly subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.   RLPP Development Consent Conditions DA/1084/2023

D39/24



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for floor space ratio by more than 10%.

The proposal seeks development consent for ground and first floor level additions to unit 1 of the four multi dwelling 2 storey units on the site.

The key issues associated with the proposal relate to whether the additional floor area will satisfy the objectives of the FSR standard and the R2 Low Density zone, noting a clause 4.6 exception to the variation is sought as part of this application.

The proposed additions are minor and do not extend beyond the predominant building envelope of the development, noting that the roof line covers both the ground and first floor level sought to be added as floor area. The proposed additional floor area does not add any bedrooms to the subject dwelling and does not result in any adverse impacts on the amenity of neighbouring properties in relation to overshadowing, privacy, visual bulk or views, given that the proposed windows at first floor level will overlook the roof of the neighbouring building at No. 15 Flood Street.

The application was notified in accordance with Council's Community Engagement Policy and no submissions were received as part of the notification period.

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

2. Site Description and Locality

The subject site is known as 17 Flood Street, Clovelly and is legally described as Lot 37 Sec 2 in Deposited Plan 5790 (Being Lots 1-4 in Strata Plan 17726). The site is 696.7m<sup>2</sup>, is regular in shape and has a 15.24m frontage to Flood Street to the west. The site contains a two-storey building with semi-basement floor level containing 4 multi dwelling units (two bedrooms each).



The site slopes approximately 3m from front along Flood Street down to the rear. The subject dwelling unit 1 is located at the front of the site and generally contains a two-storey built form.



**Figure 1:** Aerial view of the site and surrounding area



**Figure 2:** Oblique view of the site showing the northern elevation of the site.

### 3. Relevant history



DA/237/1979 – The multi dwelling units were approved on 26/02/1980.

#### **4. Proposal**

The proposal seeks development consent for enclosing existing balcony of Unit 1, internal reconfiguration and relocating window at ground level.

#### **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**

The proposed development has a cost of works that is less than the \$50,000 threshold for BASIX affected development.

##### **6.2. SEPP (Biodiversity and Conservation) 2021**

The proposal does not seek to remove any vegetation from the site.

##### **6.3. SEPP (Resilience and Hazards) 2021**

###### Chapter 2 – Coastal Management

Not applicable to the subject proposal.

###### Chapter 4 - Remediation of Land

The subject site has been used for residential purposes since at least 1980 and the proposed nature of works are not considered to alter the suitability for the site for this residential purposes.

##### **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 not permitted within the R2 zone. The existing development of 4 townhouse or multi dwelling unit development constitutes existing use rights noting the 1979 approval and ongoing use of the site to date.

###### Existing use rights

The proposal is subject to Division 4.11 of the EP&A Act for continued use as a residential accommodation, specifically a multi-dwelling housing development.

Clause 163 (1) of the Regs allow: a use to be enlarged, expanded, or intensified, or be altered or extended.

An assessment is carried out against the R2 zone objectives and the relevant development standards in the LEP such as FSR, HOB and Foreshore scenic protection area which do not derogate from the ongoing use.

## R2 zone objectives

### Objectives of zone

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will be consistent with the predominant built form of two storey scale and will not detract from the character of the area or result in any inordinate adverse impacts on the amenity of neighbouring properties in relation to overshadowing, visual bulk, privacy or views.

It is specifically noted by the applicant that the proposal already forms part of the existing building massing (undercroft space below existing balcony and roofed balcony), it represents approximately a 4% increase to the existing building Gross Floor Area and is not a significant intensification of the use noting that no additional rooms are being created as a part of the application.

### LEP development standards

The following development standards in the RLEP 2012 apply to the proposal as they do not derogate from the ongoing use of the site for the existing use:

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.5:1	0.59:1	No*
CI 4.3: Building height (max)	9.5m	5.49m to the gutter (RL42.21-RL36.72) line	Yes

\*See section 6.5.1 and section 7 of this report.

#### 6.4.1. Clause 4.6 - Exceptions to development standards

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

#### 6.4.2. Clause 6.7 Foreshore scenic protection area

The subject site is identified as being within a Foreshore Scenic Protection Area. Clause 6.7 of RLEP states that development consent must not be granted for development on land identified as foreshore scenic protection area unless the development is located and designed to minimise the visual impact as viewed from the public domain of the coastline, and that the development contributes to the scenic quality of the coastal foreshore.

The proposed development is not noticeable from the foreshore or the coast and predominately located within the envelope of the existing building. Therefore, it is not considered that it will be out of context with the existing area including development along the coastline and within the immediate vicinity, which includes mixed styles of dwellings and flat buildings. The proposal is seen to be consistent with the provisions of clause 6.7.

## **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 4.4: Floor space ratio (max) Site area – 696.7sqm	0.5:1	0.59:1  0.56:1 existing	63m <sup>2</sup>  16 m <sup>2</sup> > existing.	18% above standard  4% > existing

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 Floor Space Ratio (FSR) development standard (CI 4.4)

The applicant's written justification for the departure from the FSR standard is contained in Appendix 1.

##### 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 by noting that:

*The size of the building will remain the same with the additional floor area created by enclosing recesses in the northern façade that are located under the existing roof. The building is compatible with other buildings in the locality, which generally are 2 or 3 storeys.*

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

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

*The building will maintain articulation through extent of glazing and the proposal represents an efficient use of land while responding to environmental needs and efficient use of resources for the outcome for occupants needs, compared to alternative options such as relocation.*

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

The development is not within a conservation area or near a heritage item and the works are not visible from any heritage items.

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

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

- The proposal will result in no unreasonable visual impact, loss of privacy or solar access, in part to orientation of the proposed building and topography of the site and immediate surrounds.
- The proposed works are not visible from the public domain due to existing development, and trees.
- The works are located on the northern side of the building, below the existing roofline.

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

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

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

The proposal maintains a side setback greater than the DCP requirement for the side that the works are proposed.

The proposed works are located on the northern side of the building and there are no adverse amenity impacts created by the proposal.

It is in the public interest being consistent with clause 4.4 objectives (Table 2) and R2 low density residential zone objectives as outlined in the statement of environmental effects.

Assessing officer's comment: The applicant's environmental planning grounds focus on elements that are specific to the site and the aspects of the development that contravene the development standard. These are considered to be well founded arguments.

In conclusion, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the 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 and 2023

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**.

## 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 2
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions received under the subject proposal.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

### 9.1. Discussion of key issues

See assessment in relevant sections of this report.

### 10. Conclusion

That the application for alterations and additions to existing building involving enclosing existing balcony of Unit 1, internal reconfiguration and relocating window at ground level 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 and the submitted Clause 4.6 Variation has demonstrated a satisfactory response to the FSR development standard.
- The proposal is consistent with the specific objectives of the R2 zone in that the additional floor area is contained within the predominant envelope of the building, it provides larger living space and bedroom space for the occupants.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.

**Appendix 1: Applicant's written request seeking to justify the contravention of the FSR development standard.**



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# **1/17 Flood Street Clovelly**

## **Alterations and additions to Residential Flat building**

### **Clause 4.6 Request for Variation to Maximum Floor Space Ratio**

18 December 2023

**D39/24**

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## 1. Introduction

This Clause 4.6 request has been prepared to seek a variation to the maximum Floor Space Ratio development standard under Clause 4.4 of the *Randwick Local Environmental Plan 2012* (RLEP 2012) as part of the development application for alterations and additions to the residential flat building at 17 Flood Street, Clovelly including enclosing ground floor undercroft space and first floor balcony of unit 1 resulting in additional 16sqm Gross Floor Area.

Under Clause 4.4 of the RLEP 2012, the maximum floor space ratio permitted on the site 0.5:1, which is a gross floor area of 348.3 sqm for the site area of 696.77sqm. The existing building has a Gross Floor Area of 393sqm (FSR 0.56:1), the proposal seeks to increase the Gross Floor Area by 16sqm to 409sqm (FSR 0.59:1), a 17.4% variation to the development standard.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. A better planning outcome would, in these circumstances, be achieved by applying the flexibility afforded by Clause 4.6 to establish a design that is consistent with the scale of development in the locality.

## 2. Standard to be varied

### 2.1. Clause 4.4 Floor Space Ratio

The standard to be varied is the maximum gross floor area development standard as set out in Clause 4.4 of the RLEP 2012 as follows:

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

The numerical value of the standard applicable in this instance is 0.5:1.

### 2.2. Extent of Variation

Under Clause 4.4 of the RLEP 2012, the maximum floor space ratio permitted on the site 0.5:1, which is a gross floor area of 348.3 sqm for the site area of 696.77sqm. The existing building has a Gross Floor Area of 393sqm (FSR 0.56:1), the proposal seeks to increase the Gross Floor Area by 16sqm to 409sqm (FSR 0.59:1), a 17.4% variation to the development standard and a 4% increase on existing GFA.

## 3. Clause 4.6 Exceptions to Development Standards

The requirements of Clause 4.6 of the RLEP 2012 are outlined in Table 1.

Table 1 Clause 4.6 requirements

Clause	Provision	Comment
(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	Flexibility in the application of the maximum FSR is sought given the additional Gross Floor Area is generally within the existing building envelope.
	(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	The variation will provide improved internal amenity for occupants, while maintaining substantial private open space areas and creates no unreasonable adverse amenity impacts.
(2)	Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard	Clause 4.4 is not excluded from the use of Clause 4.6.



Clause	Provision	Comment
	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	<p>The proposal is unreasonable and unnecessary as the building will largely appear the same, have the same extent of carparking, deep soil and setbacks. The proposal seeks to enclose spaces that are already partially enclosed due to being recesses in the northern façade.</p> <p>The locality comprises a range of development density in the locality, some of which area greater than the proposed development. The zoning of land is not appropriate give the use, age of development and the existing development exceeding the development standard.</p>
	(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.	<p>The proposal maintains a side setback greater than the DCP requirement for the side that the works are proposed.</p> <p>The proposed works are located on the northern side of the building and there are no adverse amenity impacts created by the proposal.</p> <p>It is in the public interest being consistent with clause 4.4 objectives (Table 2) and R2 low density residential zone objectives as outlined in the statement of environmental effects.</p>
(4)	The consent authority must keep a record of its assessment carried out under subclause (3).	For the consent authority to address.
(6)	Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if –	
	(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or	Not applicable.
	(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.	
(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,	Not applicable.
	(b) 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	

Clause	Provision	Comment
	which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,	
	(c) clause 5.4,	
	(caa) clause 5.5	
	(ca) clause 6.16(3)(b).	

### 3.1. Compliance with Clause 4.4 (1) Objectives

**Table 2** Objectives of Clause 4.4 Floor Space Ratio

Clause	Provision	Comment
(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,	The size of the building will remain the same with the additional floor area created by enclosing recesses in the northern façade that are located under the existing roof. The building is compatible with other buildings in the locality which generally are 2 or 3 storeys.
	(b) to ensure that buildings are well articulated and respond to environmental and energy needs,	The building will maintain articulation through extent of glazing and the proposal represents an efficient use of land while responding to environmental needs and efficient use of resources for the outcome for occupants needs, compared to alternative options such as relocation.
	(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 in the vicinity of any heritage items. The works are not visible from any nearby items.
	(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.	The proposal will result in no unreasonable visual impact, loss of privacy or solar access, in part to orientation of the proposed building and topography of the site and immediate surrounds.  The proposed works are not visible from the public domain due to existing development, and trees.  The works are located on the northern side of the building, below the existing roofline.

#### 4. Conclusion

This request submits that the flexibility afforded under Clause 4.6 of the RLEP 2012 is appropriate in the circumstances of this application which demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- The proposed development achieves the objectives of the Clause 4.4 Floor Space Ratio development standard and is consistent with the objectives of the R2 low density land use zone;
- There are sufficient environmental planning grounds to justify the contravention; and
- The proposal is in the public interest and will have no adverse environmental impacts.

Council can therefore be satisfied that the development achieves the requirements of Clause 4.6 and it is appropriate to exercise the flexibility afforded by this clause.

## Appendix 2: DCP Compliance Table

### 3.1 Section C1: Low density residential

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, and the proposal shall be assessed against the new DCP. While the relevant provisions of the RDCP are Part C2, in view of the low density nature of the dwelling and the existing use rights pertaining to the site, consideration has also been given to Part C1 of the RDCP noting the R2 Low Density nature of the zoning and surrounding development.

The relevant provisions of the DCP are addressed below.

*(Note: a number of control provisions that are not related to the proposal have been deliberately omitted)*

### 3.2 Section C1: Low Density Residential

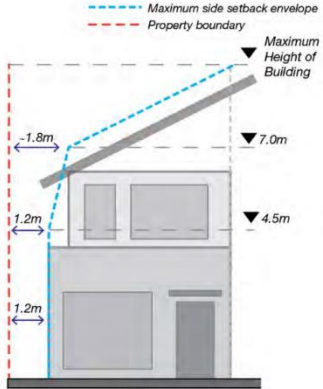
DCP Clause	Controls	Proposal	Compliance
	<b>Classification</b>	Zoning = R2	
<b>2</b>	<b>Site planning</b>		
<b>2.3</b>	<b>Site coverage</b>		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% <b>601 sqm or above = 45%</b>	Site = 696.7m <sup>2</sup> Existing = 35% Proposed = 36.1%	Yes
<b>2.5</b>	<b>Private open space (POS)</b>		
	<b>Dwelling &amp; Semi-Detached POS</b>		
	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 = 696.7 m <sup>2</sup> Proposed = 3.5 x 8.4m.	Partial compliance noting that the total area of open space for unit 1 is larger than the minimum 25sqm required under Part C2 of the DCP for medium density development.
<b>3</b>	<b>Building envelope</b>		
<b>3.1</b>	<b>Floor space ratio LEP 2012 (4.4A(3)) = 0.6:1 for site area above 600m<sup>2</sup></b>	Site area = 696.7 Total floor area = 0.59:1 (409m <sup>2</sup> )	No see section 6 and 7 of the report.
<b>3.2</b>	<b>Building height</b>		
	<b>Maximum overall height LEP 2012 = 9.5m</b>	Existing = 5.49m	Yes
	i) Minimum floor to ceiling height = 2.7m	Existing	Yes.
<b>3.3</b>	<b>Setbacks</b>		
<b>3.3.1</b>	<b>Front setbacks</b>	No change	NA
	i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary Street frontage: - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites		

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DCP Clause	Controls	Proposal	Compliance
	iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front		
3.3.2	<b>Side setbacks:</b>  See images in row below and control provisions applicable to the proposed development with a 12m wide site in row below.  2.19m required as per calculation for 12m wide sites as shown in row below.	3.78m	Yes

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 x (building height – 7m)
12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	1.8m + 2 x (building height – 7m)

Note: All building heights are measured from ground level (existing).



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"><li>• articulated to enhance streetscape.</li><li>• stepping building on sloping site,</li><li>• no side elevation greater than 12m</li><li>• encourage innovative design</li></ul>	Proposed upper floor addition results in a building length of 12.58m	No, however this is only a minor exceedance and it is considered that suitable articulation is maintained to the street and expanse of windows across this northern elevation is substantial which serves to minimise the perception of unarticulated building depth.
4.5	Colours, Materials and Finishes		
	<div><div>i) Schedule of materials and finishes</div><div>ii) Finishing is durable and non-reflective.</div><div>iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration)</div><div>iv) Articulate and create visual interest by using combination of materials and finishes.</div><div>v) Suitable for the local climate to withstand natural weathering, ageing and deterioration.</div><div>vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)</div></div>	To match existing	Yes



DCP Clause	Controls	Proposal	Compliance
<b>5</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access to proposed development:</b>		
	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.	Increased solar access to ground level living space.	Yes
	<b>Solar access to neighbouring development:</b>		
	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"> <li>Degree of meeting the FSR, height, setbacks and site coverage controls.</li> <li>Orientation of the subject and adjoining allotments and subdivision pattern of the urban block.</li> <li>Topography of the subject and adjoining allotments.</li> <li>Location and level of the windows in question.</li> <li>Shadows cast by existing buildings on the neighbouring allotments.</li> </ul>	No impact.	NA
<b>5.2</b>	<b>Energy Efficiency and Natural Ventilation</b>		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> <li>Skylights (ventilated)</li> <li>Clerestory windows</li> <li>Fanlights above doorways</li> <li>Highlight windows in internal partition walls.</li> </ul> ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries. iii) living rooms contain windows and doors opening to outdoor areas. <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	All additional areas provided with external glazing to capture natural light and ventilation.	Yes

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DCP Clause	Controls	Proposal	Compliance
<b>5.3</b>	<b>Visual Privacy</b>		
	<b>Windows</b>		
	i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: <ul style="list-style-type: none"> <li>windows are offset or staggered.</li> <li>minimum 1600mm windowsills</li> <li>Install fixed and translucent glazing up to 1600mm minimum.</li> <li>Install fixed privacy screens to windows.</li> <li>Creating a recessed courtyard (minimum 3m x 2m).</li> </ul> ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	Potential overlooking first floor windows for first floor level	Condition applied requiring first floor window to be treated with obscured glazing more than 1.6m above the internal floor levels.

### 3.3 Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>2.</b>	<b>Site Planning</b>		
<b>2.1</b>	<b>Site Layout Options</b>		
	Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> <li>Two block / courtyard example</li> <li>T-shape example</li> <li>U-shape example</li> <li>Conventional example</li> </ul>	Conventional	Yes
<b>2.2</b>	<b>Landscaped open space and deep soil area</b>		
<b>2.2.1</b>	<b>Landscaped open space</b>		
	A minimum of 50% of the site area is to be landscaped open space.	64.9%	Yes
<b>2.3</b>	<b>Private and communal open space</b>		
<b>2.3.1</b>	<b>Private open space</b>		
	Private open space is to be: <ul style="list-style-type: none"> <li>(i) Directly accessible from the living area of the dwelling.</li> <li>(ii) Open to a northerly aspect where possible so as to maximise solar access.</li> <li>(iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.</li> </ul>	28m <sup>2</sup>	Yes
<b>3.</b>	<b>Building Envelope</b>		
<b>3.3</b>	<b>Building depth</b>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	For residential flat buildings, the preferred maximum building depth (from window-to-window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.	12.58m	Yes
<b>3.4</b>	<b>Setbacks</b>		
<b>4.</b>	<b>Building Design</b>		
<b>4.1</b>	<b>Building façade</b>		
<b>4.6</b>	<b>Internal circulation</b>		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> <li>- Providing natural lighting and ventilation where possible.</li> <li>- Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors.</li> <li>- Allowing adequate space for the movement of furniture.</li> <li>- Minimising corridor lengths to give short, clear sightlines.</li> <li>- Avoiding tight corners.</li> <li>- Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor.</li> </ul>	No change proposed.	Yes
<b>4.8</b>	<b>Balconies and courtyards</b>		
	(i) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m <sup>2</sup> . All ground floor apartments are to have direct access to a terrace. (ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12 square metres. All ground floor apartments are to have direct access to a terrace. (iii) The piece meal enclosure of balconies or terraces on existing residential flat buildings will not generally be supported unless an overall scheme for the building is implemented using similar materials or materials which will harmonise with the existing building facade.	28m <sup>2</sup> retained at ground level of dwelling. Proposed enclosure is not prominent from the streetscape and has incorporated a material treatment that is consistent with the existing façade and associated fenestration.	Yes
<b>5.</b>	<b>Amenity</b>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>5.3</b>	<b>Visual privacy</b>		
	<ul style="list-style-type: none"> <li>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</li> <li>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</li> <li>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</li> <li>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</li> <li>(v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> <li>- Translucent glazing</li> <li>- Fixed timber or metal slats</li> <li>- Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings</li> <li>- Screen planting and planter boxes as a supplementary device for reinforcing privacy protection</li> </ul> </li> </ul>	<p>Large north facing window for bedroom.</p> <p>28m<sup>2</sup> Ground level courtyard is maintained at the northern side of the site.</p>	<p>A condition is included requiring a additional privacy screening from the 1<sup>st</sup> floor north facing window.</p>

**Responsible officer:** Louis Coorey, Senior Environmental Planning Officer

**File Reference:** DA/1084/2023

## Development Consent Conditions (Medium Density Residential)



<b>Folder /DA No:</b>	DA/1084/2023
<b>Property:</b>	17 Flood Street, CLOVELLY NSW 2031
<b>Proposal:</b>	Alterations and additions to existing building involving enclosing existing balcony of Unit 1, internal reconfiguration and relocating window at ground level.
<b>Recommendation:</b>	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>
DA-0100 Rev A	B studio	18 December 2023	27 December 2023
DA-1200 Rev A	B studio	18 December 2023	27 December 2023
DA-1300 Rev A	B studio	18 December 2023	27 December 2023
DA-1500 Rev A	B studio	18 December 2023	27 December 2023
DA-1600 Rev A	B studio	18 December 2023	27 December 2023
DA-3000 Rev A	B studio	18 December 2023	27 December 2023
DA-3100 Rev A	B studio	18 December 2023	27 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.

2. **Amendment of Plans & Documentation**  
The approved plans and documents must be amended in accordance with the following requirements:
  - a. The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
    - First floor north facing bedroom windows.



Condition
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
<p>3. <b>Consent Requirements</b></p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
<p>4. <b>External Colours, Materials &amp; Finishes</b></p> <p>The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
<p>5. <b>Sydney Water</b></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"> <li>• Building plan approvals</li> <li>• Connection and disconnection approvals</li> <li>• Diagrams</li> <li>• Trade waste approvals</li> <li>• Pressure information</li> <li>• Water meter installations</li> <li>• Pressure boosting and pump approvals</li> <li>• Change to an existing service or asset, e.g. relocating or moving an asset.</li> </ul> <p>Sydney Water's Tap in™ in online service is available at:  <a href="https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm">https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</a></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>
<p>6. <b>Building Code of Australia</b></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</p>

Condition	
	- 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.
	Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.
7.	<b>Stormwater Drainage</b> Stormwater runoff from the (redeveloped portion) site shall be discharged either to the kerb and gutter along the site frontages by gravity and/or to Council's underground drainage system.  Condition Reason: To control and manage stormwater run-off.

### BEFORE BUILDING WORK COMMENCES

*\*Note: Reference to "building work" in the above heading includes any demolition work associated with the development, and the following conditions must be satisfied prior to the commencement of any works.*

Condition	
8.	<b>Building Certification &amp; Associated Requirements</b> The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work): <ul style="list-style-type: none"> <li>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</li> <li>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.</li> <li>b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</li> <li>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</li> <li>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</li> <li>e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</li> </ul> Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.
9.	<b>Home Building Act 1989</b> 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

	Condition
	<p>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 &amp; 71 of the Environmental Planning and Assessment Regulation 2021.</p>
10.	<p><b>Dilapidation Reports</b></p> <p>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 <i>Principal Certifier</i> for the development.</p> <p>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).</p> <p>Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>
11.	<p><b>Construction Noise &amp; Vibration Management Plan</b></p> <p>Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise &amp; Vibration Management Plan Guideline must be prepared by a suitably qualified person and provided to the Principal Certifier prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
12.	<p><b>Construction Site Management Plan</b></p> <p>A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none"> <li>• location and construction of protective site fencing and hoardings</li> <li>• location of site storage areas, sheds, plant &amp; equipment</li> <li>• location of building materials and stock-piles</li> <li>• tree protective measures</li> <li>• dust control measures</li> <li>• details of sediment and erosion control measures</li> <li>• site access location and construction</li> <li>• methods of disposal of demolition materials</li> <li>• location and size of waste containers/bulk bins</li> <li>• provisions for temporary stormwater drainage</li> <li>• construction noise and vibration management</li> <li>• construction traffic management details</li> <li>• provisions for temporary sanitary facilities</li> <li>• measures to be implemented to ensure public health and safety.</li> </ul> <p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p>

Condition	
	<p>A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
13.	<p><b>Public Liability</b></p> <p>The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p>

### DURING BUILDING WORK

Condition	
14.	<p><b>Site Signage</b></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"> <li>showing the name, address and telephone number of the principal certifier for the work, and</li> <li>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</li> <li>stating that unauthorised entry to the work site is prohibited.</li> </ol> <p>The sign must be—</p> <ol style="list-style-type: none"> <li>maintained while the building work is being carried out, and</li> <li>removed when the work has been completed.</li> </ol> <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> <li>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</li> <li>Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</li> </ol> <p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>
15.	<p><b>Restriction on Working Hours</b></p> <p>Building, demolition and associated site works must be carried out in accordance with the following requirements:</p>

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

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Condition	
	<ul style="list-style-type: none"> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> <li>• Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted</li> </ul>

*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.

16.

#### **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*



	Condition
	<i>beforehand.</i>
	<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) 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>j) 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.
17.	<p><b>Dust Control</b></p> <p>Dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.</p> <p><i>Dust control measures and practices may include:</i></p> <ul style="list-style-type: none"> <li>• <i>Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).</i></li> <li>• <i>Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.</i></li> <li>• <i>Installation of water sprinkling system or provision hoses or the like.</i></li> <li>• <i>Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.</i></li> <li>• <i>Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.</i></li> <li>• <i>Landscaping and revegetation of disturbed areas.</i></li> </ul> <p>Condition Reason: To require details of measures that will minimise impacts to the public, and the surrounding environment, during site works and construction.</p>
18.	<p><b>Site Accessway</b></p> <p>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.</p> <p>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.</p> <p>Condition reason: To minimise and prevent damage to public infrastructure.</p>
19.	<p><b>Road/Asset Opening Permit</b></p> <p>Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:</p> <ul style="list-style-type: none"> <li>• <i>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</i></li> </ul>

Condition	
	any public place, in accordance with section 138 of the <i>Roads Act 1993</i> and all of the conditions and requirements contained in the <i>Road / Asset Opening Permit</i> must be complied with.
	<ul style="list-style-type: none"> <li>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 <i>final occupation certificate</i> for the development.</li> <li>Relevant <i>Road / Asset Opening Permit</i> fees, repair fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place.</li> </ul>
	For further information, please contact Council's Road / Asset Opening Officer on 1300 722 542.

Condition Reason: To ensure works are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.

#### BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
20.	<p><b>Occupation Certificate Requirements</b></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>
21.	<p><b>Post-construction Dilapidation Report</b></p> <p>A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.</p> <p>The dilapidation report shall detail whether:</p> <ul style="list-style-type: none"> <li>(a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and</li> <li>(b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent.</li> </ul> <p>The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.</p> <p>Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>
22.	<p><b>Structural Certification</b></p> <p>A Certificate must be obtained from a professional engineer, which certifies that the</p>

Condition	
	building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal Certifier</i> . A copy of which is to be provided to Council.
	Condition Reason: To ensure the structural adequacy of the building and works.

### OCCUPATION AND ONGOING USE

Condition	
23.	<b>External Lighting</b> 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.	<b>Configuration of rooms</b> No approval is granted for reconfiguration of rooms other than those shown in the plans referenced in condition 1 of this consent.  Condition Reason: To ensure the proposed development does not increase intensity of use on site.

### DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
25.	<b>Demolition Work</b> A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements: <ol style="list-style-type: none"> <li>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.</li> <li>b) The Demolition Work Plan must include the following details (as applicable):               <ul style="list-style-type: none"> <li>• The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor</li> <li>• Details of hazardous materials in the building (including materials containing asbestos)</li> <li>• Method/s of demolition (including removal of any hazardous materials including materials containing asbestos)</li> <li>• Measures and processes to be implemented to ensure the health &amp; safety of workers and community</li> <li>• Measures to be implemented to minimise any airborne dust and asbestos</li> <li>• Methods and location of disposal of any hazardous materials (including asbestos)</li> <li>• Other measures to be implemented to ensure public health and safety</li> <li>• Date the demolition works will commence/finish.</li> </ul> </li> </ol> <p>The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.</p> <p>If the demolition work involves asbestos products or materials, a copy of</p>

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Condition
<p>the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.</p> <p><i>Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m<sup>2</sup> of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.</i></p> <p><i>A copy of Council's Asbestos Policy is available on Council's web site at <a href="http://www.randwick.nsw.gov.au">www.randwick.nsw.gov.au</a> in the Building &amp; Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.</p>

### DURING DEMOLITION WORK

Condition
<p>26. <b>Demolition Work and Removal of Asbestos Materials</b></p> <p>Demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a <i>demolition work plan</i>, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> <li>• A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m<sup>2</sup> of bonded asbestos (i.e. fibro),</li> <li>• Asbestos waste must be disposed of in accordance with the <i>Protection of the Environment Operations Act 1997</i> and relevant Regulations</li> <li>• A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",</li> <li>• Council is to be given at least two days written notice of demolition works involving materials containing asbestos,</li> <li>• Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,</li> <li>• 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,</li> <li>• Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.</li> </ul> <p><i>A copy of Council's Asbestos Policy is available on Council's web site at <a href="http://www.randwick.nsw.gov.au">www.randwick.nsw.gov.au</a> in the Building &amp; Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

## Development Application Report No. D40/24

**Subject:** 3/7 Battery Street CLOVELLY (DA/766/2023)

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### Executive Summary

<b>Proposal:</b>	Alterations to unit 3 at 2nd level of existing residential flat building including enclosure of eastern balcony.
<b>Ward:</b>	North Ward
<b>Applicant:</b>	AS Architecture Pty Ltd
<b>Owner:</b>	Mr C C S Yu
<b>Cost of works:</b>	\$106,700.00
<b>Reason for referral:</b>	The proposal exceeds the Floor Space Ratio development standard by more than 10%.

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.6 of Randwick Local Environmental Plan 2012. The concurrence of the Planning Secretary may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/766/2023 for alterations to unit 3 at 2nd level of existing residential flat building including enclosure of eastern balcony at No. 3/7 Battery Street, Clovelly subject to the development consent conditions attached to the assessment report.

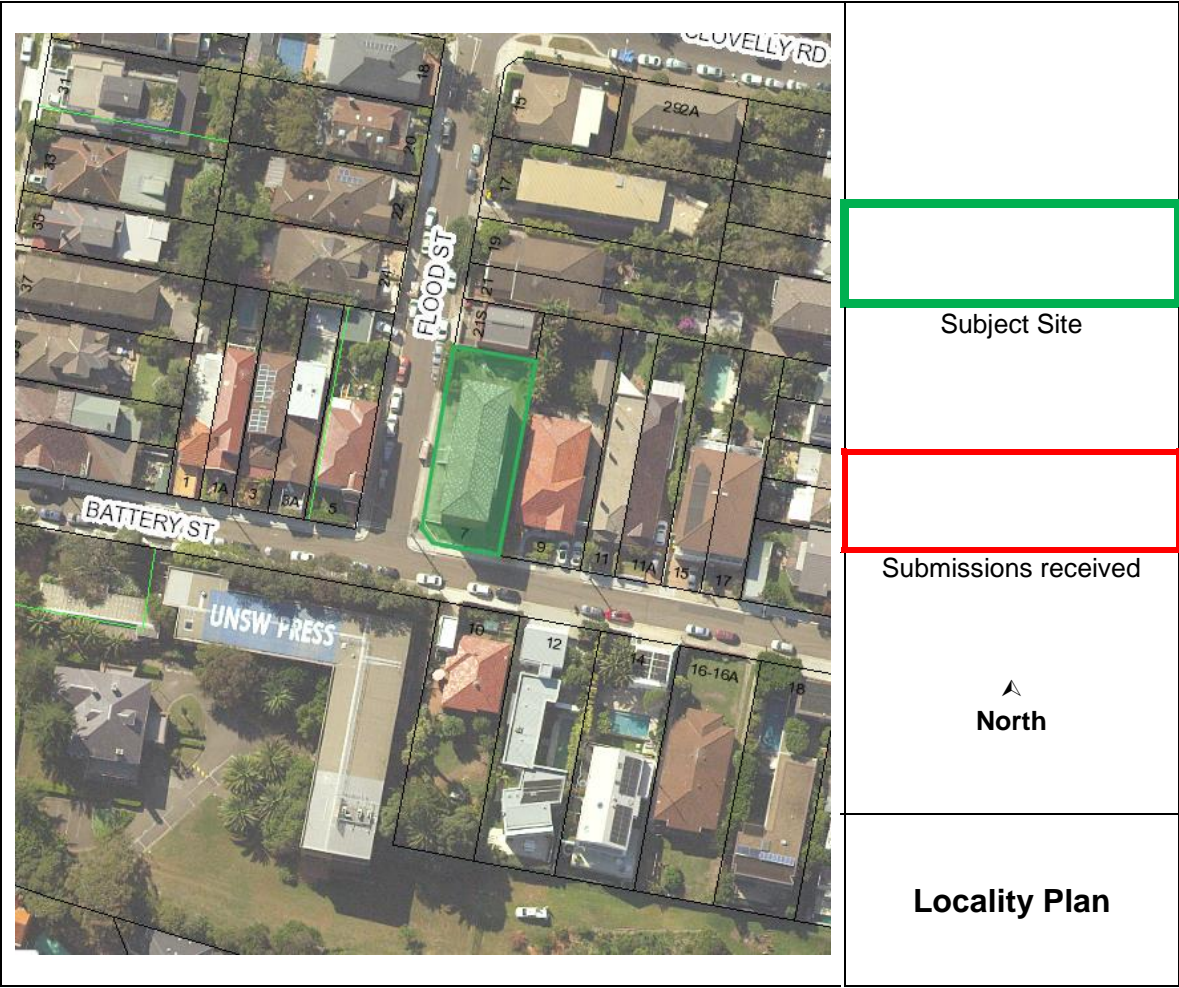
### Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/766/2023 - 3/7 Battery Street, CLOVELLY

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1. Executive summary

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

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

The proposal seeks development consent for alterations to unit 3 at 2nd level of existing residential flat building including enclosure of eastern balcony.

The key issues associated with the proposal relate to the variation to the FSR development standard, and the existing use rights pertaining to the site. The FSR variation arises as the FSR of the existing building exceeds the current standard, and the increase in GFA from the balcony enclosure is an addition of 9.92sqm.

This GFA increase is within the established building envelope and does not contribute to the overall bulk and scale of the existing building envelope. Further, the proposal does not result in any unreasonable amenity impacts upon either the other dwellings within the building or adjoining properties.

The application is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is known as 3/7 Battery Street, Clovelly and is legally described as Lot 35 in DP 527188 (Being lots 1-6 IN SP 3136). The site is irregular in shape and is on the corner of Battery and Flood Street with frontages of 16.03m and 34.37m respectively. The site contains a three-storey

red brick walk up residential flat building above ground floor parking. The ground level contains lock-up garage parking and stairs to the pedestrian entrance. The block contains six apartments, with the apartment subject of this application, unit three (3), being on the second floor. Units 1,2,4,5 and 6 have enclosed balconies or approval to enclose the balcony, with unit three, subject of this application, being the second last to propose enclosure.

**Figure 1.** Google Street View (Oct 2019) – taken from Flood Street Frontage (Source: Google Maps)



**Figure 2.** View from Battery Street (March 2022) –Taken from Battery St (Source: Author)

### 3. Relevant history

#### BA/380/1967

Building consent was granted for a three storey apartment building containing 6 x three bedroom flats.

#### BA/1191/1980

Consent was granted to glaze in balcony with anodized aluminum windows to unit 6.

#### DA/130/2018

Consent was granted on 13 April 2018 for Alterations to unit 5 at top level of existing residential flat building including enclosure of eastern balcony.

### 4. Proposal

Council is in receipt of a development application that seeks consent to undertake the following alterations and additions to unit 3, 7 Battery Street, Clovelly:

- Remove door to bathroom and replace with brick wall, move door to bed three making bathroom an ensuite;
- Renovation of existing bathroom;
- Renovation of existing kitchen; and
- Enclosure of balcony with windows to match adjacent balcony enclosure.

### 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. State Environmental Planning Policy 65 - Design Quality of Residential Apartment Developments

The proposed development involves minor alterations and additions to the existing Residential Flat Building to enclose the balcony and internal alterations to Unit 3.

Given the minor nature of the works which are contained within the existing building envelope, the proposed development is not considered to constitute the substantial redevelopment or substantial refurbishment of the existing building and therefore, SEPP 65 is not applicable in this instance. Notwithstanding, the proposed alterations shall provide better amenity for occupants and would be consistent with the design quality principals set out in Schedule 1 of SEPP 65, provided the rooms are utilised for their intended purpose of ancillary areas.

#### 6.2. SEPP (Building Sustainability Index: BASIX) 2004

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

In accordance with the savings and transitional provisions pursuant to clause 4.2 of the Sustainable Buildings SEPP 2022, as the BASIX Certificate was issued before 1 October 2023, the policy does not apply, and the proposal shall be considered against the provisions of the BASIX SEPP 2004.

#### 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 purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development (involving alterations and additions to the existing apartment) are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

A portion of the south-eastern corner of the site is identified as Coastal Use Area. However, the proposed works are not located on the land identified within the coastal use area. Notwithstanding this, the proposed development would not cause adverse impacts upon the foreshore with regards to pedestrian access, overshadowing, visual amenity, or heritage, and would be compatible with the existing building environment within the immediate locality, and therefore would be consistent with the provisions of Clause 2.11 of the SEPP. Further, it is not considered that the development would be likely to cause increased risk of coastal hazards on that land or other land in accordance with clause 2.12.

#### **6.5. 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 subject site is zoned R2 Low Density Residential as identified on the Land Zoning Map of RLEP 2012. The existing building on the subject site is defined as a Residential Flat Building. Pursuant to the Land Use Table in Part 2 of RLEP 2012, a "residential flat building" is a prohibited use in the R2 zone.

The Applicant asserts that the site benefits from existing use rights pursuant to Division 4.11 of *the Environmental Planning and Assessment Act 1979*. Section 4.65 of Division 4.11 requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Furthermore, under Section 4.66, the use is presumed to be abandoned, unless the contrary is established, if the use ceases for a continuous period of 12 months.

A search of Council records indicates that the original building was approved under Building Application 380/1967, and as noted above in the Section 3, relevant history above, the building has been the subject of numerous approvals for alterations to individual dwellings within the building, most commonly the similar enclosure of balconies.

It is therefore established that existing use rights apply to the site and there is no evidence to suggest that the approved use of the building as a residential flat building has been discontinued for any period of over 12 months since its commencement.

In view of the above, it is considered that existing use rights pertain to the site under Part 4, Division 4.11 of the EP&A Act and Part 7 of the EP&A Regulation 2021, and the subject application therefore may be considered and determined under the "existing use" provisions. See Key Issues for detailed existing use rights assessment.

Furthermore, the proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the continued use of the site as a residential development, shall not fundamentally alter the existing streetscape, and shall not result in any unreasonable amenity impacts upon adjoining and surrounding properties.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will complement the existing balconies enclosures present on the site.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.5:1	0.92:1 (Existing) 0.94:1, variation of 89% due to 9.92m <sup>2</sup> balcony enclosure.	No (Refer to Clause 4.6 Assessment below).
Cl 4.3: Building height (max)	9.5m	7.692m (proposed works) (Note: the existing building exceeds the maximum building height, however the proposed works are sited below the maximum height and are compliant with the building height standard).	Yes

#### 6.5.1. Clause 4.6 - Exceptions to development standards

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

#### 6.5.2. 6.7 Foreshore scenic protection area

The site is located within the Foreshore Scenic Protection Area under council's LEP. The Clause has the following objectives:

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

Further, before granting consent, per (3), council must be satisfied that the development –

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

Council has considered the objectives (1) as well as (3) of Clause 6.7 and found the proposed alterations to the existing residential flat building are designed in a way to have no appreciable impact on the public area of the coastline, as well as significant views to and from the coast, reserves, open space. The proposal also complies with objectives a-d, subject to recommended conditions that address building materiality.

## 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 (%)
Cl 4.4: Floor space ratio (max)	0.5:1	0.94:1	9.92 m <sup>2</sup>	89%

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

#### **7.1. Exception to the Floor Space Ratio (FSR development standard (Cl 4.4))**

The applicant’s written justification for the departure from the FSR standard is contained in Appendix 1.

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

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

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

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

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

*The Proposal will not impact on the overall size and scale of the existing building. The enclosure of the balcony follows the recent approval of a DA for the enclosure of the corresponding balcony of Unit 5 by Randwick City Council. It is noted that Units 1, 2, 4, and 6 have all enclosed the eastern balcony, with Unit 5 expected to follow with the recent approval. That leaves the subject Unit 3 the only remaining balcony yet to be enclosed.*

*The enclosure of the balcony to Unit 3 will ensure a consistent eastern elevation of the building and ensures that the development is compatible with the existing and desired future character of the locality.*

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

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

*The Proposal includes enclosing the eastern elevation with operable windows whilst retaining the western balcony. The Proposal ensures that adequate cross ventilation is retained, and provides a new kitchen fit out.*

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

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

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

*The Site is located nearby the following heritage items identified in Schedule 5, Part 1 of RLEP 2012:*

*Heritage Item I23 located adjacent the Site at 215 Flood Street, identified as 'Electricity Substation No. 300'.*

*Heritage Item I53 located on the opposite side of Battery Street at 45–51 Beach Street, identified as "Cliffbrook", Edwardian villa".*

*The Proposal seeks to enclose an existing balcony and other internal alterations only and will not impact on the heritage significance of the nearby heritage items or heritage conservation areas and is therefore consistent with this 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.*

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

*The Proposal will not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

*The Proposal seeks to enclose an existing balcony and other internal alterations only and will not result in increased visual bulk.*

*The Proposal is considered to improve the privacy impacts to the adjoining dwelling to the east by enclosing a previously open balcony space and maintains the same brick balustrade that restricts downward views.*

*The Proposal will not impact on views enjoyed by adjoining dwellings and will have no impact on the current shadows cast by the existing built form.*

*Therefore, the Proposal is consistent with this objective.*

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

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

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

*The Variation Request is considered well founded because, notwithstanding the proposed non-compliance with the maximum permitted FSR:*

- *The proposed FSR variation is consistent with the underlying objective or purpose of the standard as demonstrated in Section 4.1.*
- *The proposed FSR variation is consistent with the objectives of the R2 Low Density Residential zone as described in Section 4.2.*

*Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in Section 4.3*

*The Proposal and the exceedance do not result in any additional or unacceptable impact on other land uses. The Proposal does not result in any unreasonable impacts on adjoining development in respect of overshadowing, visual bulk, privacy, or other amenity impacts due to the existing nature of the building of the Site.*

*The additional floor space does not cause any network or capacity issues on the surrounding road network. The additional GFA does not facilitate an intensification of the use of the dwelling, with no additional bedrooms or occupants and therefore the Proposal does not cause any discernible impact on the locality by way of traffic or parking.*

*The Proposal does not result in any change to existing setbacks, building height, site landscaping, car parking, site coverage, or another other building metric that would demonstrate a non-compliance with the objectives and controls contained in Randwick Comprehensive Development Control Plan 2013 (RCDCP 2013).*

*The dwelling is provided with two (2) balconies, with one east-facing and one west-facing. The Proposal seeks to enclose the east-facing balcony and retain the west-facing balcony, and therefore maintaining adequate private open space for use by the dwelling occupants.*

*The Proposal has been architecturally designed to provide materiality and form that ensures that the visual impact of the development integrates with the surrounding environment.*

*The Proposal would remain compatible with adjoining residential land uses in light of the above.*

*Compliance with the remaining development standards applicable to the site is achieved. There would be no measurable environmental or amenity benefits in maintaining the standard.*

*For the reasons outlined above, it is considered that the variation to the FSR control under Clause 4.4 is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under RLEP 2012.*

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

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

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

***Assessment against objectives of floor space ratio standard***

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

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

Assessing officer's comment: The desired future character of the locality is established in the objectives of the R2 Low Density Residential Zone. This site benefits from existing use rights provisions under the EPA Act 1979.

The existing overall size and scale of the building shall be maintained, and the proposed development would be compatible with the existing similar aged apartment buildings within the vicinity, and not inconsistent with the desired future character of the locality.

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

Assessing officer's comment: The proposed development is well articulated on all facades with glazing and balconies.

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

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

Assessing officer's comment: The proposed development is compatible with the scale and character of neighboring developments and will have no adverse impact on nearby and adjoining heritage items.

- (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 development will not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

Further, this assessment finds the development is consistent with the objectives of the floor space ratio standard.

### **Assessment against objectives of the R2 Low Density Residential zone**

The objectives of the R2 Low Density Residential zone are:

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

Assessing officer's comment: The proposed development will provide for the housing needs of the community. The proposal improves the internal amenity of residents by providing an increase of habitable space. The dwelling will continue to retain the important features such as orientation, bulk, articulation, site coverage and setbacks and provides a transition to a lower density along Battery and Flood Streets.

The development is consistent with the objectives of the floor space ratio standard and the R2 low density Residential zone. Therefore, the development will be in the public interest.

#### **4. Has the concurrence of the Secretary been obtained?**

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

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

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

*Is there public benefit from maintaining the development standard?*

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

### **Conclusion**

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

## **8. Development control plans and policies**

### **8.1. Randwick Comprehensive DCP 2013**

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



In the assessment of the proposed development, the provisions, requirements and controls under the DCP were considered. It is noted that given the nature and location of the proposal in combination with its reliance on the existing use rights under the EP&A Act that only some of these are triggered. The proposed development involves changes to the existing layout and in-fill of a balcony that are wholly contained within the current building footprint and therefore, do not result in any changes in terms of building height, site coverage, landscaped (deep soil/permeable surface) areas and setbacks.

The DCP control for balconies, particularly Part C2, Section 4.8 iii) was considered as a part of the assessment and a consent condition requesting an external colours, materials & finishes schedule was secured to ensure the façade matches the finishes and materials of other apartment enclosures within the building. Further, the balcony of this application is the last to enclose and will harmonize with the remainder of units within the building.

Section B10 of the DCP relates to the Foreshore Scenic Protection Area. The proposed alterations to the residential flat building consisting of a balcony enclosure are largely consistent with the controls and objectives of B10 and considered to result in a minor change within the foreshore context, refer to commentary under Clause 6.7 of the LEP above.

The resultant in-fill of the balcony contributes to changes to the presentation and expression of the building, however, the overall design is considered appropriate and will integrate with the remainder of the residential flat building, given a number of balconies having already been converted to sunrooms/bedroom extensions. Notably, the external elements proposed to change are situated in the rear portion of the site and will not be highly visible to the public domain. An evaluation of potential visual bulk, privacy, overshadowing and view loss impacts has determined that any impacts of this nature generated by the proposal will be minor and reasonable.

## 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues section.
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 Section 8 of report and/or the discussion in key issues below. Please note that only relevant controls from Randwick's C2.
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>

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Section 4.15 'Matters for Consideration'	Comments
	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	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.

### 9.1. Discussion of key issues

#### Existing Use Rights

Section 4.65 of Division 4.11 of the *Environmental Planning and Assessment Act 1979* requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Based on a search of past approvals, the existing building was approved under Building Application BA/380/1967 and the building has been the subject of numerous building and development applications in the past, most recently in 2018, for various alterations and additions to the building (resulting in balcony enclosure), which have all maintained the existing and ongoing use of the building as a residential flat building.

It is also noted that the building has been in consistent pattern of ownership being individual strata lots with included nominated common areas.

Therefore, it is established that the use of the building was lawfully granted and in existence prior to the implementation of RLEP 2012.

Section 4.67 of the EP&A Act provides that any provisions in an instrument that would derogate from the “incorporated provisions” of the Act would have no force or effect. It should be noted that derogation from the incorporated provisions has also been considered in recent caselaw with regards to the matters of *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made Property Group Pty Limited v North Sydney Council* [2020] NSWLEC 1332 in which it was determined that the provisions of a LEP do not necessarily derogate from the incorporated provisions of the EP&A Regs and that the existing use right permits the permissibility and alteration of the development, however may not result in the derogation from the standards of a LEP. In this instance (and adopting the Commissioner’s findings in the above LEC matters), it is considered that the provisions of clause 4.4 read in conjunction with clause 4.6 of RLEP 2012 allow the application to be made and considered by the consent authority, and do not derogate from the incorporated provisions, and that an assessment of the development in accordance with s4.15 of the EP&A Act should be undertaken.

Furthermore, as the provisions of clause 4.4 are applicable, and the Applicant seeks to vary the FSR, a clause 4.6 written submission has been provided and is assessed in Section 7.1 above.

The Land and Environment Court has established a planning principle for urban development (*Fodor Investments v Hornsby Shire Council*, 2005) which establishes criteria for the assessment of proposals on land with existing use rights. As such, the proposal has been assessed against the relevant provisions of RLEP 2012 and RDCP 2013 as well as the planning principal.

Assessment against the planning principal is provided below:

#### Planning Principal 1

***How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?***

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.*

The subject site is located within the R2 – Low Density Residential zoning, with the adjoining and adjacent properties within the surrounding area primarily medium and low density developments in the form of dwelling houses and semi-detached dwellings, and low rise flat buildings. There are also several examples in the near vicinity of residential flat buildings of similar bulk and scale to this building which are also non-conforming uses.

The existing FSR of the building exceeds the permitted 0.5:1, being 0.92:1. The proposed works shall result in a minor increased to the approved FSR to 0.94:1 or an additional 9.92m<sup>2</sup>.

The proposed works that provide for additional floor area constitute the enclosure of the balcony of unit No.3 and remains within the overall building envelope of the building.

The proposal does not alter the maximum height of the building, or the approved site coverage and landscaping on the site. While it is acknowledged that the proposed development significantly exceeds the FSR of the R2 – Low Density zone, given the context of the existing building and existing character of the immediate locality, the bulk and scale of the proposal is not considered to be incompatible with the existing streetscape or the character of the local area within the immediate vicinity.

In view of the above, and subject to the recommendations, the bulk and scale of the proposed development is supportable when considered in the context of the site and surrounds.

Planning Principal 2

***What is the relevance of the building in which the existing use takes place?***

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.*

The proposed development does not involve a change of use to the existing development. The proposed development seeks to improve the amenity of the existing Unit 3 by providing additional usable floor area within the dwelling. The proposal does not alter the number of bedrooms or otherwise intensify the use of the dwelling.

Planning Principal 3

***What are the impacts on adjoining land?***

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Visual Privacy

The enclosure of the balcony of Unit 3 does not result in an additional privacy impact. The existing windows and the use of the room are not changing in the proposal. It is also noted that the extension of the living area would likely result in a similar use configuration and the privacy impacts would not be considered unreasonable.

Acoustic Privacy

The enclosure of the balcony minimizes acoustic privacy impacts to the adjoining properties given that the enclosure will provide for noise attenuation that does not currently exist within the open balcony.

#### Solar Access and View Loss

Due to the proposed works not extending beyond the existing building envelope, the proposal does not impact solar access to adjoining properties or result in any view loss impacts.

#### Planning Principal 4

##### ***What is the internal amenity?***

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

The proposed development provides for increased amenity for occupants in conjunction with the floor plan reconfiguration of the dwelling improves the internal amenity of the dwelling.

Based on the above existing use rights assessment, and subject to the recommendations within the report, the proposal is considered reasonable.

## **10. Conclusion**

That the application for alterations to unit 3 at 2nd level of existing residential flat building including enclosure of eastern balcony 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 and has demonstrated a satisfactory outcome under Clause 4.6 of the RLEP 2012.
- The proposal is consistent with the specific objectives of the R2 zone in that the proposal will provide for the continued use of the site as a residential development and continues to reflect the desired future character of the area and not result in any unreasonable amenity impacts to the adjoining and surrounding properties.
- The site is subject to existing use rights and the proposal is considered to be appropriate to the subject site and will not result in any unreasonable adverse impacts upon either the amenity of the adjoining premises or the character of the locality.
- 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: Applicant's written request seeking to justify the contravention of the development standard

### PART A PRELIMINARY

#### 1.1 INTRODUCTION

This Clause 4.6 Variation Request has been prepared in support of a Development Application (DA) for alterations and additions to an existing dwelling within a residential flat building including enclosure of the eastern balcony and internal configurations at Unit 3, 7 Battery Street, Clovelly (the Site).

The proposed development includes the following works (the Proposal):

- Demolition of the existing windows, door, and external wall to the eastern balcony
- Alterations to the internal configuration of Unit 3
- Installation of new windows to enclose the eastern balcony

The Site is zoned R2 Low Density Residential, pursuant to the *Randwick Local Environmental Plan 2012* (RLEP 2012) and is located within the Randwick Local Government Area (LGA). The Proposal relates to an existing residential flat building which is prohibited in the R2 zone. Notwithstanding, the existing residential flat building has been determined to benefit from existing use rights pursuant to Part 7 of the *Environmental Planning & Assessment Regulation 2021* (the EP&A Regulation) and therefore can be altered under Section 163 of the EP&A regulation. The Statement of Environmental Effects prepared for the DA addresses the relevant parts of the EP&A Regulation.

The Proposal is generally consistent with the objectives and provisions of RLEP 2012, with the exception of the maximum floor space ratio (FSR) development standard prescribed by Clause 4.4, for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 prescribed under RLEP 2012. It considers various planning controls and existing characteristics of the Site and concludes that the proposed variation is the best means of achieving the objects of encouraging orderly and economic use and development under the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

#### 1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Clause 4.4 - Floor space ratio of RLEP 2012 and has been prepared in accordance with the requirements of Clause 4.6 of RLEP 2012 which includes the following objectives:

- (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.

Under the provisions of Clause 4.4 of RLEP 2012, the land is subject to a maximum FSR development standard of 0.5:1. The Proposal entails the following key components identified in **TABLE 1** below.



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TABLE 1: DEVELOPMENT COMPONENTS	
Project element	Proposed
Site Area	560.82sqm
Existing GFA and FSR	519.49sqm (0.92:1)
Proposed additional GFA	9.92sqm
Proposed GFA and FSR	529.41sqm (0.94:1)

The Proposal principally involves the enclosure of an existing balcony to Unit 3 with the introduction of new enclosing windows. The Proposal results in an increase to the GFA of the building by 9.92sqm and therefore increases the existing FSR exceedance on the Site. The Proposal results in an FSR of 0.94:1 on the Site and therefore exceeds the development standard by 249sqm or 89%.

It is noted that the existing GFA on the Site results in an FSR of 0.92:1, which is a significant existing variation to the FSR development standard.

The Proposal seeks to enclose one of the two balconies servicing the dwelling in order to provide additional internal floor area and improve the amenity of the living and dining areas of the dwelling. Whilst there is technically no additional floor area available to the dwelling, the enclosure of the balcony would constitute GFA pursuant to the definition of gross floor area in the Dictionary accompanying RLEP 2012. A GFA Calculations Plan is provided in **Figure 1** below which shows the additional proposed GFA shown highlighted in yellow.

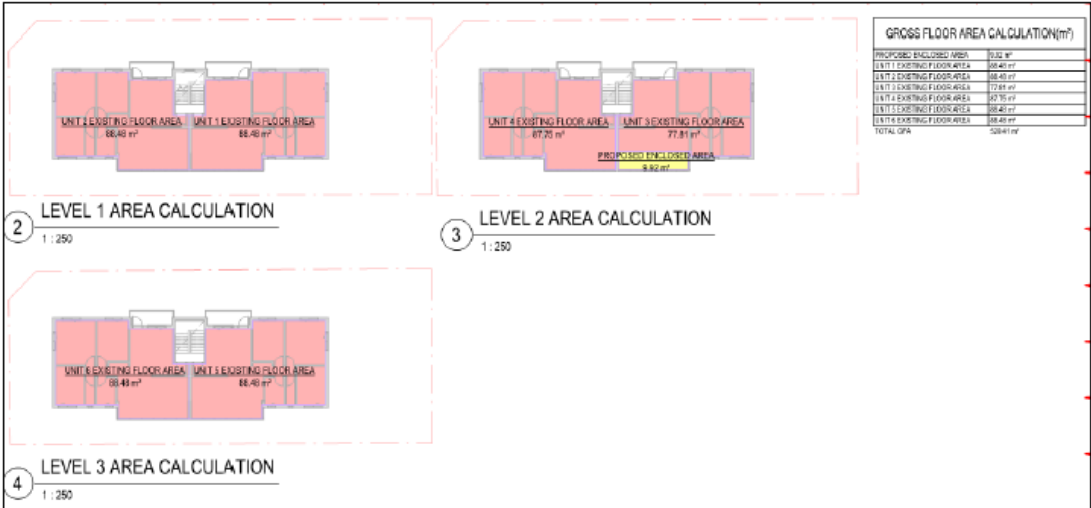


Figure 1. GFA Calculations Plan (Source: ASA Studio, 2024)

The particular circumstances of the Site and the Proposal warrant an appropriate degree of flexibility in the application of the development standard to achieve the best outcome for the Site.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standard prescribed by Clause 4.4 of RLEP 2012.

### 1.3 DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 4.4 of RLEP 2012, the Site is subject to a maximum FSR development standard of 0.5:1. The proposal will result in an FSR of 0.94:1. **TABLE 2** below provides a summary of the variation.

TABLE 2: CLAUSE 4.4 of RLEP 2012 VARIATION SUMMARY		
RLEP 2012 Clause	RLEP 2012 Development Standard	Proposed development
Clause 4.4 – Floor space ratio	0.5:1	0.94:1

### 2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of RLEP 2012 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

*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 EP&A Regulation 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).*

Accordingly, a successful Clause 4.6 variation must satisfy the below:

#### Clause 4.6(3)

Clause 4.6(3) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the following:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (CI 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (CI 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*"Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have "considered" the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be*

*satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."*

Accordingly, a consent authority must be satisfied:

- a) that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
- b) of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in **Sections 4.3 and 4.4** of this Variation Request.

## **PART C STANDARDS BEING OBJECTED TO**

### **3.1 OVERVIEW**

The Site is zoned R2 Low Density Residential and is subject to the underling objectives of the varied standard as well as the R2 zone under RLEP 2012.

### **3.2 CLAUSE 4.4 - MAXIMUM FSR UNDER RLEP 2012**

Clause 4.4 of RLEP 2012 identifies the following objectives:

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

Pursuant to Clause 4.6, the proposal seeks exception to the maximum permissible FSR control of 0.5:1.

For clarity FSR is defined under Clause 4.5(2) of the RLEP 2012 as follows:

- (2) *Definition of "floor space ratio" The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

## PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF WLEP2012

Pursuant to Clause 4.6 of RLEP 2012, exception is sought from the maximum FSR development standard applicable to the Site pursuant to Clause 4.4 of RLEP 2012.

### 4.1 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 variation to a development standard is the Proposal's compliance with the underlying objectives and purpose of that development standard.

Clause 4.6(4)(a)(ii) requires that a request to vary a development standard must establish that the proposed contravention will be in the public interest because it is consistent with the objectives of the development standard and the zone.

Clause 4.4(1) of RLEP 2012 sets out specific objectives of the FSR development standard and those objectives are responded to in **TABLE 3** below:

TABLE 3: CONSISTENCY WITH THE DEVELOPMENT STANDARD OBJECTIVES	
Objective	Response
(a) <i>to ensure that the size and scale of development is compatible with the desired future character of the locality,</i>	<p>The Proposal will not impact on the overall size and scale of the existing building.</p> <p>The enclosure of the balcony follows the recent approval of a DA for the enclosure of the corresponding balcony of Unit 5 by Randwick City Council. It is noted that Units 1, 2, 4, and 6 have all enclosed the eastern balcony, with Unit 5 expected to follow with the recent approval. That leaves the subject Unit 3 the only remaining balcony yet to be enclosed.</p> <p>The enclosure of the balcony to Unit 3 will ensure a consistent eastern elevation of the building and ensures that the development is compatible with the existing and desired future character of the locality.</p>
(b) <i>to ensure that buildings are well articulated and respond to environmental and energy needs,</i>	<p>The Proposal includes enclosing the eastern elevation with operable windows whilst retaining the western balcony. The Proposal ensures that adequate cross ventilation is retained, and provides a new kitchen fitout that</p>
(c) <i>to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</i>	<p>The Site is located nearby the following heritage items identified in Schedule 5, Part 1 of RLEP 2012:</p> <ul style="list-style-type: none"> <li>Heritage Item I23 located adjacent the Site at 215 Flood Street, identified as 'Electricity Substation No. 300'.</li> </ul>

TABLE 3: CONSISTENCY WITH THE DEVELOPMENT STANDARD OBJECTIVES	
Objective	Response
	<ul style="list-style-type: none"> <li>Heritage Item I53 located on the opposite side of Battery Street at 45-51 Beach Street, identified as "Cliffbrook", Edwardian villa"</li> </ul> <p>The Proposal seeks to enclose an existing balcony and other internal alterations only and will not impact on the heritage significance of the nearby heritage items or heritage conservation areas and is therefore consistent with this objective.</p>
(d) <i>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.</i>	<p>The Proposal will not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</p> <p>The Proposal seeks to enclose an existing balcony and other internal alterations only and will not result in increased visual bulk.</p> <p>The Proposal is considered to improve the privacy impacts to the adjoining dwelling to the east by enclosing a previously open balcony space and maintains the same brick balustrade that restricts downward views.</p> <p>The Proposal will not impact on views enjoyed by adjoining dwellings and will have no impact on the current shadows cast by the existing built form.</p> <p>Therefore, the Proposal is consistent with this objective.</p>

#### 4.2 OBJECTIVES OF THE ZONE

The Site is zoned R2 Low Density Residential zone pursuant to RLEP 2012. Therefore, consideration has been given to the R2 zone objectives in **TABLE 4** below:

TABLE 4: CONSISTENCY WITH THE R2 ZONE OBJECTIVES	
Objective	Response
<ul style="list-style-type: none"> <li><i>To provide for the housing needs of the community within a low density residential environment.</i></li> </ul>	<p>The Proposal continues to provide a three-bedroom dwelling with a high level of internal amenity. Therefore, the Proposal is consistent with this objective.</p>
<ul style="list-style-type: none"> <li><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> </ul>	<p>It is understood that "other land uses" relates to other permissible uses in the zone that are not residential in nature, and therefore this objective is not relevant to the Proposal. Notwithstanding, the Proposal is not inconsistent with this objective.</p>



<ul style="list-style-type: none"> <li><i>To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.</i></li> </ul>	<p>The Proposal seeks to enclose an existing balcony which is consistent with the enclosure of the balconies to the five remaining units in the building. Units 1, 2, 4 and 6 have enclosed balconies, and Unit 5 has a recent approval to enclose the balcony. Therefore, the enclosure of the balcony to Unit 3 would be consistent with the evolving pattern of development on the subject building. The enclosure of the balcony will provide for a unified and cohesive presentation of the building to the streetscape and view from the public and private domain.</p>
<ul style="list-style-type: none"> <li><i>To protect the amenity of residents.</i></li> </ul>	<p>The Proposal will protect the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</p> <p>The Proposal seeks to enclose an existing balcony and other internal alterations only and will not result in increased visual bulk.</p> <p>The Proposal is considered to improve the privacy impacts to the adjoining dwelling to the east by enclosing a previously open balcony space and maintains the same brick balustrade that restricts downward views.</p> <p>The Proposal will not impact on views enjoyed by adjoining dwellings and will have no impact on the current shadows cast by the existing built form.</p> <p>Therefore, the Proposal is consistent with this objective.</p>
<ul style="list-style-type: none"> <li><i>To encourage housing affordability.</i></li> </ul>	<p>The Proposal involves alterations and additions to provide additional internal floor area and a more efficient layout to an existing dwelling that is slightly undersized to today's Apartment Design Guide standards. The Proposal results in an improved amenity outcome and will not impact on the affordability of housing in the locality.</p>
<ul style="list-style-type: none"> <li><i>To enable small-scale business uses in existing commercial buildings.</i></li> </ul>	<p>The Site does not contain an existing commercial building and therefore this objective is not relevant to the Proposal. Notwithstanding, the Proposal is not inconsistent with this objective.</p>

#### 4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.1**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

The case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:

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

Section 4.2 above provides a detailed assessment against the objectives of the development standard and the zone. The following justification has adopted the first (1) and fourth (4) tests in *Wehbe* to establish that compliance is unreasonable or unnecessary because the objectives of the FSR standard are satisfied notwithstanding the variation, and the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard. Strict compliance with the development standard is considered unreasonable and unnecessary for the following reasons:

- The Proposal is consistent with the existing and desired future character of the Site and locality and the surrounding area in that it maintains a scale of development that when viewed from the streetscape and surrounding properties is not dominant in terms of bulk, scale, or interface with the streetscape. It is argued that the Proposal provides a development outcome that, in enclosing the existing balcony to match the other enclosed balconies along the eastern elevation of the building, improves the cohesiveness of the character of the area.
- The portion of the Proposal that provides additional GFA, being the enclosure of the existing exposed balcony, does not add any additional bulk to the building and does not result in additional overshadowing.
- The Proposal introduces an additional GFA of 9.92sqm which contributes 1.8% to the total GFA of the building (529.41sqm) which is insignificant in respect of the overall existing building size.

- Randwick City Council has approved the enclosure of the other 5 balconies on the eastern elevation of the subject building. The enclosure of each of those balconies have added a combined 49.6sqm to the total GFA of the building. Given the existing GFA of the building before the balcony enclosure would therefore have been 469.89sqm, the existing building still constitutes a significant variation to the FSR development standard.
- Randwick City Council has approved the enclosure of the other 5 balconies and has granted a variation to the maximum FSR development standard on all occasions. Therefore, the development standard has been virtually abandoned on the Site by Randwick City Council's actions in granting consents departing from the standard.
- A reduction in the scale of the development to reduce the Proposal to a compliant FSR would involve the demolition of a significant portion of the building, which is not within the scope of works nor a practicable option.
- The Proposal and the exceedance do not result in any additional or unacceptable impact on other land uses. The Proposal does not result in any unreasonable impacts on adjoining development in respect of overshadowing, visual bulk, privacy, or other amenity impacts due to the existing nature of the building of the Site.

In view of the circumstances of the Proposal, strict compliance with clause 4.4 of RLEP 2012 is considered to be both unnecessary and unreasonable. The Proposal does not conflict with the intent of Clause 4.4 of RLEP 2012 as demonstrated above and satisfies its objectives, notwithstanding the proposed numerical variation.

The proposed FSR variation will retain compatibility with surrounding development and will remain consistent with the objectives of the development standard and the R2 Low Density Residential zone.

The abovementioned justifications are considered valid, and in this instance the Clause 4.6 Variation Request is considered to be acceptable.

#### **4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

The Variation Request is considered well founded because, notwithstanding the proposed non-compliance with the maximum permitted FSR:

- The proposed FSR variation is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 4.1**.
- The proposed FSR variation is consistent with the objectives of the R2 Low Density Residential zone as described in **Section 4.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**.

- The Proposal and the exceedance do not result in any additional or unacceptable impact on other land uses. The Proposal does not result in any unreasonable impacts on adjoining development in respect of overshadowing, visual bulk, privacy, or other amenity impacts due to the existing nature of the building of the Site.
- The additional floor space does not cause any network or capacity issues on the surrounding road network. The additional GFA does not facilitate an intensification of the use of the dwelling, with no additional bedrooms or occupants and therefore the Proposal does not cause any discernible impact on the locality by way of traffic or parking.
- The Proposal does not result in any change to existing setbacks, building height, site landscaping, car parking, site coverage, or another other building metric that would demonstrate a non-compliance with the objectives and controls contained in Randwick Comprehensive Development Control Plan 2013 (RCDCP 2013).
- The dwelling is provided with two (2) balconies, with one east-facing and one west-facing. The Proposal seeks to enclose the east-facing balcony and retain the west-facing balcony, and therefore maintaining adequate private open space for use by the dwelling occupants.
- The Proposal has been architecturally designed to provide materiality and form that ensures that the visual impact of the development integrates with the surrounding environment.
- The Proposal would remain compatible with adjoining residential land uses in light of the above.
- Compliance with the remaining development standards applicable to the site is achieved. There would be no measurable environmental or amenity benefits in maintaining the standard.

For the reasons outlined above, it is considered that the variation to the FSR control under Clause 4.4 is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under RLEP 2012.

4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 13 of the EP&A Act. **TABLE 5** below assesses the proposed development against the objects of the EP&A Act.

TABLE 5: EP&A ACT OBJECTIVES	
Objective	Response
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The Proposal is considered to be in the public interest as it would contribute towards improved amenity for the existing dwelling

TABLE 5: EP&A ACT OBJECTIVES	
Objective	Response
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The Proposal is consistent with the principles of ESD and provides a positive economic, environmental and social outcome by improving the amenity of existing housing stock.
<i>(c) to promote the orderly and economic use and development of land,</i>	The Proposal promotes the orderly and economic use and development of land by carrying out alterations and additions that improve the amenity of the dwelling for current and future residents.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The Proposal will not negatively impact the delivery and maintenance of affordable housing.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The Proposal will not have any adverse impact on the environment including threatened and other species of native animals and plants, ecological communities and their habitats.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The Proposal will not adversely impact on the heritage significance of nearby heritage items.
<i>(g) to promote good design and amenity of the built environment,</i>	The Proposal promotes good design and amenity of the built environment by providing an outcome that integrates with the existing building to provide additional amenity to current and future residents of the dwelling.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The Proposal will be constructed and maintained without health and safety risks to future occupants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The Proposal is considered to be local development, for which the Consent Authority will be Randwick Local Planning Panel.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA is subject to the relevant public notification requirements.



#### 4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 4.4 of RLEP 2012 will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation. It is noted that this variation exceeds 10% and would be required to be determined by the Randwick Local Planning Panel.

#### 4.7 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 4.4 of RLEP 2012 is well-founded and appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of RLEP 2012 and relevant case law:

- The Proposal is consistent with the objectives of the particular standard and the objectives of the standard are achieved notwithstanding the non-compliance with the standard (refer to **Section 4.1**).
- The Proposal is consistent with the objectives for development within the zone to provide appropriate housing with a high level of amenity (refer to **Section 4.2**).
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3**).
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4**).
- The Proposal is consistent with the objectives of the *Environmental Planning and Assessment Act 1979* (refer to **Section 4.5**).
- The Proposal does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.6**).

Overall, it is considered that the variation to the FSR development standard is appropriate and is justified having regard to the matters listed within Clause 4.6 of RLEP 2012.

### PART E CONCLUSION

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Clause 4.4 of RLEP 2012 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standards;
- The proposal will capitalise on the Site's full planning potential;
- The proposal satisfies the objectives of the R2 zone and Clause 4.4 of RLEP 2012;
- No unreasonable environmental impacts are introduced as a result of the Proposal; and
- There is no public benefit in maintaining strict compliance with the standards.

Given the justification provided above, the Variation Request is well founded and should be favourably considered by Council.

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**Responsible officer:** Max Di Rosario, Environmental Planning Officer

**File Reference:** DA/766/2023

## Development Consent Conditions (Medium Density Residential)



<b>Folder /DA No:</b>	DA/766/2023
<b>Property:</b>	3/7 Battery Street, CLOVELLY NSW 2031
<b>Proposal:</b>	Alterations to an existing apartment (Unit 3) of a residential flat building including enclosure of eastern balcony and internal configurations.
<b>Recommendation:</b>	Approval

### Development Consent Conditions

#### GENERAL CONDITIONS

Condition
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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>
DA01 Site Plan And Site Analysis Plan Issue D	ASA Studio	20.02.2024	26.02.2024
DA03 Proposed Floor Plan Issue D	ASA Studio	20.02.2024	26.02.2024
DA05 Proposed South East Elevation Issue D	ASA Studio	20.02.2024	26.02.2024
DA06 North East Elevation Issue D	ASA Studio	20.02.2024	26.02.2024
DA07 Section Issue D	ASA Studio	20.02.2024	26.02.2024

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
A506088	12 September 2023	4 October 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
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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.

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	Condition
	<p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
3.	<p><b>External Colours, Materials &amp; Finishes</b></p> <p>The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application and demonstrate integration with the existing balcony enclosures of the building.</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 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><b>Section 7.12 Development Contributions</b></p> <p>In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$106,700.00 the following applicable monetary levy must be paid to Council: \$533.50.</p> <p>The levy must be paid in <b>cash, bank cheque</b> or by <b>credit card</b> 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 <b>9093 6000</b> or <b>1300 722 542</b> 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><b>IDC</b> = the indexed development cost</p> <p><b>ODC</b> = the original development cost determined by the Council</p> <p><b>CP2</b> = 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><b>CP1</b> = 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 <a href="http://www.randwick.nsw.gov.au">www.randwick.nsw.gov.au</a>.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p>
5.	<p><b>Sydney Water</b></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>

Condition	
	<ul style="list-style-type: none"> <li>• Building plan approvals</li> <li>• Connection and disconnection approvals</li> <li>• Diagrams</li> <li>• Trade waste approvals</li> <li>• Pressure information</li> <li>• Water meter installations</li> <li>• Pressure boosting and pump approvals</li> <li>• Change to an existing service or asset, e.g. relocating or moving an asset.</li> </ul> <p>Sydney Water's Tap in™ in online service is available at:  <a href="https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm">https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</a></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>
6.	<p><b>Building Code of Australia</b></p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
7.	<p><b>BASIX Requirements</b></p> <p>In accordance with section 4.17(11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 75 of the <i>Environmental Planning and Assessment Regulation 2021</i>, 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>

## BEFORE BUILDING WORK COMMENCES

Condition	
8.	<p><b>Building Certification &amp; Associated Requirements</b></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> <p>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning</i></p>

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- |     | Condition  |
|-----|--|
|     | <p>and Assessment Act 1979 and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <p>b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</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> |
| 9.  | <p><b>Home Building Act 1989</b></p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 &amp; 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 &amp; 71 of the Environmental Planning and Assessment Regulation 2021.</p>   |
| 10. | <p><b>Dilapidation Reports</b></p> <p>A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a Professional Engineer, detailing the current condition and status of buildings and structures located upon the subject site or properties adjoining the subject site, and any other property or public land, which may be affected by the works, to the satisfaction of the <i>Principal Certifier</i> for the development.</p> <p>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).</p> <p>Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>  |
| 11. | <p><b>Construction Noise &amp; Vibration Management Plan</b></p> <p>Noise and vibration from the works are to be minimised by implementing</p>   |



	Condition
	appropriate noise management and mitigation strategies.
	A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person and provided to the Principal Certifier prior to the commencement of any site works.
	Condition Reason: To protect the amenity of the neighbourhood during construction.
12.	<p><b>Construction Site Management Plan</b></p> <p>A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none"> <li>• location and construction of protective site fencing and hoardings</li> <li>• location of site storage areas, sheds, plant &amp; equipment</li> <li>• location of building materials and stock-piles</li> <li>• tree protective measures</li> <li>• dust control measures</li> <li>• details of sediment and erosion control measures</li> <li>• site access location and construction</li> <li>• methods of disposal of demolition materials</li> <li>• location and size of waste containers/bulk bins</li> <li>• provisions for temporary stormwater drainage</li> <li>• construction noise and vibration management</li> <li>• construction traffic management details</li> <li>• provisions for temporary sanitary facilities</li> <li>• measures to be implemented to ensure public health and safety.</li> </ul> <p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
13.	<p><b>Public Liability</b></p> <p>The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p>

## DURING BUILDING WORK

	Condition
14.	<p><b>Site Signage</b></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"> <li>a) showing the name, address and telephone number of the principal certifier for the work, and</li> <li>b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which</li> </ol>

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Condition
the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and
c) stating that unauthorised entry to the work site is prohibited.
The sign must be—
a) maintained while the building work is being carried out, and
b) removed when the work has been completed.
This section does not apply in relation to—
a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or
b) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

15. **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"> <li>Monday to Friday - 7.00am to 5.00pm</li> <li>Saturday - 8.00am to 5.00pm</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> <li>Monday to Friday - 8.00am to 3.00pm</li> <li>(maximum)</li> <li>Saturday - No work permitted</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> <li>Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted</li> </ul>

*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.

16. **Demolition Work and Removal of Asbestos Materials**

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:

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Condition

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- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m<sup>2</sup> 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](http://www.randwick.nsw.gov.au) in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.*

Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.

17. **Noise & Vibration**

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the *Construction Noise & Vibration Management Plan*, prepared for the development.

Condition Reason: To protect the amenity of the neighbourhood during construction.

18. **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.

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Condition
<p>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> <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> <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) 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>j) 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.

19. **Dust Control**

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.*

Condition Reason: To require details of measures that will minimise impacts to 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
Condition Reason: To ensure no encroachment onto public land and to protect Council land.

## BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition
<p>21. <b>Occupation Certificate Requirements</b></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>
<p>22. <b>BASIX Requirements</b></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>
<p>23. <b>Post-construction Dilapidation Report</b></p> <p>A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.</p> <p>The dilapidation report shall detail whether:</p> <ul style="list-style-type: none"><li>(a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and</li><li>(b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent.</li></ul> <p>The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.</p> <p>Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>
<p>24. <b>Structural Certification</b></p> <p>A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal</i></p>



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Condition
<i>Certifier</i> . A copy of which is to be provided to Council.
Condition Reason: To ensure the structural adequacy of the building and works.

OCCUPATION AND ONGOING USE

Condition
<div>25. <b>External Lighting</b> 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.</div>
<div>26. <b>Fire Safety Statement</b> A single and complete <i>Fire Safety Statement</i> (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> at least on an annual basis each year following the issue of the <i>Fire Safety Certificate</i>, and in accordance with the <i>Fire Safety Schedule</i> for the building.  The <i>Fire Safety Statement</i> is required to confirm that all the fire safety measures have been assessed by a registered fire safety practitioner and are operating in accordance with the standards of performance specified in the <i>Fire Safety Schedule</i>.  A copy of the <i>Fire Safety Statement</i> must be displayed within the building entrance or foyer at all times and a copy must also be forwarded to Fire &amp; Rescue NSW.  Condition Reason: Statutory requirement. To ensure compliance with the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, and that adequate provision is made for fire safety in the premises for building occupant safety.</div>