

Randwick Local Planning Panel (Electronic) Meeting

Thursday 8 August 2024



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC) MEETING

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Team on Thursday, 8 August 2024

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

D60/24	8 Victory Street, Clovelly (DA/957/2023)	3
D61/24	49 Mermaid Avenue, Maroubra (DA/726/2023)	37
D62/24	19 Gilderthorpe Avenue, Randwick (DA/177/2024)	83
D63/24	18 Bass Street, Kingsford (DA/619/2023)	121

Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D60/24

Subject: 8 Victory Street, Clovelly (DA/957/2023)


Executive Summary

Proposal:	Demolition of existing structures and construction of a 2 storey dwelling with basement parking, swimming pool and landscaping works
Ward:	North Ward
Applicant:	Mr B Babikian
Owner:	Mrs R L Amirian & Mr D Amirian
Cost of works:	\$3,245,000.00
Reason for referral:	The development involves demolition of a local heritage item.

Recommendation

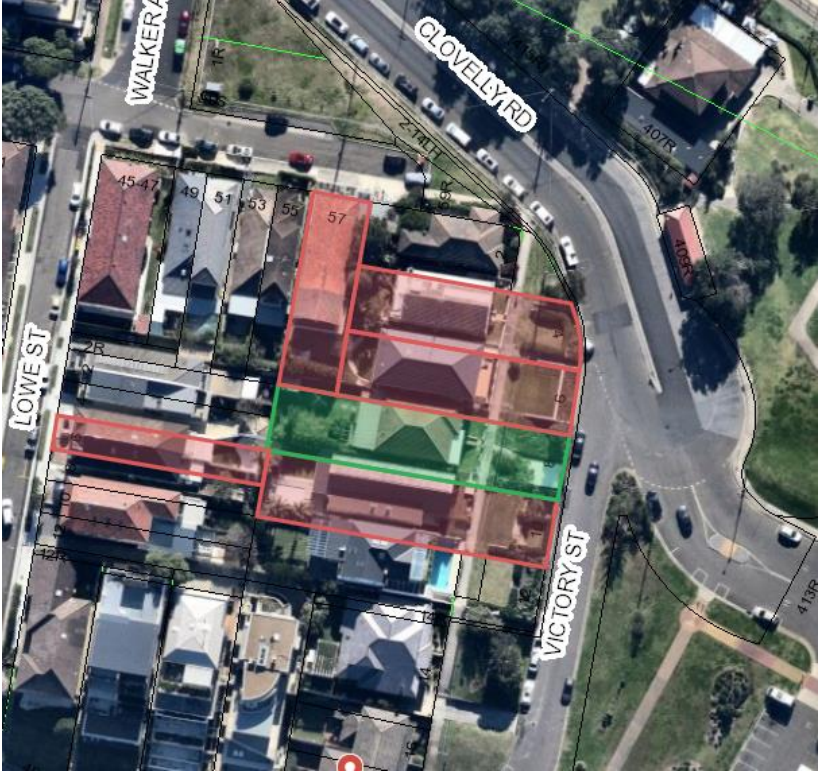
That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/957/2023 for demolition of existing structures and construction of a 2 storey dwelling with basement parking, swimming pool and landscaping works, at No. 8 Victory Street, Clovelly, subject to the development consent conditions attached to the assessment report.

Attachment/s:

-  RLPP Dev Consent Conditions (dwellings dual occ) - DA/957/2023 - 8 Victory Street, CLOVELLY NSW 2031 - DEV - Randwick City Council

D60/24

D60/24

	
	Subject Site
	Submissions received
	North
<p>N.b. 8 (eight) submissions were received during the notification period, including x3 from 57 Melrose Parade, x2 from 4 Victory Street.</p>	
Locality Plan	

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development involves demolition of a local heritage item, being a sandstone retaining wall located at the front (eastern side) of the site.

The proposal seeks development consent for demolition of existing structures and construction of a 2 storey dwelling with basement parking, swimming pool and landscaping works.

On 9 May 2024, an amended set of architectural plans were received that included minor changes to building envelope, changes to parking facilities including reconstruction of the heritage retaining wall, fenestration changes, and further plan details regarding the site earthworks.

The key issues associated with the proposal relate to allotment configuration consisting of a front Stratum section (which is partially owned by Council) and the rear Torrens section of the site. This configuration results in a proposal with non-compliances with site coverage, deep soil permeable areas, earthworks, and the front garage and garden structure. Furthermore, the proposed development seeks consent for variations to side and rear setbacks, as well as consideration of view sharing impacts. These issues are assessed in detail in the Key Issues section of the report.

The proposal is recommended for approval subject to non-standard conditions that require an increase in the amount of deep soil permeable areas on the site, increase side and rear setbacks, redesign and further detailing to the upper Stratum garden terrace for greater consistency with the surrounding foreshore area.

2. Site Description and Locality

Site Description and Locality

The site is identified as Lot 101 DP 1071445, No. 8 Victory Street, Clovelly. The site is located on the western side of Victory Street between Melrose Parade to the north and Cliffbrook Parade to the south.

The site comprises two components as follows:

- The main part of the site constitutes a Torrens title component located immediately to the west of the elevated public walkway, where the existing single dwelling house is situated. It has a rectangular shape, with a frontage width of 12.19m to the footpath, a depth of 38.73m to 38.865m, and an area of 473m². The land slopes from the rear to the front with a maximum fall of approximately 2m.
- The supplementary part of the site constitutes a Stratum title carriageway component, which has been subdivided into two Stratums. This section of the lot is situated between the aforementioned Torrens titled land to the west and the road reserve to the east. The Stratums have a frontage width of 12.36m to the street, a depth of 15.575m to 15.58m, and an area of 189.8m². The land slopes significantly from the public footpath to the Victory Street road reserve with a maximum fall of approximately 5m. Refer to Figures 1 and 2 below.
 - The lower Stratum forms part of the site and is partially underground. The extent of this Stratum is limited from RL8.3 to RL13.0, with the exception of a 1m wide service easement that runs parallel to and approximately 4m from the Torrens title component, which occurs from RL11.7 onwards. The Stratum component presently accommodates a single garage and a sandstone block retaining wall.
 - The upper Stratum does not form part of the site, comprising of the elevated footpaths and garden areas (which is above RL13.0) and the service easement, which are owned by Council to enable public access.

There is an existing staircase running horizontally across the garden areas linking the lower road reserve and single garage with the upper footpath and dwelling entrance.

The entire site has a combined land area of 662.8m².

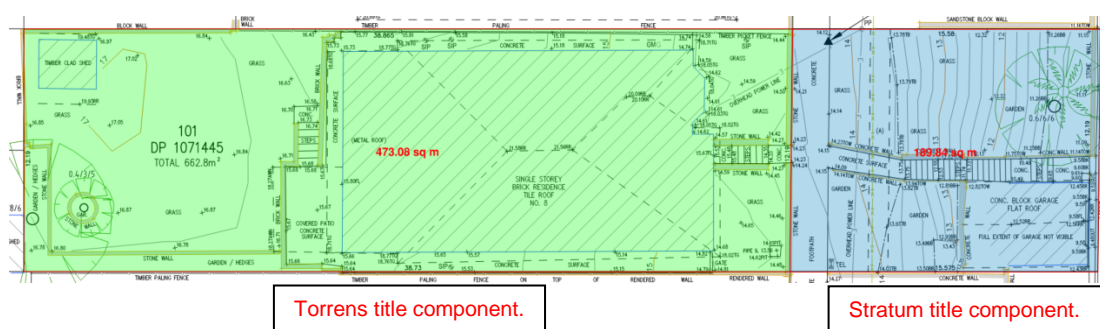


Figure 1: Current survey plan showing the different lot components - 8 Victory Street, Clovelly (Source: Total Surveying Solutions)

D60/24

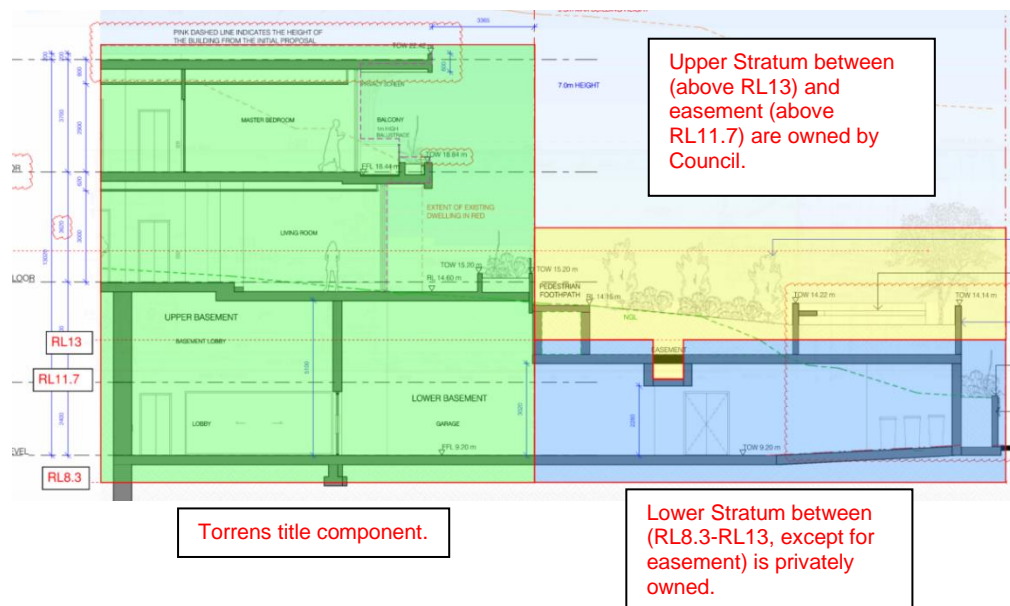


Figure 2: Long section showing the different lot components - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

The surrounding area is characterised by residential development, including dwelling houses and residential flat buildings. Adjoining the site to the north at No. 6 Victory Street is a two storey detached dwelling house and No. 57 Melrose Parade to the northern side of the rear of the site, to the south at No. 10 Victory Street is a two storey detached dwelling house, and to the west at the rear of the site at No. 2 & 4 Lowe Street are a pair of two storey adjoining semi-detached dwelling houses.

In terms of the buildings along Victory Street, the subject site is the only remaining single storey dwelling house that has a single width garage and garden area within the Stratum section of the allotment. The recent developments at Nos. 4, 6 and 12 Victory Street have incorporated new garages that involve varying degrees of removal of the retaining walls at the front. The areas above the garages on the upper stratum consistently adopt a split-level garden arrangement consisting of a lower and an upper terrace. The lower terraces accommodate dense shrubbery and are not designed to be trafficable. The upper terraces are occupied by lawn areas with balustrades along the perimeters. A new staircase aligned perpendicularly with Victory Street is constructed within the road reserve at the front of Nos. 4 and 6 Victory Street.



Figure 3: Photo of the front of the existing dwelling - 8 Victory Street, Clovelly (Source: Randwick City Council)



Figure 4: Photo of the rear of the existing dwelling - 8 Victory Street, Clovelly (Source: Randwick City Council)



Figure 5: Photo of the rear yard of the existing dwelling - 8 Victory Street, Clovelly (Source: Randwick City Council)



Figure 6: Photo of the garage and sandstone retaining wall of the existing dwelling - 8 Victory Street, Clovelly (Source: Randwick City Council)

D60/24



Figure 7: Photo of the No. 10 and 12 Victory Street, Clovelly - 8 Victory Street, Clovelly (Source: Randwick City Council)



Figure 8: Photo of the No. 4 and 6 Victory Street, Clovelly - 8 Victory Street, Clovelly (Source: Randwick City Council)



Figure 9: Photo of the significant sandstone retaining wall and No. 2 Victory Street, Clovelly - 8 Victory Street, Clovelly (Source: Randwick City Council)



Figure 10: West oblique view of the subject neighbourhood (April 2024) - 8 Victory Street, Clovelly (Source: Nearmap)

3. Relevant history

The land has been used for residential purposes for an extended period of time.

DA/638/2003

Development Application No. DA/638/2003 for use substratum as garages and subdivide substratum from nature strip to create four lots.

Prior to the approved stratum subdivision, the existing garages to No's 4, 6, 8 and 10 Victory Street were located on the Council-owned road reserve. As part of this development application, Council sought to close and sell the lower stratum of the section of the Council verge to the individual lot owners to include the garages as part of their allotment.

The subject development application was approved by Council under delegation on 02 October 2003. The related subdivision certification application (SC/29/2003) was approved by Council on 14 October 2003. The lower Stratum sections of the allotment was subsequently sold off to the individual lot owners.

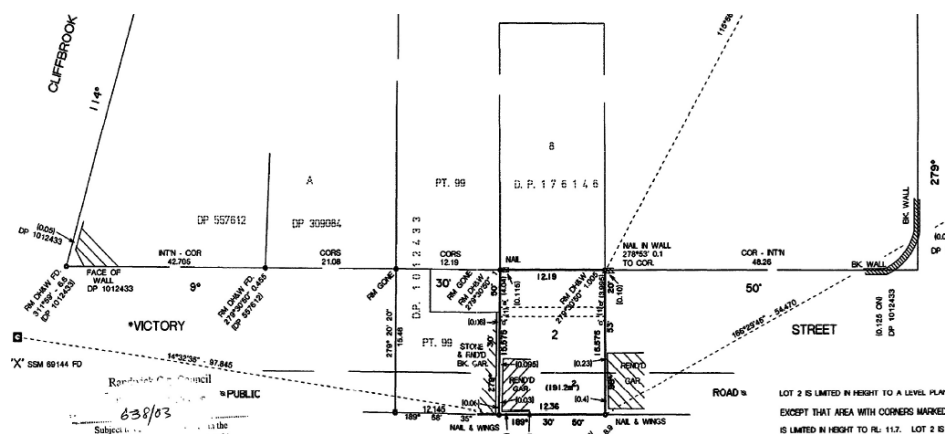


Figure 11: Approved survey plan under DA/638/2003 - Victory Street, Clovelly (Source: Michael Stynes)

Original DA Submission

The original proposal sought consent for demolition of existing structures and construction of a 2 storey dwelling with basement parking, swimming pool and landscaping works (Local Heritage Item), including demolition of the entire heritage-listed front sandstone retaining wall.

Below is a reproduction of some relevant plans provided for consideration under this application:

D60/24

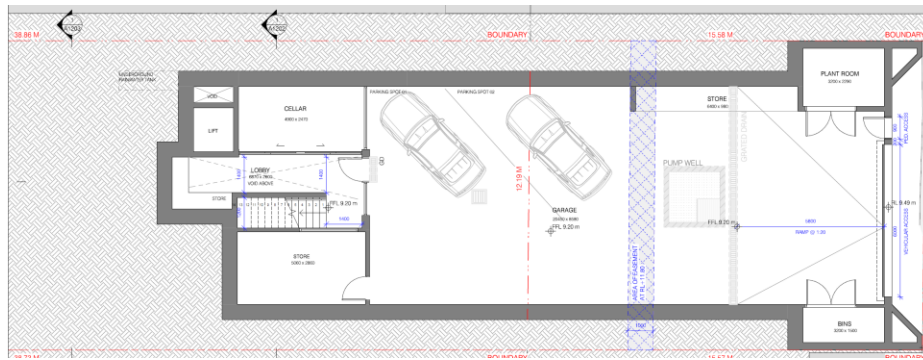


Figure 12: Originally proposed lower basement plan under the subject DA - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)



Figure 13: Originally proposed ground floor plan under the subject DA - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

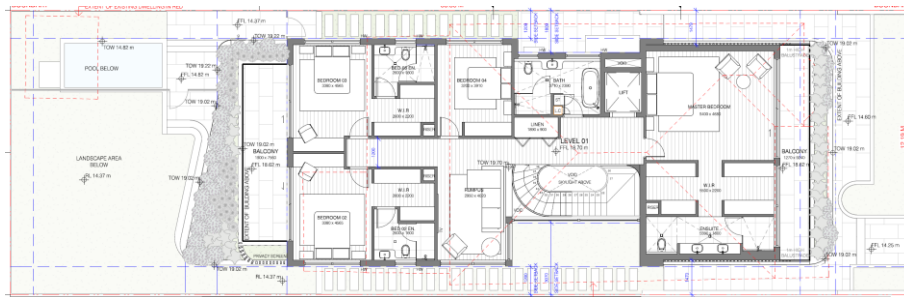


Figure 14: Originally proposed first floor plan under the subject DA - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)



Figure 15: Originally proposed front elevation under the subject DA - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

Site Visit

On 30 January 2024, the Assessing Officer conducted a site visit of the subject property.

Additional Information Request

On 14 March 2024, Council issued a formal additional information request to the applicant outlining issues regarding sections, floor space ratio, geotechnical report, deep soil permeable area, side and rear setbacks, retention of existing sandstone blocks, earthworks, solar access, privacy, views, garage and streetscape, fencing, encroachments, landscaping treatments, and other minor matters.

On 9 May 2024, following a review of preliminary amended architectural plans with Council, the applicant responded to the additional information request in addresses the concerns raised above, providing amended architectural plans, landscape plans, SEE, HIS, BASIX, and further engineering information.

On 17 May 2024, Council notified the applicant that their View Sharing Assessment was insufficient and that further assessment of the impacts from No's 2 and 4 Lowe Street were required.

On 29 May 2024, the Assessing Officer and the applicant attended No's 2, 4 and 6/3 Lowe Street for the view sharing assessment.

On 31 May 2024, Council issued a second formal additional information request to the applicant requesting a detailed view sharing assessment for 2, 4, 6/3 and 6 Lowe Street, including a written assessment against the *Tenacity Principles*.

On 7 June 2024, the applicant provided a visual view impact assessment report.

On 12 June 2024, the applicant provided a written view impact assessment report against the *Tenacity Principles*.

Between 20 June 2024 and 4 July 2024, the amended scheme including the view sharing assessment was placed on re-notification. The outcome of the re-notification process is noted below.

4. Proposal

The proposal seeks development consent for demolition of existing structures and construction of a 2 storey dwelling with basement parking, swimming pool and landscaping works at 8 Victory Street, Clovelly.

On 9 May 2024, an amended set of architectural plans were received that included minor changes to building envelope, changes to parking facilities including reconstruction of the heritage retaining wall, fenestration changes, and further plan details regarding the site earthworks.

Specifically, the proposal is seeking demolition of all existing structures and trees on the site and construction of a new two storey dwelling house with extensive excavation, as specified below:

Site Works:

Demolition/Earthworks

- Demolition of the existing sandstone retaining wall, which forms part of the Local Heritage Item 'L33' being 'Victory Street sandstone retaining wall', with the sandstone to be preserved prior to reuse.
- Demolition of all existing structures on the site, including the front garage and staircase, dwelling house and rear yard.
- Removal of all trees within the front and rear sections of the site.
- Excavation of approximately 250m² of the site and to a height of between 1m-6.4m.
- Retention and protection of the existing stormwater main that runs through the front section of the site.

Construction

- Reconstruction of the sandstone retaining wall with the preserved sandstone blocks from the original retaining wall with a planter behind the wall with low-level planting.
- Reinstatement of the Council-owned section of the stratum portion of the site with a new footpath and garden area above the excavated garage below with grass lawn, a seating area and low-level planting, in accordance with the proposed landscaping plans.
- Addition of planters forward of the new dwelling adjoining the Council footpath with a new solid front fence.
- Side passages of the site paved and planted in accordance with the proposed landscaping plans.
- Addition of retaining walls adjoining the side and rear boundaries to support the new lower, excavated area of the ground floor area. Planter boxes are provided to the perimeter of the rear yard area to soften the height of the retaining walls.
- A large landscaped area at the rear of the site accessible via the main lounge/dining/kitchen room and adjoining roofed terrace.

Dwelling House Works:Lower Basement Floor

- A double garage with an internal floor area of 164.5m² which includes the garage and pedestrian access and a bin storage area.
- A separate 9.9m² storage area.
- An additional separate 16m² storage area.
- A 12m² services/plant room.
- A separate lobby area to with access to the internal dwelling staircase, lift and small storage area.

Upper Basement Floor

- A lobby area with that connects the lower staircase with the main internal dwelling staircase.

Ground Floor

- Dwelling entrance from the upper footpath to Victory Street.
- Separate living room at the front of the dwelling.
- Study area.
- Powder room.
- Laundry.
- Internal staircase and lift access.
- Open-plan lounge/dining/kitchen (with separate pantry) room to the rear of the dwelling with direct access to the main private open space and rear yard of the site.
- Roofed terrace adjoining the lounge/dining/kitchen room with a BBQ.
- A separate W/C adjoining the rear terrace with access via a door to the northern side elevation.

First Floor

- Master bedroom with a WIR, ensuite bathroom and balcony at the front of the dwelling.
- Bathroom.
- Linen cupboard.
- Separate rumpus room adjoining the main circulation area on the floor.
- Bedroom 2 and 3, both with a separate WIR and ensuite bathroom with access to a shared balcony at the rear of the dwelling.
- Bedroom 4.

Roof

- Skylight provided to the void area to the internal dwelling staircase.
- Solar panels to the western side of the roof area.

It is noted that any future underground car park and basement storey within the lower Stratum will be privately owned. The ownership of the elevated footpath and terraced gardens within the upper Stratum (above RL13.0 and the sewer easement) will be owned by Council.

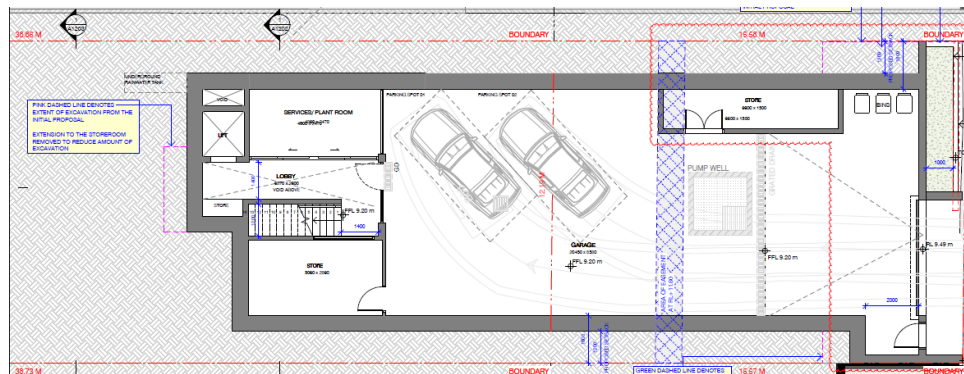


Figure 16: Proposed lower basement floor plan - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

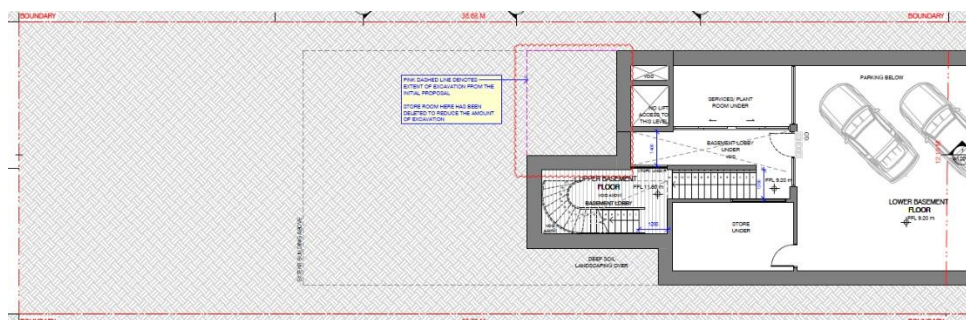


Figure 17: Proposed upper basement floor plan - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

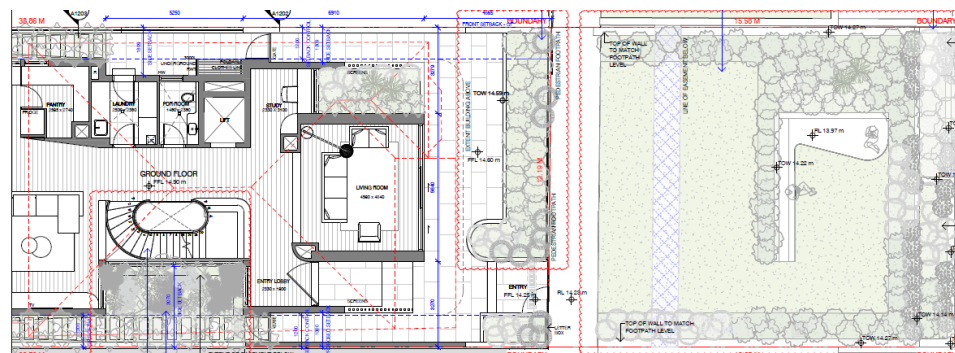


Figure 18: Proposed front terrace floor plan - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

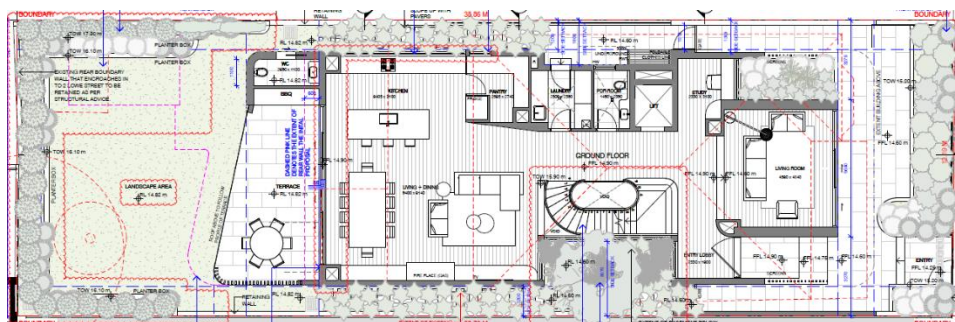


Figure 19: Proposed dwelling ground floor plan - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

D60/24

D60/24

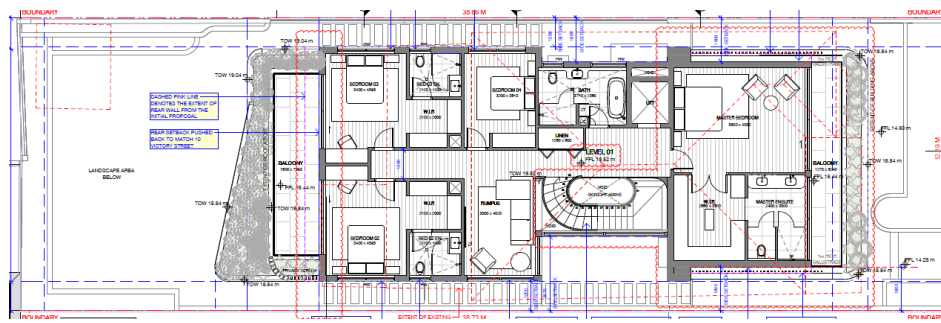


Figure 20: Proposed dwelling first floor plan - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

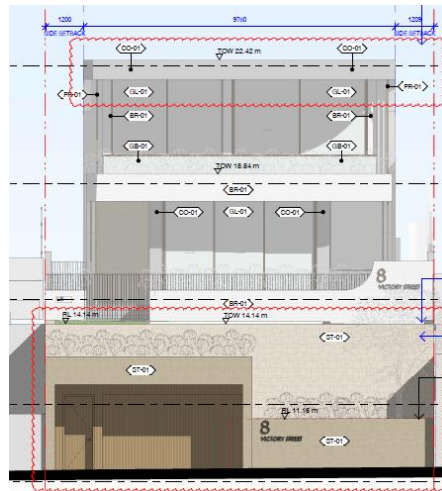


Figure 21: Proposed front elevation - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

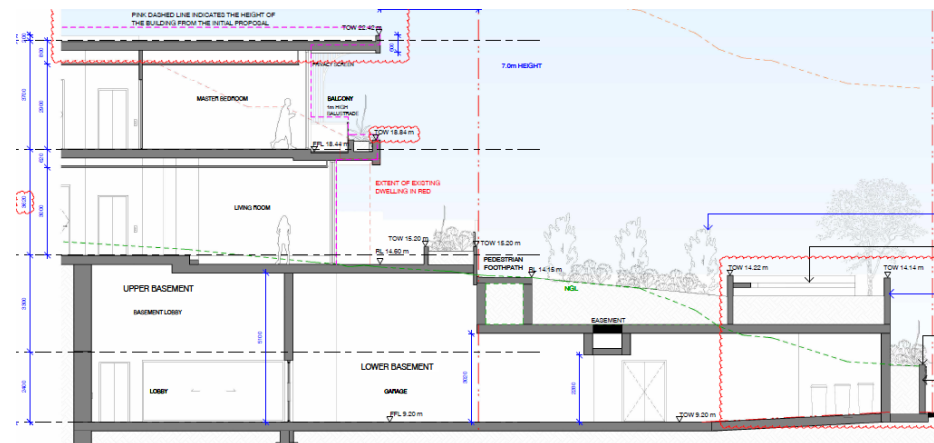


Figure 22: Proposed front long section - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

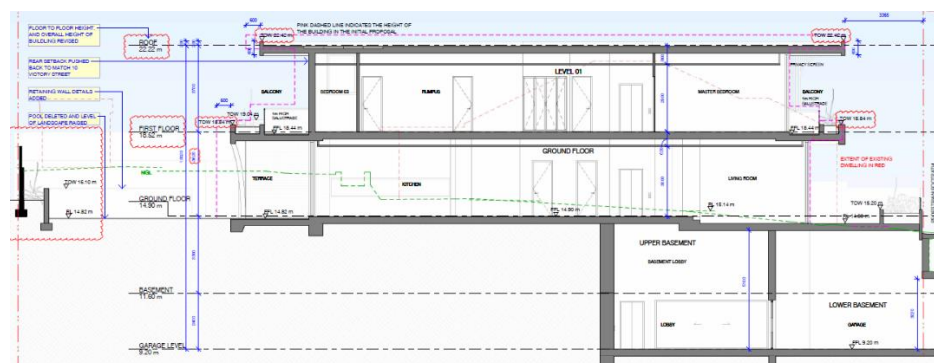


Figure 23: Proposed rear long section - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

5. Notification

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

- 4 Victory Street

Issue	Comment
<p><u>Vibration issues</u> We submit that Council should require excavation and construction works to be carried out in a manner that produces the least amount of ground vibration to protect our near 100-year-old home.</p> <p><u>Dilapidation report</u> A dilapidation report be undertaken prior to the commencement of any works, considering the age of our building.</p> <p><u>Public Footpath Bridge</u> We submit that prior to any excavation that a suitable temporary bridge type structure be installed to maintain pedestrian access on 8 Victory Street.</p> <p><u>Retain Existing Staircase Access</u> We submit that a stair should be included in the construction from the high level footpath down to the lower level roadway, to maintain the safer pedestrian route to access the grassed park.</p> <p><u>Groundwater Seepage</u> The property has historically been affected by ground water seepage. Our suggestion is that consideration be given to collection of the seepage flow and using the collected water for site irrigation and other non-potable uses.</p>	<p>Appropriate conditions of consent have been included as part of the consent requiring a noise and vibration management plan and controls.</p> <p>An appropriate condition of consent has been included as part of the consent requiring a dilapidation report be prepared prior to any works being carried out.</p> <p>Whilst the proposed development will impact upon pedestrian access of the footpath to Victory Street during the construction phase, Council is satisfied that there are sufficient public footpaths and accessways within the area to not adversely impact pedestrians during the construction. Therefore, the requested temporary footbridge is not supported. Council also notes the issues with the practicalities and safety implications of such a footbridge.</p> <p>Council is satisfied that the loss of the pedestrian access on the site will not adversely impact upon pedestrian access will be maintained within the locality. See details in the Key Issues section of this report.</p> <p>Council is satisfied that the groundwater has been adequately addressed in Geotechnical Report prepared by Geotechnical Consultants Australia. Subsequent conditions of consent have been recommended requiring that the recommendations of the report be implemented as part of the construction phase of the development, in addition to standard conditions regarding excavation by Council.</p>

- 6 Victory Street

Issue	Comment
<p><u>Support for Development</u> The development is well considered and an improvement to the streetscape and surrounding</p>	Noted.

D60/24

Issue	Comment
<p>landscape. My submission is regarding the construction phase only.</p> <p><u>Excavation Support</u> The sand base provides significant support to the foundations of my house, which is on concrete slab. When excavation is carried out, proper support to the excavation will be required to prevent slippage/loss of sand base and potential damage to my property.</p> <p><u>Vibration Monitoring</u> It is recommended to install vibration monitoring during excavation to minimise the risk to damage neighbouring properties.</p> <p><u>Dilapidation Report</u> A prudent dilapidation report of my property should be required prior to the commencement of any works.</p>	<p>An appropriate condition of consent has been included as part of the consent requiring sufficient excavation considerations and support for the duration of the construction phase of the development.</p> <p>As noted above, appropriate conditions of consent have been included as part of the consent requiring a noise and vibration management plan and controls.</p> <p>As noted above, an appropriate condition of consent has been included as part of the consent requiring a dilapidation report be prepared prior to any works being carried out.</p>

- 10 Victory Street

Issue	Comment
<p><u>Support for Development</u> I am supportive of this sympathetic and stylish development.</p> <p><u>Rear Setback</u> The proposed footprint of both ground and first floor extent further back than numbers 10 & 12. This has privacy and bulk implications. Solar access does not appear to be affected.</p> <p><u>Privacy</u> The first floor south elevation proposes large windows adjacent to our first floor with large windows to bedrooms immediately adjacent. We request privacy modifications.</p> <p><u>Excavation</u> Dust and debris mitigation are important given the proximity of bedrooms. We request engineer supervised support and vibration management. Subsoil drainage filter medium should be site specific and designed to ensure appropriate drainage.</p> <p><u>Undergrounding of Electricity.</u> Consideration should be given to subterranean relocation of electric poles and wires.</p>	<p>Noted.</p> <p>Agreed. See Key Issues for a detailed consideration of the proposed rear setback.</p> <p>Agreed. Amended plans show revised windowsill heights. See the DCP compliance table for further considerations of privacy impacts of the development.</p> <p>Appropriate conditions of consent have been imposed with regard to adequate protections for the excavation, noise and vibration monitoring, and drainage.</p> <p>Agreed. Relevant conditions have been imposed on the consent, in accordance with the assessment by Council's Development Engineer.</p>

- 6 Lowe Street

Issue	Comment
<u>View Sharing</u>	

Issue	Comment
The documentation does not include any view sharing assessment which is concerning for us as the proposed development will impact our ocean views.	Agreed. The applicant has provided a view impact assessment. See Key Issues for a detailed consideration of the view sharing.

- 57 Melrose Parade – x2 submissions received, summarised into x1 summary as below.

Issue	Comment
<u>Swimming Pool</u> Our primary concern is the swimming pool and its proximity to our property in terms of any damage to our fence/property.	Noted. Amended plans demonstrate the originally proposed swimming pool has been deleted.
<u>Fence Replacement/Damage Considerations</u> Request to impose conditions that boundary fencing costs be covered by the applicant only, repairing damage at the cost by the applicant.	Matters in relation to the cost of fence replacement is a consideration subject to the Dividing Fences Act 1991. As such, Council has not imposed any such requirements.
<u>Support for Development</u> I am very supportive of the project.	Noted.

5.1. Renotification

As noted above, between 20 June 2024 and 04 July 2024, the amended scheme including the view sharing assessment was placed on re-notification.

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

- 4 Victory Street

Issue	Comment
<u>Vibration issues</u> We submit that Council should require excavation and construction works to be carried out in a manner that produces the least amount of ground vibration to protect our near 100 year old home.	As noted above, appropriate conditions of consent have been included as part of the consent requiring a noise and vibration management plan and controls.
<u>Dilapidation report</u> A dilapidation report be undertaken prior to the commencement of any works, considering the age of our building.	As noted above, an appropriate condition of consent has been included as part of the consent requiring a dilapidation report be prepared prior to any works being carried out.
<u>Public Footpath Bridge</u> We submit that prior to any excavation that a suitable temporary bridge type structure be installed to maintain pedestrian access on 8 Victory Street.	See comments above.
<u>Retain Existing Staircase Access</u> We submit that a stair should be included in the construction from the high level footpath down to the lower level roadway, to maintain the safer pedestrian route to access Forsythe Park.	See comments above.

Issue	Comment
<p><u>Groundwater Seepage</u> The property has historically been affected by ground water seepage. A pump chamber is now shown on the basement plan however no details have been provided regarding proposed water usage or discharge.</p> <p><u>Driveway Rise</u> Our observations is that stormwater flow depths can be expected in Victory Street guttering. Our suggestion is that a suitable rise be incorporated into the car park entry driveway to prevent flooding of the basement.</p>	<p>See comments above.</p> <p>Council's Development Engineer is satisfied with the proposed development in terms of flooding considerations and parking requirements in accordance with the relevant Australian Standards. See Engineering comments in Appendix 1 of this report.</p>

- 57 Melrose Parade

Issue	Comment
<p><u>Vibration Issues</u> We submit that Council should require excavation and construction works to be carried out in a manner that produces the least amount of ground vibration to protect our near 100 year old home.</p> <p><u>Dilapidation Report</u> A dilapidation report be undertaken prior to the commencement of any works, considering the age of our building.</p> <p><u>Vibration Monitoring</u> It is recommended to install vibration monitoring during excavation to minimise the risk to damage neighbouring properties.</p> <p><u>Damage to Fencing</u> All works must avoid damage to our brick and block work fences.</p>	<p>As noted above, appropriate conditions of consent have been included as part of the consent requiring a noise and vibration management plan and controls.</p> <p>As noted above, an appropriate condition of consent has been included as part of the consent requiring a dilapidation report be prepared prior to any works being carried out.</p> <p>See comments above.</p> <p>Relevant conditions of consent have been imposed requiring the need to protect adjoining properties.</p>

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

Chapter 2 'Vegetation in non-rural areas'

The aims of Chapter 2 are:

“(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and

(b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.”

The proposed development involves the removal of vegetation. Council's Landscape Development Officer reviewed the proposal and confirmed support for the proposed removal and landscaping treatments, subject to the imposition of conditions (refer to Appendix 1 section below). As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

6.2. SEPP (Resilience and Hazards) 2021

Chapter 2 'Coastal management'

Chapter 2 of SEPP (Resilience and Hazards) 2021 applies to development within the category of Coastal Management. The site is mapped as part of the coastal environmental, and coastal use areas pursuant to Chapter 2 of SEPP (Resilience and Hazards) 2021. In response to Clause 2.10, Council is satisfied that the proposed development will not impede public access to the foreshore or use of the surf zone, or impact ecological or coastal environmental values. See Key Issues regarding the removal of the existing public footpath, which is supported in this instance.

In response to Clause 2.11, Council is also satisfied that the proposed development contributes to the scenic qualities of the coast with respect to the building envelope, earthworks and parking facilities. See a detailed assessment under Clause 6.7 'Foreshore Scenic Protection Area' of the RLEP 2012 and Key Issues in relation to the garage and garden terrace within the Stratum section of the site.

Chapter 4 'Remediation of land'

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

Clause 4.6 of SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land. The subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject to a site audit statement. In this regard it is Council's position that the site will be suitable for the proposed development, posing no risk of contamination. Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered to be suitable for the proposed land use.

6.3. SEPP (Sustainable Buildings) 2022

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

6.4. SEPP (Transport and Infrastructure) 2021

Division 5 'Electricity transmission or distribution'

Clause 2.48 of the T&I SEPP requires the consent authority to give written notice to the relevant electricity supply authority for a development application for development within 5m of an exposed overhead electricity power line. The subject development is located within 5m of an overhead electricity power line, located on the upper footpath area of the adjoining neighbour. As such, the development application was referred to Ausgrid for comment.

See below Ausgrid referral in Appendix 1 which notes that Ausgrid does not object to the proposed development. As such, Clause 2.48 of the T&I SEPP has been satisfied.

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

Description	Standard	Proposed	Compliance (Yes/No/NA)
Clause 4.3: Height of Building (Maximum)	9.5m	7.92m (RL22.42-RL14.5) N.b. as per the LEP definition, building height is measured from the existing ground level.	Yes
Clause 4.4: Floor Space Ratio (Maximum) Clause 4.4A: Exceptions to floor space ratio—Zones R2 and R3	0.6:1 Site area = 662.8m ² Max GFA = 397.68m ²	0.6:1 (397.47m ²) Includes the lower basement lobby and staircase (in addition to the GFA identified on the submitted GFA calculation plan). Excludes basement storage, parking and access to that parking.	Yes

Clause 5.10 - Heritage conservation

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

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

See Appendix 1 below for the Heritage Referral comments.

6.5.1. Clause 6.2 – Earthworks

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

The development satisfies Clause 6.2(3) in that:

- Conditions of consent are imposed to minimise impact on drainage patterns, soil stability and adjoining structures.

- The proposed excavation area of 250m², to a height of between 1m-6.4m, which is suitably scaled for the subject site. The size of the excavation does not have an adverse impact on the likely future use or redevelopment of the land.
- The site has been used for residential purposes for an extended period of time and there is unlikely to be contamination issues with the quality of the soil.
- Conditions of consent are imposed to manage demolition and waste removal.
- The proposed excavation does not have an adverse impact on the amenity of adjoining properties. Whilst there is significant excavation of the site, the level of excavation is what is expected on the subject site, noting that excavation is required of the lower Stratum section to accommodate parking and excavation of the Torrens section of the is to accommodate an internal access to the dwelling above. The extent of earthworks will not have an adverse impact on adjoining neighbours as the dwelling is located at the existing ground level and all retaining walls to boundaries are designed so that the site area is lower than that of the adjoining neighbours. Therefore, the earthworks will not result in any undue bulk, privacy, solar, or view impacts on adjoining neighbours.
- The proposal is unlikely to disturb relics – the site is not in a heritage conservation area. Whilst the front sandstone retaining wall is listed as a heritage item, Council's Heritage Planner is satisfied that the development would be unlikely to disturb any relics.
- The scale and siting of the proposal minimises impact on waterways, water catchments and environmentally sensitive areas.
- Sufficient conditions of consent have been imposed to enforce the conclusions and recommendations in the submitted Geotechnical Report prepared by Geotechnical Consultants Australia (dated 04 October 2023), and the Structural Engineering Letter prepared by Zimmerman Consulting Engineers (dated 11 April 2024).

6.5.2. *Clause 6.7- Foreshore scenic protection area*

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

6.7 Foreshore scenic protection area

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

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

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

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

- 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*
- contributes to the scenic quality of the coastal foreshore.*



Figure 24: The Foreshore Scenic Protection Area and the subject site in orange – 8 Victory Street, Clovelly

Comment:

The proposed detached dwelling house is two storeys with two levels of basement, with only one level visible to the basement garage and storage areas (accounting for the steep topography of the site between the Torrens and Stratum sections of the site).

Council is satisfied that the proposed development is located and designed to minimise its visual impact on public areas of the coastline, in that the building is of a similar scale to that of the adjoining dwellings in Victory Street. Overall, the dwelling envelope generally complies with Council's building envelope controls, except for the side setbacks which have an impact on visual bulk of the dwelling in the foreshore area. See Key Issues for a detailed assessment of the side setback non-compliance and view sharing assessment, of which is satisfactory, subject to conditions to increase the dwelling side setbacks.

The proposed Stratum section of the site is generally in keeping with the adjoining garage/grassed structures to Victory Street, which retains the sandstone local heritage item. The upper Stratum section, being the podium grassed section above RL13 and the sewer easement, will be subject to a separate Civil Works application and consent as it is located on Council land. Relevant conditions of consent have been recommended to ensure that the development includes a simple design that matches the adjoining balustrades with planting to either side of the balustrade to mask if from view to Victory Street (similar to that at 10 Victory Street). See Key Issues for a detailed consideration of the garden terrace structure.

Council is also satisfied with the colours, materials and finishes submitted with the application. See 'Section B10: Foreshore Scenic Protection Area' in the compliance table below for the assessment of the colours, materials and finishes submitted with the application.

Therefore, in light of the above, the proposed works are considered acceptable and that Clause 6.7 of the RLEP has been sufficiently satisfied.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

Council has commenced a comprehensive review of the existing Randwick Development Control Plan 2013. Stage 1 of the RDCP 2013 review has concluded, and the new RDCP comprising Parts

B2 (Heritage), C1 (Low Density Residential), E2 (Randwick) and E7 (Housing Investigation) commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of the new RDCP 2023 are applicable to the proposed development, and the proposal shall be assessed against the new DCP.

The relevant provisions of the DCP are addressed in Appendix 2.

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 and Key Issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in Key Issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of Key Issues

Site Coverage and Deep Soil Permeable Area

The proposed development includes non-compliance with the controls outlined in Section 2 ‘Site Planning’ of C1 in Council’s DCP, in terms of site coverage (clause 2.4) and deep soil permeable area (DSPA) (clause 2.5). The non-compliances relate to the unique allotment configuration which includes a Stratum title and Torrens title section.

Clause 2.4 ‘Site Coverage’ requires that for a site with an area >601sqm, that the site is to have a maximum site coverage of 45%. The site has an area of 662.8m² and therefore is subject to a maximum site coverage of 298.3m². The proposed development has a site coverage of 60.8% (or 403m²), which includes areas of the basement level to the garage below the podium. This represents a variation of 15.8% of the numerical control.

Clause 2.5 ‘Deep Soil Permeable Surfaces’ requires that for a site with an area >601sqm, that the site is to have a minimum DSPA of 45%. The site has an area of 662.8m² and therefore is subject to a minimum DSPA of 298.3m². The proposed development has a DSPA of 21.8% (or 144.4m²) which excludes landscaped areas on podium, areas of planting <900mm in width, and paved sleeper areas with groundcover in between. This represents a variation of 23.2% of the numerical control.

In terms of DSPA, the applicant has provided the following justification in regards to the non-compliance with the DCP controls:

“As per Council’s request, we have made modifications to the backyard and landscape area within the Torrens title portion of the site, ensuring compliance with the mandated 35% DSPA. Please refer to the accompanying Architectural and landscape drawings for details.

It would be worth noting that we have allocated a significantly larger landscape area compared to our neighbours at 10 Victory Street. This includes landscaping in the backyard, front of the building and side setbacks as illustrated in the image below.

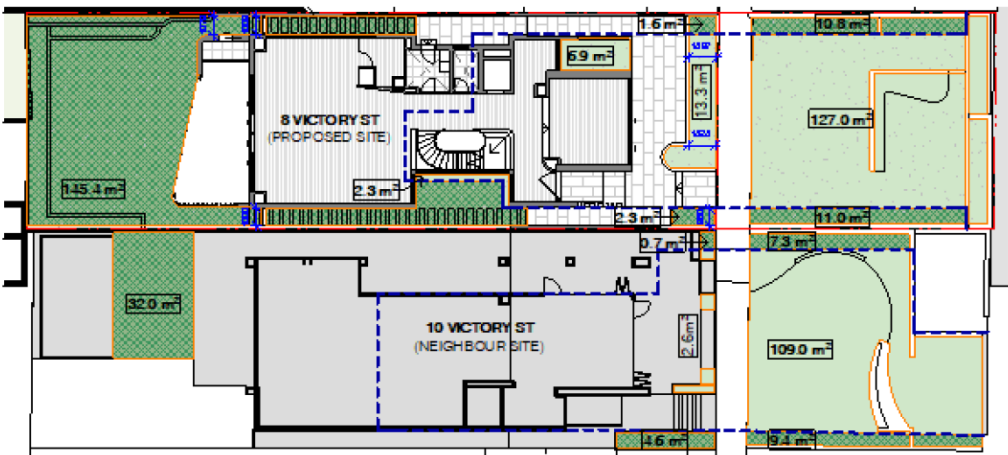


Figure 1 - Summary of Landscaped Areas for 8 & 10 Victory Street

In addition to the above, the neighbours have a considerable amount of covered area at the back reducing the amount of DSPA as shown below:”



Figure 2 - Summary of Covered Spaces at 8 & 10 Victory Street

In order to assess the non-compliance and consider the justification above, Council needs to consider the proposal against the objectives of the relevant clause. The relevant objectives of Section 2 'Site Planning' have been reproduced below:

Clause 2.4 'Site Coverage'

- 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.
- To ensure a high level of environmental amenity for residents of low density dwellings in the LGA.

Clause 2.5 'Deep Soil Permeable Surfaces'

- To retain and provide planting area for canopy trees and general vegetation to contribute to the overall tree canopy cover of the LGA and to the establishment of landscaped corridors across the locality.
- To assist with stormwater infiltration and reduction of overland flow.
- To improve climate resilience of the site.

The proposed variations to the site coverage and DSPA controls area supported for the following reasons (subject to recommended conditions):

- In terms of site coverage, the different sections of the site comprise of the following calculations:
 - The total of the Torrens section site area is 473.1m². The total of the Torrens section site coverage is 53.2% (or 251.9m²) of the Torrens section, comprising of 42.7% (or 202m²) for the dwelling and 10.5% (or 49.9m²) for the basement areas below. Should Council only consider dwelling structures above the new ground level, the dwelling would comply with the numerical control. See Figure 25 below.
 - The total of the Stratum section site area is 189.85m². The total of the Stratum section site coverage is 79.6% (or 151.1m²) of the Stratum section, comprising of the excavated basement area below the Council podium garden above. See Figure 26 below.

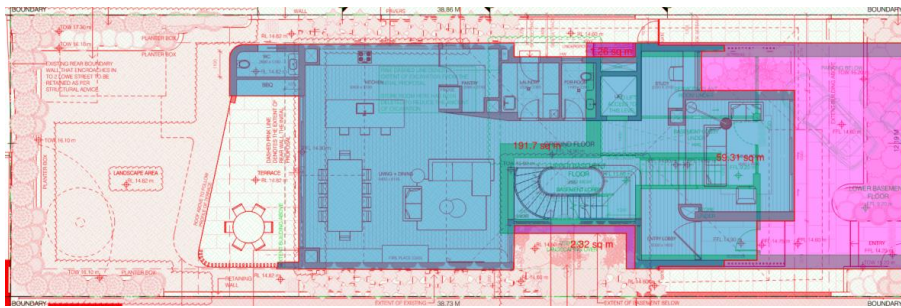


Figure 25: Proposed ground floor plan (in red) of the Torrens section of the site overlay basement level (in green), with Council markings of dwelling site coverage (in blue) and basement site coverage (in pink) - 8 Victory Street, Clovelly (*BJB Architects Pty Ltd*)

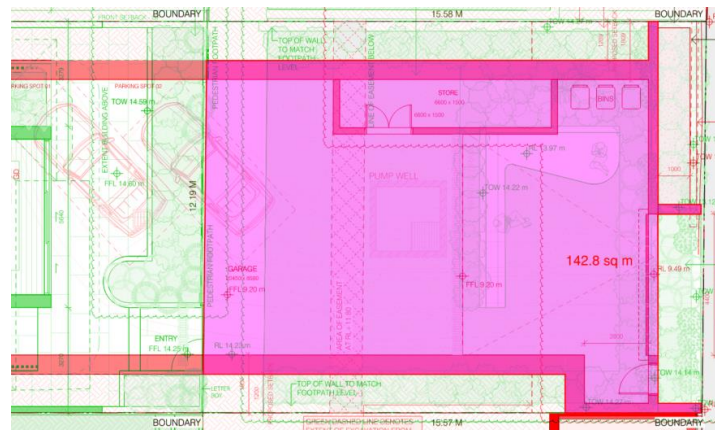


Figure 26: Proposed ground floor plan (in red) of the Stratum section of the site overlay basement level (in green), with Council markings of basement site coverage (in pink) - 8 Victory Street, Clovelly (*BJB Architects Pty Ltd*)

Council is satisfied that the proposed development is in keeping with other development in the row of allotments along Victory Street. In terms of the built areas on the site, it is compatible in site coverage to other dwellings. In addition, the Stratum parking/garden area continues to present as an integrated part of the previous natural conditions of the locality.

Council appreciates the uniqueness of the site configuration and is supportive of the development in terms of meeting the intention of the approved Stratum subdivision to sell off the lower Stratum section of the road reserve to lot owners. The extent of basement excavation to both the Torrens and Stratum sections of the site is in keeping with other development in this block.

It is also noted that in September 2013, the Ordinary Council approved Development Application No. DA/72/2013, at No. 10 Victory Street, Clovelly. The approved site coverage area was 62% of the site. However, as with this site and the unique titling arrangement, Council was satisfied that the development met the objectives of the site coverage controls.

- Council is satisfied that the proposed development retains adequate unbuilt upon areas for the purpose of private open space (which has demonstrated compliance with the controls) and deep soil planting/permeable surfaces areas (see detailed assessment below, subject to conditions). It is noted that no ancillary development to the main dwelling is located within the site boundaries (i.e. swimming pool, outbuilding, etc.), except for the basement garage, mainly within the Stratum section of the site.
- Council is satisfied that the proposed development will result in a high level of environmental amenity for residents of low-density dwellings in the LGA. The site will be able to sufficiently accommodate occupants for the 4-bedrooms with sufficient areas within the site for residential needs, including domestic, recreational, parking and other amenity needs.

- In terms of deep soil permeable area, the different sections of the site comprise of the following calculations:

- The total of the Torrens section site area is 473.1m². The applicant has calculated the DSPA in this section as 31.6% (or 149.3m²) of the Torrens section. However, this calculation includes areas of planting <900mm in width, paved sleeper areas with groundcover in between and areas occupied by retaining walls as identified on the landscape calculation plan, which does not satisfy the DSPA definition in the RDCP.

Subsequently, Council has calculated the area this area as 22.7% (or 107.3m²) of the Torrens section. See Figure 27 below.

- The total of the Stratum section site area is 189.85m². The applicant has calculated the DSPA in this section as 11.5% (or 21.8m²) of the Stratum section. However, this calculation includes areas of planting above the basement garage below, which does not satisfy the DSPA definition in the RDCP.

Subsequently, Council has calculated the area this area as 10.4% (or 19.8m²) of the Stratum section. See Figure 28 below.

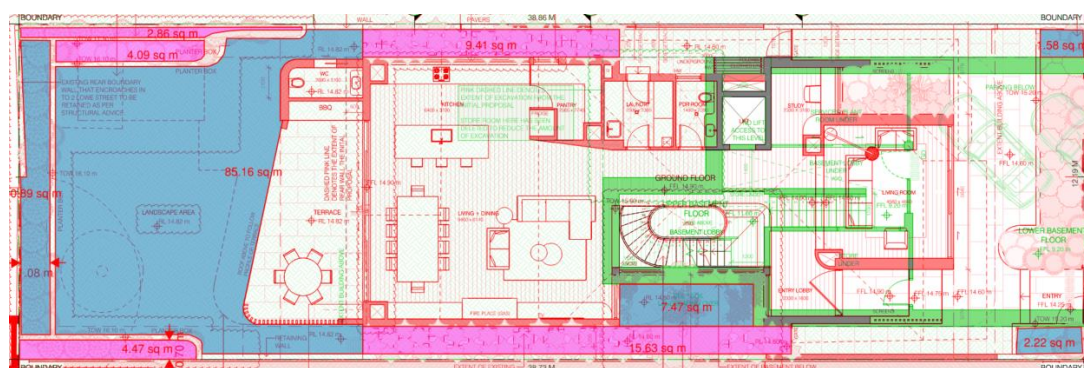


Figure 27: Proposed ground floor plan (in red) of the Torrens section of the site overlay basement level (in green), with Council markings of DSPA (in blue) and those DSPA not counted (in pink) - 8 Victory Street, Clovelly (*BJB Architects Pty Ltd*)

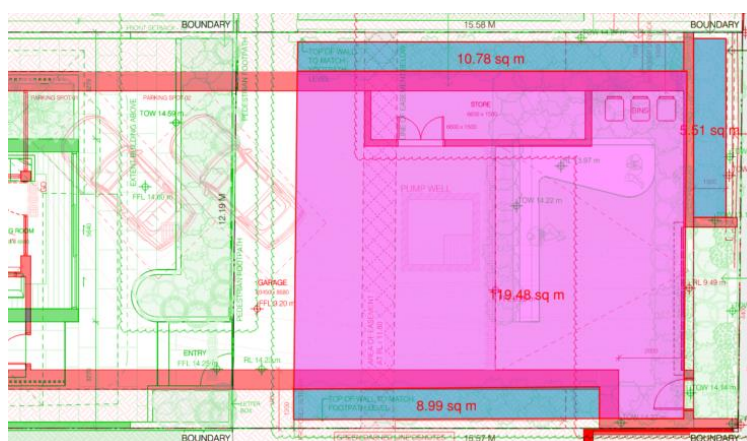


Figure 28: Proposed ground floor plan (in red) of the Stratum section of the site overlay basement level (in green), with Council markings deep soil areas (in blue) and those areas not counted (in pink) - 8 Victory Street, Clovelly (*BJB Architects Pty Ltd*)

That being said, Council does acknowledge the uniqueness of this particular site in terms of the two sections of the Title allotments. As noted previously, Council accepts that as part of the approved Stratum subdivision that there would be an ability of owners of No's 2-10 Victory Street to have basement garages through the Stratum section of the site to provide direct access from the parking internally into the Torrens section of the site and dwelling.

As noted above, in September 2013, the Ordinary Council approved Development Application No. DA/72/2013, at No. 10 Victory Street, Clovelly. The approved DSPA area was only 10% of the site. However, as with this site and the unique titling arrangement, Council was satisfied that the development met the objectives of the landscaping controls. Whilst DA/72/2013 was approved under a previous DCP version that only required a landscaped area of 35% for this site (as opposed to 45% as per the current DCP), this significant variation to the control is noted.

- Council is satisfied that the proposed development retains and provides planting area for vegetation that is appropriate to the exposed coastal area that will not impact upon view corridors and contribute to the visual qualities of the foreshore. The proposed site provides low planting within the Stratum section of the site, which Council supports in the foreshore area.

Whilst only 1 canopy tree is provided to the site (to the southern side of the dwelling), Council is satisfied that canopy trees have not been provided within the rear yard as they will impact upon solar access and view corridors. See comments from Council's Landscape Officer below in Appendix 1).

- In terms of the Stratum section of the site, whilst the significant grassed area to the upper Stratum area is not technically counted as DSPA, Council is satisfied that this area provides planting opportunities that are in keeping with the streetscape that positively contribute to the visual amenity of the locality, will assist with stormwater runoff and is a publicly-accessible area for recreational purposes (subject to conditions and further approvals by Council). The proposed development offers an opportunity for a comprehensive landscape upgrade of the site and publicly-accessible upper Stratum section with new planting that is suitable to the coastal environment and view sharing with the surrounding properties.

It is noted that the front planter area behind the reconstructed sandstone heritage wall should contribute to DSPA. However, this area has not been indicated on the applicant's landscape calculation plan. In order to ensure that this planter area contributes to the DSPA calculation, an appropriate condition of consent has been imposed to ensure that the planter shall not be constructed on a podium.

Therefore, Council is satisfied that the Stratum section of the site satisfies the objectives of the deep soil controls.

- In terms of the Torrens section of the site, Council sees opportunities for increased areas for stormwater penetration and runoff treatment, as well as provide more areas that comply with the >900mm width requirements, in order to achieve a greater compliance with the numerical control. Therefore, Council has recommended that several conditions of consent be imposed including that:
 - The areas of 'steppers with native groundcover in between', as identified on the landscape plans, be converted into areas of DSPA, as defined in the DCP.
 - All planters within the rear yard of the site are to have a minimum width of 900mm, in order to meet the definition of DSPA as per the DCP.

Additional opportunities for further DSPA have been provided by increasing the rear setback in accordance with the predominant rear setback line in the block (see Key Issues below for a detailed assessment). This will provide an additional 5.3m² of DSPA for the site.

Therefore, this will allow for an increase of DSPA on the Torrens section of the site to be increased from 22.7% (or 107.3m²) to approximately 32.2% (or 152.3m²) of the Torrens section site area.

Subject to these recommended conditions, Council would be satisfied that the site will sufficiently assist with stormwater infiltration and reduction of overland flow, and that sufficient areas of DSPA within the Torrens section of the site to provide areas for planting that create a visual balance between natural and built elements of the site. This has also

been achieved with an additional 20.2m² of planters within the front of the Torrens section of the dwelling, that assist with drainage and the visual balance.

- Council is satisfied that the proposed development will improve climate resilience of the site in providing sufficient areas for stormwater drainage as well as provide a planting schedule that encompasses native planting that is appropriate to this foreshore coastal area.

In summary, the non-compliance with the site coverage and DSPA controls considered acceptable in satisfying the relevant objectives of the DCP section, subject to conditions to increase the amount of DSPA within the Torrens section of the site.

Side Setbacks

The proposed development includes a non-compliance with the controls outlined in Section 3 'Building Envelope' of C1 in Council's DCP.

Clause 3.3.2 'Side Setback' requires that for a site with a frontage of >12m, the following side setbacks based on the building heights as below:

- 0m-4.5m = 1.2m
- 4.5-7m = 1.825m
- 7m-7.9m = 3.6m

The proposed dwelling includes a portion of the ground floor external walls that are only setback 1.109m from the northern and southern side boundaries. Furthermore, between 4.5m-7.9m, the proposed dwelling is only setback 1.2m from the site boundaries to each side. The variations have been demonstrated in elevation form, as per Figure 29 and 30 below:

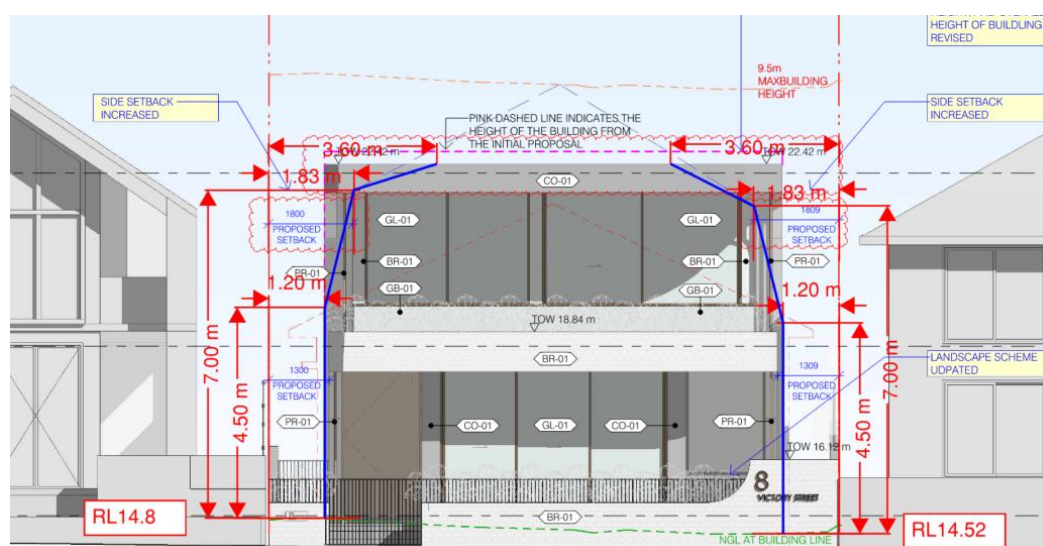


Figure 29: Proposed eastern elevation with Council markings showing the side setback controls in blue – 8 Victory Street, Clovelly (*BJB Architects Pty Ltd*)

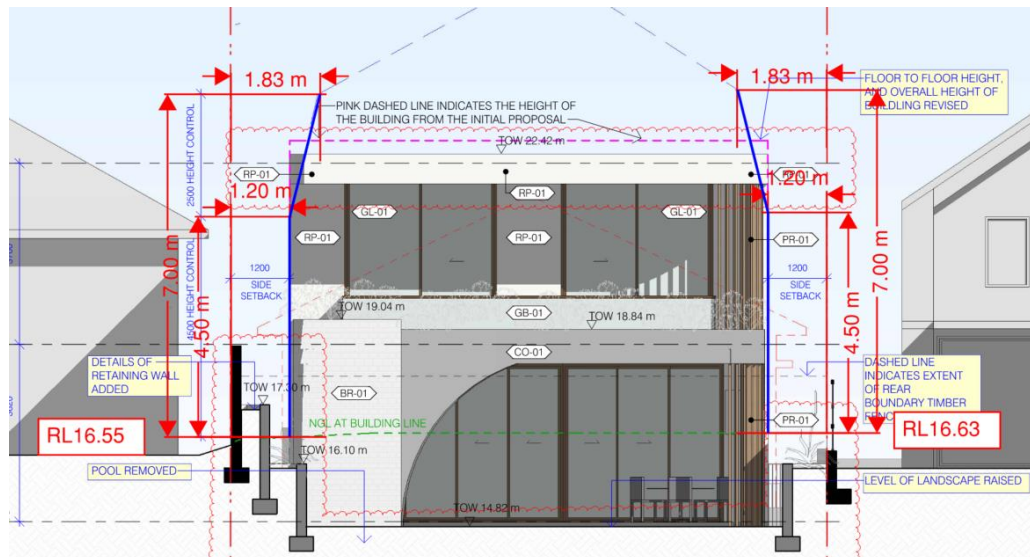


Figure 30: Proposed western elevation with Council markings showing the side setback controls in blue - 8 Victory Street, Clovelly (*BJB Architects Pty Ltd*)

It is noted that as per the side setback section of the DCP, all building heights are measured from ground level (existing). This includes the calculation of building height in relation to side setbacks. Due to the extensive excavation of the site, the side setbacks measured at the higher existing ground level as opposed to the lower new ground level and FFL of the proposed dwelling.

As per Figure 29 & 30 above, the dwelling does not comply with the DCP side setback controls.

As part of Council's Additional Information Request dated 14/03/2024, Council raised side setbacks as an issue, noting the following:

" Under Council's new DCP adopted on 01/09/2023, there is a deliberate intention to have the first floors of dwellings stepped in from the ground floor walls to provide greater articulation to the sides. This is to replace the previous external wall height and side setback controls.

The proposed first floor is only setback 1.2m from the side boundaries, of which Council does not support. There is sufficient space to reduce without impacting upon the amenity of the dwelling occupants, noting bedroom sizes exceed the 3m x 3m minimum, and a master bedroom size of 48m² (far exceeding the 10m² minimum).

Non-compliance with the controls impacts upon the views from No 6 Lowe Street. Strict compliance with the side setback controls would retain more of the existing ocean views. In addition, it is currently unclear what impact the non-compliance has in terms of solar access, however it does further overshadow the southern adjoining neighbour.

As well, the building has a visual bulk impact to the FSPA and adjoining neighbours. It is noted as a new dwelling without any site constraints, the development is required to fully comply with the side setback controls.

As such, please amend the plans to fully comply with the side setback controls. You may seek to reduce the generous heights within the building in order to fit more of the first floor within the side setback building envelope controls. Council notes there is space to reduce the 3m GF F2C height, 2.9m 1F F2C height, 3.8m F2F height and the 1.1m 1F ceiling-to-roof height.”

As part of the response to the Additional Information Request, the applicant has provided the following justification in regard to the non-compliance with the DCP controls:

"Site setbacks: To alleviate the breach caused by the new side setbacks, we have

addressed the design in the following ways

- Reduction in Building Height

We have reduced the floor to floor height of the two main habitable levels which results in an overall 280mm reduction in overall height of the building. This reduces the breach of the side setbacks.

- Increased Setback to 1800mm from Boundary

We have increased the side setback on Level 01 at the Master Bedroom to 1800mm to comply with the new DCP (dated Sept 01, 2023).

The increase in setback is at the area where the breach with the setback controls is maximum as the natural ground line here is the lowest in the torrents portion of the site. As we go further west, the natural ground level slopes up drastically and there is very minimal breach with the setback control.

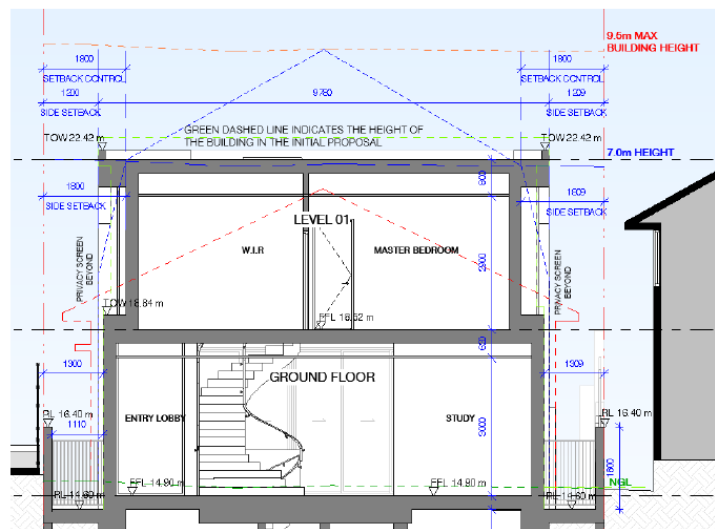


Figure 3 - Section through Building showing increased Side Setbacks

We note that the eave projections are explicitly excluded from the setback requirement as per the DCP ("excluding eaves, gutters, unroofed terraces, decks...minor projecting features, such as awnings, sun hoods, screening devices and the like").

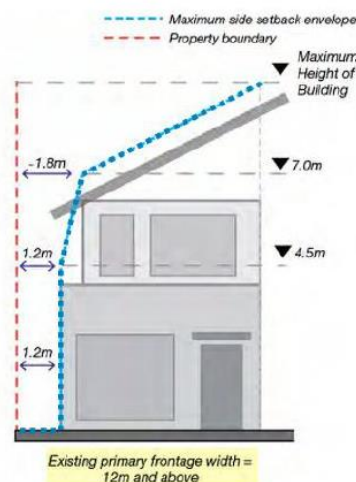


Figure 4 - Side Setback Diagram from the DCP

In order to assess the non-compliance and consider the justification above, Council needs to consider the proposal against the objectives of the relevant clause. The relevant objectives of Clause 3.3.2 'Side Setback' have been reproduced below:

- *To ensure the form and massing of development complements and enhances the streetscape character and maintains a two storey street frontage.*
- *To ensure adequate separation between neighbouring buildings for visual and acoustic privacy and solar access.*
- *To reserve adequate areas for the retention or creation of private open space and deep soil planting.*
- *To enable a reasonable level of view sharing between a development and the neighbouring dwellings and the public domain.*

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

- The form and massing of the development does not complement and enhance the streetscape character in that the dwelling visually dominates the width of the allotment, which appears out of scale with the desired future character of the R2 zone. Furthermore, the variation will adversely impact upon the massing and visual bulk of the building to adjoining dwellings in the locality.

Whilst the amended scheme has increased the side setbacks of the Master bedroom to 1.8m, a portion of the external wall is still setback only 1.2m. The 1.8m setback wall section also has vertical paneling detail that visually adds to the bulk, as well as the roof eave of 600mm. These elements further increase the visual bulk of the dwelling to Victory Street that detract from the streetscape and the desired future character of dwelling houses in the R2 zone.

- The dwelling benefits from a need to further increase side setbacks due to the proposed site excavation. This results in the measurement for the side setback height starting significantly higher to the rear of the dwelling, almost 1.9m in height from between the existing ground level and new dwelling ground level. Therefore, it is Council's opinion that greater compliance with the side setback controls should be adhered to in order to reduce the visual bulk impacts of the dwelling to adjoining neighbours to the sides and rear.
- There is insufficient separation between side neighbouring buildings in terms of solar access and privacy. A compliant 1.825m side setback would further reduce privacy impacts to adjoining neighbours. Furthermore, whilst the allotment to the south (No. 10 Victory Street) is reasonably expected to be overshadowed due to the site's orientation, strict compliance with the 1.825m side setback compliance with controls will improve solar access to this neighbour.
- It is noted that Council is satisfied that sufficient areas of POS and DSPA have been provided to the site (subject to recommended conditions). In addition, the non-compliance will have minimal adversely impact upon view corridors (see view sharing assessment below).

The applicant has not adequately demonstrated why compliance with the side setback controls cannot be adhered to. Taking this into consideration and the impacts it will have on the streetscape and adjoining neighbours, the following conditions of consent have been recommended:

- Setback the Master bedroom and adjoining front balcony, lift and adjoining void, and bathroom 1.825m from the northern side boundary (including all paneling and screening).
- Setback the Master bedroom balcony, ensuite bathroom and WIR 1.825m from the southern side boundary (including all paneling and screening).

Council notes that whilst strict compliance with the side setback controls is still not achieved in relation the front and rear sections of the first floor of the dwelling, subject to the recommended conditions above, Council is satisfied that the proposed development complements and enhances

the streetscape character with a tiered first floor and will sufficiently reduce the massing and visual bulk impacts of the building to adjoining dwellings. Council is satisfied that the recommended conditions will retain sufficient amenity for the future occupants of the dwelling, as well as provide sufficient articulation of the wall sections of the first floor of the dwelling.

In summary, the side setback is considered acceptable, subject to the recommended conditions to increase side setbacks to reduce visual bulk of the building to both the street and adjoining neighbours, as well as improve the amenity of the adjoining neighbours in terms of solar access.

Rear Setbacks

The proposed development includes a non-compliance with the controls outlined in Section 3 'Building Envelope' of C1 in Council's DCP.

Clause 3.3.3 'Rear Setback' requires that the minimum rear setback must be 25% of the allotment depth or 8m, whichever is the lesser. However, control (ii) requires development to provide increased rear setbacks over the numerical control or demonstrate that this is not required, having regard to the following matters:

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

The subject site has a depth of 38.865m. 25% of this depth is 9.72m. Therefore, the numerical minimum rear setback for this proposed development is 8m (being the lesser of the two measurements).

The ground floor of the proposed dwelling has the following rear setbacks:

- 8.14m to the terrace awning;
- 9.5m to the external W/C rear façade;
- 12.5m to the main dwelling rear façade.

The first floor of the proposed dwelling has the following rear setbacks:

- 10.4m to the balcony;
- 12.5m to the dwelling rear façade.

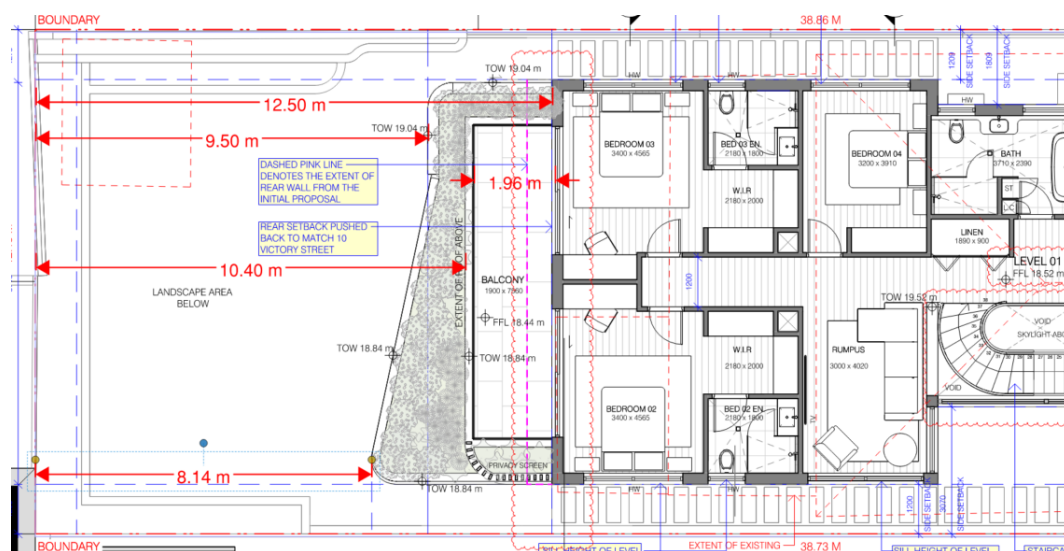


Figure 31: Proposed dwelling first floor plan with setbacks marked in red - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

Therefore, the proposed development complies with the numerical control of 8m. However, in accordance with control 3.3.3(ii) of the DCP, consideration is required of the above raised matters, in particular the existing predominant rear setback line in the subject urban block.

The DCP notes the following definition for the predominant rear setback:

The predominant rear setback is defined as the average of adjacent dwellings on either side of the allotment and is determined separately for each storey.

In terms of the urban block of dwellings to Victory Street, the sites of No's 8, 10 and 12 have similar block dimensions being longer than others in the block. Sites No's 2-6 and 14-20 share similar block dimensions being shorter and squarer than those at No's 8-12. See Figure 32 below.



Figure 32: Aerial view of the sites on Victory Street, with No's 8-12 highlighted that share a similar allotment size (July 2024) - 8 Victory Street, Clovelly (Source: Nearmap)

Should the strict application of the definition of the predominant rear setback be applied in this instance, the rear setback of No.8 would have to comply with the average rear setback of No's 6 & 10, which would be approximately 14.7m, of which it does not comply. Compliance with this control would be too onerous on the subject development and not supported by Council. Therefore, Council has considered compliance with the predominant rear setback on merit, defining the 'subject urban block' for the predominant rear setback of the blocks at 6-10 Victory Street, due to these allotments sharing common block dimensions that are more in keeping with the subject site.

In terms of No. 10 Victory Street, the ground floor roofed terrace has a rear setback of 9.1m and the first floor dwelling has a rear setback of 11.9m.

In terms of No. 12 Victory Street, the ground floor and first floor rear setback of the dwelling is approximately 11m.

The considerations of the block and rear setbacks have been produced in the table below:

Dwelling No.	No. 8	No. 10	No. 12	Average 10 & 12	No's 10 & 12 with No. 8	Variation of Ave of No's 10 & 12 with No. 8
GF	8.14m	9.1m	11m	10.05m		1.91m
1F	10.4m	11.9m	11m	11.45m		1.05m

As noted in the table above, the variation of the proposed dwelling with the average of rear setbacks of No's 10 & 12 Victory Street is 1.91m (ground floor) and 1.05m (first floor).

As part of Council's Additional Information Request dated 14/03/2024, Council raised side setbacks as an issue, noting the following:

“Rear setback – the proposed rear of the dwelling protrudes further than the adjoining dwellings at No. 10 & 12 Victory Street to the south, being the only 3 dwellings that share similar site dimensions.

The protrusion of the rear, at both the ground and first floor, will impact upon the visual amenity and privacy of the adjoining neighbours, including those to the north at 6 Victory Street and 57 Melrose Parade. In addition, the POS area is only 7.54m wide, due to the roof above the ground floor rear terrace. Clause 2.7 of the DCP requires a length of 8m.

As such, please reduce the dwelling to match the ground and first floor alignment of No. 12 Victory Street and the rear awning/terrace area to match No. 10 Victory Street. As part of these amendments, you will likely need to delete the first floor rear balcony.”

As part of the response to the Additional Information Request, the applicant has provided the following justification in regard to the non-compliance with the DCP controls:

“Rear Setbacks: To preserve visual amenity and privacy for the neighbouring properties, we have realigned the rear setback for Ground Floor and Level 01 to match the rear wall with our neighbours at 10 Victory Street. The rear setback, as shown in the image below, has been pushed back by 600mm.

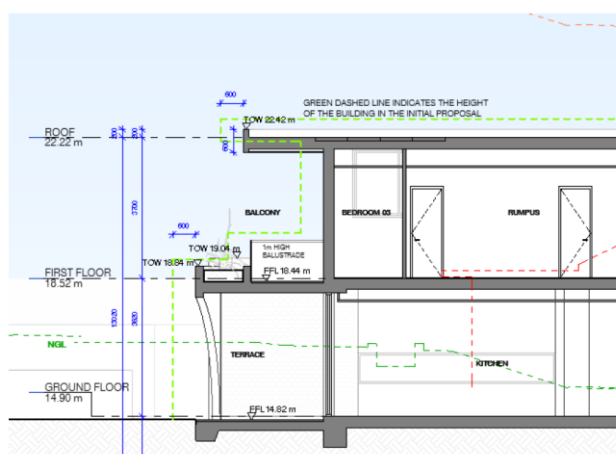


Figure 5 - Image Indicating the Realignment of Rear Setback

This adjustment has necessitated modifications to the internal layout at Level 01 to ensure optimal functionality while accommodating the new structural configuration.”

In order to assess the rear setback and consider the justification above, Council needs to consider the proposal against the objectives of the relevant clause. The relevant objectives of Clause 3.3.3 ‘Rear Setback’ have been reproduced below:

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

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

- The proposed development will result in visual bulk impacts to side and rear adjoining neighbours. The further breach of the proposed dwelling to both the ground and first floors fails to respect the predominant rear setback line of the dwellings in the urban block No’s 8-12 Victory Street. The proposed development will result in continued rear setback variations within the immediate block that will be visually dominant to the adjoining sites and future impact of development in the block.

- The proposed development will result in visual and acoustic privacy impacts, in particular that of the first floor rear balcony. Whilst the amended plans have included a privacy screen to the southern side of the balcony, the balcony will provide overlooking and noise impacts to both No. 6 Victory Street and No. 57 Melrose Parade.
- The proposed development Council notes that the breach in the predominant rear setback does not contribute to adverse view sharing impacts (see below for a detailed view sharing assessment). The increase setback will slightly increase solar impacts to No. 10 Victory Street, however this is not a significant impact.
- The rear section of the dwelling is not located above the basement. Therefore, non-compliance with the rear setback at the ground floor contributes to a reduction and non-compliance with the DPSA numerical control. Should the setback be increased in accordance with No's 10 & 12, more area will be provided for DPSA.

Based on the above reasons, the following conditions of consent have been recommended to be imposed:

- Setback the ground floor terrace (including the roof above) 9.5m from the rear boundary line and convert the setback terrace area into DPSA. This will result in an additional 5.3m² of DPSA for the site.
- Setback the first floor rear balcony from the rear boundary line so that the width of the balcony is only 1m, and convert the setback balcony area into an extended planter area.
- Install a 1.6m privacy screen to the northern side of the first floor balcony, to reduce direct overlooking into the POS of No. 6 Victory Street and 57 Melrose Parade. Furthermore, the southern privacy screen to the balcony is to be reduced to 1.6m in height to reduce visual bulk impacts.

Subject to these recommended conditions, the proposed development will be setback in accordance with the neighbouring dwellings in the block, reducing privacy and visual bulk concerns from the rear setback breach, as well as contribute to increasing the amount of DPSA within the site.

Earthworks

The proposed development seeks consent for non-compliances with several of the controls outlined in clause 4.7 'Earthworks' of C1 in Council's DCP. These controls include the following:

- Control 4.7(i) requires that any excavation and backfilling within the building footprint must be limited to a maximum 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a dwelling within this extent of site modification.
- Control 4.7(ii) requires that the outer edge of any excavation, piling or sub-surface walls must be setback a minimum of 900mm from the side and rear boundaries. Control 4.7(v) allows that where it is necessary to construct retaining walls at less than 900mm from the side or rear boundary due to site conditions, retaining walls must be stepped to follow the topography of the land. Each stepping must not exceed a maximum height of 2.2m, as measured from the ground level (existing).
- Control 4.7(vii) requires that any cut and fill outside the building footprint (for the purposes of creating useable private open space) must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site. The appropriate extent of site modification will be assessed on a merit basis.
- Control 4.7(viii) For sites with a significant slope, adopt a split-level design for dwellings to minimise excavation and backfilling, and design dwellings to minimise the height and extent of any exposed undercroft areas.

The proposed development seeks extensive excavation over the entirety of the site, with the most

significant height of excavation to accommodate a double-height basement garage and storage area. The greatest excavation height to accommodate the lower basement level is up to 6.4m.

The proposed development also seeks to create a flat site for the main dwelling and rear POS area. The proposed dwelling has a minimal split-level design with a difference of only 300mm between the front and rear sections of the ground floor level (being RL14.6 and RL14.9). This significant amount of excavation will result in retaining walls having to be provided along the side and rear boundaries to height of approximately 2.2m, with planters forward of the wall sections to reduce the visual impact. See Figure 33 below.

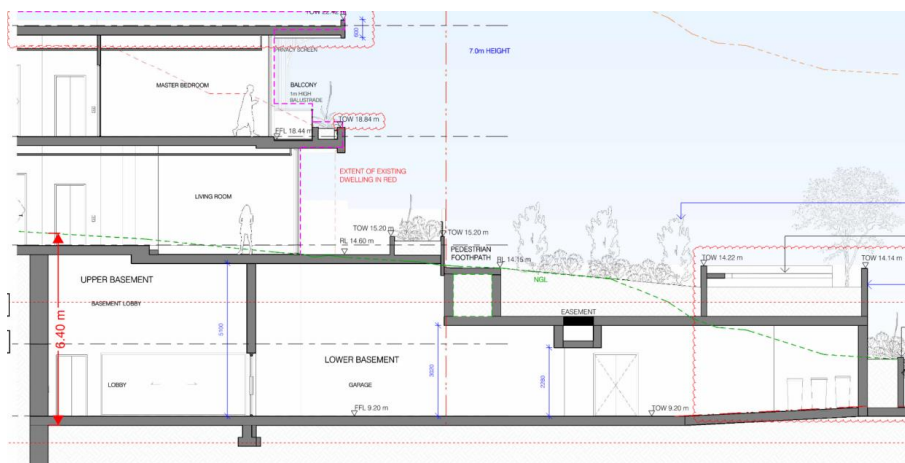


Figure 33: Proposed front long section with Council markings showing the extent of the proposed earthworks - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)

As part of Council's Additional Information Request dated 14/03/2024, Council raised side setbacks as an issue, noting the following:

"To the ground level of the main Torren section of the site, Council is concerned regarding the extensive excavation required to create a flat site, which will impact on the amenity of the dwelling occupants and adjoining neighbours."

Council is concerned that the excavation and construction of new retaining walls and boundary fencing will create undue visual bulk and amenity impacts to the future occupants, with retaining walls being constructed along the boundaries of up to 2.5m tall. With a 1.8m boundary fence, the sides and rear yards will have sections of up to 4.3m in height to the sides of the dwelling, of which Council does not support."

It is unclear why the existing rear lower terraced area FFL cannot be retained, and the rear yard excavated to match this height, rather than the need to further excavate at least another 1m down."

As such, the proposal is to be amended so that the dwelling and levels to the sides and rear of the site are to be stepped to better respond to the topography of the site. Excavation within the building envelope is to be reduced to a maximum height of 1m above the existing ground level, as per the DCP controls. You will therefore need to significantly raise the FFL of the rear section of the ground floor level and rear yard to a more appropriate height. Unfortunately, Council cannot provide an exact measurement of what an acceptable FFL would be due to not having a full understanding of the different levels of the adjoining neighbours, however the levels to this property should be roughly in keeping with the adjoining neighbours. This will also reduce any unforeseen drainage that may arise from such extensive excavation works. Council will be happy to review preliminary amended plans to confirm the levels are satisfactory prior to the final set of plans being submitted for determination."

As part of the response to the Additional Information Request, the applicant has provided the following justification in regard to the non-compliance with the DCP controls:

“Earthworks, Ground Floor: As mentioned earlier, the proposed floor levels are a function of the site. However, we have moved the steps at the backyard and have raised the backyard to match the terrace level, thereby reducing the excavation further.”

In order to assess the non-compliance and consider the justification above, Council needs to consider the proposal against the objectives of the relevant clause. The relevant objectives of clause 4.7 ‘Earthworks’ have been reproduced below:

- To maintain or minimise change to the natural ground levels, streetscape, and natural environment;
- To ensure excavation and backfilling of a site does not result in unreasonable structural, visual, overshadowing and privacy impacts on the adjoining dwellings;
- To provide usable private open space for dwellings with adequate gradient;
- To ensure earthworks do not result in adverse stormwater impacts on adjoining properties;
- To ensure earthworks do not impact upon the ability to achieve deep soil permeability surface areas and canopy tree planting.

The proposed variations to the earthworks controls are supported for the following reasons:

- The length of excavation of the site is what Council envisaged when the Stratum subdivision of the road reserve was approved and the lower Stratum section was sold off to the block owners, in terms of providing a direct internal access from the parking facilities to the main dwelling to the Torrens section of the site.

Firstly, Council notes that the western most point of the excavation accounts for the lift and stair access, which are centrally located within the dwelling above. The layout of the internal access is considered accepted for the amenity of the future occupants.

Secondly, in accepting that this level of excavation is required for a sufficient use and amenity of the site, the excavation of the garage and storage area to the basement between the lift/staircase and eastern side boundary is acceptable in that excavation will be required for this access. So long as the extent of excavation does not have any impact (of which it does not for the reasons outlined above), then the excavation of the basement (whilst being significant) is supported.

Thirdly, as the excavation of the lower basement is supported, Council does not have concerns in excavating the upper basement level and ground floor level above. In terms of the practical excavation works on site during the construction phase, Council is supportive of removing all soil within this area in providing the easiest way to excavate the lower basement level. The reconstruction of the new ground level to the upper Stratum and Torren sections of the site are consistent with the existing site and will not impact upon the public and private use of the site sections.

Council notes that the extent of excavation is similar to that of the adjoining southern neighbour at No. 10 Victory Street, as demonstrated by the applicant. It is also noted that sufficient conditions have been imposed in order to protect the Sewer line that runs through the upper Stratum section of the site.

- Council is satisfied that the proposed development sufficiently minimises changes to the natural ground levels on the site. The extend of excavation of the Stratum section is supported, as required to provide a sufficiently functioning basement garage which will not adversely impact upon the streetscape.

In terms of the Torrens section of the site, there is extensive excavation to a height of up to 6.4m. The section of excavation to the x2 basement levels is wholly contained within the existing ground level. Therefore, the excavation of the basement does not affect the natural ground level, which could be reiterated in its existing slope.

In terms of the upper Torrens section of the site, the proposed development seeks to create predominantly flat site in excavating the natural ground level and constructing retaining

walls along the side and rear boundaries to a maximum height of 2.2m. Within the rear yard where the area of the excavation is greatest, the proposed development seeks to provide tiered planters to reduce the visual impact of the wall sections. Whilst this does result in changes to the natural ground level, it will not impact upon neighbours, the streetscape or the natural environment. Therefore, the changes are supported.

- Council is satisfied that the proposed excavation in relation to the basement level will not impact upon the streetscape or adjoining properties in terms of structural, visual, overshadowing and privacy impacts. To the basement level, most of the excavation has been setback 1.2m from each side boundary, except for a small section to the garage entrance, which adjoins the neighbours garage and therefore will not impact upon the streetscape or amenity of the neighbour.

The proposed retaining walls along the side and rear boundaries are all burdened on the subject site to the all the adjoining neighbours, which will have higher FFLs along all of the boundaries of the site.

Whilst the proposed development will result in large retaining walls with boundary fencing to the sides of the site adjoining the dwelling impacting upon visual outlooks and daylight access, the retaining walls will not impact upon any of the adjoining neighbours, subject to conditions to protect adjoining neighbours. Sufficient conditions of consent have been recommended to ensure this.

- Council is satisfied that the extent of earthworks supports the improve use of the main rear POS area. Existing on the site is a raised garden area that is over 1m higher than the FFL of the dwelling. A levelling of the rear yard will improve the accessibility and amenity of the POS for future occupants. Retaining walls to the side and rear boundaries have a height of 2.2m, which complies with the numerical control. The tall sections of retaining walls are tiered into 2 sections with planters forward of the retaining walls to soften the visual impact of the retaining walls.
- Subject to adequate conditions, Council is satisfied that the proposed development will not result in adverse stormwater impacts on adjoining properties. See comments from Council's Development Engineer in Appendix 1 of the report.
- Council acknowledges that the extent of excavation to accommodate the proposed basement garage and storage level will impact upon strict compliance with Council's controls in terms of deep soil permeable area. That being said, Council is satisfied with the amount of proposed DSPA, as outlined in detail above. Council is also satisfied with the proposed planting schedule including that in relation to canopy tree planting within this exposed coastal area. See Landscaping comment for further details in Appendix 1 of this report.
- Sufficient conditions of consent have been imposed to enforce the conclusions and recommendations in the submitted Geotechnical Report prepared by Geotechnical Consultants Australia (dated 04 October 2023), and the Structural Engineering Letter prepared by Zimmerman Consulting Engineers (dated 11 April 2024).

In summary, the amount of proposed earthwork, whilst significant, is considered acceptable on the merits of the proposed application.

View Sharing

View sharing does not prescribe the total retention of all significant views and vistas. In established inner metropolitan areas like Randwick City, development inevitably causes varying degree of view loss. The intent of the DCP is to ensure development is sensitively and skilfully designed, so that a reasonable level of views is retained for the surrounding areas.

The NSW Land and Environment Court has developed a planning principle relating to view sharing based on the case of *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. Where view

loss impact is likely to occur, development proposals must address this sub-section of the DCP. The relevant objectives of the DCP to this proposal are as follows:

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

Loss of views has been raised by the objector at No. 6 Lowe Street. The objection contend that the proposed building envelope would impact upon the views enjoyed from this property. Council's Assessing Officer attended the site to verify the extent of view impacts to this dwelling. The site visit confirmed that there would be a view impact to the ocean views to the east.

Council's Assessing Officer, also with the Applicant, attended the sites of No's 2, 4 and 6/3 Lowe Street to determine the impact of the development on existing views from these properties. These site visits also confirmed that there would be a view impact to the ocean views to the east to each of these dwellings.

As such, as part of the view considerations of this development, Council will consider the impact of the development upon the views from No's 2, 4, 6 and 6/3 Lowe Street. See Figure 34 below showing the subject site in relation to those dwellings with view impacts. The applicant has provided a detailed view sharing assessment report to support the proposed development.

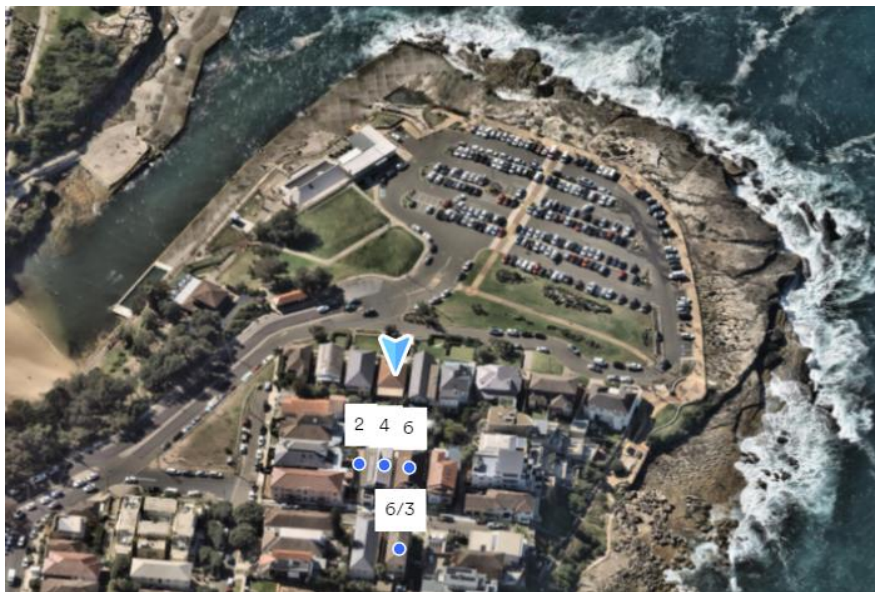


Figure 34: Aerial view for view loss consideration (October 2023) (Source: Nearmap)

Assessing Officer's Assessment:

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

1. Quality of Views:

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

Comments:

The views currently obtained from the properties No's 2, 4 & 6 Lowe Street are significant ocean and South Coogee headland view to the east at the front of the dwellings and partial ocean views without any land interface to the rear of the dwelling, over the subject site. No. 6/3 Lowe Street currently enjoys sweeping iconic views of the Pacific Ocean with headland interface from the north Clovelly headland to other eastern headlands to the south including Lurline Bay, Maroubra and Malabar.

The proposed development seeks to provide a two storey dwelling in place of an underdevelopment single dwelling house. The eastern views from No. 2, 4 and 6 Lowe Street will remain unaffected whilst views will be further obscured from the eastern rear of each of these dwellings. The views from No. 6/3 Lowe Street will be mainly preserved, except that of the Clovelly Surf Club, which will be obscured.

Photos of the existing views that were captured by the Assessing Officer and applicant have been shown in the applicant's 3D rendering response below:



Figure 35: Photo of ocean views with indicative proposed dwelling and building envelope controls from No. 2 Lowe Street, from the first floor western rear balcony (Source: BJB Architects Pty Ltd)

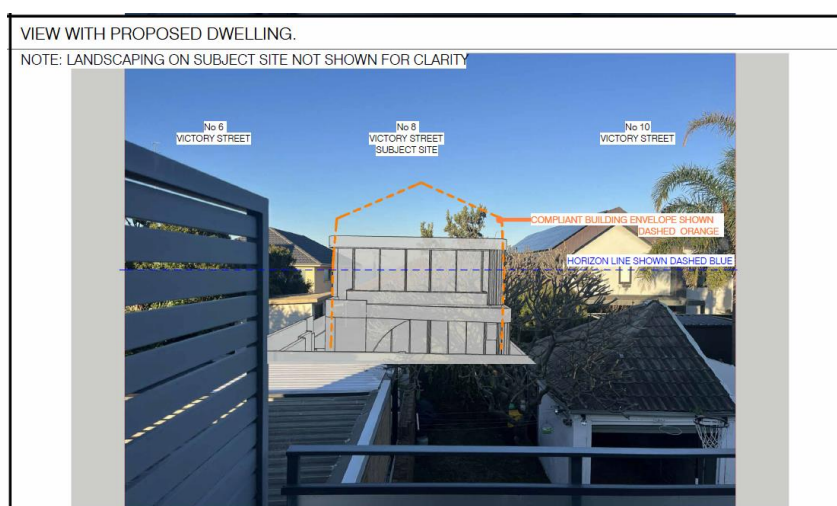


Figure 36: Photo of ocean views with indicative proposed dwelling and building envelope controls from No. 4 Lowe Street, from the first floor western rear balcony (Source: BJB Architects Pty Ltd)

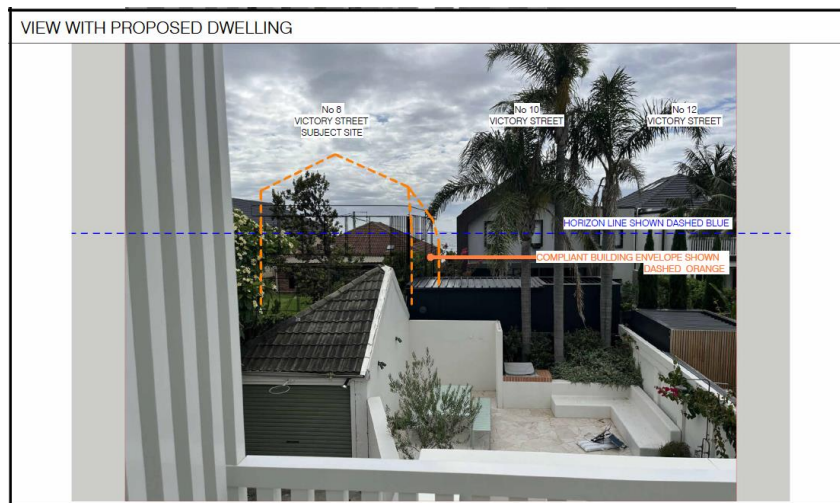


Figure 37: Photo of ocean views with indicative proposed dwelling and building envelope controls from No. 6 Lowe Street, from the first floor western rear balcony (Source: BJB Architects Pty Ltd)

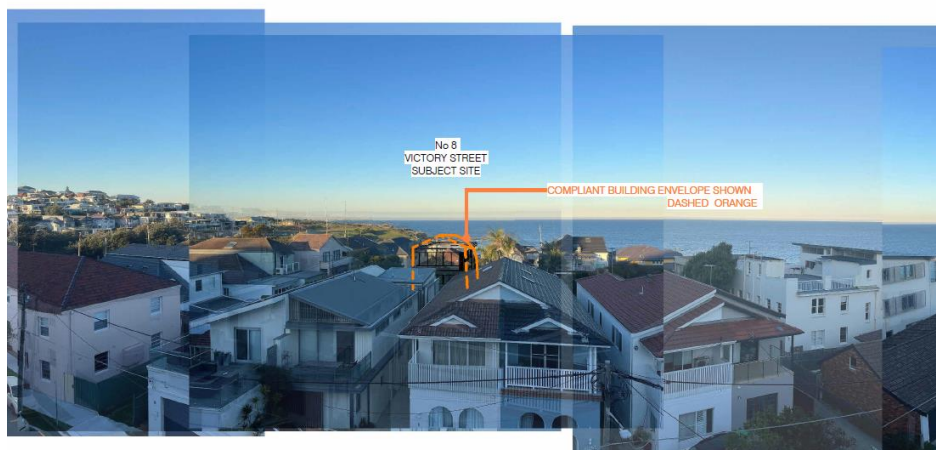


Figure 38: Photo of ocean views with indicative proposed dwelling and building envelope controls from No. 6/3 Lowe Street, from the first floor western rear balcony (Source: BJB Architects Pty Ltd)

2. Reasonable Expectation of View Retention:

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

Comments:

The views impacted from the proposed development to No's 2, 4 and 6 Lowe Street are obtained across the rear eastern boundary for each dwelling from the first floor bedrooms and balconies. These views are enjoyed from both sitting and standing positions, with a greater portion of the view visible from the standing position.

The views impacted from the proposed development to No. 6/3 Lowe Street is obtained across the front eastern boundary from the main living room and adjoining balcony, enjoyed from both standing and seated positions.

3. Extent of Impact:

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

Comments:

The views impacted from the proposed development to No's 2, 4 and 6 Lowe Street are determined to be minor. This is as the more significant views at the front of each dwelling to the south of the ocean and headland interface will be retained and the views to the east of the subject dwelling are from a bedroom to the first floor (rather than a living room).

The views impacted from the proposed development to No. 6/3 Lowe Street are determined to be negligible, noting that the vast majority of the sweeping ocean and headland views will be retained, except for a view of the Clovelly Surf Club.

4. Reasonableness of Proposed Development:

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

Comments:

Firstly, Council has verified that the provided view loss analysis from the applicant showing a photomontage of what impact the dwelling envelope will have on views as accurate.

The views that are impacted result from a proposed new two storey dwelling, in place of an existing single storey dwelling. These views have been enjoyed as mainly a result of the underdevelopment of the existing dwelling on the subject site, being over the pitched roof of the existing dwelling.

It is noted that the proposed dwelling does not comply with several site planning and building envelope controls as set out in the DCP, including site coverage, side setbacks, and rear setbacks. Of these, only the side setbacks impact upon the view sharing impacts (noting that the site coverage of the proposed dwelling above the ground level complies with the numerical control and is considered acceptable on merit).

In terms of the side setback non-compliance, due to the rising slope of the site topography from the front to the rear of the site and calculation of side setbacks from the existing ground level, the greater variation is to the side setbacks at the front of the site rather than the rear. The rear section represents only a minor variation. Strict compliance with the side setbacks at the rear of the dwelling would do little to retain a significant portion of the existing ocean views.

Therefore, based on the building envelope controls, the proposed development that generally complies with the planning controls is considered more reasonable than one that breaches them (in accordance with *Tenacity*).

Finally, noting that the proposed development generally complies with the building envelope controls, a test of whether a more skilful design needs to be considered, that ponders the balance between the same development potential and amenity for the dwelling future occupants and the increased retention of the impacted views.

Council notes that the first floor of the subject dwelling includes generous bedroom sizes, with the smallest bedroom being 3.2m x 3.91m. Council's DCP requires that for bedrooms to have sufficient amenity, they require dimensions of a minimum of 3m x 3m. In this instance, the side setbacks to the first floor could be setback a further 900mm to each side without impacting upon the amenity of the dwelling. That being said, a further setback of the northern and southern façade walls would do little to retain a significant portion of views that are currently being enjoyed by No's 2, 4 and 6 Lowe Street.

Council notes that the proposed development does include planting along the rear boundary, being 'Syzygium australe' and 'Acmena smithii' (i.e. varieties of lilly pilly's). Whilst lilly pillys have the ability to grow to a maturity height of 5m-8m, the amount of ocean views that will be retained from the proposed development are not significant. As such, Council is supportive of this type of planting as it acts as a screen planting, is native, and will result in the loss of a non-significant ocean views across the subject site.

Final comments:

Overall, the view impacts are mostly minor, based on the full extent of views currently experienced by the occupants of No's 2, 4, 6 and 6/3 Lowe Street. Whilst some views will be impacted from each these dwellings, sufficient view corridors will be retained. Council recognises that the proposed building envelope generally complies with numerical controls, except for the side setbacks.

Council notes that there is no viable design that would permit views not being impacted, acknowledging that views across No. 8 Victory Street are mainly enjoyed as the site has been underdeveloped as an existing single storey dwelling. Therefore, Council is satisfied of the view impacts of the proposed development. As such, the proposal has therefore passed the test in *Tenacity*, complies with section 5.6 of the RDCP 2013, and is accordingly supported in this instance.

Front Garage and Garden Structure

The proposed development seeks works to the Stratum section of the site to remove the existing publicly-accessible staircase and single garage to introduce a new garage structure and terraced garden structure above. This portion of the site is prominent within the streetscape context and FSPA. Furthermore, as noted previously, Council owns the upper Stratum section which is publicly accessible to pedestrians. Therefore, Council must be satisfied that the structure integrates into the adjoining terrace areas, retains the important sandstone retaining wall and will be a positive contribution to this foreshore setting.

The proposed upper terrace garden has been designed with a sloped garden adjoining the pedestrian footpath to a lower flat section of garden with a concrete seat and daybed. Adjoining the eastern side of the lower terraced garden is an inaccessible planter above the garage.

Council is concerned that the terrace garden does not integrate well into the adjoining structures and retain the similar features of the terraces within this block. As the upper Stratum section (above RL13.00) is owned by Council, a separate Civil Works application will be required to be submitted and approved by Council for all works. In order to provide a more integrated and less imposing design within the foreshore area, the following considerations have been made and conditions of consent recommended to be included in the Civil Works application design:

- The proposed development will result in the removal of an existing staircase access from the lower garage level to the upper footpath and main dwelling entrance. Previously, Council understands No's 4-12 Victory Street all had single width garages adjoining the road reserve to Victory Street with individual staircases, which were mainly to provide direct access from the garages to the dwellings above. Council is satisfied that the removal of this staircase access on the site will not adversely impact upon public access in the area for the following reasons:
 - Access to the parking facilities to the basement level is provided via an adjoining pedestrian access to Victory Street. The basement parking is now connected to the main dwelling via the internal staircase and lift access. Therefore, the need for the external staircase for the site occupants is no longer required.

- There is no footpath on either side of Victory Street in front of the subject site. Whilst parking is available to each side of the street, this section of the street is not frequently used as a pedestrian thoroughfare.
 - Access to the upper footpath adjoining the eastern side of the Victory Street dwellings is mainly for local residents along Victory Street and those further northern along Melrose Parade and beyond. This section of footpath does not form part of the popular Eastern Suburbs Coastal Walkway.
 - Supplementary pedestrian access is maintained to the footpath on the upper side of Victory Street via staircases on No. 4 and 14 Victory Street, in addition to the main access to the southern side of Victory Street.
- The 4.4m width of the garage door is in keeping with the width of other garage doors in the row along Victory Street.
- The parapet of the garage at a height of 1.2m generally matches that of the adjoining garages. Whilst this breaches the 600mm maximum height control (clause 6.5 of the DCP), Council is supportive of the parapet in that it is in keeping with the streetscape design. That being said, the submitted plans show the parapet lower than those of the adjoining garages. In order to ensure that the parapet height matches the adjoining neighbours in order to integrate into the streetscape design, a condition of consent has been recommended to provide amended plans confirming the RL height of the adjoining garage parapet heights and demonstrating that the proposed garage is generally aligned to these structures.
- The existing local heritage-listed sandstone wall located at the front of the site shall be removed and reconstructed as part of the proposed development. Whilst the length of the retaining wall will be reduced from 6.4m to 5.7m, this is considered acceptable in order to provide adequate parking facilities for the subject dwelling. In order to clarify the materials being used to the sides of the garage (which are not clear from the proposed development), a condition has been recommended to confirm that all sides of the garage structure to Victory Street is to be constructed/clad with sandstone blocks.
- The proposed upper Stratum terrace garden does not match that of the adjoining terraces. In order to provide some consistency of these terraces in the row, a condition of consent has been recommended that the terrace shall be tiered into two separate areas that follow the terracing of the gardens within this block. The FFL of each level is to generally match that of No. 10 Victory Street.
- The proposed design includes a brick wall section of the upper terrace garden fronting Victory Street. This wall section will create additional visual bulk that does not integrate into the adjoining structures. It is also noted that no details of balustrading have been provided as part of the design, which will be required for this publicly accessible terrace area. An appropriate condition of consent has been recommended that this wall section shall be replaced with a simple horizontal balustrading, similar to that at No. 10 Victory Street. A further condition has been recommended requiring all balustrading to the upper terraces shall comprise of this design.
- To ensure that the balustrading is masked with planting to reduce the visual impact of the terrace structure, a condition of consent has been recommended that planting is to be provided between the balustrading to the terrace, being of a hedging that will mask the balustrading from visibility, similar to the treatment of the planting to No. 10 Victory Street.

D60/24

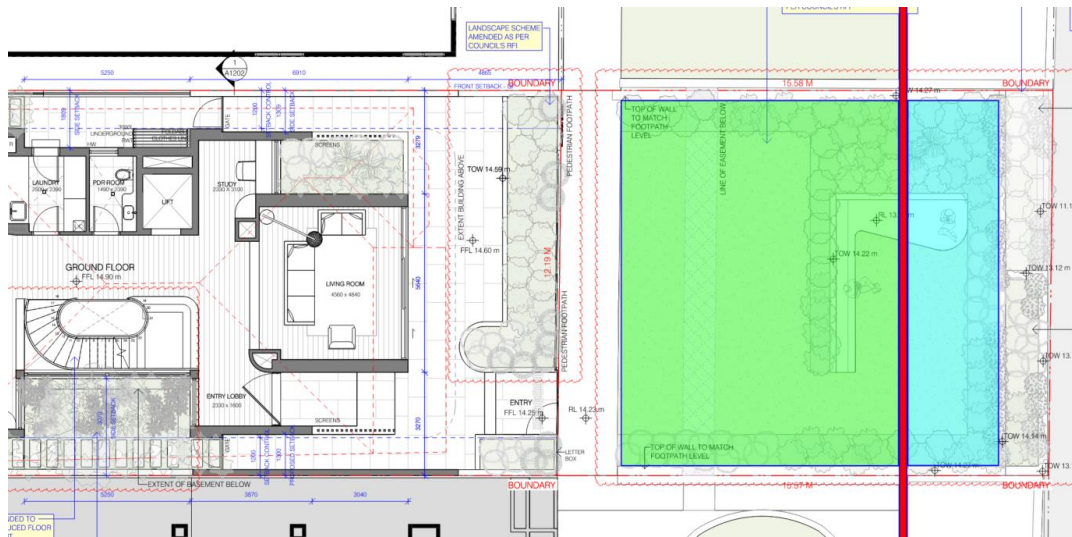


Figure 39: Proposed upper terrace level with Council markings showing the conditioned two tiered terrace gardens - 8 Victory Street, Clovelly (Source: BJB Architects Pty Ltd)



Figure 40: West oblique view showing the general two-tiered terraces within the block and proposed conditioned two terraces for the subject site - 8 Victory Street, Clovelly (Source: Nearmap)



Figure 41: Photo of the lower terraced garden area to No. 10 with balustrading obstructed with hedging
(Source: Randwick City Council)

Subject to above recommended conditions of consent, Council is satisfied that the proposed upper Stratum terraced garden will positively contribute to the foreshore scenic area and that integrates into the streetscape design of other terraces to Victory Street.

9. Conclusion

That the application to demolition of existing structures and construction of a 2 storey dwelling with basement parking, swimming pool and landscaping works (Local Heritage Item) approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The reconstruction works to the heritage sandstone retaining wall will not detract from the heritage significance of the retaining wall within the streetscape.

Appendix 1: Referrals

1. External Referral Comments:

1.1. Ausgrid

Ausgrid has confirmed the proposed development is satisfactory and provided standard conditions of consent in relation to overhead cables.

2. Internal Referral Comments:

2.1. Development Engineering

Council's Development Engineer has confirmed the proposed development is satisfactory and provided the following comments:

"Parking Comments

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

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

Civil Works Above and below Garage

The assessing officer is advised that the front of the property at the location of the existing garage comprises of a stratum lot with upper boundary of RL 11.80 and RL 13.0 and lower boundary of RL 8.40 AHD as shown on DP 1071445. Works above and below these levels respectively will therefore be on Council property and hence excavation works must not commence on the site until permission has been obtained from Council.

A separate written approval from Council is required to be obtained in relation to all works which are located externally from the site within the road reserve/public place, in accordance with the requirements of the Roads Act 1993. Detailed plans and specifications of the proposed works are to be submitted to and approved by the Director of City Services prior to commencing any works within the road reserve/public place.

All works within the road reserve/public place must be carried out to the satisfaction of Council and certification from a certified practicing engineer is to be provided to Council upon completion of the works.

Drainage Comments

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.

Roof stormwater must be directed to a suitably designed and constructed rainwater tank, as required in the relevant BASIX Certificate for the dwelling. The overflow from the rainwater tank and other surface stormwater must be directed (via a sediment/silt arrestor pit) to Council's kerb and gutter (or underground drainage system) in Victory Street

Undergrounding of power lines to site

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

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

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

Sewer Comments

The assessing officer is advised that Council records indicate there is a 225mm diameter Sydney Water sewer main located at the front of the property within the stratum lot or potentially above the stratum lot within Council property. The sewer will be impacted during construction works and 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. A suitable condition has been included in this report."

2.2. Development Landscaping

Council's Landscaping Officer has confirmed the proposed development is satisfactory and provided the following comments:

"Tree Management Comments

Beyond the front, eastern site boundary, on Council's sloped grassed verge, in the area between the northern boundary and existing free standing single car garage is a mature 6-7m tall *Banksia integrifolia* (Coastal Banksia, Tree 1 in the Arborist Report) which is a desirable endemic species that is automatically protected by the DCP due to its location on public property.

However, its retention as part of this application will not be possible given the significant civil works that will need to be undertaken in this same area associated with the new Basement Level, so approval is given for its removal, along with the other smaller plants and shrubs in this same area as they are all insignificant, with the new landscape treatment provided for the future external terrace to improve its visual presentation, consistent with other recently completed examples nearby.

Given that this whole area will need to be excavated down to street level, conditions in this case allow the applicant to undertake this tree removal themselves, at their own cost, rather than the usual process of paying a fee for Council to perform this work and will need to satisfy themselves as to the location of any sub-surface services or similar prior to the commencement of any works on public property.

The only other vegetation requiring assessment is the mature, 6m tall *Banksia serrata* (Saw Toothed Banksia, T2) located in the rear setback of this development site, in the southwest corner, which is also a desirable, endemic coastal species that is protected by the DCP, and while displaying good health and condition, is not significant in anyway.

The ground level currently steps up slightly from the dwelling (15.80) into the rear yard (16.71), with a low stone/brick wall noted around the perimeter of the rear yard, and while both the current and proposed dwelling will remain well away to its east, the plans show that in order to provide a level transition straight off the floor level of the new house into the backyard, the whole rear setback will need to be significantly lowered by 2.05m, from 16.87 down to RL 14.82, with a perimeter planter box to then be constructed, to which screening species will be added so as to assist in minimising the visual dominance of these boundary walls/fences.

The only way this tree could remain would be to exclude it from the lowering works described above, meaning it would effectively be contained within a restricted box, elevated above with the rest of the yard; however, this is not warranted in this situation as it is not sustainable for the tree or desirable for the layout of the rear private open space, so will not be pursued, with approval given for its removal, with the replacement planting shown on the submitted Landscape Plans deemed to provide adequate compensation for its loss throughout this same area.

Landscape Plan Comments

Several issues were identified on the original Landscape Plans associated with species selection both on private and public property, due either to their exotic origins which would mean they could not withstand the frontline condition; or the fact they could achieve heights of between 6-10 metres at maturity, which could form 'green walls' that would affect surveillance, solar access and water views, with Council also requiring that the extent of works and inclusions on the public verge for the future terrace area be reduced and scaled-back so as to then provide a similar outcome to other recently completed examples nearby.

The applicant has complied with this request by selecting species of smaller mature heights around the rear yard, as well as deleting the numerous large concrete steppers and raised planters from the external terrace on public property, with alternative species here to now be limited to around 1 metre in height, and as Council is supportive of the improvement of the currently underutilised external verge area, relevant conditions requiring its full implementation have been included in this report.

2.3. Heritage Planning

Based on the original proposal that sought to remove the heritage sandstone retaining wall, Council's Heritage Planner confirmed that the proposed development was not satisfactory and provided the following comments:

"Comments

The proposal involves the provision of vehicular access and parking for two vehicles in the lower basement which will result in the total removal of the existing sandstone wall. The Heritage Impact Assessment undertaken by Umwelt advises that:

"The proposed development, designed by BJB Architects, would remove the house and garage, while salvaging the sandstone from the house, its fence and the lower retaining wall, to be reused within the listed retaining wall. The sandstone blocks from the plinth of the house, its fence alongside the footpath and the stone from the retaining wall adjacent to the garage would be cleaned, stored safely, and then reused in the facing of the new garage level facing Victory Street. This would lead to more of the early twentieth-century cut sandstone at 8 Victory Street being incorporated into the front boundary wall than at present."

Concern is raised that the re-use of the sandstone in a totally new reconfiguration of a large double garage structure that has no semblance to the existing heritage sandstone retaining wall will be detrimental to the heritage streetscape character along the western side of Victory Street.

Recommendation

It is considered that amended plans should be provided for discussion with the heritage planner showing the following:

- A reduction in the width of the vehicular access driveway to a maximum 4-5m measured from the southern boundary of the site.*
- The remainder of the site frontage should be comprised of a continuous retaining wall with pedestrian entry gate at the same height as the existing heritage sandstone retaining wall which is to be provided to the edge of a front landscaped terrace at the same height and presentation as the plants in the existing planter turf, in order to improve the consistency and continuity of landscape treatment to the Victory Street properties. Please note that the approved development on the adjoining site at No 10 Victory Street has achieved this configuration as shown in the before and after photos below.*

Additional comment to clarify the concerns raised above:

- Garage should remain the smaller portion of the frontage – i.e. max 50% of the front façade.*
- Preference should be given to use similar proportion of the existing garage at 8 Victory Street including the solid spandrel over the garage door.*

- *Minimise the garage door and driveway as noted in the above comments or similar to the neighbouring property No.10 Victory, in order to maintain the existing sandstone wall and streetscape character.*
- *Following the reduction of garage/driveway width, it is recommended to introduce a pedestrian access (i.e. in replacement of the existing public stair access) adjacent to the garage to minimise conflict of access (as a safety measure) for delineating pedestrian and vehicle access, as well as maintaining the streetscape character.*
- *Use the same size stone and patterning similar to the original size and patterning for repair or reconstruction of the stone wall/retaining walls.*
- *Preference should be given to re-use of existing stone in repair and construction works or similar appropriately sized / aged replacement stone.*
- *Preference should be given to have a non-trafficable landscaped area above the garage.”*

On 13 June 2024, upon reviewing the final architectural plans, Council's Landscaping Officer has confirmed the proposed development is satisfactory and provided the following comments:

“Comments

Amended drawings, garage design, Victory Street façade design and Material/colour identified as ST-01 on Drawing A1305 streetscape façade(design) / retaining wall are supported from a heritage perspective.

Recommendation

The following conditions should be included in any consent:

Existing sandstone retaining wall/blocks are to be removed with care and stored/preserved prior to reuse. The re-construction of the retaining wall must re-use existing/restored sandstone blocks using soft mortar matching the original wall. Any additional blocks that may be required for this façade must match existing blocks.”

Appendix 2: DCP Compliance Table

1.1 Section B2: Heritage

Council is satisfied that the proposed development meets the heritage objectives and controls in accordance with Section B2 of the DCP. See a detailed assessment by Heritage Planning in Appendix 1 of the report below.

1.2 Section B4: Landscaping and Biodiversity

Council is satisfied that the proposed development meets the landscaping and biodiversity requirements in accordance with Section B4 of the DCP. This includes detailed comments regarding the upper Stratum garden terrace. See a detailed assessment by Development Landscaping in Appendix 1 and the Key Issues of the report.

1.3 Section B5: Preservation of Trees and Vegetation

Council is satisfied that the proposed development meets the preservation of trees and vegetation requirements in accordance with Section B5 of the DCP. See a detailed assessment by Development Landscaping in Appendix 1 of the report below.

1.4 Section B6: Recycling and Waste Management

Council is satisfied that the proposed development meets the waste requirements in accordance with Section B6 of the DCP.

1.5 Section B7: Transport, Traffic, Parking and Access

Council is satisfied that the proposed development meets the parking requirements in accordance with Section B7 of the DCP. See a detailed assessment by Development Engineering in Appendix 1 of the report below.

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	i) Development must comply with the vehicle parking rates as detailed in below. Any excess provisions over and above the parking rates will be included in GFA calculations: Dwelling houses/dual occupancies, semidetached dwellings, attached dwellings: 1 space per dwelling house with up to 2 bedrooms; <u>2 spaces per dwelling house with 3 or more bedrooms;</u> Note: Tandem parking for 2 vehicles is allowed.	The subject 4-bedroom dwelling house has been provided with a garage for 2 vehicles.	Yes, complies
3.8	Access to Dwellings Elevated Above Retaining Walls in Public Domain		
	i) Any provision of vehicular access to dwellings must minimise demolition, modification and damage to existing retaining walls within the public domain. ii) Double width driveway and entry to on-site parking involving full or part removal of retaining walls in the	The existing local heritage-listed sandstone wall located at the front of the site shall be removed and reconstructed as part of the proposed development. Whilst the length of the retaining wall	Yes, complies on merit

D60/24

	<p>public domain must not be provided.</p> <p>iii) Development must not involve any significant change to the existing gradients of public footpaths above the retaining walls, except to facilitate equitable access.</p> <p>iv) The creation of an access driveway must not jeopardise the safety of pedestrians and vehicles.</p> <p>v) Works that require alteration or replacement of landscape elements and structures (such as handrails) adjacent to the public footpaths situated above retaining walls must be compatible with the streetscape character.</p>	will be reduced from 6.4m to 5.7m, this is considered acceptable in order to provide adequate parking facilities for the subject dwelling.	
--	---	--	--

1.6 Section B8: Water Management

Council is satisfied that the proposed development meets the water management requirements in accordance with Section B8 of the DCP. See a detailed assessment by Development Engineering in Appendix 1 of the report below.

1.7 Section B10: Foreshore Scenic Protection Area (2013)

DCP Clause	Controls	Proposal	Compliance
	<p>i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated.</p> <p>ii) Integrated outbuildings and ancillary structures with the dwelling design (coherent architecture).</p> <p>iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues).</p> <p>iv) Must not use high reflective glass</p> <p>v) Use durable materials suited to coast</p> <p>vi) Use appropriate plant species</p> <p>vii) Provide deep soil areas around buildings</p> <p>viii) Screen coping, swimming and spa pools from view from the public domain.</p> <p>ix) Integrate rock outcrops, shelves and large boulders into the landscape design</p> <p>x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone.</p>	See assessment below.	Yes, subject to conditions
	<p>Overall, Council is satisfied that the proposed development is in keeping with the foreshore area. The proposed garage wall and retaining walls to Victory Street are to comprise of recycled sandstone blocks on the existing site. The publicly accessible terrace to the upper Stratum section of the site is generally satisfactory. See Key Issues for detailed considerations.</p>		

	<p>The colour scheme complements the natural elements in the coastal areas, using light colour neutral hues and materials.</p> <p>Sufficient deep soil areas have been provided to all sides of the site with native planting that is appropriate in this exposed coastal area.</p> <p>A separate Colours, Materials and Finishes Schedule is to be submitted and approved by Council's prior to the issue of a Construction Certificate. A further condition has been imposed to confirm where any recycled sandstone blocks are left over, that they are to be reused as part of the development.</p>
--	---

1.8 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 662.8m ²	
2.4	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	Site = 662.8m ² Proposed = 60.8% (403m ²) Comprises of three areas: Torrens Dwelling: 202sqm Torrens Basement – 49.9sqm. Stratum Basement – 151.1sqm	No, See Key Issues
2.5	Deep soil permeable surfaces		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached dwellings: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	Site = 662.8m ² Proposed = 21.8% (144.4m ²) Comprises of two areas: Torrens Section: 116.7m ² Stratum Section – 27.7m ² Does not include the landscaped areas on podium, areas of planting <900mm in width, and paved sleeper areas with groundcover in between.	No, see Key Issues
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	The proposed development only includes x1 canopy tree. See Landscaping comment for further details in Appendix 1.	See Appendix 1 for detailed landscaping comments.
2.7	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Proposed = >8m x 8m	Yes, complies

D60/24

DCP Clause	Controls	Proposal	Compliance
	ii) POS satisfy the following criteria: <ul style="list-style-type: none"> Situated at ground level (except for duplex) No open space on podiums or roofs Adjacent to the living room Oriented to maximise solar access Located to the rear behind dwelling Has minimal change in gradient 	The proposed main POS is located at the rear of the site, situated at ground level, free of podiums and roofs, adjacent to the main living room, which will receive adequate solar access.	Yes, complies
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.6:1	Proposed = 0.6:1 (397.47m ²)	Yes, complies
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 7.92m	Yes, complies
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: <ul style="list-style-type: none"> Topography Site orientation Lot configuration Flooding Lot dimensions Impacts on visual amenity, solar access, privacy and views of adjoining properties. 	The proposed dwelling is two storeys, as viewed within the context of dwellings on the upper footpath area. Whilst the dwelling has a visible double width garage from the lower side of Victory Street, this is in keeping with all other dwellings in the block and the desired character of this block, in accordance with the previous Stratum subdivision consent. The extensive two levels of basement are located wholly within the existing ground level and will not impact upon the neighbouring amenity. Proposed F2C heights = >2.9m Proposed F2F height = 3.6m	Yes, complies on merit
3.3	Setbacks		
3.3.1	Front setbacks		
	i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> 900mm for allotments with primary frontage width of less than 7m 1500mm for all other sites Should align with setbacks of adjoining dwellings iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.	The front setback of the dwelling has been calculated in relation to the Torrens title section of the site. No. 6 = 3.4m No. 10 = 3.6m Proposed GF = 4.75m-4.9m Proposed 1F = 4.15m-4.25m (excluding the front planter podium, considered a minor	Yes, complies

DCP Clause	Controls	Proposal	Compliance																								
		<p>projecting element).</p> <p>The proposed dwelling is setback behind the adjoining dwellings.</p> <p>See section 6 of the DCP table below regarding the parking facilities within the Stratum section of the site.</p>																									
3.3.2	Side setbacks <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 >4.5m to 7m</th><th>Building heights >7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height - 4.5m) / 4</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td>0.9m + (building height - 4.5m) / 4</td><td>1.5m + 2 x (building height - 7m) / 4</td></tr> <tr> <td>12m and above</td><td>1.2m</td><td>1.2m + (building height - 4.5m) / 4</td><td>1.8m + 2 x (building height - 7m) / 4</td></tr> </tbody> </table>	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 - 4.5m) / 4	9m to less than 12m	0.9m	0.9m + (building height - 4.5m) / 4	1.5m + 2 x (building height - 7m) / 4	12m and above	1.2m	1.2m + (building height - 4.5m) / 4	1.8m + 2 x (building height - 7m) / 4	<p>Frontage = 12.19m</p> <p>Min 0m-4.5m = 1.2m</p> <p>Min 4.5-7m = 1.825m</p> <p>Min 7m-7.9m = 3.6m</p> <p>Proposed 0m-4.5m = 1.2m</p> <p>Proposed 4.5-7m = 1.2m</p> <p>Proposed 7-7.9m = 1.2m</p>	No, see Key Issues
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 - 4.5m) / 4																								
9m to less than 12m	0.9m	0.9m + (building height - 4.5m) / 4	1.5m + 2 x (building height - 7m) / 4																								
12m and above	1.2m	1.2m + (building height - 4.5m) / 4	1.8m + 2 x (building height - 7m) / 4																								
3.3.3	Rear setbacks <ol style="list-style-type: none"> Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> Existing predominant rear setback line Reasonable view sharing (public and private) Protect the privacy and solar access Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> Compatibility POS dimensions comply minimise solar access, privacy and view sharing impacts <p><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>Minimum = 8m</p> <p>Proposed GF = 8.2m to awning, 9.5m to external W/C, 12.5m to main dwelling rear facade</p> <p>Proposed 1F = 10.35m to balcony, 11.9m to dwelling.</p> <p>The site has a regular block dimension with No's 10 and 12 Victory Street only.</p> <p>No. 10 = 9.1m to GF roofed terrace, 11.9m to dwelling.</p> <p>No. 12 = approximately 11m to GF and 1F.</p> <p>See detailed assessment in the Key Issues section of the report.</p>	See Key Issues for detailed assessment.																								
4	Building design																										
4.1	General																										
	Respond specifically to the site	The proposed dwelling is	Yes,																								

D60/24

DCP Clause	Controls	Proposal	Compliance
	<p>characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design balconies appropriately sized Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	<p>articulated well to the street, except for the side setbacks. See Key Issues for detailed assessment.</p> <p>Council is satisfied that all wall sections, except for a minor variation to the northern ground floor wall, are all less than 12m in length. The minor variation to this non-compliant wall is supported as the side is articulated well with mixed materials and openings.</p> <p>The first floor front balcony has a width of 1m, which is appropriate to the adjoining bedroom use. The first floor rear balcony is 1.96m in width, which is significantly more with a greater impact. See Key Issues for detailed assessment for this balcony in relation to the rear setback controls.</p> <p>All bedrooms are >3m x 3m in size.</p>	complies on merit
4.5	Roof design and features		
	<p><i>Dormers</i></p> <ul style="list-style-type: none"> i) Dormer windows do not dominate ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. iii) Multiple dormers consistent iv) Suitable for existing <p><i>Clerestory windows and skylights</i></p> <ul style="list-style-type: none"> v) Sympathetic to design of dwelling <p><i>Mechanical equipment</i></p> <ul style="list-style-type: none"> vi) Contained within roof form and not visible from street and surrounding properties. 	<p>The proposed skylight above the main dwelling staircase is sympathetic to the design of dwelling.</p>	Yes, complies
4.6	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. 	<p>See a detailed consideration of the proposed colours, materials and finishes below in Part B10 of the DCP table, as the subject site is within the FSPA.</p> <p>Furthermore, in order to retain or recycle existing sandstone block works as much as possible, a</p>	Yes, subject to condition

DCP Clause	Controls	Proposal	Compliance
	vi) Recycle and re-use sandstone	condition of consent has been imposed recommending that all sandstone blocks within the site be reduced within the development.	
4.7	Earthworks		
	i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vii) cut and fill for POS is terraced <i>where site has significant slope:</i> viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas.	The proposed development seeks excavation of the entire site area, to a maximum depth of 6.4m. The excavation is to provide the parking access through the Stratum section of the site and a flatter site for the Torrens section of the site for the main dwelling and POS at the rear of the site. This will result in retaining walls along the side and rear boundaries of up to 2.2m (with planters forward of the wall sections).	No, see Key Issues
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The allotment has an east-west orientation (i.e. east being the front and west being the rear). As such, opportunities for north-facing windows with direct sunlight are challenging. The amended scheme shows north-facing windows to the kitchen and pantry rooms, which will provide some additional daylight. The rear POS will receive sufficient direct sunlight in accordance with the DCP controls.	Yes, complies on merit
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on	As noted above, the allotment has an east-west orientation. As such, the allotment to the south (No 10 Victory Street) is reasonably expected to be overshadowed.	Yes, complies on merit

D60/24

D60/24

DCP Clause	Controls	Proposal	Compliance
	<p>21 June.</p> <p>v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	<p>The applicant has provided hourly shadow diagrams that demonstrate that POS and roof of No 10 Victory Street will receive sufficient direct sunlight in accordance with the DCP controls. It is noted that the north-facing ground floor living room windows will all be overshadowed by the new two storey dwelling. Strict compliance with the side setback controls will not result in any additional direct sunlight. No 10 only currently receives direct sunlight as the subject site is a single-storey, underdevelopment allotment. On merit, the overshadowing is considered acceptable as it cannot be avoided. Council also notes that no living rooms are located to the northern side of the first floor of No. 10.</p>	
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) Living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	<p>The submitted development has been accompanied with a BASIX Certificate identifying compliance with thermal and water energy.</p> <p>In addition, the location of windows and doors have been considered as acceptable, addressing the matter of natural light and ventilation.</p>	Yes, complies
5.3	Visual Privacy		
	Windows		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following</p>	<p>The amended scheme shows that windowsill heights have been increased to 1.6m in order to address visual privacy</p>	Yes, complies

DCP Clause	Controls	Proposal	Compliance
	measures: <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	to the side elevations. Council is satisfied that the eastern window to the ground floor living/dining room and first floor rumpus are staggered and will not result in adverse overlooking impacts. Council is also satisfied that whilst there is a full double height window to the staircase on the southern side, it is not to a habitable room and sufficient planting has been provided to supplementary reduce overlooking the adjoining neighbour.	
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	In order to protect the visual privacy of the adjoining dwellings to the sides, a condition of consent will be issued requiring that the first floor front balcony have 1.6m privacy screens installed to reduce direct overlooking the adjoining neighbours. Council is also concerned that the first floor rear balcony will result in adverse visual privacy impacts. See Key Issues for a detailed consideration.	Yes, subject to conditions
5.4	Acoustic Privacy		
	i) Noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	Council is satisfied that the proposed development has been designed to minimise acoustic privacy to adjoining neighbours.	Yes, complies
5.5	Safety and Security		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the	The proposed dwelling provides sufficient overlooking for causal surveillance to Victory Street and the South	Yes, complies

D60/24

DCP Clause	Controls	Proposal	Compliance
	street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	Clovelly carpark.	
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.	The proposed development will result in view impacts on neighbouring dwellings. The applicant has provided a details view sharing assessment for consideration as part of the amended scheme.	See Key Issues for a detailed view impact assessment.
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	All dwellings		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard. v) Tandem parking may be considered vi) Avoid long driveways (impermeable surfaces)	See assessment below.	Yes, complies on merit
	<p>The proposed development provides a single vehicular access to the Stratum section of the site via Victory Street. The parking facilities are located forward of the dwelling with a nil front setback, in accordance with the existing parking facilities, those of adjoining neighbours and that of which was envisaged for the block when the Stratum subdivision was approved by Council.</p> <p>A large single garage has been provided. This is satisfactory in that the site frontage is 12.19m, is consistent with the pattern in Victory Street, and sufficient landscaping is provided to the upper Stratum section of the structure, as well as within behind the sandstone heritage wall.</p>		
6.2	Parking Facilities forward of front façade alignment		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site	As noted above, the parking facilities are located forward of the dwelling with a nil front setback, in accordance	Yes, complies on merit

DCP Clause	Controls	Proposal	Compliance
	<p>frontage</p> <p>ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where:</p> <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) - Compliments architectural character of dwelling ie roof pitch and finishes. 	<p>with the existing parking facilities, those of adjoining neighbours and that of which was envisaged for the block when the Stratum subdivision was approved by Council. Council also notes that there is no alternative, feasible location for accommodating car parking integrated with the dwelling, there is a significant slope on the site, it does not pose risk to pedestrians and the sandstone heritage wall and sufficient landscaping has been incorporated into the design to reduce the impact.</p>	
6.3	Setbacks of Parking Facilities		
	<p>i) Garages and carports comply with Sub-Section 3.3 Setbacks.</p> <p>ii) 1m rear lane setback</p> <p>iii) Nil side setback where:</p> <ul style="list-style-type: none"> - Nil side setback on adjoining property; - Streetscape compatibility; - Safe for drivers and pedestrians; - Amalgamated driveway crossing. 	<p>The proposed garage is setback 1.2m from the side boundaries, except for the southern garage entrance which adjoins the front terrace area to No. 10. Council is satisfied that this minor non-compliance will not impact upon the use and amenity of this terrace area.</p>	<p>Yes, complies on merit</p>
6.5	Garage Configuration		
	<p>i) Recessed behind front of dwelling</p> <p>ii) Maximum garage width (door and piers or columns):</p> <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m <p>iii) Min. 5.4m length of garage</p> <p>iv) Max. 2.6m wall height and 3m building height (for pitched roof) for detached garages</p> <p>v) Recess garage door 200mm to 300mm behind walls (articulation)</p> <p>vi) 600mm max. parapet wall or bulkhead</p> <p>vii) Minimum clearance 2.2m (AS2890.1)</p>	<p>See assessment below.</p>	<p>Yes, complies on merit.</p>
	<p>The proposed garage area has an approximate area of 156m². Whilst this far exceeds the maximum width and minimum requirements for parking, Council is supportive of the proposed development as the garage is wholly contained within the basement of the Stratum area, is not visible from the streetscape and has no adverse amenity impacts on neighbours or the streetscape. Council also acknowledges that the adjoining site at No. 10 has a similar sized garage.</p>		

D60/24

DCP Clause	Controls	Proposal	Compliance
	<p>The garage door has width of 4.4m, which is satisfactory for this garage configuration, reducing the visual impact of the garage to Victory Street from the previous scheme. This amended design is in keeping with the structures along Victory Street.</p> <p>The garage parapet height is 1.2m, with an inset section above the garage door and a planter above. See Key Issues for detailed assessment of front garage structure.</p>		
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	The proposed front fence to the footpath on the upper Stratum section of the site has a section of blank rendered masonry to the street. See further details below.	See clause 7.2 comments below.
7.2	Front Fencing		
	i) 1200mm max. (solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) Light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.	<p>The proposed front fence has a solid section of between 1.05m-2m. Whilst some dwellings in the row has solid wall sections, newer development (including No. 10) has incorporated planters into the front wall to reduce the massing of the wall.</p> <p>In order to better balance the visual impacts of the front wall, a condition of consent has been recommended that the front fence to the main dwelling adjoining the raised footpath is to incorporate landscaping (such as cascading plants), to avoid continuous blank walls, to the satisfaction of Council.</p>	Yes, subject to condition
7.3	Side and rear fencing		
	i) 1800mm maximum height (from	Side and rear boundary	Yes, subject

DCP Clause	Controls	Proposal	Compliance
	<p>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>	fencing has been included as part of the DA submission. Significant retaining walls have been proposed along the side and rear boundaries to account of the leveling of the site. A condition of consent has been recommended that any side and rear boundary fencing (excluding that forward of the front dwelling alignment) is to a maximum height of 1.8m (as measured from the top of the retaining walls), to ensure that the fencing height does not adversely impact the subject site or adjoining neighbours.	to condition
7.5	Swimming pools and Spas		
	<p>i) Locate behind the front building line</p> <p>ii) Minimise damage to existing tree root systems on subject and adjoining sites.</p> <p>iii) Locate to minimise noise impacts on the adjoining dwellings.</p> <p>i) Pool and coping level related to site topography (max 1m over lower side of site).</p> <p>ii) 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>iii) 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>iv) Incorporate screening or planting for privacy as above, unless need to retain view corridors.</p> <p>v) Position decking to minimise privacy impacts.</p> <p>vi) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.</p>	The amended scheme shows that the originally proposed swimming pool has been deleted.	N/A

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/957/2023

**Development Consent Conditions
(Dwelling House)**

Folder /DA No:	DA/957/2023
Property:	8 Victory Street, CLOVELLY NSW 2031
Proposal:	Demolition of existing structures and construction of a 2 storey dwelling with basement parking, swimming pool and landscaping works
Recommendation:	Approval

GENERAL CONDITIONS

Condition

1. Approved plans and documentation

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Site Plan, Job No. 2022-060, A1001, Issue AH	BJB Architects	09/05/2024	10/05/2024
Demolition Plan, Job No. 2022-060, A1002, Issue AH	BJB Architects	09/05/2024	10/05/2024
Lower Basement Plan, Job No. 2022-060, A1101A, Issue AH	BJB Architects	09/05/2024	10/05/2024
Upper Basement Plan, Job No. 2022-060, A1101B, Issue AH	BJB Architects	09/05/2024	10/05/2024
Ground Floor Plan – Part A, Job No. 2022-060, A1102A, Issue AH	BJB Architects	09/05/2024	10/05/2024
Ground Floor Plan – Part B, Job No. 2022-060, A1102B, Issue AH	BJB Architects	09/05/2024	10/05/2024
Level 01, Job No. 2022-060, A1103, Issue AH	BJB Architects	09/05/2024	10/05/2024
Roof Plan, Job No. 2022-060, A1105, Issue AH	BJB Architects	09/05/2024	10/05/2024
Long Section A, Job No. 2022-060, A1201A, Issue AH	BJB Architects	09/05/2024	10/05/2024
Long Section B, Job No. 2022-060, A1201B, Issue AH	BJB Architects	09/05/2024	10/05/2024
Short Section 01, Job No. 2022-060, A1202, Issue AH	BJB Architects	09/05/2024	10/05/2024
Short Section 02, Job No. 2022-060, A1203, Issue AH	BJB Architects	09/05/2024	10/05/2024
Short Section 03, Job No. 2022-060, A1204, Issue AH	BJB Architects	09/05/2024	10/05/2024
Retaining Wall Sections, Job No. 2022-060, A1205, Issue AH	BJB Architects	09/05/2024	10/05/2024
East Elevation, Job No. 2022-060, A1301, Issue AH	BJB Architects	09/05/2024	10/05/2024

Condition			
West Elevation, Job No. 2022-060, A1302, Issue AH	BJB Architects	09/05/2024	10/05/2024
North Elevation, Job No. 2022-060, A1303, Issue AH	BJB Architects	09/05/2024	10/05/2024
South Elevation, Job No. 2022-060, A1304, Issue AH	BJB Architects	09/05/2024	10/05/2024
Street Elevation, Job No. 2022-060, A1305, Issue AH	BJB Architects	09/05/2024	10/05/2024
DA Landscape Plan, Sheet No. FA1, Revision B	Nelson Thomas	06/05/2024	09/05/2024
DA Landscape Plan, Sheet No. FA2, Revision B	Nelson Thomas	06/05/2024	09/05/2024
BASIX Certificate No.	Dated	Received by Council	
1399759S_04	07 May 2024	09 May 2024	

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 planter to the western side of the heritage retaining wall adjoining the garage entrance shall not be constructed on any podium/slab, so that water can drain directly into the earth below.
- b. The areas of 'steppers with native groundcover in between', as identified on the landscape plans, shall be converted into areas of deep soil permeable surfaces, as defined in Part C1 of the Randwick DCP.
- c. All planters within the rear yard of the site shall have a minimum width of 900mm.
- d. Setback the master bedroom at first floor level including the associated front balcony, lift and adjoining void, and bathroom to 1,825mm from the northern side boundary (including all paneling and screening).
- e. Setback the first floor level master bedroom balcony, ensuite bathroom and WIR to 1,825mm from the southern side boundary (including all paneling and screening).
- f. Setback the ground floor terrace (including the roof above) a minimum of 9,500mm from the rear boundary. The setback terrace area shall be converted into additional deep soil permeable surfaces, as defined in Part C1 of the Randwick DCP.
- g. The first floor rear balcony shall be reduced to a maximum depth of 1,000mm, as measured from the western external wall of the dwelling. The reduced area is to form part of an increased planter area.
- h. A privacy screen having a height of 1.6m (measured above the FFL) shall be provided to northern and southern sides of both the first floor front balcony and the first floor rear balcony.
- i. All privacy screens must be constructed with either:
 - Translucent or obscured glazing (The use of film applied to the clear glass

D60/24

Condition
<p>pane is unacceptable);</p> <ul style="list-style-type: none"> Fixed lattice/slats with individual openings not more than 30mm wide; Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings. <p>j. The front fence to the dwelling adjoining the raised footpath is to incorporate landscaping (such as cascading plants), to avoid continuous blank walls.</p> <p>k. All side and rear boundary fencing (excluding that forward of the front dwelling alignment) shall have a maximum height of 1.8m (as measured from the existing ground level of the respective adjoining neighbour).</p> <p>Amended plans are to be submitted to and approved by Council's Manager Development Assessment, in accordance with Section 4.17 of the <i>Environmental Planning and Assessment Act 1979</i>, prior to a Construction Certificate being issued for the development.</p> <p>Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.</p>

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition
<p>3. Consent Requirements</p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
<p>4. External Colours, Materials & Finishes</p> <p>The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.</p> <p>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>
<p>5. Sandstone Blocks</p> <p>The following requirements are to be adhered to regarding the existing sandstone blocks within the site:</p> <ul style="list-style-type: none"> a) Existing sandstone retaining wall/blocks are to be removed with care and stored/preserved prior to reuse. The re-construction of the retaining wall must re-use existing/restored sandstone blocks using soft mortar matching the original wall. Any additional blocks that may be required for this façade must match existing blocks. b) All sides of the garage structure visible to Victory Street shall be constructed/clad with coarse textured sandstone blocks, matching the

Condition

existing blocks.

- c) Any leftover recycled sandstone blocks (including those that form part of the existing dwelling) are to be reused as part of the development.

Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development, in accordance with the heritage protection and foreshore scenic protection area provisions of the site.

6. **Section 7.12 Development Contributions**

In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$3,245,000.00 the following applicable monetary levy must be paid to Council: \$32,450.00.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Condition Reason: To ensure relevant contributions are paid.

7. **Long Service Levy Payments**

Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with Section 6.8 of the *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.

Condition Reason: To ensure the long service levy is paid.

8. **Security Deposits**

The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the *Environmental Planning and Assessment*

D60/24

	Condition
	<p><i>Act 1979:</i></p> <ul style="list-style-type: none"> • \$8,000.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
9.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
10.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p>

	Condition
	Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.
11.	<p>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
12.	<p>Excavation Earthworks and Support of Adjoining Land</p> <p>Details of proposed excavations and support of the adjoining land and buildings are to be prepared and be included in the construction certificate, to the satisfaction of the appointed Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported.</p>
13.	<p>Excavation, Earthworks and Support of Adjoining Land</p> <p>A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details the methods of support for any buildings located on the adjoining land, to the satisfaction of the Principal Certifier:</p> <ul style="list-style-type: none">• when undertaking excavation or building work within the zone of influence of the footings of a dwelling or other building that is located on the adjoining land;• when undertaking demolition work to a wall of a dwelling or other substantial structure that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);• when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land; and• as otherwise may be required by the Certifier for the development. <p>The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported.</p>
14.	<p>Design Alignment Levels</p> <p>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:</p> <ul style="list-style-type: none">• 80mm above the invert of the gutter at all points opposite. <p>The design alignment levels at the property boundary as issued by Council and their relationship to the roadway/kerb/footpath must be indicated on the building plans for the construction certificate. The design alignment level at the street</p>

D60/24

- | | Condition |
|-----|---|
| | 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. |
| | Condition Reason: To ensure all roadway works are designed and constructed in accordance with Council requirements. |
| 15. | <p>Design Alignment Levels</p> <p>The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of \$767 calculated at \$63.00 per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.</p> <p>Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements, to Council standard, and to ensure payment of fees to Council.</p> |
| 16. | <p>Driveway Design</p> <p>The gradient of the internal access driveway must be designed and constructed in accordance with AS 2890.1 (2004) – Off Street Car Parking and the levels of the driveway must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate.</p> <p>Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.</p> |
| 17. | <p>Stormwater Drainage</p> <p><u>Stormwater drainage plans have not been approved as part of this development consent.</u> Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.</p> <p>The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval.</p> <p>Condition Reason: To control and manage stormwater run-off.</p> |
| 18. | <p>Stormwater Drainage</p> <p>A site stormwater drainage system is to be provided in accordance with the following requirements (as applicable):</p> <ol style="list-style-type: none"> The stormwater drainage system must be designed and constructed to satisfy the relevant requirements in the Building Code of Australia, Roof stormwater must be directed to a suitably designed and constructed rainwater tank, as required in the relevant BASIX Certificate for the dwelling, The overflow from the rainwater tank and other surface stormwater must be directed to a suitably designed sediment/silt arrestor pit which drains to Council's kerb and gutter in front of the site, 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 |

Condition
property's frontage unless approved in writing by Council's Development Engineering Coordinator.
e) Details of the design and construction of the stormwater drainage system, sediment site arrestor pit/s and infiltration areas must be submitted to and approved by the Principal Certifier with the Construction Certificate and all works are to be carried to the satisfaction of the Principal Certifier.
<i>Details and requirements for the design and construction of sediment/silt arrestor pits and infiltration areas may be obtained from the applicants consulting engineer or from Council's Development Engineer on 9093-6881.</i>
Condition Reason: To control and manage stormwater run-off.

19. **Stormwater Drainage**

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

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

"This sediment/silt arrestor pit shall be regularly inspected and cleaned."

Note: Sketch details of a standard sediment/silt arrestor pit can be obtained from Council's Drainage Engineer.

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

20. **Site Seepage**

The development must comply with the following requirements to ensure the adequate management of site seepage and sub-soil drainage:

- a) Seepage/ground water and subsoil drainage (from planter boxes etc) must not be collected & discharged directly or indirectly to Council's street gutter or underground drainage system
- b) Adequate provision is to be made for the ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site).
- c) The walls of the basement level/s of the building are to be waterproofed/tanked to restrict the entry of any seepage water and subsoil drainage into the basement level/s of the building and the stormwater drainage system for the development.

Condition	
	<p>d) Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to be fully managed within the site, without causing a nuisance to any premises and ensuring that it does not drain or discharge (directly or indirectly) to the street gutter.</p> <p>e) Details of the proposed stormwater drainage system including methods of tanking the basement levels and any sub-soil drainage systems (as applicable) must be prepared or approved by a suitably qualified and experienced Professional Engineer to the satisfaction of the Principal Certifier and details are to be included in the construction certificate. A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Principal Certifier.</p>
	<p>Condition Reason: To control and manage site seepage.</p>
21.	<p>Undergrounding of Site Power</p> <p>Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Victory street. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.</p> <p>Condition Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground.</p>
22.	<p>Public Utilities</p> <p>A <i>Public Utility Impact Assessment</i> 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.</p> <p>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.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>
23.	<p>Landscape Plan</p> <p>Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the scheme for private property that is submitted for the Construction Certificate is substantially consistent with the Landscape Plans by Nelson Thomas, sheets FA1-2, rev B dated 06/05/24, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.</p> <p>Condition Reason: To ensure residential amenity and that appropriate landscaping is provided.</p>
24.	<p>Landscape Improvements to Public Property</p> <p>The landscape improvements for that part on public property must also be in accordance with the Landscape Plans by Nelson Thomas, sheets FA1-2, rev B dated 06/05/24, with the applicant required to cover all costs associated with fully implementing and completing these works, which also includes application forms, fees, submission of additional details, samples/materials or similar, and must also satisfy the requirements of the 'Works Above Garage' condition shown later in this report.</p>

Condition
Condition Reason: To ensure residential amenity and that appropriate landscaping is provided.

BEFORE BUILDING WORK COMMENCES

Condition
<p>25. Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <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 and Assessment Act 1979</i> 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>
<p>26. Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p>
<p>27. Dilapidation Reports</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</p>

D60/24

	Condition
	<p>development. This must include (but is not limited to) No. 4 Victory Street, Clovelly and No. 57 Melrose Parade, Clovelly.</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>
28.	<p>Construction Site Management Plan</p> <p>A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none"> • location and construction of protective site fencing and hoardings • location of site storage areas, sheds, plant & equipment • location of building materials and stock-piles • tree protective measures • dust control measures • details of sediment and erosion control measures • site access location and construction • methods of disposal of demolition materials • location and size of waste containers/bulk bins • provisions for temporary stormwater drainage • construction noise and vibration management • construction traffic management details • provisions for temporary sanitary facilities <p>measures to be implemented to ensure public health and safety.</p> <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>
29.	<p>Construction Site Management Plan</p> <p>A <i>Sediment and Erosion Control Plan</i> must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.</p>
30.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be</p>

	Condition
	<p>implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
31.	<p>Works Above and Below Garage</p> <p>A separate written approval from Council is required to be obtained in relation to all works which are located externally from the site within the road reserve/public place, in accordance with the requirements of the Roads Act 1993. Detailed plans and specifications of the proposed works are to be submitted to and approved by the Director of City Services prior to commencing of any works within the road reserve/public place.</p> <p>All works within the road reserve/public place must be carried out to the satisfaction of Council and certification from a certified practicing engineer is to be provided to Council upon completion of the works.</p> <p>Relevant Council assessment and inspection fees, as specified in Council's adopted Pricing Policy, are required to be paid to Council prior to commencement of the works.</p> <p><u>NOTE: The front of the property at the location of garage comprises of a stratum lot with upper boundary of RL 11.80 AHD and RL 13.0 AHD and lower boundary of RL 8.40 AHD as shown on DP 1071445. All proposed works at this location above and below these levels respectively will be on Council property.</u></p> <p>Condition Reason: To ensure that all works carried out within the Council Stratum area are completed in accordance with the required consents.</p>
32.	<p>Amendments to Stratum Garage</p> <p>The following amendments are required to the garage structure and garden terrace located within the Stratum section of the site:</p> <ol style="list-style-type: none"> The top of the parapet of the garage shall generally align to the adjoining garage parapets at No's 6 & 10 Victory Street. The upper garden terraces shall be tiered into two separate areas that follow the terracing of the gardens within this block. The FFL of each terrace is to generally match that of No. 10 Victory Street. The wall section adjoining the lower terrace garden area shall be replaced with a simple horizontal balustrading, similar to that at No. 10 Victory Street. All balustrading is to be installed to any areas of trafficable garden terraces areas, providing this simple and consistent balustrading design. Planting shall be provided between the balustrading to the terrace that will mask the balustrading from visibility, similar to the treatment of the planting to No. 10 Victory Street. <p>Amended plans are to be submitted to and approved by Council's Manager Development Assessment, in accordance with Section 4.17 of the <i>Environmental Planning and Assessment Act 1979</i>, prior to being submitted as part of the separate application as required under Condition 31.</p> <p>Condition Reason: To ensure that all works carried out within the Council Stratum area are consistent with the adjoining publicly accessible terrace areas.</p>
33.	<p>Construction Traffic Management</p> <p>An application for a 'Works Zone' and Construction Traffic Management Plan must</p>

D60/24

	Condition
	<p>be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Victory Street for the duration of the demolition & construction works.</p> <p>The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.</p> <p>The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.</p> <p>Condition Reason: To ensure that construction vehicles and traffic are adequately managed in the coastal area.</p>
34.	<p>Construction Traffic Management</p> <p>A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.</p> <p>The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:</p> <ul style="list-style-type: none"> • A description of the demolition, excavation and construction works • A site plan/s showing the site, roads, footpaths, site access points and vehicular movements • Any proposed road and/or footpath closures • Proposed site access locations for personnel, deliveries and materials • Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site) • Provision for loading and unloading of goods and materials • Impacts of the work and vehicular movements on the road network, traffic and pedestrians • Proposed hours of construction related activities and vehicular movements to and from the site • Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority) • Any activities proposed to be located or impact upon Council's road, footways or any public place • Measures to maintain public safety and convenience <p><i>The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.</i></p> <p>Condition Reason: To ensure that construction vehicles and traffic are adequately</p>

Condition	
	managed in the coastal area.
35.	<p>Construction Traffic Management</p> <p>Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.</p> <p>All conditions and requirements of the NSW Police, Roads & Maritime Services, State Transit Authority and Council must be complied with at all times.</p> <p>Condition Reason: To ensure that construction vehicles and traffic are adequately managed in the coastal area.</p>
36.	<p>Demolition & Construction Waste</p> <p>A <i>Demolition and Construction Waste Management Plan</i> (WMP) must be developed and implemented for the development, to the satisfaction of Council.</p> <p>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.</p> <p>Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's website at https://www.randwick.nsw.gov.au/_data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf or contact Council Development Engineer on 9093-6881/9093-6923.</p> <p>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.</p> <p>Condition Reason: To ensure that adequate provisions are in place to manage waste on site to reduce environmental impacts of the development.</p>

DURING BUILDING WORK

Condition	
37.	<p>Site Signage</p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> showing the name, address and telephone number of the principal certifier for the work, and showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ol style="list-style-type: none"> maintained while the building work is being carried out, and removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

Condition

Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

38. **Restriction on Working Hours**

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

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

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

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

39. **Construction Site Management**

Temporary site safety fencing must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works.

Temporary site fences must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.

Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.

All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

Notes:

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

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

	Condition
40.	<p>Public Safety & Site Management</p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ul style="list-style-type: none"> a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction. d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council. f) Noise and vibration from the work shall be minimised and appropriate strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines. g) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident. h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land. i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council. j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details. <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
41.	<p>Excavations and Support of Adjoining Land</p> <p>The adjoining land and buildings located upon the adjoining land must be adequately supported at all times and in accordance with section 74 of the Environmental Planning and Assessment Regulation 2021 and approved structural engineering details.</p> <p>Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.</p>

Condition	
	Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.
42.	<p>Building Encroachments</p> <p>There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p>
43.	<p>Survey Report</p> <p>A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</p> <ul style="list-style-type: none"> • prior to construction (pouring of concrete) of footings for the building and boundary retaining structures, • prior to construction (pouring of concrete) of new floor levels, • prior to issuing an Occupation Certificate, and • as otherwise may be required by the Principal Certifier. <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p> <p>Condition Reason: To ensure compliance with approved plans.</p>
44.	<p>Road/Asset Opening Permit</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"> • A <i>Road / Asset Opening Permit</i> 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 <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. • 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. • 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. <p>For further information, please contact Council's Road / Asset Opening Officer on 1300 722 542.</p> <p>Condition Reason: To ensure works are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p>
45.	<p>Geotechnical Report</p> <p>The recommendations and requirements in the submitted Geotechnical Report prepared by Geotechnical Consultants Australia (dated 04 October 2023) shall be implemented and monitored during construction works.</p> <p>Condition Reason: To ensure the development and works are undertaken in accordance with relevant technical reports.</p>

Condition	
46.	<p>Structural Engineering Report</p> <p>The recommendations and requirements in the submitted Structural Engineering Letter prepared by Zimmerman Consulting Engineers (dated 11 April 2024) shall be implemented and monitored during construction works.</p> <p>Condition Reason: To ensure the development and works are undertaken in accordance with relevant technical reports.</p>
47.	<p>Tree Management</p> <p>Approval is granted for removal of the <i>Banksia serrata</i> (Saw Toothed Banksia, T2 in the Arborist Report) in the rear setback of this development site, in the southwest site corner to accommodate both the significant lowering of ground levels and the new planter box and perimeter screen planting that are now shown for this same area, and is subject to full implementation of the approved Landscape Plans.</p> <p>Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.</p>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
48.	<p>Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
49.	<p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>
50.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>The owner/developer must meet the full cost for a Council approved contractor to:</p> <ol style="list-style-type: none"> Construct concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site, Council's specifications and requirements. Construct kerb & gutter across full length of site frontage the to Council's specifications. Excavate verge & re/construct 1.8m wide concrete footpath along the full site frontage. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification. <p>Condition Reason: To ensure rectification of any damage to public infrastructure and that works are completed in accordance with Council's requirements with</p>

D60/24

Condition	
	Council's approval.
51.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.</p> <p>Condition Reason: To ensure works are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p>
52.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering 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:</p> <ul style="list-style-type: none"> a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details. b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval. c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing. <p>Condition Reason: To ensure rectification of any damage to public infrastructure.</p>
53.	<p>Stormwater Drainage</p> <p>The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development consent.</p> <p>The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To ensure compliance with the consent and relevant standards, and adequate management of stormwater.</p>
54.	<p>Undergrounding of Power</p> <p>The Principal Certifier shall ensure that all power supply to the development site has been provided as an underground (UGOH) connection from the nearest main pole in Victory Street, with all work completed to the requirements and satisfaction of Ausgrid and at no cost to Council. All private poles must be removed prior to the issuing of an occupation certificate, unless otherwise approved in writing by Council's Development Engineering Coordinator.</p> <p>Condition Reason: To provide infrastructure that facilitates the future improvement</p>

Condition	
	of the streetscape by relocation of overhead lines below ground.
55.	<p>Landscape Certification</p> <p>Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Landscape Plans by Nelson Thomas, sheets FA1-2, rev B dated 06/05/24.</p> <p>Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.</p>
56.	<p>Landscape Certification</p> <p>Prior to any Occupation Certificate, written approval must be obtained from Council's Landscape Development Officer (9093-6613), and then submitted to, the Principal Certifier, confirming the date that the completed external landscaping over public property was inspected, and that it has been installed substantially in accordance with the Landscape Plans by Nelson Thomas, sheets FA1-2, rev B dated 06/05/24, any requirements of Council's Engineering/Assets Officers and relevant conditions of consent.</p> <p>Condition Reason: To ensure that community assets are presented in accordance with reasonable community expectations.</p>
57.	<p>Landscape Certification</p> <p>Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.</p> <p>Condition Reason: To ensure that community assets are presented in accordance with reasonable community expectations.</p>

OCCUPATION AND ONGOING USE

Condition	
58.	<p>Use of Premises</p> <p>The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.</p> <p>Condition reason: To ensure the development is used for its intended purpose.</p>
59.	<p>External Lighting</p> <p>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.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>
60.	<p>Waste Management</p> <p>Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.</p> <p>Condition Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste.</p>
61.	<p>Plant & Equipment</p> <p>Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>.</p>

Condition	
Condition reason: To protect the amenity of the surrounding area and residents.	
62.	<p>Use of parking spaces</p> <p>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.</p> <p>Condition Reason: To ensure that adequate parking facilities to service the development are provided on site, and to prevent leasing out of car spaces to non-residents.</p>

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
63.	<p>Demolition Work</p> <p>A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <ol style="list-style-type: none"> 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): <ul style="list-style-type: none"> • The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor • Details of hazardous materials in the building (including materials containing asbestos) • Method/s of demolition (including removal of any hazardous materials including materials containing asbestos) • Measures and processes to be implemented to ensure the health & safety of workers and community • Measures to be implemented to minimise any airborne dust and asbestos • Methods and location of disposal of any hazardous materials (including asbestos) • Other measures to be implemented to ensure public health and safety • Date the demolition works will commence/finish.

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

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

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

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

Condition
<i>can be obtained from Council's Customer Service Centre.</i>

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

DURING DEMOLITION WORK

Condition

64. **Demolition Work**

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

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

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

Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.

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

Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.

Development Application Report No. D61/24

Subject: 49 Mermaid Avenue, Maroubra (DA/726/2023)

Executive Summary

Proposal:	Demolition of existing structures and construction of a new three-storey dwelling with basement, new swimming pool, and associated excavation, tree removal and landscaping.
Ward:	Central Ward
Applicant:	Mr L Molins Calvet
Owner:	Mr J R Keith
Cost of works:	\$2,334,127.00
Reason for referral:	The proposal contravenes the development standards for floor space ratio by more than 10%.

Recommendation

That the RLPP refuse consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/726/2023 for Demolition of existing structures and construction of a new three-storey dwelling with basement, new swimming pool, and associated excavation, tree removal and landscaping, at No. 49 Mermaid Avenue, MAROUBRA NSW 2035, for the following reasons:

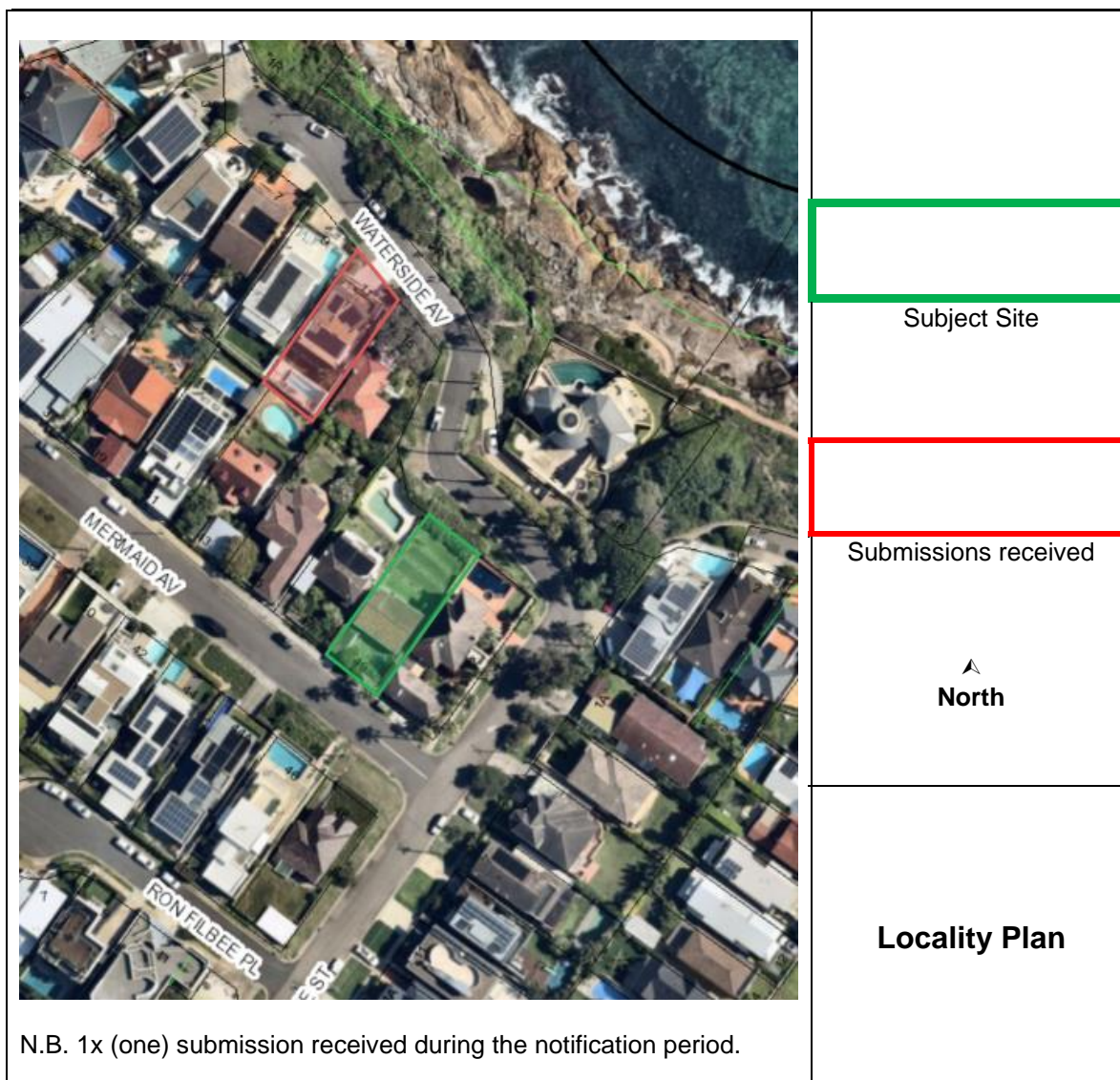
1. Pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives of the R2 Low Density Residential zone in that it is not compatible with the desired future character of the locality and exceeds the level of built form anticipated for the subject site. The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form.
2. Pursuant to clause 4.6 of RLEP 2012, the Applicant has failed to submit a written request to vary clause 4.4A of the RLEP 2012 relating to the floor space ratio development standard. The Applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
3. Pursuant to clause 6.2 of RLEP 2012 and clause 4.7 of RDCP 2013, Council considers that the development results in excessive and unnecessary excavation of the site, which results in impacts to drainage patterns and soil stability, amenity impacts on neighbours, and detracts from the scenic qualities of the foreshore area.
4. Pursuant to clause 6.7 of RLEP 2012 and Part B10 of RDCP 2013, Council is not satisfied that the development contributes to the scenic quality of the foreshore.
5. Pursuant to the provisions of section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the following objectives and controls of the Randwick Development Control Plan 2013:
 - Part B5 – Preservation of Trees and Vegetation
 - Clause 2.4 of C1 – Site Coverage
 - Clause 2.5 of C1 – Deep Soil Permeable Surfaces
 - Clause 2.6 of C1 – Landscaping and Tree Canopy Cover

D61/24

- Clause 2.7 of C1 – Private Open Space
 - Clause 3.2 of C1 – Building Height
 - Clause 3.3 of C1 – Setbacks
 - Clause 4.1 of C1 – Building Design - General
 - Clause 4.4 of C1 – Roof Terraces and Balconies
 - Clause 5.1 of C1 – Solar Access and Overshadowing
 - Clause 5.3 of C1 – Visual Privacy
 - Clause 5.4 of C1 – Acoustic Privacy
 - Section 6 of C1 – Parking Facilities
 - Clause 7.1 of C1 – General Fencing
 - Clause 7.2 of C1 – Front Fencing
 - Clause 7.5 of C1 – Swimming and Spa Pools
6. Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development will result in adverse environmental impacts on the existing neighbourhood character and the visual amenity of the street and foreshore area.
 7. Pursuant to the provisions of section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development will is not suitable to the site as the proposed development does not respect the site topography, configuration and characteristics.
 8. Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is considered to not be in the public interest as the proposal is inconsistent with the objectives of the zone and will result in significant adverse impacts on the locality.

Attachment/s:

Nil



D61/24

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 demolition of existing structures and construction of a new three-storey dwelling with basement, new swimming pool, and associated excavation, tree removal and landscaping.

The key issues associated with the proposal relate to non-compliances with the development standard for floor space ratio in the Randwick Local Environmental Plan (RLEP) 2012, as well as several non-compliances with sections with the DCP, in particular those relating to building envelope and layout.

The proposed development will result in unreasonable residential amenity impacts upon neighbouring properties with regard to visual bulk and both visual and acoustic privacy. Additionally, the proposed development will result in unreasonable visual impacts within the Foreshore Scenic Protection Area (FSPA).

A full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and lack of detail in the information submitted with the development application.

Including that the Applicant has failed to provide a written request to vary the floor space ratio development standards applying to the site under RLEP 2012.

Therefore, the proposal is recommended for refusal.

2. Site Description and Locality

The subject site is located at 49 Mermaid Avenue, Maroubra and is legally described as Lot A in DP 345283. The subject site has an area of 490m² with a 13.41m primary frontage to Mermaid Avenue (to the south-west) and a 13.41m secondary (rear) frontage to Waterside Avenue (to the north-east). The site has 36.575m side boundaries to the north-west and south-east. The site has a steep fall of approximately 11m from the front to the rear (south-west to the north-east).

The site is currently occupied by a part 1 part 2 storey detached dwelling house, a single vehicle garage adjoining the front boundary line to Mermaid Avenue, a sunken front garden area and a multi-tiered garage at the rear of the site. Views are currently experienced to the east of the Pacific Ocean and north-east of a number of headlands along the coastline and Wedding Cake Island. These views are visible from the dwelling and the rear yard level.

Surrounding development is characterised mainly by detached dwelling houses, which range in height from 1 to 4 storeys. Surrounding development represents a mix of older and newer housing stock. To the north-west of the site, at 47 Mermaid Avenue, is a 3-storey detached dwelling house with a single vehicle garage accessible via Mermaid Avenue. The front of the site contains a sunken garden and the rear of the site contains the main private open space with a swimming pool and paved area. To the south-east of the site, at 2 Lurline Street, is a part 2 / part 3-storey detached dwelling house. The site also contains a separate 2-storey building containing a triple garage and workshop to the ground floor accessible via Mermaid Avenue and habitable rooms to the lower ground floor. The main private open space is located to the north-eastern side of the site containing a swimming pool and paved area.

Only 3 dwellings, being 47 & 49 Mermaid Avenue and 2 Lurline Street, have frontages to both Mermaid Avenue and Waterside Avenue within the urban block. On-street parking is available on both sides of Mermaid Avenue. Footpaths are also provided to both sides of the Mermaid Avenue, except for the section in front of 46 & 48 Mermaid Avenue. Waterside Avenue is a no-through road reserve with no footpaths to either side and on-street parking permitted on the south-western side of the street only.

The subject site is located within close proximity to the Ivo Rowe Rockpool and Lurline Bay and is located between Coogee Beach to the north and Maroubra Beach to the south. The section of Mermaid Avenue of which the subject site is located forms part of the Eastern Beaches Coastal Walkway.



Figure 1: Photograph of the street frontage of the subject site (Source: Randwick City Council)



Figure 2: Photograph of existing dwelling at the subject site (Source: Randwick City Council)



Figure 3: Photograph of views from the rear yard of the subject site (Source: Randwick City Council)



Figure 4: Aerial photograph of the subject site (Source: Nearmap)

3. Relevant history

The land has been used for residential purposes for an extended period of time. There are no recent relevant applications pertinent to the abovementioned subject site.

Site Visit

On 1 February 2024, the Assessing Officer conducted a site visit of the subject property.

Additional Information Request

On 22 February 2024, Council issued an Additional Information Request to the Applicant regarding a number of issues including plan amendments; additional notations and sections; site coverage; deep soil permeable area; canopy trees and planting; building envelope, including building height, side setbacks, rear setback and balconies, wall articulation, dwelling layout, and floor space ratio; parking facilities; extent of earthworks and excavation; visual and acoustic privacy; colours, materials and finishes schedule; solar access; front and side boundary fencing; swimming pool; and other minor items.

On 28 February 2024, Council provided the referral response from Council's Landscape Officer to the Applicant.

On 19 March 2024, Council met online with the Applicant to discuss the main items outlined in Council's Additional Information Request dated 22 February 2024.

On 03 April 2023, the Applicant provided Council with preliminary amended architectural plans to address the issues raised in Council's Additional Information Request dated 22 February 2024.

On 19 April 2024, Council provided a response to the Applicant's preliminary amended architectural plans, raising issues regarding the key matters outlined in the Council's Additional Information Request dated 22 February 2024.

On 02 May 2024, the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against Council's deemed refusal of the development application.

4. Proposal

The proposal seeks development consent for demolition of existing structures and construction of a new three-storey dwelling with basement, new swimming pool, and associated excavation, tree removal and landscaping.

Specifically, the proposed development includes:

- A three-storey dwelling house with an additional basement level including:
 - Basement floor – garage for 2 vehicles, 1 boat storage, bicycle parking, under ground driveway accessible via Waterside Avenue, bin storage room, plant room, internal lift and staircase access and lift plant storage beneath the staircase.
 - Lower ground floor – rumpus room with adjoining outdoor loggia, Bedroom 4 with ensuite bathroom, study, bathroom, laundry, internal lift and staircase access.
 - Ground floor – Master bedroom with walk-in-robe, ensuite bathroom and rear terrace, bedroom 2 with ensuite bathroom, bedroom 3 with ensuite bathroom, linen cupboard, laundry chute, internal lift and staircase access.
 - First floor – main dwelling entrance from Mermaid Avenue, main open-plan kitchen/living/dinner room with a kitchen pantry and adjoining rear terrace, powder room, internal lift and staircase access.
- Two storey structure within the front setback area with a plant room to the ground floor level and single vehicle carport accessible from Mermaid Avenue. Adjoining the carport is the main dwelling entrance pathway cantilevered above the front garden below.
- Swimming pool above the underground basement driveway within the rear yard of the site.

- Associated planting, retaining walls, paved areas, and other minor site works.

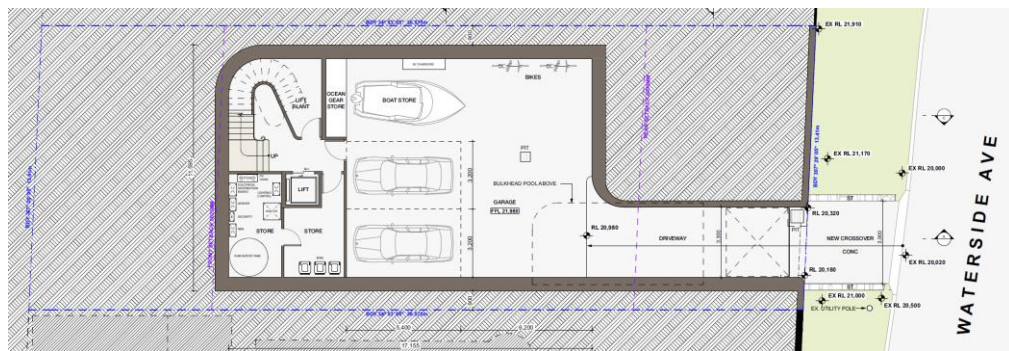


Figure 5: Proposed basement floor plan (Source: MHNDUnion)

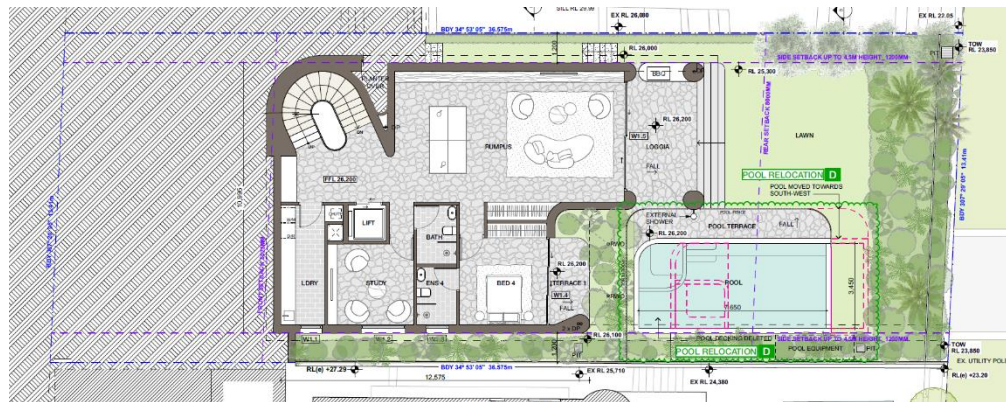


Figure 6: Proposed lower ground floor plan (Source: MHNDUnion)

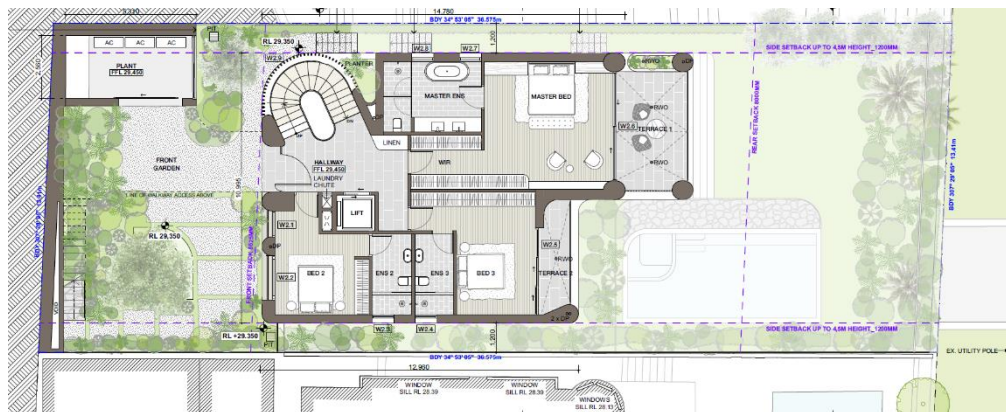
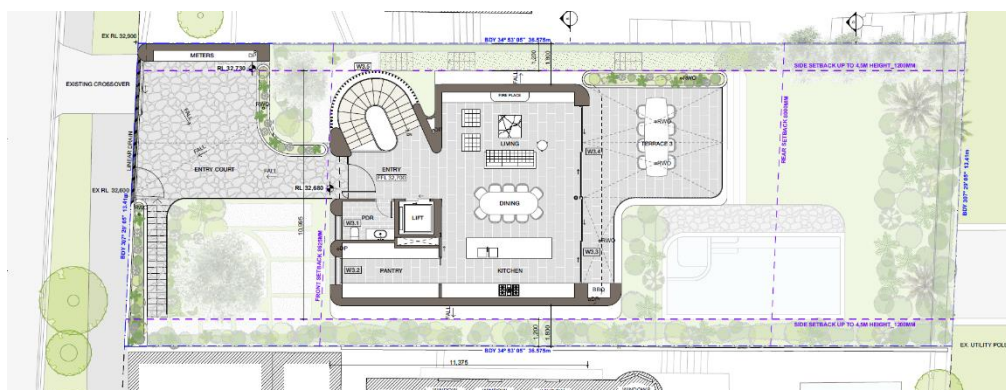
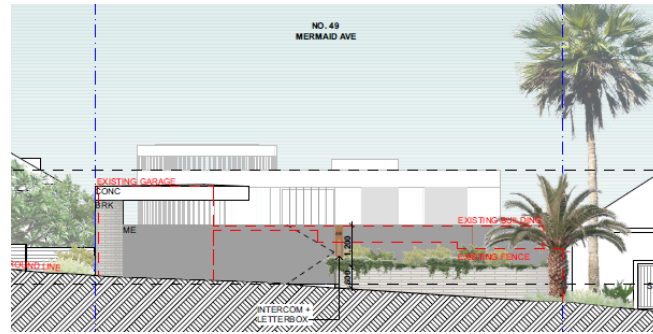


Figure 7: Proposed ground floor plan (Source: MHNDUnion)



D61/24

Figure 8: Proposed first floor plan (Source: MHNDUnion)**Figure 9:** Proposed south-western elevation (Source: MHNDUnion)**Figure 10:** Proposed north-eastern elevation (Source: MHNDUnion)

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 and have been paraphrased and summarised below:

- **11 Waterside Avenue**

Issue	Comment
<p><u>Vehicular access via Waterside Avenue</u></p> <p>Our concern is with the unnecessary introduction of parking to Waterside Avenue. The access to Mermaid Avenue should be maintained as the only access in terms of streetscape presentation and the character of Waterside Avenue, reduced paved areas, protect pedestrian safety as there is no footpath to Waterside Avenue so pedestrians generally walk on the road to the waterfront.</p>	<p>Council is satisfied that the proposed development will not adversely impact upon safety along Waterside Avenue, however, it is considered that the 2x vehicular accesses will result in the unnecessary loss of an additional on-street parking space. See Key Issues for a detailed discussion of the proposed parking provisions.</p>

D61/24

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted, satisfying the requirements of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

6.2. SEPP (Biodiversity and Conservation) 2021

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.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

Chapter 2 of SEPP (Resilience and Hazards) 2021 applies to development within the category of Coastal Management. The site is mapped as part of the coastal environmental, and coastal use areas pursuant to Chapter 2 of SEPP (Resilience and Hazards) 2021. In response to Clause 2.10, Council is satisfied that the proposed development will not impede public access to the foreshore or use of the surf zone, or impact ecological or coastal environmental values.

However, in response to Clause 2.11, Council is not satisfied that the proposed development contributes to the scenic qualities of the coast given that the proposed building envelope, earthworks and parking facilities. See a detailed assessment under Clause 6.7 'Foreshore Scenic Protection Area' of the RLEP 2012.

Chapter 4 - Remediation of Land

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

The subject site has previously been used for residential purposes and as such is unlikely to contain any contamination. The nature and location of the proposal are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

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

The proposed development is inconsistent with the desired future character of the locality and significantly exceeds the level of built form anticipated for the site. The bulk and scale of the proposed development as a result of the substantial non-compliance with the floor space ratio development standards is considered excessive. Further non-compliances with the earthworks, site coverage, deep soil permeable surfaces, canopy tree coverage, private open space, building height, side and rear setbacks, building design, terraces, parking facilities, front fencing, and swimming pools further contribute to an inconsistency with the desired future character of the locality.

The proposed development is inconsistent with the desired future character of the locality as it does not contribute to the scenic qualities of the foreshore area. The proposed development is inconsistent with protecting the amenity of residents in relation to adverse visual amenity impacts, and both visual and acoustic privacy impacts on adjoining neighbours. The proposed development is therefore recommended for refusal.

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

Clause	Development Standard	Proposal	Compliance
CI 4.3: Building height (max)	9.5m	9.47m (RL35.95-RL26.48) N.B. as per the LEP definition, building height is measured from the existing ground level.	Yes, complies
CI 4.4A: Exceptions to floor space ratio—Zones R2 and R3	0.65:1	0.88:1 (or 431.1m ²) N.B. as per the LEP definition, gross floor area excludes any of the following: area for common vertical circulation, any basement storage, and vehicular access, loading areas, garbage and services, and parking to meet any requirements of the consent authority (including access to that car parking).	No, see Clause 4.6 Assessment below.

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 6.2 - Earthworks

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

Clause 6.2(3) of the RLEP 2012 then requires the consent authority to consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
- (b) the effect of the development on the likely future use or redevelopment of the land,
- ...
- (d) the effect of the development on the existing and likely amenity of adjoining properties,

...

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development."

The proposed development is unacceptable with regard to the considerations in clause 6.2 of the RLEP 2012 as it results in excessive and unnecessary excavation and will have a detrimental impact on environmental functions and processes, neighbouring uses, and features of the surrounding land within the Foreshore Scenic Protection Area. The proposed development will have an adverse impact on the likely future use or redevelopment of the land on both the subject site and adjoining sites and impacts on the amenity of adjoining properties.

Insufficient information has been provided in relation to the impact of the development on drainage patterns in the locality. The submitted Geotechnical Report does not indicate that the site is suitable for the proposed development from a geotechnical viewpoint and recommends that further geotechnical investigation is carried out. The report also does not include an assessment of the potential groundwater impacts, which were outside the scope of the report.

In addition, Part C1, Section 4.7 of the RDCP 2023 seeks to maintain or minimise change to the natural ground levels, streetscape, and natural environment, to ensure excavation and backfilling of a site does not result in unreasonable structural, visual, overshadowing and privacy impacts on the adjoining dwellings, and to provide usable private open space for dwellings with adequate gradient.

The following controls are applicable to the proposed development under Section 4.7:

- Pursuant to control 4.7(i), any excavation and backfilling within the building footprint must be limited to a maximum 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a dwelling within this extent of site modification.
- Pursuant to control 4.7(vii), any cut and fill outside the building footprint (for the purposes of creating useable private open space) must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site. The appropriate extent of site modification will be assessed on a merit basis.
- Pursuant to control 4.7(viii), for development on with a significant sloping site, adopt a split-level design for dwellings to minimise excavation and backfilling, and design dwellings to minimise the height and extent of any exposed undercroft areas.

The proposed development includes significant excavation of up to 8.3m in height of the site to provide a basement floor with a driveway tunnel that is accessible from Waterside Avenue. The basement floor contains a large triple garage, 2x storage areas and lift plant area that can be accommodated throughout the site and dwelling without the need for excessive and unnecessary excavation.

The proposed development includes level changes and retaining walls along both side elevations. This will result in unreasonable visual amenity impacts to the adjoining neighbours with exposed retaining walls visible along the side boundaries.

The proposed development includes a retaining wall along the eastern rear boundary fronting Waterside Avenue with a height of 2.28m to support the significant fill of earth within the rear yard level. This is in non-compliance with the controls that seek to step any cut and fill for creating useable private open space in a terraced form that does not result in large retaining walls and level changes. The proposed development is on a significantly sloping site and does not adopt a split-level design for dwellings to minimise excavation and backfilling.

The non-compliance contributes to the excessive bulk and privacy impacts of the proposed development, which is inconsistent with the desired future character of the locality. The non-compliant earthworks are inconsistent with the objectives of Part C1, Section 4.7 of the RDCP 2023 and will result in the following adverse impacts:

- Drainage patterns and soil stability on the subject site, to the adjoining neighbours and locality.

- Redevelopment of the subject in the future due to significant and unnecessary excavation.
- Insufficient measures have been adequately explored and proposed to avoid, minimise or mitigate the impacts of the development.
- Amenity of adjoining properties in terms of visual bulk, privacy and sufficient protection and stability of their sites.
- Detracts from the scenic qualities of the foreshore area.

Therefore, Council is not satisfied that clause 6.2 of the RLEP 2012 has been satisfied, and it is recommended that the proposed development be refused.

6.4.3. Clause 6.7- Foreshore scenic protection area

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

6.7 Foreshore scenic protection area

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

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

(2) *This clause applies to land identified as “Foreshore scenic protection area” on the Foreshore Scenic Protection Area Map.*

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

- 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*
- contributes to the scenic quality of the coastal foreshore.*



Figure 11: The Foreshore Scenic Protection Area and the subject site in orange – 49 Mermaid Avenue, Maroubra (Source: Randwick City Council)

The subject site is also subject to the coastal environmental area and coastal use area designations under Chapter 2 ‘Coastal management’ of the R&H SEPP 2021. A detailed assessment against all these relevant coastal considerations have been outlined and included below.

Clause 6.7(3) of the RLEP 2012 requires the consent authority be satisfied that a development 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 contributes to the scenic quality of the coastal foreshore.

Part B10 of the RDCP 2013 relating to the Foreshore Scenic Protection Area seeks to protect the natural landscape qualities and aesthetic appeal of the foreshore areas, encourage high quality designs for dwellings that are sensitive and sympathetic to the natural landform, colours and landscape character of the foreshore areas, and to encourage high quality designs for dwellings that are sensitive and sympathetic to the natural landform, colours and landscape character of the foreshore areas.

The following controls are applicable to the proposed development under Part B10:

- Pursuant to control (i) of Part B10, the design of buildings must consider their visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated.
- Pursuant to control (ii) of Part B10, outbuildings and ancillary structures must be integrated with the design of the main dwelling in a coherent architectural expression. Pursuant to control (viii) of Part B10, any exposed coping structures of swimming and spa pools must be minimised and screened from view from the public domain.

Furthermore, Clause 2.11(1)(a) of the R&H SEPP requires the consent authority to consider, amongst other things, whether the proposal is likely to cause an adverse impact on the following:

“... (iii) the visual amenity and scenic qualities of the coast, including coastal headlands...”

Clause 2.11(1)(b) of the R&H SEPP then requires that the consent authority be satisfied that a development is designed, sited and will be managed to avoid an adverse impact referred to in Clause 2.11(1)(a), or to minimise or mitigate that impact where it cannot be avoided or minimised (respectively). Clause 2.11(1)(c) also requires the consent authority to taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

The proposed development includes a planting schedule with planting that is not appropriate within the coastal environment area and that would impact upon the native vegetation located within the area.

The proposed development will result in adverse impact to the visual amenity of the coast, detracting from the scenic qualities of the coastal area, especially as the site is located along the Eastern Suburbs Coastal Walkway path within the foreshore area.

The development will have an adverse impact on the surrounding coastal and built environment resulting from an overdevelopment of the site in considering the bulk, scale and size of the proposed development. The proposed development fails to comply with the floor space ratio and with numerous building envelope controls in the RDCP 2023. This also includes insufficient articulation of the proposed dwelling. The non-compliance with these controls visually impacts the coastal area and detracts from the scenic quality of the coastal foreshore. Furthermore, insufficient information has been provided by the Applicant in relation to the colours, materials and finishing details of the proposed retaining wall fronting Waterside Avenue and along the northern side boundary within the rear yard area, which will impact upon vantage points from the public domain within the Foreshore Scenic Protection Area and the coastal and scenic qualities of the area.

The proposed additional parking facilities outside the requirements in Part B7 of the RDCP 2013 will detract from visual amenity of the public domain within the Foreshore Scenic Protection Area and have an adverse impact on the coastal and scenic qualities of the area.

The proposed swimming pool within the rear yard is elevated significantly above the natural ground level and will detract from visual amenity of the public domain within the Foreshore Scenic Protection Area and have an adverse impact on the coastal and scenic qualities of the area.

Having regard to the above, the consent authority would not be satisfied as to the matters in clause 6.7 of the RLEP 2012 or that the proposed development is designed, site and will be managed to avoid, minimise or mitigate adverse impacts upon the matters referred to in Clause 2.11 of the R&H SEPP.

Therefore, Council is not satisfied that clause 6.2 of the RLEP 2012 and Clause 2.11 of the R&H SEPP have been satisfied, and it is recommended that the proposed development be refused.

6.4.4. Clause 6.10- Essential services

Clause 6.10 requires the consent authority to be satisfied that essential services are available or that adequate arrangements have been made to make them available. These services include water and electricity supply, sewage disposal and management, stormwater drainage or on-site conservation, and suitable vehicular access.

Council is satisfied that the proposed development will provide sufficient essential services, subject to standard conditions, should the development have been supported.

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 4.4A: Exceptions to floor space ratio—Zones R2 and R3	0.65:1 Site area: 490m ² Max. GFA: 318.5m ²	0.88:1 (or 431.1m ²)	0.23:1 (or 431.1m ²)	26%

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 4.4A)

The Applicant has failed to provide a written request to vary the Floor Space Ratio development standard applying to the site under clause 4.4A of RLEP 2012.

The Applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the maximum Floor Space Ratio 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.

Council has commenced a comprehensive review of the existing Randwick Development Control Plan 2013. Stage 1 of the RDCP 2013 review has concluded, and the new RDCP comprising Parts B2 (Heritage), C1 (Low Density Residential), E2 (Randwick) and E7 (Housing Investigation) commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of the new RDCP 2023 are applicable to the proposed development, and the proposal shall be assessed against the new DCP.

The relevant provisions of the DCP are addressed in Appendix 2.

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	See discussion in sections 6 & 7 and key issues below.

Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See Appendix 2 and Key Issues for details.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report and are not acceptable. The proposed development is inconsistent with the dominant residential character in the locality. The proposal will result in detrimental impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site has a steeply topographical fall and has a double frontage to Mermaid Avenue to the primary frontage and Waterside Avenue to the rear secondary frontage. The proposed development fails to provide a dwelling house that respects the site characteristics, especially with the FSPA. Therefore, the proposed development is not considered suitable for the subject site.
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 is inconsistent with the objectives of the zone and will result in significant adverse impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of Key Issues

Site Coverage

Part C1, Section 2.4 of the RDCP 2023 relating to site coverage seeks to ensure that new dwellings reserve adequate unbuilt upon areas for the purpose of private open space, deep soil planting, permeable surfaces and ancillary development and to ensure a high level of environmental amenity for residents of low density dwellings in the LGA.

The following controls are applicable to the proposed development under Section 2.4:

- Pursuant to control 2.4(i), a maximum site coverage of 50% of the site area is required where the site area is between 451-600m².

The proposed site coverage of 56% (being 274.6m², which includes the built area of the driveway on the basement floor) exceeds the maximum control by 6%.

The non-compliant site coverage is inconsistent with the objectives of Part C1, Section 2.4 of the RDCP 2023 and will result in the following adverse impacts:

- Insufficient areas have been reserved on the site for non-built structures.
- Contributes to visual bulk and excessive bulk from the streetscape and adjoining neighbours, which is inconsistent with the desired future character of the locality.
- Detracts from the scenic qualities of the foreshore area.

Therefore, subject to the proposed development not satisfying Section 2.4 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Deep Soil Permeable Surfaces

Part C1, Section 2.5 of the RDCP 2023 relating to deep soil permeable surfaces seeks to retain and provide planting area for canopy trees and general vegetation to contribute to the overall tree canopy cover of the LGA and to the establishment of landscaped corridors across the locality, assist with stormwater infiltration and reduction of overland flow, and to improve climate resilience of the site.

The following controls are applicable to the proposed development under Section 2.5:

- Pursuant to control 2.5(i), a minimum deep soil permeable surfaces of 40% of the site area shall be provided where the site area is between 451-600m².
- Pursuant to control 2.5(ii), deep soil permeable surfaces must have a width of not less than 900mm.

The proposed deep soil permeable surfaces of 39.3% (being 192.4m², which includes the loose gravel surface areas within the front setback area) is a shortfall of the minimum control by 0.7%.

The non-compliant deep soil permeable surface is inconsistent with the objectives of Part C1, Section 2.5 of the RDCP 2023 and will result in the following adverse impacts:

- Insufficient planting areas for canopy trees and general vegetation to contribute to the overall tree canopy cover of the LGA.
- Inadequate assistance with stormwater infiltration and reduction of overland flow.
- Reduce the climate resilience of the site.
- Detracts from the scenic qualities of the foreshore area.

Furthermore, the Applicant notes that the paved areas within the front setback area contribute to FSPA. In order for these areas to be counted as DSPA, should the DA have been recommended for approval, a condition of would have been included requiring that the paved areas located within the front setback area shall be converted in areas with loose gravels upon soil that water can easily penetrate, in order to comply with the definition of DSPA.

Therefore, subject to the proposed development not satisfying Section 2.5 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Landscaping and Tree Canopy Cover

Part C1, Section 2.6 of the RDCP 2023 relating to landscaping and tree canopy cover seeks the following objectives:

- *To ensure landscaped areas are effectively distributed on the site to achieve a visual balance between building structures and open space.*
- *To provide privacy screening between dwellings.*
- *To retain and provide for canopy trees and large shrubs to contribute to the overall tree canopy cover of the locality.*
- *To encourage urban greening that contributes positively to the existing and desired future character of the locality.*
- *To establish vegetation corridors across the locality.*
- *To reduce the impacts of urban heat island effect.*

The following controls are applicable to the proposed development under Section 2.6:

- Pursuant to control 2.6(i), new development must demonstrate that a minimum of 25% canopy coverage as a proportion of the site area can be achieved within 10 years from the completion of development based on maturity of trees selected.
- Pursuant to control 2.6(ii), in the circumstances where the consent authority is satisfied that there are sufficient environmental constraints on a site (such as significant slope) to limit the ability to achieve a 25% tree canopy cover on a site, a financial contribution may be considered to enable Council to plant trees in the public domain.
- Pursuant to control 2.6(v), canopy trees must achieve a minimum mature height of 5m. For allotments with constrained dimensions or site conditions, smaller trees with minimum mature height of 4m may be accepted by Council subject to achieving the minimum 25% canopy cover (as per sub-Clause ii).

The proposed canopy tree coverage of 8.2% (being approximately 40m²) is a shortfall of the minimum control by 16.8%.

The non-compliant planting, landscaping and canopy tree considerations are inconsistent with the objectives of Part C1, Section 2.6 of the RDCP 2023 and will result in the following adverse impacts:

- The landscape planting does not contribute to the preservation of and extension to native fauna and flora habitats.
- The landscape design does not provide appropriate and sufficient canopy trees and large shrubs to contribute to the overall tree canopy cover of the locality.
- The proposed development includes a planting schedule with planting that is not appropriate within the coastal environment area and Foreshore Scenic Protection Area, that would impact upon the native vegetation located within the area (see Landscaping Referral comments in Appendix 1).

Therefore, subject to the proposed development not satisfying Section 2.6 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Private Open Space

Part C1, Section 2.7 of the RDCP 2023 relating to private open space seeks to ensure private open space is designed for useability, solar access, privacy and accessibility.

The following controls are applicable to the proposed development under Section 2.7:

- Pursuant to control 2.7(ii), the contiguous private open space must be adjacent to and directly accessible from the living or dining room of the dwelling.

The main private open space of the dwelling is located on lower ground floor at the rear of the site, which includes a lawn area and swimming pool. The private open space is accessible via a secondary rumpus room. The main living/dining/kitchen is located on the first floor plan above and is not adjacent to and directly accessible from the private open space.

The non-compliance contributes to the excessive bulk and privacy impacts of the proposed development. The proposed layout that does not locate the main living/dining/kitchen adjoining the main private open space, results in the addition of a large, elevated terrace adjoining the

living/dining/kitchen, which has an adverse impact on bulk and privacy. This is inconsistent with the desired future character of the locality.

The non-compliant private open space is inconsistent with the objectives of Part C1, Section 2.7 of the RDCP 2023 and will result in the following adverse impacts:

- The poor layout reduces the useability of the private open space considering that the rumpus room will have a lower use than the main living/dining/kitchen area on the first floor.
- The poor layout results in additional bulk, scale and visual impact of the proposed dwelling as viewed from Waterside Avenue and from neighbouring dwellings.
- The poor layout results in additional and unreasonable privacy impacts to adjoining neighbours which detracts from the scenic qualities of the foreshore area.

Therefore, subject to the proposed development not satisfying Section 2.7 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Building Height

Part C1, Section 3.2 of the RDCP 2023 relating to building height seeks to ensure the following:

- *Bulk, scale and visual impact of buildings are limited as viewed from the street and from neighbouring dwellings;*
- *Low density residential development maintains a two-storey height and street frontage;*
- *Any habitable space above the first floor level within the roof of the dwelling;*
- *Development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity;*
- *Form and massing of development is respectful of site topography.*

The following controls are applicable to the proposed development under Section 3.2:

- Pursuant to control 3.2(i), any habitable space located above the first floor level must be integrated into the building roof form and roofline.
- Pursuant to control 3.2(iv), an alternative design that varies from the two-storey height and street frontage in the Zone R2 may be acceptable having regard to the following considerations: site topography; site orientation; allotment configuration; flooding requirements; allotment dimensions; potential impacts on the visual amenity, solar access, privacy and views of the adjoining properties.

The subject site has a significant fall of approximately 11m from the Mermaid Avenue to the Waterside Avenue sides of the site. The existing and proposed front yard is sunken below the street level. Therefore, from the Mermaid Avenue side of the site, the proposed development presents as a one and two storey dwelling.

From the rear of the site from Waterside Avenue, the proposed development presents as a full-height three storeys with a further fourth level for basement parking. See Figure 12 below for an indicative 3D image of how the proposed development will present from Waterside Avenue.



Figure 12: 3D perspective of the proposed development from Waterside Avenue of the subject site (*Source: MDNHUnion*)

In accordance with control 3.2(iv), Council is not satisfied that the proposal provides an alternative design to vary the two-storey height and street frontage in the Zone R2, for the following reasons:

- The proposed dwelling does not respond to the steep site topography in that it does not step down to create a terraced dwelling that follows the topography of the site.
- The proposed dwelling does not adequately consider allotment configuration and the visual impacts that the dwelling has when viewed from Waterside Avenue, which presents as a three storey dwelling with an additional fourth level for basement parking.
- The proposal results in visual amenity impacts to adjoining properties, which relates to the additional non-compliances in relation to the side setbacks, rear setback, wall length and articulation.
- The proposal results in privacy impacts due to the large terrace located adjoining the eastern side of the main living/dining/kitchen room on first floor.

The non-compliant building height is inconsistent with the objectives of Part C1, Section 3.2 of the RDCP 2023 and will result in the following adverse impacts:

- Form that does not respect the topography of the site that accentuates the visual bulk impacts.
- Inconsistency with the future built character of the locality for 2 storey dwelling houses.
- Adverse bulk, scale and visual impact of the proposed dwelling as viewed from Waterside Avenue and from neighbouring dwellings.
- Unreasonable privacy impacts to adjoining neighbours.
- Detracts from the scenic qualities of the foreshore area.

Therefore, subject to the proposed development not satisfying Section 3.2 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Side Setbacks

Part C1, Section 3.3.2 of the RDCP 2023 relating to side setbacks seeks to ensure that the form and massing of the development complements and enhances the streetscape character and maintains a two storey street frontage, and that adequate separation between neighbouring buildings is provided for visual and acoustic privacy.

The following controls are applicable to the proposed development under Section 3.3.2:

- Pursuant to control 3.3.2(i), the following side setbacks are to be maintained for the proposed development (as the site has a primary frontage width of 13.41m:

- Building heights 0m-4.5m = 1.2m.
- Building heights >4.5m-7m = 1.2m-1.825m.
- Building heights >7m-9.39m = 1.825m-6.58m.

No specific controls under Part C1, Section 3.3.2 of the RDCP 2023 outlines any considerations for application of the side setback controls on sloping sites. Therefore, adherence to the requirements under control 3.3.2(i) should be adhered to where possible.

The proposed dwelling maintains a setback of 1.2m to the length of the lower ground floor and ground floor plans to each side boundary line. To the first floor plan, the proposed dwelling provides a 1.8m side setback except for the internal curved dwelling staircase that maintains a side setback of 1.2m.

Figures 13 and 14 below demonstrate the extent of the non-compliance with the side setback controls, particularly that of the rear portion of the ground floor and near entirety of the first floor.

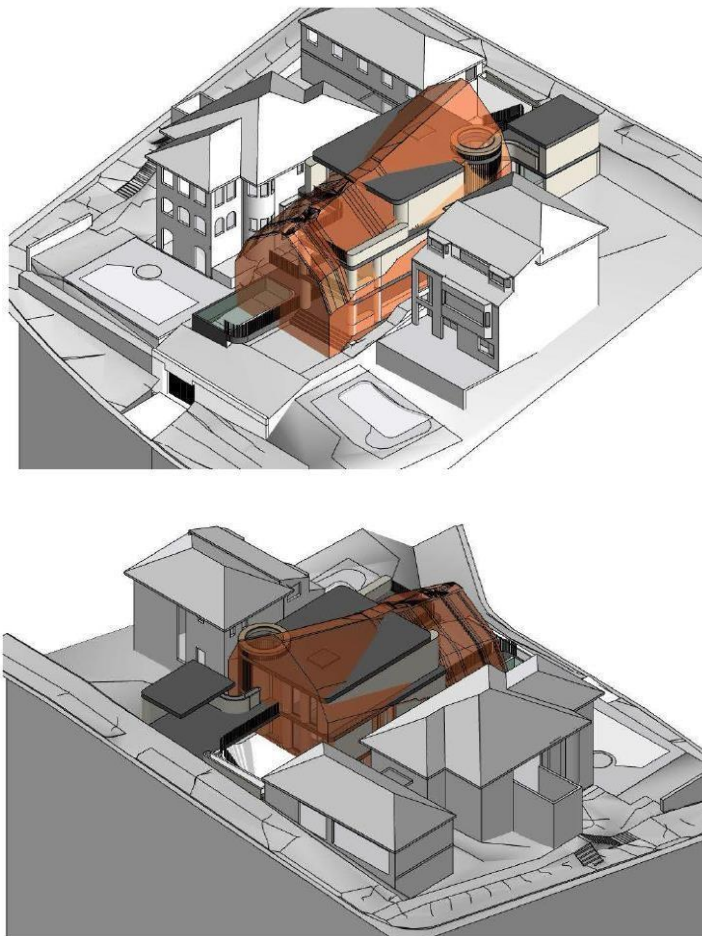


Figure 13 & 14: 3D oblique of the proposed development showing the extent of non-compliance with the side setback controls of the subject site (Source: MDNHUnion)

The non-compliant side setbacks are inconsistent with the objectives of Part C1, Section 3.2.2 of the RDCP 2023 and will result in the following adverse impacts:

- Visual amenity of dwelling as viewed from Waterside Avenue, that does not seek to maintain a dwelling with a two storey frontage presentation.
- Insufficient articulation, visual amenity, massing and bulk of the proposed dwelling to the adjoining properties that detracts from the future streetscape character and a two storey street frontage.

- Inadequate separation results in visual and acoustic privacy from the terraces to all three levels at the rear of the dwelling. Planting cannot be solely relied upon to provide privacy treatments.
- Detracts from the scenic qualities of the foreshore area.

The proposed development does not satisfy Section 3.3.2 in Part C1 of the RDCP 2023 and it is recommended that the proposed development be refused.

Rear Setback

Part C1, Section 3.3.3 of the RDCP 2023 relating to rear setbacks seeks to ensure that the form and massing of development complements and enhances the streetscape character and maintains a two storey street frontage, that adequate separation between neighbouring buildings is provided for visual and acoustic privacy, and that adequate areas are reserved for deep soil planting.

The following controls are applicable to the proposed development under Section 3.3.3:

- Pursuant to control 3.3.3(ii), development is to provide increased rear setbacks over and above control 3.3.3(i), or demonstrate that this is not required, having regard to the following matters: existing predominant rear setback line in the subject urban block; the need to achieve reasonable view sharing with the neighbouring dwellings and the public domain; the need to adequately protect the privacy and solar access to the neighbouring dwellings.

Part C1, Section 3.3.2 of the RDCP 2023 includes the following definition: *The predominant rear setback is defined as the average of adjacent dwellings on either side of the allotment and is determined separately for each storey.*

Part C1, Section 3.3.2 of the RDCP 2023 includes a note that rear setback controls do not apply to corner allotments. The adjoining south-eastern site, No. 2 Lurline Street is a corner allotment. As such, this dwelling was not subject to the same rear setback controls and is therefore not relevant to the considerations of the existing predominant rear setback line in the subject urban block (as per control 3.3.3(ii)).

The proposed dwelling maintains two separate rear setbacks, with the longer being to the southern section of the dwelling being 14.67m-14.86m, whilst the longer being to the northern section of the dwelling setback being 10.23m-10.47m. Each setback measurement is the same to each of the three levels of the dwelling.

The adjoining neighbour to the north-west, No. 47 Mermaid Avenue, contains a three storey dwelling. The shortest length of the rear setback is 14.53m to the first floor, 14.13m to the second floor, and 15.78m to the second floor.

The non-compliant rear setbacks are inconsistent with the objectives of Part C1, Section 3.2.3 of the RDCP 2023 and will result in the following adverse impacts:

- Visual amenity, massing and bulk of the proposed dwelling to the adjoining dwellings that detracts from the future streetscape character and a two storey street frontage.
- Inadequate separation results in visual and acoustic privacy from the terraces to all three levels at the rear of the dwelling.
- Detracts from the scenic qualities of the foreshore area.

The proposed development does not satisfy Section 3.3.3 in Part C1 of the RDCP 2023 and it is recommended that the proposed development be refused.

Building Design

Part C1, Section 4.1 of the RDCP 2023 relating to building seeks to ensure that the form, scale, massing and proportions of dwellings recognise and adapt to the characteristics of a site in terms of topography, configuration, orientation and surrounding natural and built context, to ensure building facades are articulated to complement or enhance the existing streetscape and

neighbourhood character, and to encourage contemporary and innovative designs that contribute to neighbourhood character in new and transitional residential areas.

The following controls are applicable to the proposed development under Section 4.1:

- Pursuant to control 4.1(i), development on sloping sites must model or step the building mass in response to the prevailing slope of the land and avoid concentrating the structural bulk on the uphill or downhill side of the allotment.
- Pursuant to control 4.1(iii), development is to articulate the external facades of the dwelling to reduce the apparent mass and to present a human scale to adjoining properties, public areas and from key vantage points. This may be achieved by design measures such as: window openings; balconies or terraces; entry porches; staggered wall planes; a combination of materials and finishes; and decorative architectural elements.
- Pursuant to control 4.1(iv), development is to divide side elevations into sections, bays or modules of not more than 12m length, separated by measures, such as recesses or side courtyards, in order to avoid massive or unrelieved walls.
- Pursuant to control 4.1(vii), balconies, terraces and decks must be of a size and configuration that are appropriate to the proportions of the building without excessively increasing its visual bulk.

The proposed development does not step the building massing in response to the steep rear fall of the site. This results in a design that concentrates a significant amount of massing to eastern side of the dwelling.

The proposed development fails to provide sufficient articulation to the side external facades of the dwelling using the elements noted in control 4.1(iii). The side elevations contain mostly uninterrupted wall sections of brickwork with limited openings to the lower ground floor and ground floor. No articulation elements are provided to the first floor side elevations.

The proposed development includes wall section of 12.88m in length to the southern side of the dwelling, which contributes to the visual bulk of the proposed development.

The proposed development includes a terrace adjoining the eastern side of the Master bedroom on the ground floor with a trafficable area of 4.81m x 2.93m, and a terrace adjoining the eastern side of the living/dining/kitchen room on the first floor with a trafficable area of 4.84m x 5.87m. Council notes that these terraces are not of an appropriate size in relation to the proportions of the building and adjoining room uses, and adversely increases the impacts of visual bulk of the development.

The non-compliant building design is inconsistent with the objectives of Part C1, Section 4.1 of the RDCP 2023 and will result in the following adverse impacts:

- Visual amenity, massing and bulk of the proposed dwelling resultant from a design that disregards the topography and configuration of the site and does not provide sufficient articulation, that detracts from the future streetscape character and a two storey street frontage from both Waterside Avenue and the adjoining neighbours.
- Insufficient articulation that further accentuates the visual bulk impacts of the development.
- A poor design that does not contribute to the neighbourhood character.
- Detracts from the scenic qualities of the foreshore area.

Therefore, subject to the proposed development not satisfying Section 4.1 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Terraces

Part C1, Section 4.4 of the RDCP 2023 relating to building seeks to ensure that terraces are integrated with the overall built form and architectural expression of the dwelling and maintain privacy in relation to neighbouring dwellings, to minimise the amenity impacts of terraces on surrounding properties, to ensure that terraces are not the primary private open space, and to ensure roof terraces are not uncharacteristic of the area.

The following controls are applicable to the proposed development under Section 4.4:

- Pursuant to control 4.4(ii), ii), for stepped buildings on sloping sites, a terrace may be provided on the roof other than the uppermost roof above the storeys below, provided the terrace complies with the following controls: suitably located to prevent direct views to neighbouring habitable windows and private open spaces; the size is to be subservient to the roof form within which it is located; it is designed as a secondary private open space and does not to include entertainment facilities such as kitchens, BBQs or similar; designed to provide for view sharing, including minimising associated structures and roof top elements; it is to be uncovered and all elements of roof terraces shall comply with the maximum building height control.

The proposed development includes an unroofed terrace adjoining the eastern side of the living/dining/kitchen room on the first floor with a trafficable area of 4.84m x 5.87m. The terrace is the main private open space of the subject dwelling as it is located adjoining the living/dining/kitchen room and includes a BBQ facility. The size of the terrace is not subservient to the adjoining roof form due to its large size.

The non-compliant rear setbacks are inconsistent with the objectives of Part C1, Section 4.4 of the RDCP 2023 and will result in the following adverse impacts:

- Visual and acoustic privacy resultant from the large open terrace to the northern adjoining neighbour that uses the first floor terrace as the main private open space.
- Visual amenity, massing and bulk of the proposed dwelling that do not sufficiently integrate the terraces into the building envelope that further impact the bulk of the dwelling that detracts from the scenic qualities of the foreshore area and desired future character of the streetscape.

Therefore, subject to the proposed development not satisfying Section 4.4 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Solar Access

Part C1, Section 5.1 of the RDCP 2023 seeks to ensure new dwellings are sited and designed to maximise solar access to the dwelling living areas, and to provide adequate ambient daylight to dwellings and minimise the need for artificial lighting.

The following controls are applicable to the proposed development under Section 5.1:

- Pursuant to control 5.1(i), a portion of the north-facing living area windows of proposed development must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice) (In so far as it does not contradict any BASIX requirement).

The proposed development does not provide any north-facing windows to the rumpus room on the lower ground floor or the living/dining/kitchen area on the first floor. The only natural light is provided via glazed doorways to the east.

The non-compliant solar access is inconsistent with the objectives of Part C1, Section 5.1 of the RDCP 2023 and will result in the following adverse amenity impacts on future occupants:

- Insufficient solar access to living rooms where they can capture north solar access, impacting occupant amenity.
- Increases the need for artificial lighting within the dwelling.

Therefore, subject to the proposed development not satisfying Section 5.1 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Visual Privacy

Part C1, Section 5.3 of the RDCP 2023 seeks to ensure that development minimises overlooking or cross-viewing of neighbouring dwellings to maintain reasonable levels of privacy.

The following controls are applicable to the proposed development under Section 5.3:

- Pursuant to control 5.3(i), all habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following design measures: offsetting or staggering windows away from those of the adjacent building; setting the window sills at a minimum of 1.6m above finished floor level; installing fixed and translucent glazing up to a minimum of 1.6m above finished floor level; installing fixed privacy screens outside the windows in question; or creating a recessed courtyard on the side elevations of a building measuring not less than 3m x 2m in size, with windows opening towards the courtyard in lieu of the common boundary.
- Pursuant to control 5.3(iii), any elevated balconies, or balcony returns on the side façade, must have a narrow width to minimise privacy impacts on the adjoining properties.
- Pursuant to control 5.3(iv) Balconies, decks, and terraces on steeply sloping sites must minimise overlooking through careful positioning and orientation.
- Pursuant to control 5.3(v), where a terrace is likely to overlook the private open space or windows of the adjacent dwellings, privacy screens must be installed in positions suitable to mitigate the loss of privacy. The use of privacy screens should be a secondary mitigation device where overlooking is primarily mitigated through positioning and orientation.
- Pursuant to control 5.3(vi), screen planting and planter boxes may be used as a supplementary device for reinforcing privacy protection. However, they must not be used as the sole privacy protection measure.
- Pursuant to control 5.3(vii), ground floor decks and terraces on sloping sites must step down in accordance with the landform, and avoid expansive areas of elevated outdoor recreation space.

Firstly, windows to the side elevations seek to have panelling provided to all windows. The applicant has failed to provide sufficient information as to the details of the panelling to the northern and southern façade windows to determine the impact they will have on the privacy of the adjoining neighbours.

Secondly, the proposed loggia to the lower ground floor and x2 terraces to ground floor and first floor respectively, do not have narrow widths and result in privacy impacts to the adjoining northern neighbour at No. 47 Mermaid Avenue. They are not positioned and orientated carefully in order to minimise overlooking to the northern adjoining neighbour at No. 47 Mermaid Avenue. The proposal does not include any privacy screening to the northern sides of these structures, and relies upon planter boxes for privacy treatments to the ground floor and first floor terraces.

Thirdly, the proposed earthworks within the rear yard to provide fill up to a height of 2.2m does not step down the rear yard in accordance with the landform which will result in visual bulk to the adjoining neighbours.

The non-compliant visual privacy controls are inconsistent with the objectives of Part C1, Section 5.3 of the RDCP 2023 and will result in the following adverse impacts:

- Visual privacy that increases overlooking and compromises upon the adequate protection of privacy.
- Visual amenity, massing and bulk of the proposed dwelling that do not sufficiently integrate the terraces into the building envelope, which further impact the bulk of the dwelling that detracts from the scenic qualities of the foreshore area and desired future character of the streetscape.

Therefore, subject to the proposed development not satisfying Section 5.3 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Acoustic Privacy

Part C1, Section 5.4 of the RDCP 2023 seeks to ensure the siting and design of development minimises the impact of noise transmission between dwellings.

The following controls are applicable to the proposed development under Section 5.4:

- Pursuant to control 5.4(i), dwellings must be sited and designed to limit the potential for excessive noise transmission to the sleeping areas of adjacent dwellings. Accordingly, main living room windows, balconies and terraces, barbecues, swimming pools and spa pools must not be located immediately adjacent to the bedroom windows of adjoining dwellings.

The proposed terraces to ground floor and first floor respectively are large in size, which will impact upon the acoustic privacy of the third floor bedroom on the southern side of the adjoining northern neighbour at No. No. 47 Mermaid Avenue. The large terraces contribute to the excessive bulk and privacy impacts of the proposed development, which is inconsistent with the desired future character of the locality.

The non-compliant acoustic privacy is inconsistent with the objectives of Part C1, Section 5.4 of the RDCP 2023 and will result in acoustic privacy impacts as the proposed development does not adequately reduce noise transmission between the proposed terraces and the adjoining northern neighbour.

Therefore, subject to the proposed development not satisfying Section 5.4 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Parking Facilities

Part C1, Section 6 of the RDCP 2023 seeks 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, and to ensure that the location and design of parking and access facilities do not: pose undue safety risks on building occupants and pedestrians; adversely impact on the amenity of neighbouring properties; or result in a loss of on-street parking and street trees.

The following controls are applicable to the proposed development under Section 6:

- Pursuant to control 6.1(i), dwellings are to provide a maximum of one vehicular access per property.
- Pursuant to control 6.1(ii), locate parking facilities off rear lanes, or secondary street frontages in the case of corner allotments, where available.
- Pursuant to control 6.1(iii), where rear lane or secondary street access is not available, parking facilities must be located behind the front façade alignment, either integrated within the dwelling or positioned to the side of the dwelling.
- Pursuant to control 6.1(v), development can provide a double width garage or carport only where: the frontage width is at least 12m; the development is consistent with the predominant pattern in the street; and the minimum deep soil permeable surfaces area in the front setback is achieved.
- Pursuant to control 6.2(i), where the provision of parking facilities behind the front façade alignment is not feasible (due to the absence of rear lane or secondary street access, narrow site width, irregular allotment configuration, or retention of an existing dwelling), parking facilities may be provided within the front setback areas as follows: an uncovered single car space; or a single carport having an external width of not more than 3m (excluding eaves); and landscaping must be able to be incorporated into the site frontage.
- Pursuant to control 6.2(ii), regardless of the site frontage width, the provision of garages or carports within the front setback areas may only be considered where: there is no alternative, feasible location for accommodating carparking; the site has a significant slope with the dwelling being elevated above the street; the garage or carport will not adversely affect the visual amenity of the street and the surrounding areas; the garage or carport location will not pose an undue risk on the safety of pedestrians; the garage or carport will not require the removal of significant landscape elements that enhance the streetscape,

such as rock outcrop or sandstone retaining walls; and the garage design compliments the architectural character, design elements and materials and finishes of the primary dwelling eg. roof type/pitch and finishes.

- Pursuant to control 6.3(i), garages and carports must comply with the side setback requirements stipulated in subsection.
- Pursuant to control 6.3(ii), entry to garages and carports off the rear laneway must be setback a minimum of 1m from the laneway boundary.
- Pursuant to control 6.3(iii), garages and carports built to the side boundary may be considered where: the adjoining property has its parking facilities or outbuildings constructed to the common boundary; the location of car parking is compatible with the streetscape character; appropriate sightlines will be maintained for drivers and pedestrians; and development seeks to amalgamate the driveway crossing with that of the adjoining property.
- Pursuant to control 6.4(i), the maximum width of a single width driveway is 3m.
- Pursuant to control 6.5(i), the garages must be recessed behind the front façade alignment of the dwelling on both the primary and secondary street elevations.
- Pursuant to control 6.5(ii), the maximum internal width of a garage (including the garage door and the flanking piers or columns) is 6m for a double garage.
- Pursuant to control 6.5(vii), the height of any parapet wall or bulkhead above the garage entry must not exceed 600mm, to minimise the visual bulk of the garage.
- Pursuant to control 6.6(i), carports must have a simple, post-support design and not solid enclosing walls. The carport may only be semi-enclosed with timber or metal slats achieving a minimum 30% of open area.
- Pursuant to control 6.6(ii), the carport must have a flat roof, lean-to roof, gable or hipped roof having a pitch angle and design that relates to the dwelling or the predominant street character.
- Pursuant to control 6.6(iii), the maximum width of a single carport is 3m.

The proposed development seeks consent for x2 separate vehicular accesses per property, x1 via the primary street frontage of Mermaid Avenue for a single vehicle carport and x1 via the secondary rear street frontage of Waterside Avenue for a triple vehicle garage. There are only x3 dwellings, being 47 & 49 Mermaid Avenue and 2 Lurline Street, that have frontages to both Mermaid Avenue and Waterside Avenue within the block. Most parking facilities to dwelling on Mermaid Avenue have a nil front setback, consisting of single and double width parking structures.

Council also noted that pursuant to Table 1 'Vehicle Parking Rates' under Part B7, Section 3.2 of the RDCP 2013, a dwelling house with 3 or more bedrooms is to provide parking for 2 vehicle spaces only. The proposed development seeks to provide x4 vehicle parking spaces on the site.

The proposed development will result in the unnecessary loss of an additional on street parking space because the development includes x2 separate vehicular accesses, of which is not a requirement under B7 of the RDCP 2013 or Section 7 of the RDCP 2023.

The carport to Mermaid Avenue is a single width carport forward of the proposed dwelling with a nil front setback and nil northern side setback, located where the existing single garage is to the site. The carport has a width of 3.12m. Council notes that as the site has a frontage width of 13.41m, Council could be supportive of a double carport structure to Mermaid Avenue, which would be in keeping with the streetscape and objectives and controls in Part C1, Section 6 of the RDCP 2023.

The garage to Waterside Avenue is located within the proposed excavated basement area of the building envelope, with a dimension of 11.6m x 10.3m, providing parking to x3 vehicles. The garage entrance has a nil rear setback from the rear boundary line and has a parapet wall height of 1.1m. The basement driveway has a width of 3.3m.

The non-compliant parking facilities are inconsistent with the objectives of Part C1, Section 6 of the RDCP 2023 and will result in the following adverse impacts:

- The proposed parking facilities visually dominate the property frontage and streetscape for parking facilities that exceed parking rate requirements under B7 of the RDCP 2013, which

further impact the bulk of the dwelling, detract from the scenic qualities of the foreshore area and contravene the desired future character of the streetscape.

- The proposed parking facilities are not integrated with the architectural expression of the dwelling as an integrated element.
- The loss of an additional on-street parking space that can be avoided by only having a single vehicular access for parking facilities on the subject site. This will have a detrimental impact on parking within the busy coastal foreshore area and Eastern Beaches Coastal Walkway.

Therefore, subject to the proposed development not satisfying Section 6 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Front Fence

Part C1, Section 7 of the RDCP 2023 seeks to ensure that fence design is to achieve a balance between privacy, safety and security for the building occupants and visual interaction with the public domain, without adversely affecting the amenity of the pedestrian environment, and that new fences are to complement the building on the site and the streetscape, in their alignment, configuration, rhythm of bays, height, materials, colours and texture.

The following controls are applicable to the proposed development under Section 7.2:

- Pursuant to control 7.1(iv), expansive surfaces of blank rendered masonry to street frontages must be avoided.
- Pursuant to control 7.2(i), the maximum height of front fencing is limited to 1.2m, as measured from the footpath level, with the solid portion not exceeding 600mm, except for piers. The maximum height of front fencing may be increased to 1.8m, provided the upper two-thirds are partially open, except for piers.
- Pursuant to control 7.2(ii), the non-solid portion of the front fence is to be constructed with lightweight materials (such as timber panels, slats or the like) that are at least 30% open and evenly distributed along the full length of the fence.
- Pursuant to control 7.2(iv), the fence must incorporate stepping to follow any change in level along the street boundary. The height of the fence may exceed the aforementioned numerical requirement by a maximum of 150mm adjacent to any stepping.

The proposed front fence varies in height from 1.46m-2.2m in height. The southern section of the front fence includes a solid wall section with a height from 0.6m-1m in height. The non-compliance contributes to the excessive bulk impacts of the proposed development, which is inconsistent with the desired future character of the locality.

The non-compliant front fence design is inconsistent with the objectives of Part C1, Section 7.2 of the RDCP 2023 and will result in the following adverse impacts:

- Does not strike the right balance between privacy, safety and security for the building occupants and visual interaction with the public domain, without adversely affecting the amenity of the pedestrian environment.
- Distracts from the proposed dwelling in terms of visual amenity, massing and bulk, alignment, configuration, rhythm of bays, height, materials, colours and texture, that further impact the bulk of the dwelling that detracts from the scenic qualities of the foreshore area and desired future character of the streetscape.

Therefore, subject to the proposed development not satisfying Section 7.2 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

Swimming Pool

Part C1, Section 7 of the RDCP 2023 seeks to ensure that ancillary development is to enhance the liveability of dwellings and to maintain reasonable levels of visual amenity, solar access and privacy for neighbouring dwellings, and that ancillary development should not present as a prominent feature and detract from the streetscape character.

The following controls are applicable to the proposed development under Section 7.5:

- Pursuant to control 7.5(i), development is to locate swimming and spa pools and associated structures to minimise potential noise impacts on the adjoining dwellings.
- Pursuant to control 7.5(ii), the pool coping height must relate to the topography of the site. On sloping allotments, the high side of the site must be excavated, so that the pool structure does not protrude more than 1m above the existing ground level on the lower side.

The proposed swimming pool is located within close proximity to main dining room windows and open-plan kitchen/living/dining room of the adjoining south-eastern dwelling at No. 2 Lurline Street. The proposed swimming pool is located 1.7m (RL26.2 above RL23.5) above the lowest point of the existing ground level, setback 1.2m from the south-eastern side boundary and visible from the Waterside Avenue side of the property and adjoining south-eastern dwelling at No. 2 Lurline Street.

The non-compliant swimming pool controls are inconsistent with the objectives of Part C1, Section 7.5 of the RDCP 2023 and will result in the following adverse impacts:

- Visual and acoustic privacy that increase overlooking and noise transmission from the proposed elevated swimming pool to the adjoining neighbour's main living area and private open space.
- Visual amenity, massing and bulk of the proposed swimming pool which present as a prominent feature that detracts from the scenic qualities of the foreshore area and desired future character of the streetscape.

Therefore, subject to the proposed development not satisfying Section 7.5 in Part C1 of the RDCP 2023, it is recommended that the proposed development be refused.

10. Conclusion

That the application for demolition of existing structures and construction of a new three-storey dwelling with basement, new swimming pool, and associated excavation, tree removal and landscaping at 49 Mermaid Avenue, Maroubra be refused for the following reasons:

1. Pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives of the R2 Low Density Residential zone in that it is not compatible with the desired future character of the locality and exceeds the level of built form anticipated for the subject site. The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form.
2. Pursuant to clause 4.6 of RLEP 2012, the Applicant has failed to submit a written request to vary clause 4.4A of the RLEP 2012 relating to floor space ratio development standard. The Applicant has failed demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
3. Pursuant to clause 6.2 of RLEP 2012 and clause 4.7 of RDCP 2013, Council considers that the development results in excessive and unnecessary excavation of the site, which results in impacts to drainage patterns and soil stability, amenity impacts on neighbours, and detracts from the scenic qualities of the foreshore area.
4. Pursuant to clause 6.7 of RLEP 2012 and Part B10 of RDCP 2013, Council is not satisfied that the development contributes to the scenic quality of the foreshore.
5. Pursuant to the provisions of section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives and controls of the Randwick Development Control Plan 2013:
 - Part B5 – Preservation of Trees and Vegetation
 - Clause 2.4 of C1 – Site Coverage

- Clause 2.5 of C1 – Deep Soil Permeable Surfaces
 - Clause 2.6 of C1 – Landscaping and Tree Canopy Cover
 - Clause 2.7 of C1 – Private Open Space
 - Clause 3.2 of C1 – Building Height
 - Clause 3.3 of C1 – Setbacks
 - Clause 4.1 of C1 – Building Design - General
 - Clause 4.4 of C1 – Roof Terraces and Balconies
 - Clause 5.1 of C1 – Solar Access and Overshadowing
 - Clause 5.3 of C1 – Visual Privacy
 - Clause 5.4 of C1 – Acoustic Privacy
 - Section 6 of C1 – Parking Facilities
 - Clause 7.1 of C1 – General Fencing
 - Clause 7.2 of C1 – Front Fencing
 - Clause 7.5 of C1 – Swimming and Spa Pools
6. Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development will result in adverse environmental impacts on the existing neighbourhood character and the visual amenity of the street and foreshore area.
7. Pursuant to the provisions of section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development will is not suitable to the site as the proposed development does not respect the site topography, configuration and characteristics.
8. Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is considered to not be in the public interest as the proposal is inconsistent with the objectives of the zone and will result in significant adverse impacts on the locality.

Appendix 1: Referrals

1. Development Engineering

Council's Development Engineer has confirmed the proposed development is satisfactory and provided the following comments:

"Parking Comments

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

Amendments to the internal driveway design off Waterside Ave including possible slight lowering of the garage slab level of RL 21.980m may need to be done, prior to the issuing of a Construction Certificate.

Drainage Comments

Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.

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

Undergrounding of Powerlines to the Site

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

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

*The subject **is not** located within 15m of a mains power distribution pole on the same side of the street hence the above clause **is not** applicable."*

2. Development Landscaping

Council's Landscaping Officer has raised a number of concerns regarding the proposed development, noting in its current for it is unsatisfactory, providing the following comments:

"Part B4 of the RDCP 2013 relating to landscaping and biodiversity seeks to promote high quality landscape design as an integral component of the overall design of a development, to provide landscape design and plantings that are compatible with the site and locality, and to contribute to the preservation of and extension to native fauna and flora habitats.

Whilst there is an abundance of shrubs, ground covers, grasses etc within and around the proposed ground floor dwelling, however the planting plan is unsatisfactory for the following reasons:

- a) *Four **Waterhousia floribunda** (Weeping Lilly Pilly) nominated in the Planting Schedule, plotted within the north western front aspect of the dwelling, along the common boundary, west to east, their use cannot be supported, as these group of trees will grow to a mature size of 6+ metres, which will block neighbouring ocean views, the species nominated is not for coastal use, with being close to front line salt winds, this species would not survive being close to the coastline. These trees need to be completely deleted and replaced with more suitable coastal species which will attain a mature height of 4 metres, which is stated in the new C1 DCP.*

- b) *Three **Livistonia Australia** (Cabbage Tree Palms) nominated in the Planting Schedule, plotted within the north eastern frontage of the property, near above trees, their use cannot be supported, as these group of trees will grow to a mature size of 10 metres, which again, same as above, will block neighbouring ocean views, These trees need to be completely deleted an replaced with more suitable coastal species which will attain a mature height of 4 metres.*
- c) *The fourth **Livistonia Australia** (Cabbage Tree Palms) nominated in the Planting Schedule, plotted within the southeastern corner of the property, above the driveway/garage entrance, its use cannot be supported, will grow to a mature size of 10 metres, which again, same as above, will block neighbouring ocean views, also plotted within shallow soil depth will see the tree unstable.*
- d) *Three **Opuntia burbank spineless** (Barbary Fig/Prickly Pear) nominated in the Planting Schedule, it's use cannot be supported in such an environmentally sensitive zone close to Trenerry Reserve to the north, Jack Vanny Reserve to the south, as these areas contain remnant native coastal vegetation which Council directs significant time, funds and resources to maintaining and protecting. These plants need to be completely deleted and replaced with more suitable coastal species.*
- e) *One **Opuntia burbank spineless** (Barbary Fig/Prickly Pear) nominated in the Planting Schedule, it's use cannot be supported in such an environmentally sensitive zone, stated in (section c) This plant needs to be completely deleted and replaced with more suitable coastal species.*
- f) *The Applicant's Arborist Report seeks consent to remove the x2 trees located within the front setback area of the northern adjoining neighbour at No. 47 Mermaid Avenue (being trees 6 & 7 in the report).*

Council is not satisfied that the applicant has adequately demonstrated why these x2 trees need removed based on the proposed scope of works. Council is of the opinion that the x2 trees can be retained subject to advice and recommendations from a suitably qualified structural engineer during the removal of the existing garage structure on the site.

Council has not received any correspondence from the adjoining neighbour regarding the removal of these two trees. Therefore, in order to protect these trees, Council will require, prior to the removal of the northern wall to the existing garage structure, the applicant to engage a suitably qualified structural engineer to advise and make suitable recommendations as to how these trees will be adequately protected. These recommendations are to be implemented during the construction process.

Appendix 2: DCP Compliance Table

2.1 Section B4: Landscaping and Biodiversity

DCP Clause	Controls	Proposal	Compliance
3	Landscape Design		
3.1	Existing vegetation and natural features		
	<ul style="list-style-type: none"> i) Maximise the retention and protection of existing vegetation including trees, shrubs and groundcover vegetation. ii) Retain and incorporate existing natural features, such as cliffs and rock outcrops into the landscape design where possible. Note: Refer to DCP section – B5 Preservation of Trees and Vegetation for more detailed requirements on tree works. iii) Retain and stockpile topsoil for reuse in the landscaped area. 	Council is satisfied that the vegetation on the Council verge to the Waterside Avenue side of the site is not an important natural feature. See detailed Landscaping comments above.	See Landscaping Referral comments above.

2.2 Section B6: Recycling and Waste Management

DCP Clause	Controls	Proposal	Compliance
4	On-going operation		
	<ul style="list-style-type: none"> 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. v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties. vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain. vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have stepfree and unobstructed access to the collection point(s). 	The proposed basement garage or carport can facilitate the x3 residential bins required for the dwelling house.	Yes, complies

2.3 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	i) Development must comply with the vehicle parking rates as detailed in below. Any excess provisions over and above the parking rates will be included in GFA calculations:	The proposed 4-bedroom dwelling house provides x4 parking spaces on the site, where only x2 are required.	Yes, complies

	<p>Dwelling houses/dual occupancies, semidetached dwellings, attached dwellings:</p> <p>1 space per dwelling house with up to 2 bedrooms;</p> <p>2 spaces per dwelling house with 3 or more bedrooms;</p> <p>Note: Tandem parking for 2 vehicles is allowed.</p> <p>iv) Minimise the use of mechanical parking devices (car stackers or turntables) particularly on difficult (eg constrained access) sites and where queuing may result or safety is jeopardised.</p> <p>N.b. Where development comprises an extension, modification or change of use to an existing development, Council will generally only require that additional parking be provided to cater for the additional demands arising from increases in floor space or changes in use.</p>		
--	--	--	--

D61/24

2.4 Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Integrated outbuildings and ancillary structures with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone. 	Council is not satisfied that the visual qualities of the FSPA are being adequately maintained and addressed. See Clause 6.7 assessment above for a detailed consideration.	No, see Clause 6.7 assessment above.

2.5 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	

D61/24

DCP Clause	Controls	Proposal	Compliance
2	Site planning	Site = 490m ²	
2.4	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	Site = 490m ² Proposed = 56% (being 274.6m ² , which includes the built area of the driveway on the basement floor)	No, see Key Issues
2.5	Deep soil permeable surfaces		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached dwellings: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	Site = 490m ² Proposed = 39.3% (being 192.4m ²). Within this 39.3%, the Applicant has included paved areas within the front setback area, which does not meet the DCP definition.	No, see Key Issues
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	Site = 490m ² Proposed = 8.2% (being approximately 40m ²) >25% landscaping in front setback area, including paved areas.	No, see Key Issues
2.7	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 490m ² Proposed = >7m x 7m	Yes, complies
	ii) POS satisfy the following criteria: <ul style="list-style-type: none"> Situated at ground level (except for duplex) No open space on podiums or roofs Adjacent to the living room Oriented to maximise solar access Located to the rear behind dwelling Has minimal change in gradient Includes landscaped areas, terraces, decks, paved surfaces and the like. 	The main living/dining/kitchen is located on the first floor plan above and is not adjacent to and directly accessible from the private open space.	No, see Key Issues
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.65:1	Proposed = 0.88:1 (or 431.1m ²)	No, see Clause 4.6 Assessment above.
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 9.47m (RL35.95-RL26.48) N.b. as per the LEP definition, building height is measured from the existing ground level.	Yes, complies

DCP Clause	Controls	Proposal	Compliance																								
	<p>i) Habitable space above 1st floor level must be integrated into roofline</p> <p>ii) Minimum ceiling height = 2.7m</p> <p>iii) Minimum floor height = 3.1m (except above 1st floor level)</p> <p>iv) Maximum 2 storey height at street frontage</p> <p>v) Alternative design which varies 2 storey street presentation may be accepted with regards to:</p> <ul style="list-style-type: none"> - Topography - Site orientation - Lot configuration - Flooding - Lot dimensions <p>Impacts on visual amenity, solar access, privacy and views of adjoining properties.</p>	<p>The proposed dwelling is 4 storeys tall. Whilst the dwelling presents as 1-2 storeys from Mermaid Avenue, from the Waterside Avenue and adjoining neighbours, it presents as 3-4 storeys.</p> <p>Habitable level F2C = 2.75m</p> <p>Habitable level F2F = 3.25m</p>	No, see Key Issues																								
3.3	Setbacks																										
3.3.1	<p>Front setbacks</p> <p>i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment.</p> <p>ii) Corner allotments: Secondary street frontage:</p> <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites - Should align with setbacks of adjoining dwellings <p>iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.</p>	<p>Council is satisfied that with the front setback as it maintains the existing building line, only presents as single storey from Mermaid Avenue and there is sufficient space in the front setback area for landscaping.</p>	Yes, complies																								
3.3.2	<p>Side setbacks</p> <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 >4.5m to 7m</th><th>Building heights >7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height - 7m)</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.5m + 2 \times (\text{building height} - 7m)$</td></tr> <tr> <td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.8m + 2 \times (\text{building height} - 7m)$</td></tr> </tbody> </table>	Minimum side setbacks				Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m	Less than 6m	Merit assessment			6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	<p>Frontage = 13.41m</p> <p>Min 0m-4.5m = 1.2m</p> <p>Min 4.5-7m = 1.625m</p> <p>Proposed 0m-4.5m = 1.2m.</p> <p>Proposed >4.5m-7m = 1.2m-1.825m.</p> <p>Proposed >7m-9.39m = 1.825m-6.58m.</p>	No, see Key Issues
Minimum side setbacks																											
Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m																								
Less than 6m	Merit assessment																										
6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)																								
9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$																								
12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$																								
3.3.3	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and</p>	<p>Minimum = 8m</p> <p>Proposed = 14.67m-14.86m and 10.23m-10.47m.</p> <p>The rear setback line is inconsistent with the adjoining north-west neighbour at No. 47 Mermaid Avenue. A reduced rear setback will impact upon visual bulk, privacy and foreshore impacts.</p>	No, see Key Issues																								

D61/24

D61/24

DCP Clause	Controls	Proposal	Compliance
	<p>terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p><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>		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	<p>The proposed development does not step the building massing in response to the steeply falling rear fall of the site. The proposed development fails to provide sufficient articulation to the side external facades with mostly uninterrupted walls sections of brickwork with limited openings to the lower ground floor and ground floor. The proposed development includes wall section of 12.88m in length to the southern side of the dwelling, which contributes to the visual bulk of the proposed development.</p> <p>The proposed development includes a terrace adjoining the eastern side of the Master bedroom on the ground floor with a trafficable area of 4.81m x 2.93m, and a terrace adjoining the eastern side of the living/dining/kitchen room on the first floor with a trafficable area of 4.84m x 5.87m.</p>	No, see Key Issues
4.4	Roof terraces and balconies		
	i) Locate on stepped buildings only (not on uppermost or main roof)	The proposed development includes an	No, see Key Issues

DCP Clause	Controls	Proposal	Compliance
	ii) Where provided, roof terraces must: <ul style="list-style-type: none"> Prevent overlooking Size minimised Secondary POS – no kitchens, BBQs or the like Maintain view sharing, minimise structures and roof top elements Be uncovered and comply with maximum height iii) Locate above garages on sloping sites (where garage is on low side) <i>*Note: Existing roof terraces in locality that do not comply with the above controls should not be utilised as precedent in seeking variations to the controls outlined in this section. This is to ensure that the objectives of low density residential development are met.</i>	unroofed terrace adjoining the eastern side of the living/dining/kitchen room on the first floor with a trafficable area of 4.84m x 5.87m. The terrace is the main private open space of the subject dwelling as it is located adjoining the living/dining/kitchen room and includes a BBQ facility. The size of the terrace is not subservient to the adjoining roof form due to its large size.	
4.5	Roof design and features		
	<i>Dormers</i> <ul style="list-style-type: none"> i) Dormer windows do not dominate ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. iii) Multiple dormers consistent iv) Suitable for existing <i>Clerestory windows and skylights</i> <ul style="list-style-type: none"> v) Sympathetic to design of dwelling <i>Mechanical equipment</i> <ul style="list-style-type: none"> vi) Contained within roof form and not visible from street and surrounding properties. 	The proposed lift overrun is located within a roof detailing element of which is integrated into the design of the dwelling and will not be readily visible from the street.	Yes, complies
4.6	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone 	See Clause 6.7 Assessment above as the development is located within the FSPA.	See Clause 6.7 assessment above.
4.7	Earthworks		
	<ul style="list-style-type: none"> i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a 	The proposed development includes significant excavation of up to 8.3m in height of the site. The basement floor contains a large triple garage, x2 storage areas and lift plant area that can be accommodated	No, see Key Issues

D61/24

D61/24

DCP Clause	Controls	Proposal	Compliance
	maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vii) cut and fill for POS is terraced <i>where site has significant slope:</i> viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas.	throughout the site. The proposed development also includes level changes and retaining walls along the side and rear elevations, creating visual bulk and privacy impacts.	
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The proposed development does not provide any north-facing windows to the rumpus room on the lower ground floor or the living/dining/kitchen area on the first floor. The only natural light is provided via glazed doorways to the east.	No, see Key Issues
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	Council is satisfied that the proposed development will not adversely impact upon the solar access of the adjoining neighbours, in particular No. 2 Lurline Street. Hourly solar diagrams and sun eye diagrams provided by the applicant (and verified by Council) confirm that north-facing living rooms windows, POS and roof panes will receive sufficient solar access in accordance with the requirements within this control.	Yes, complies
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas	The submitted	Yes, complies

DCP Clause	Controls	Proposal	Compliance
	<p>within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) Living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	<p>development has been accompanied with a BASIX Certificate identifying compliance with thermal and water energy.</p> <p>In addition, the location of windows and doors have been considered as acceptable, addressing the matter of natural light and ventilation.</p>	
5.3	Visual Privacy		
	Windows		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	The applicant has failed to provide sufficient information as to the details of the panelling to the northern and southern façade windows to determine the impact they will have on the privacy of the adjoining neighbours.	No, see Key Issues
	Balcony		
	<p>iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side)</p> <p>iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers)</p> <p>v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure)</p> <p>vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.</p>	The proposed development seeks to provide raised loggia and terraces at the rear of the site that will overlook adjoining neighbours, causing adverse privacy impacts.	No, see Key Issues
5.4	Acoustic Privacy		
	<p>i) Noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i></p> <p>ii) Reduce noise transmission between dwellings by:</p> <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. 	Council is concerned that the proposed terraces to ground floor and first floor respectively are large in size which will impact upon the acoustic privacy of the third floor bedroom	No, see Key Issues

D61/24

D61/24

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	on the southern side of the adjoining northern neighbour at No. 47 Mermaid Avenue.	
5.5	Safety and Security		
	<ul style="list-style-type: none"> i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access) 	Council is satisfied that sufficient for causal surveillance is provided to Mermaid Avenue.	Yes, complies
5.6	View Sharing		
	<ul style="list-style-type: none"> i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. 	Council is satisfied that proposed development will not adversely impact upon view corridors within the foreshore area.	Yes, complies
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	All dwellings		
	<ul style="list-style-type: none"> i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: <ul style="list-style-type: none"> - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard. v) Tandem parking may be considered vi) Avoid long driveways (impermeable surfaces) 	The proposed development seeks consent for x2 separate vehicular accesses to the site, x1 via Mermaid Avenue and x1 via Waterside Avenue.	No, see Key Issues
6.2	Parking Facilities forward of front façade alignment		
	<ul style="list-style-type: none"> i) The following may be considered: <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage 	The proposed development seeks consent for x2 separate vehicular accesses per property, x1 via the primary street frontage of	See Key Issues for detailed assessment

DCP Clause	Controls	Proposal	Compliance
	<p>ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where:</p> <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) - Compliments architectural character of dwelling ie roof pitch and finishes. 	<p>Mermaid Avenue for a single vehicle carport and x1 via the secondary rear street frontage of Waterside Avenue for a triple vehicle garage. There are only x3 dwellings, being 47 & 49 Mermaid Avenue and 2 Lurline Street, that have frontages to both Mermaid Avenue and Waterside Avenue within the block. Most parking facilities to dwelling on Mermaid Avenue have a nil front setback, consisting of single and double width parking structures.</p> <p>Council also noted that pursuant to Table 1 'Vehicle Parking Rates' under Part B7, Section 3.2 of the RDCP 2013, a dwelling house with 3 or more bedrooms is to provide parking for 2 vehicle spaces only. The proposed development seeks to provide x4 vehicle parking spaces on the site.</p> <p>The proposed development will result in the unnecessary loss of an additional on street parking space because the development includes x2 separate vehicular accesses, of which is not a requirement under B7 of the RDCP 2013 or Section 7 of the RDCP 2023.</p>	
6.3	Setbacks of Parking Facilities		
	<p>i) Garages and carports comply with Sub-Section 3.3 Setbacks.</p> <p>ii) 1m rear lane setback</p> <p>iii) Nil side setback where:</p> <ul style="list-style-type: none"> - Nil side setback on adjoining property; - Streetscape compatibility; - Safe for drivers and pedestrians; - Amalgamated driveway crossing. 	The proposed carport has a nil northern side setback.	See Key Issues for detailed assessment
6.4	Driveway Configuration		
	<p>Maximum driveway width:</p> <ul style="list-style-type: none"> - Single driveway – 3m 	The basement driveway has a width of 3.3m.	No, see Key Issues

D61/24

D61/24

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Double driveway – 5m Must taper driveway width at street boundary and at property boundary		
6.5	Garage Configuration		
	<ul style="list-style-type: none"> i) Recessed behind front of dwelling ii) Maximum garage width (door and piers or columns): <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m 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 garage to Waterside Avenue is located within the proposed excavated basement area of the building envelope, with a dimension of 11.6m x 10.3m, providing parking to x3 vehicles. The garage entrance has a nil rear setback from the rear boundary line and has a parapet wall height of 1.1m.	No, see Key Issues
6.6	Carport Configuration		
	<ul style="list-style-type: none"> i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to dwelling iii) 3m (single) 6m (double) maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) Front gate allowed (minimum 30% open) viii) Gate does not open to public land 	The carport to Mermaid Avenue is a single width carport forward of the proposed dwelling with a nil front setback and nil northern side setback, located where the existing single garage is to the site. The carport has a width of 3.12m. Council notes that as the site has a frontage width of 13.41m, Council could be supportive of a double carport structure to Mermaid Avenue, which would be in keeping with the streetscape and objectives and controls in Part C1, Section 6 of the RDCP 2023.	See Key Issues for detailed assessment
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	<ul style="list-style-type: none"> i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street 	Council is not supportive of the proposed front fence, which features blank rendered masonry sections to the street.	No, see Key Issues for detailed assessment
7.2	Front Fencing		
	<ul style="list-style-type: none"> i) 1200mm max. (solid portion not exceeding 600mm), except for piers. <ul style="list-style-type: none"> - 1800mm max. provided upper two-thirds partially open (30% min), except for 	The proposed front fence varies in height from 1.46m-2.2m in height. The southern section of the	No, see Key Issues for detailed assessment

DCP Clause	Controls	Proposal	Compliance
	<p>piers.</p> <p>ii) Light weight materials used for open design and evenly distributed</p> <p>iii) 1800mm max solid front fence permitted in the following scenarios:</p> <ul style="list-style-type: none"> - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> <p>iv) 150mm allowance (above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p>	<p>front fence includes a solid wall section with a height from 0.6m-1m in height. The non-compliance contributes to the excessive bulk impacts of the proposed development, which is inconsistent with the desired future character of the locality.</p>	
7.3	Side and rear fencing		
	<p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p>	<p>The proposed side and rear boundary fencing has a height of 1.8m and follows the topography of the site and new retaining walls. However, the level changes along the boundaries will increase visual impacts on neighbours.</p>	<p>See Clause 6.2 assessment regarding earthworks above.</p>
7.4	Outbuildings		
	<p>i) Locate behind the front building line.</p> <p>ii) Locate to optimise backyard space and not over required permeable areas.</p> <p>iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height)</p> <p>iv) Nil side and rear setbacks where:</p> <ul style="list-style-type: none"> - Finished external walls (not requiring maintenance; - No openings facing neighbours lots; and - Maintain adequate solar access to the neighbours dwelling <p>v) For secondary street frontages a nil setback is only permitted if it adjoins a building constructed on the boundary.</p>	<p>The proposed plant room outbuilding within the front setback area is not visible from the street, due to the sunken site topography of the site. Sufficient DSPA is retained within the front setback area, subject to converting paved areas to pebbled areas. The structure does not have an adverse impact on the adjoining neighbours.</p>	<p>Yes, complies</p>

D61/24

DCP Clause	Controls	Proposal	Compliance
	<p>For detached garages at rear, first floor addition to existing may be considered subject to:</p> <ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades; - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. <p>vi) Must not be used as a separate business premises.</p>		
7.5	Swimming pools and Spas		
	<ul style="list-style-type: none"> i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. i) Pool and coping level related to site topography (max 1m over lower side of site). ii) 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. iii) 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. iv) Incorporate screening or planting for privacy as above, unless need to retain view corridors. v) Position decking to minimise privacy impacts. vi) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings. 	<p>The proposed swimming pool is located within close proximity to main dining room windows and open-plan kitchen/living/dining room of the adjoining south-eastern dwelling at No. 2 Lurline Street. The proposed swimming pool is located 1.7m (RL26.2 above RL23.5) above the lowest point of the existing ground level, setback 1.2m from the south-eastern side boundary and visible from the Waterside Avenue side of the property and adjoining south-eastern dwelling at No. 2 Lurline Street.</p>	<p>No, see Key Issues for detailed assessment</p>
7.6	Air conditioning equipment		
	<ul style="list-style-type: none"> 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. 	<p>The proposed air-conditioning units are located within the front plant room outbuilding.</p>	<p>Yes, complies</p>

Responsible officer: William Joannides, Environmental Planning Officer
File Reference: DA/726/2023

Development Application Report No. D62/24

Subject: 19 Gilderthorpe Avenue, Randwick (DA/177/2024)


Executive Summary

Proposal:	Alterations and additions to existing semi-detached dwelling for extension of attic level to comprise of a new bedroom/study with a rear dormer as well as additional minor alterations and additions.
Ward:	North Ward
Applicant:	Mr Richard Agostinho
Owner:	Mr Richard Agostinho, Mrs Elizabeth Agostinho
Cost of works:	\$88,000
Reason for referral:	The development contravenes the development standard for building height by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of buildings development standard in Clause 4.3 of Randwick Local Environmental Plan 2012.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 177/2024 for alterations and additions to the semi-detached dwelling at No. 19 Gilderthorpe Avenue, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions - DA/177/2024 - 19 Gilderthorpe Avenue, Randwick

D62/24

D62/24



1. Executive summary

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

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

The application seeks development consent for alterations and additions to the existing semi-detached dwelling at 19 Gilderthorpe Avenue, Randwick (*the subject site*).

The key issue associated with the application relates to the overall height of the proposed attic addition, which does not comply with the building height development standard under Clause 4.3 of *Randwick Local Environmental Plan 2012 (LEP)*. The applicant has submitted a Clause 4.6 request to vary the building height development standard (Appendix 2).

The proposed development generally complies with the relevant considerations under *Part C1 Low Density Residential* of *Randwick Comprehensive Development Control Plan 2013 (RDCP 2013)* except for the floor to ceiling height and window height. Section 9 of this report provides further detail as well as a merit assessment for those matters.

The proposal is recommended for approval subject to non-standard conditions that requires amendment to the architectural drawings so that window W2 is reduced in size.

2. Site Description and Locality

The subject site is located at 19 Gilderthorpe Avenue and is legally identified as Lot 1 in DP 200439. The subject site measures 215sqm in area, is regular in shape, and has a 5.23m frontage to Gilderthorpe Avenue.

The subject site is improved by a semi-detached dwelling (*the dwelling*). That dwelling comprises two storeys with an attic storage in the roof. The dwelling is readily identifiable through its distinct late Victorian architecture with black trimmed features fronting Gilderthorpe Avenue. Semi-detached to the dwelling at 21 Gilderthorpe Avenue is a dwelling similar in form and character, made distinct through its juxtaposed white trimmed featured (**Figure 1**).

The site slopes approximately 2.7m from its front boundary to Gilderthorpe Avenue down to its rear boundary.

A nature reserve is located to the west of the subject site which provides pedestrian access to Figtree Avenue as well as public open space.

Garage parking is presently provided for the dwelling and is accessible via Figtree Avenue to the rear of the subject site.

The surrounding area comprises primarily low scale residential dwellings mixed sporadically with apartment buildings. Supporting commercial uses such as restaurants and cafes are within the walkable vicinity of the dwelling.

Bieler Park is located approximately 200 metres east of the dwelling. Queens Park and Centennial Park are approximately 400 metres to its north.



Figure 1: Subject Site from Gilderthorpe Avenue (source: Site visit 29/06/24)

D62/24



Figure 2: Subject Site from Figtree Avenue (source: Site visit 29/06/24)



Figure 3: Subject Site rear boundary (source: Site visit 29/06/24)



Figure 4: Subject Site garage (source: Site visit 29/06/24)

3. Relevant history

The land has been used for residential purposes for an extended period. Council's records did not reveal any recent or relevant applications for the subject site which are relevant to this assessment.

4. Proposal

The application seeks development consent for alterations and additions to the existing dwelling. The works comprise:

- Alteration and additions to the attic level to comprise of a new bedroom/study with a rear facing dormer;
- Conversion of ground floor *formal dining* into a *home office* through minor wall demolition;
- New stairs to the attic;
- New timber entry door on western boundary;
- New window with glazing to dining room on western boundary; and
- Minor internal alterations including arch to existing door opening and new brick and rendering to garage.

5. Notification

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

- 21 Gilderthorpe Avenue, Randwick.

Issue	Comment
1. Concern was raised with the potential for construction noise and whether a method for limiting construction to certain times was possible.	1. Council's standard condition for permitted construction hours will be imposed.
2. Concern was raised at the potential location for air-conditioning units.	2. Air-conditioning unit installation is not proposed by the application.
3. The proposed staircase to the attic would be located (with wall separation) next the bedroom doors of 21 Gilderthorpe Avenue. Concern has been raised over sound.	3. The existing wall separation and no existing windows between the property boundaries would make acoustic impacts from the proposed stairs unlikely.
4. Potential damage to the roof and internal ceiling of 21 Gilderthorpe Avenue. A dilapidation report was requested.	4. A condition for a dilapidation report will be imposed.

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policy (Sustainable Buildings) 2022

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

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

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

The subject site has only been previously used for residential purposes. It is unlikely to contain any contamination. The nature and location of the application are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.3. Randwick Local Environmental Plan 2012

The subject site is zoned R3 under Randwick Local Environmental Plan 2012. Development for the purpose of semi-detached dwellings is permissible with consent.

The application is consistent with the specific objectives of the zone in that the proposed activity and built form will meet the day to day needs of residents by providing additional housing. The proposed alterations and additions are consistent with the dwelling's built form as well as the surrounding localities' general built form. Residential amenity would be maintained.

The following development standards in the LEP have been considered for the application:

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4A(4): Floor space ratio (max)	N/A (site area is less than 300sqm)	0.81:1	N/A

CI 4.3: Building height (max)	9.5 Metres	11.11m (existing height) 10.86m (proposed attic addition)	No
CI 4.1: Lot Size (min)	N/A	No change	N/A

6.3.1. Clause 4.6 - Exceptions to development standards

Non-compliance with the height of buildings development standards is discussed in section 7 below.

6.3.2. Clause 5.10 - Heritage conservation

The application was referred to Council's heritage planner for comment as the subject site is in the vicinity of State Heritage Register Item (SHR) I382. A copy of the referral is provided at Appendix 1.

Council's heritage planner found the application as proposed would have "no material impact on the SHR item" and "appears to have no significant visual impact on the SHR item".

The application is supported from a heritage perspective.

6.3.3. Clause 6.7 Foreshore scenic protection area

The subject site is not within the foreshore scenic protection area.

7. Clause 4.6 exception to a development standard

The application seeks to vary the height of buildings development standard contained within the LEP as follows:

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.3: Building height (max)	9.5 metres	10.86 metres (proposed attic addition)	1.36m	14.4%

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.

Under the LEP, *Clause 4.6 Exception to a Development Standard* 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 the LEP 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 the LEP.

7.1. Exception to Height of Buildings development standard (CI 4.3)

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

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

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

The objectives of the height of buildings standard are set out in Clause 4.3 of the LEP. The applicant has addressed each of the objectives as follows:

4.3 Height of Buildings

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the dwelling is already above the height limit and that the proposed attic addition would be below that existing height.

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

The applicant's written justification has not noted whether the proposed attic addition would be compatible with the nearby state heritage item. Notwithstanding, Council's internal heritage planner has concluded that the application would have "*no material impact on the SHR item*" and "*appears to have no significant visual impact on the SHR item*".

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

The applicant's written justification demonstrates that this objective is satisfied. The applicant notes that the amenity of adjoining land would not be affected, that there will be no loss of views and that the proposed attic addition would have minimal shadow impacts with any additional shadows falling on the street.

Assessing officer's comment: The applicant's written request has adequately demonstrated that compliance with the height of building development standard is unreasonable or unnecessary in the circumstances of this case.

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

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

"This request provides that there is sufficient environmental planning ground to justify the contravention. Such grounds include:

It has been demonstrated that the proposal and its height breach remain consistent with the objectives of the subject zone as well as Clause 4.3 and 4.6 of the Randwick LEP 2012, despite the numerical non-compliance.

The proposal would not compromise the character or nature of the area sought by the local environmental planning framework.

The non-compliant height does not result in any unreasonable visual impacts. The area to which the non-compliance relates already exists, on a building that already breaches the height control.

The non-compliant height does not result in any unreasonable overshadowing impacts as demonstrated in the shadow diagrams.

The height non-compliance assists with providing improved internal amenity for residents.”

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

Conclusion

Considering the above assessment, the requirements of Clause 4.6(3) have been adequately satisfied. Development consent may be granted for development that contravenes the height of buildings development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The RDCP 2013 provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

Council has commenced a comprehensive review of the existing Randwick Development Control Plan 2013. Stage 1 of the RDCP 2013 review has concluded, and the new RDCP comprising Parts B2 (Heritage), C1 (Low Density Residential), E2 (Randwick) and E7 (Housing Investigation) commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of the new 2023 Development Control Plan are applicable to the application, and the proposal shall be assessed against the new DCP.

The relevant provisions of RDCP 2013 are addressed in Appendix 3.

9. Environmental Assessment

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

Section 4.15 ‘Matters for Consideration’	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of RDCP 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 application on the natural and built environment have been addressed in this report.</p> <p>The application is consistent with the dominant character in the locality.</p> <p>The application 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 subject site is located in close proximity to local services and public transport. The subject site has sufficient area to accommodate the proposed land use and associated structures.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submission has been addressed in this report.
Section 4.15(1)(e) – The public interest	The application promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Randwick Local Environmental Plan 2012 - Clause 4.3 – Height of Buildings

The application is not compliant with clause 4.3 '*height of buildings*' under the LEP.

The building height for the subject site is 9.5 metres, however the dwelling's existing ridge height is 11.11 metres. The application proposes a roof attic addition with a maximum height of 10.86 metres, an exceedance of the maximum by 14.4%

Section 7 of this report has addressed this matter and the applicant has provided a clause 4.6 variation request (Appendix 2).

Randwick Local Environmental Plan 2012 - Clause 4.4A – Floor Space Ratio

The subject site has an area of 215sqm. Under Section 4.4A (4) of RLEP 2012, there is no maximum floor space ratio applicable to this site:

(4) Clause 4.4(2) does not apply to a dwelling house or semi-detached dwelling on a lot in Zone R2 Low Density Residential or Zone R3 Medium Density Residential if the lot size is 300m² or less.

The proposed FSR of 0.81:1, is therefore required to be assessed on merit against the objective of Clause 4.4 under the RLEP 2012:

(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,*

Assessing officer's comments: The proposed attic addition will increase the GFA of the subject site by, 22.9sqm resulting in a total GFA of 172.08sqm and an FSR of 0.81:1. The additional floor space is contained within the dwelling's roof, which maintains a two storey presentation to the street. Visual bulk is reduced through the proposed attic addition's location to the rear of the subject site. The application would not alter the existing dwelling height limit of 11.11 metres. The application further does not alter existing site coverage, setbacks or deep soil areas. Accordingly, the proposed FSR is in keeping with the size and scale of the surrounding development and is compatible with the desired future character of the low-density residential locality.

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

Assessing officer's comments: The additional floor space provided to the subject site is contained within the proposed attic addition and corresponds to the existing development footprint for the subject site. The proposed attic addition will receive adequate natural light through the provision of windows to its northern elevation.

(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 comments: The subject site is located within the vicinity of SHR I382. Council's internal heritage planner has assessed that the application would have "*no material impact on the SHR item*" and "*appears to have no significant visual impact on the SHR item*".

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

The application does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing as discussed earlier within this report. There are no views to be impacted by the scale of the proposed development which would restrict the ability of the additional floor space being accommodated within an attic addition.

In light of the above assessment against the relevant objectives under the development standard and in consideration of the site's setting, characteristics, constraints and context, the proposed FSR of 0.81:1 is considered to be acceptable and reasonable. The overall proposal demonstrates merit and is regarded as a supportable outcome.

Randwick Comprehensive Development Control Plan 2013 – C1 Low Density Residential

3.2 Building height

The application is not compliant with the following control for building height under 3.2 *Building height* of RDCP 2013:

ii) *The minimum floor-to-ceiling height for living areas, such as living/lounge, dining and bedrooms, is 2.7m.*

The attic addition is proposed within the dwelling's gable roof. That area is therefore subject to a slanted ceiling which measures 1.2 metres at its lowest from floor to ceiling, a non-compliance of 1.5 metres. At its apex the proposed attic floor to ceiling would measure 2.4 metres, a non-compliance of 0.3 metres.

Notwithstanding compliance with control ii), the application achieves the relevant objectives of 3.2 *Building height* as follows:

- *To limit the bulk, scale and visual impact of buildings as viewed from the street and from neighbouring dwellings*

The proposed attic would not affect the bulk, scale, or visual impact of the dwelling as viewed from Gilderthorpe Avenue due to not being readily viewable. Neighbouring dwellings along Figtree Avenue would be able to view the proposed attic addition. The proposed attic has been designed to articulate well into the existing built form and benefits from significant setbacks from the subject site's rear boundary. Beneficially, dense canopy trees are located along Figtree Avenue which dismantle the visual bulk of the streetscape and proposed attic addition.

- *To ensure low density residential development maintains a two-storey height and street frontage*

The proposed attic addition would not affect the dwelling's two storey character.

- *To position any habitable space above the first floor level within the roof of the dwelling*

The proposed attic would be a habitable space within the roof, above the first floor.

- *To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity*

The shadow diagrams indicate that the proposed attic would not cause unreasonable shadow impacts. The proposed attic does not impact any view and has been articulated to maintain privacy. The visual amenity of the surrounding area is maintained.

- *To ensure the form and massing of development is respectful of site topography.*

The overall form and massing of the dwelling is maintained.

Additionally for consideration, under the National Construction Code, the minimum height for a habitable attic room is as follows:

(1) *Heights of rooms and other spaces (see Figure 10.3.1) must be not less than—*

(e) in a room or space with a sloping ceiling or projections below the ceiling line within—

(i) habitable room—

(A) in an attic — a height of not less than 2.2 m for at least two-thirds of the floor area of the room or space; and

The proposed attic would provide a height of at least 2.2 metres for more than two thirds of its proposed area.

For the above reasons, non-compliance with Part C1, 3.2, ii) is considered acceptable in this instance.

4.5 Roof design and features

The application is not compliant with control v). That control requires:

Dormer windows

v) The configuration of dormer windows must satisfy the following: A maximum height from base to ridge of not more than 1.5m

Window W2 as identified on 'Drawing No: db346-DA-07' for 'proposed elevations' has a proposed height of 1800mm or 1.8 metres, an exceedance of 300mm or 0.3 metres.

Window W3, which is located beside window W2, measures 1500mm in height and complies with this control. This demonstrates that it is reasonable for window W2 to comply with the dormer window height limit.

A condition will be imposed which requires window W2 to be redesigned with a maximum height of 1500mm or 1.5m metres.

10. Conclusion

This report recommends that the application for alterations and additions to 19 Gilderthorpe Avenue be approved (subject to conditions) for the following reasons:

- It has been successfully demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify that contravention;
- Subject to the recommended conditions, the proposal is generally consistent with the relevant objectives contained within the LEP and the relevant requirements of the RDCP 2013 and 2023;
- The proposal is consistent with the specific objectives of the R3 zone in that the attic addition will provide additional housing in a manner consistent with the dwelling's and surrounding area's built form and character;
- The scale and design of the application is suitable for the location and is compatible with the desired future character of the locality; and
- The attic addition would not detract from the visual quality of the public domain/streetscape.

D62/24

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The Site

- The subject site is not identified as a heritage item nor located within a heritage conservation area. However, it is located in the vicinity of State Heritage Register Item (SHR) I382
- The existing building on site appears to be a Late Victorian semi-detached pair with No.21 and retained its main character elements

Background

Approved DA/516/2002 - Alterations and additions to existing terrace house

Proposal

Alterations and additions to existing semi-detached dwelling including extension of attic level to comprise of a new bedroom/study and a rear dormer, new window in dining room and new entry door along eastern boundary.

Submission

- D05243220 – SEE
- D05243234 – Full set of architectural plans
- P00341574 - Schedule of Colours and Material

Controls

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

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

The Heritage section of Randwick Development Control Plan 2023 provided Objectives and Controls in relation to heritage properties.

Comments

- The proposed development appears to have no material impact on the SHR item.
- The proposed development appears to have no significant visual impact on the SHR item.

Recommendation

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

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

Development standard to which the request to vary the standard is taken: Clause 4.3 of the Sydney LEP 2012 (LEP 2012) prescribes a maximum building height of 9m applying to the site.

1. The Aim of the request

To allow works that are above the 9.5m height limit, being up to a height of 10.86m for works within the existing attic space. The works do not seek to increase the existing height of the building which is 11.11m.

Clause 4.6 of LEP 2012 allows the applicant to request a departure from compliance with a development standard.

2. Objectives of the Standard

The objectives in relation to Height of Buildings in LEP 2012 are given as,

Clause 4.3 Height of buildings

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

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

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

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

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

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

3. Application and Assessment of Clause 4.6 Exceptions to development standards

Clause 4.6 of LEP 2012 is designed to provide the consent authority some flexibility in the strict compliance with the application of the development standard. There have been various Land and Environment Court judgments that have some relevance to addressing the application of Clause 4.6, among them being,

1. Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46
2. Wehbe v Pittwater Council [2007] NSWLEC 827
3. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009; NSWLEC 90; NSWCA 248
4. Moskovich v Waverley Council [2016] NSWLEC 1015
5. Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118
6. Hansimikali v Bayside Council [2019] NSWLEC 1353
7. Rebel MH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

In the assessment of using Clause 4.6 it is particularly relevant to address parts (1), (2) and (3) of the clause, being,

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

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

In assessment of the proposal against parts 2, 3(a) and 3(b) the following is offered.

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The NSW Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827. Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the proposal met the objectives of the standard regardless of the non-compliance. Under *Four2Five*, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6 (3)(a). Furthermore, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the applicant must demonstrate that Clause 4.6(3) must be adequately justified. The standard method is in using the five part *Wehbe* test (as noted in the judgement) as an approach in justifying this requirement.

The five-part test described in *Wehbe* are therefore appropriately considered in this context, as follows:

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

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

The non-compliance relates to works within the existing attic space. The overall height of the dwelling is not being increased. The works are below the existing ridge height. The building height is compatible with the character of the locality.

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

Not Applicable.

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

The proposed works does not affect the amenity of the adjoining land. No loss of privacy or views, and rear dormer shadowing has minimal impact with shadows falling on roof and street.

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

(2A) Despite sub clause (2), the maximum height of a dwelling house or semi-detached dwelling On land in Zone R3 Medium Density Residential is 9.5 metres
The works do not seek to increase the existing height of the building which is 11.11m.

In light of the above, this request provides that the non-compliant height satisfies the objective in question.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore, compliance is unnecessary;

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved.

3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The exception request does not rely on this reason.

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;

The exception request does not rely on this reason.

5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone. The zoning of the land is appropriate for the site. The exception request does not rely on this reason.

In addition to demonstrating that the principles of Wehbe are satisfied, strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following additional reasons.

*In the case of *Moskovich v Waverley Council*, the Land and Environment Court accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. For the subject application, the proposed development which seeks to vary the height standard, achieves a better response to the objectives of the subject R1 General Residential Zone in that it provides a high level of internal amenity for occupants and safeguards the street appearance of the site which is consistent with various LEP and DCP heritage requirements.*

On the basis of the above, compliance with the standard is considered to be unnecessary and would be unreasonable.

Sufficient environmental planning grounds to justify the contravention

This request provides that there is sufficient environmental planning ground to justify the contravention. Such grounds include:

It has been demonstrated that the proposal and its height breach remains consistent with the objectives of the subject zone as well as Clause 4.3 and 4.6 of the Randwick LEP 2012, despite the numerical non-compliance.

The proposal would not compromise the character or nature of the area sought by the local environmental planning framework.

The non-compliant height does not result in any unreasonable visual impacts. The area to which the non-compliance relates already exists, on a building that already breaches the height control

The non-compliant height does not result in any unreasonable overshadowing impacts as demonstrated in the shadow diagrams.

The height non-compliance assists with providing improved internal amenity for residents.

Is the variation in the public interest?

The proposal is considered to be in the public interest because it is consistent with the objectives of the particular standard, and the objectives for development within the zone in which the development is proposed to be carried out. The objectives of the standard have been addressed above and are demonstrated to be satisfied. The works are consistent with the requirements for the R3 medium Density Residential Zone because of significant improvements to the amenity of the housing stock on the site.

Is the variation well founded?

This Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.6 of the Randwick LEP 2012, that:

Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;

There are sufficient environmental planning grounds to justify the requested contravention;

The development achieves and is consistent with the objectives of the development standard and the objectives of the R3 medium Density Residential Zone;

The proposed development is in the public interest and there is no public benefit in maintaining the standard; and

The contravention does not raise any matter of State or Regional Significance. The variation is therefore considered well founded.

Appendix 3: RDCP 2023 Compliance Table

3.1 Section B2 – Heritage Conservation

The relevant provisions under Section B2 of the RDCP have been addressed by Council's Heritage Planner as referenced in Appendix 1.

3.2 Section C: Low Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	Classification	Zoning = R3	Yes
2	Site planning	Site = 215sqm	
2.1	Minimum lot size		
	Minimum lot size LEP 2012 = N/A	Proposed = 215sqm	Yes
2.2	Lot frontage		
	Semi-detached Dwellings		
	Semi-detached R2 & R3 = 15m parent lot, 7.5m per dwelling	Proposed = 5.23 metres (no change)	N/A
2.4	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	Maximum permissible site coverage is 60% Application proposes 68% (No change)	N/A
2.5	Deep soil permeable surfaces		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached dwellings: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	Required deep soil is 30%. The Application proposes 6%. (No change)	N/A
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	No change to existing.	N/A
	Dual occupancies and semi-detached dwellings		
	The front setback must contain at least one (1) tree per dwelling.	A tree is provided in the front setback (no change)	N/A
2.7	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Proposed = 31sqm (no change)	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)																							
3	Building envelope																									
3.1	Floor space ratio LEP 2012 = No FSR	Proposed = 0.81:1	Acceptable																							
3.2	Building height																									
	Building height LEP 2012 = 9.5M	11.11m (existing height) 10.86m (proposed attic addition)	No See Key Issues & Clause 4.6 assessment for further discussion																							
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: <ul style="list-style-type: none"> Topography Site orientation Lot configuration Flooding Lot dimensions Impacts on visual amenity, solar access, privacy and views of adjoining properties. 	i) The proposed attic room is integrated with the existing roof line. ii) At its lowest the attic ceiling height is 1.2m. iii) Floor heights at the ground and first floor are maintained. iv) The street frontage of 2 storeys will be maintained. v) N/A	Partial non-compliance with ii). See Key Issues discussion.																							
3.3	Setbacks																									
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary Street frontage: <ul style="list-style-type: none"> 900mm for allotments with primary frontage width of less than 7m 1500mm for all other sites Should align with setbacks of adjoining dwellings iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.	No change proposed to existing setback or street setback character.	N/A																							
3.3.2	Side setbacks <table border="1"> <thead> <tr> <th rowspan="2">Existing primary frontage width</th><th colspan="3">Minimum side setbacks</th></tr> <tr> <th>Building heights 0m to 4.5m</th><th>Building heights >4.5m to 7m</th><th>Building heights >7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height – 7m)</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.5m + 2 \times (\text{building height} - 7m)$</td></tr> <tr> <td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.8m + 2 \times (\text{building height} - 7m)$</td></tr> </tbody> </table>	Existing primary frontage width	Minimum side setbacks			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	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	No change proposed to existing side setback.	N/A
Existing primary frontage width	Minimum side setbacks																									
	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	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$																							

D62/24

D62/24

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
3.3.3	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p><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>	No change proposed to existing rear setback.	N/A
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	<p>The proposed attic addition would be able to integrate into the existing streetscape.</p> <p>The dwelling remains steeped.</p> <p>No side elevation would exceed 12 metres.</p> <p>No existing or proposed balconies.</p> <p>The proposed attic bedroom would be 22.9sqm.</p>	Yes
4.3	Alterations and additions to semi-detached and dual occupancy (attached) dwellings		
	<p>i) Respect and enhance architectural character of pair, including symmetry</p> <p>ii) Setback upper addition from street (to rear) with substantial portion of existing front intact</p> <p>iii) Locate upper addition behind apex of hipped roofed houses</p> <p>iv) Setback upper addition from gable end</p>	<p>i) The architectural character of the semi-detached dwellings would be retained from the streetscape. The proposed attic addition is sympathetic to existing design.</p>	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>100% of the height increase and retain any existing gable features and chimneys</p> <p>v) Design first floor with low profile roof form that is visually secondary to existing front roof.</p> <p>vi) Avoid exposure of existing blank party walls</p> <p>vii) Materials enhance character of the pair</p>	<p>ii) Upper addition setback maintained.</p> <p>iii) Dwelling has a gable roof.</p> <p>iv) Attic addition is set back from gable end of roof and retains existing features.</p> <p>v) Existing low roof profile for the first floor is retained.</p> <p>vi) Party wall exposure unchanged.</p> <p>vii) Materials proposed are sympathetic to existing materials of the semi-detached dwellings.</p>	
4.4	Roof terraces and balconies		
	<p>i) Locate on stepped buildings only (not on uppermost or main roof)</p> <p>ii) Where provided, roof terraces must:</p> <ul style="list-style-type: none"> Prevent overlooking Size minimised Secondary POS – no kitchens, BBQs or the like Maintain view sharing, minimise structures and roof top elements Be uncovered and comply with maximum height <p>iii) Locate above garages on sloping sites (where garage is on low side)</p> <p><i>*Note: Existing roof terraces in locality that do not comply with the above controls should not be utilised as precedent in seeking variations to the controls outlined in this section. This is to ensure that the objectives of low density residential development are met.</i></p>	<p>A roof terrace is not proposed.</p>	N/A
4.5	Roof design and features		
	<p><i>Dormers</i></p> <p>i) Dormer windows do not dominate</p> <p>ii) Maximum 1500mm window height from base to ridge, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof.</p> <p>iii) Multiple dormers consistent</p> <p>iv) Suitable for existing</p> <p><i>Clerestory windows and skylights</i></p> <p>vi) Dormers occurring in the same roof plane</p>	<p>i) Proposed dormer windows would not dominate the roof.</p> <p>ii) Proposed dormer window W2 height is 1.8m. The top of the dormer is below the roof ridge. Side setbacks are greater</p>	<p>Partial non-compliance. See Key Issues discussion.</p> <p>Conditioned.</p>

D62/24

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>must be similarly sized, configured, and arranged symmetrically.</p> <p>vii) Dormer windows may only be provided on buildings with an architectural character or style that is suitable for dormer features.</p> <p>ix) Any plant and equipment must be contained within the roof form or screened behind parapet walls, so that they are not readily visible from the public domain and surrounding properties.</p>	<p>than 500mm. Proposed dormer is setback from external wall below by 650mm and is above the below gutter ridge.</p> <p>iii) Multiple dormers not proposed.</p> <p>iv) Skylights are not proposed.</p> <p>vi) Multiple dormers not proposed.</p> <p>vii) The existing gable roof is suitable for a dormer.</p> <p>ix) No plant or equipment proposed.</p>	
4.6	Colours, Materials and Finishes		
	<p>i) Schedule of materials and finishes.</p> <p>ii) Finishing is durable and non-reflective and uses lighter colours.</p> <p>iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration)</p> <p>iv) Articulate and create visual interest by using combination of materials and finishes.</p> <p>v) Suitable for the local climate to withstand natural weathering, ageing and deterioration.</p> <p>vi) Recycle and re-use sandstone</p>	<p>Proposed materials and colours are appropriate.</p>	Yes
4.7	Earthworks		
	<p>i) Excavation and backfilling limited to 1m, unless gradient too steep</p> <p>ii) Minimum 900mm side and rear setback</p> <p>iii) Subterranean spaces must not be habitable</p> <p>iv) Step retaining walls.</p> <p>v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm.</p> <p>vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping)</p> <p>vii) cut and fill for POS is terraced <i>where site has significant slope:</i></p> <p>viii) adopt a split-level design</p> <p>ix) Minimise height and extent of any exposed under-croft areas.</p>	<p>No earthworks are proposed</p>	N/A
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	ii) Portion of north-facing living room	The shadow diagrams	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June</p> <p>ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p>	provided indicate no change to existing solar access.	
	Solar access to neighbouring development:		
	<p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>ii) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	<p>The shadow diagrams indicate that additional shadows resultant from the proposed dormer would fall on the street.</p>	Acceptable
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) Living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not</i></p>	<p>i) The proposed attic addition windows would provide lighting.</p> <p>ii) No changes.</p> <p>iii) No changes.</p>	Yes

D62/24

D62/24

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	acceptable		
5.3	Visual Privacy		
	Windows		
	ii) 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"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	i) Windows to the proposed attic addition are proposed with 1600mm obscure glazing. ii) The proposed ground floor dining room window is appropriately located, and provides a sill height of 1.81m above floor level.	Yes
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	No balcony proposed	N/A
5.4	Acoustic Privacy		
	i) Noise sources not located adjacent to adjoining dwellings bedroom windows	No noise source is proposed to adjoin dwelling bedroom window.	N/A
5.5	Safety and Security		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	Proposed attic window will be glazed and able to overlook Figtree Avenue. Elsewhere security maintained.	Yes
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must	Views are unaffected.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.		
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	All dwellings		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard. v) Tandem parking may be considered vi) Avoid long driveways (impermeable surfaces)	No changes to existing parking garage other than minor remediation.	Yes
6.2	Parking Facilities forward of front façade alignment		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) - Compliments architectural character of dwelling i.e. roof pitch and finishes.	No changes to existing parking garage other than minor remediation.	N/A
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: - Nil side setback on adjoining property; - Streetscape compatibility;	No changes to existing parking garage other than minor remediation.	N/A

D62/24

D62/24

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - Safe for drivers and pedestrians; - Amalgamated driveway crossing. 		
6.4	Driveway Configuration		
	Maximum driveway width: <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	No changes to existing parking garage other than minor remediation.	N/A
6.5	Garage Configuration		
	i) Recessed behind front of dwelling ii) Maximum garage width (door and piers or columns): <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m 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)	No changes to existing parking garage other than minor remediation.	N/A
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	No changes proposed to fencing.	N/A
7.2	Front Fencing		
	i) 1200mm max. (solid portion not exceeding 600mm), except for piers. <ul style="list-style-type: none"> - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) Light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: <ul style="list-style-type: none"> - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.	No changes proposed to fencing.	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.		
7.3	Side and rear fencing		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	No changes proposed to fencing.	N/A
7.6	Air conditioning equipment		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.	Air conditioning equipment is not proposed.	N/A

D62/24

Responsible officer: Dean Lidis, Environmental Planning Officer

File Reference: DA/177/2024

Draft Development Consent Conditions (Low Density Residential)



Folder /DA No:	DA/177/2024
Property:	19 Gilderthorpe Avenue, Randwick
Proposal:	Alterations and additions to existing semi-detached dwelling for extension of attic level to comprise of a new bedroom/study with a rear dormer as well as additional minor alterations and additions.
Recommendation:	Approval

GENERAL CONDITIONS

Condition

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Proposed Floor & Roof Plans – db346-DA-06 – Rev B	design + build solutions	12 July 2024	14 July 2024
Proposed Floor & Roof Plans – db346-DA-05 – Rev B	design + build solutions	12 July 2024	14 July 2024
Proposed Elevations - db346-DA-07 – Rev B	design + build solutions	12 July 2024	14 July 2024
Proposed Sections – db346-DA-08 – Rev B	design + build solutions	12 July 2024	14 July 2024
Building & Area Calculations – db346-DA-09 – Rev B	design + build solutions	12 July 2024	14 July 2024
Schedule of Colours and Material – db346 – schedule of colours and material	design + build solutions	25 February 2024	21 March 2024.

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
A1737298	25 February 2024	21 March 2024

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. Window W2 must be amended to measure no more than 1,500mm in height.

Amended plans must be submitted to and approved by Principal Certifier prior to the issue of any construction certificate.

The above amendment/s must be reflected in the final construction plans and any

Condition
documentation submitted as part of any construction certificate.

Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

3. **Consent Requirements**

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

Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.

4. **External Colours, Materials & Finishes**

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

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by the certifier prior to issuing a construction certificate for the development.

Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.

5. **Sydney Water**

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 wastewater 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™ 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.

Condition Reason: To ensure the development satisfies Sydney Water requirements.

6. **Building Code of Australia**

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).

D62/24

- | | Condition |
|----|--|
| | <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p> |
| 7. | <p>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p> |
| 8. | <p>Stormwater Drainage</p> <p>A surface water/stormwater drainage system must be provided in accordance with the following requirements, to the satisfaction of the Certifier and details are to be included in the construction certificate:-</p> <ol style="list-style-type: none"> a) Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2); b) The surface water/stormwater must be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit; c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises; d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises; e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works. <p>Condition Reason: To control and manage stormwater run-off.</p> |

BEFORE BUILDING WORK COMMENCES

- | | Condition |
|----|--|
| 9. | <p>Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):</p> <ol style="list-style-type: none"> a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be |

	Condition
	made available to the Council officers and all building contractors for assessment.
	b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and
	c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i> , and the Principal Certifier and Council must be notified accordingly (in writing); and
	d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and
	e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.
	Condition Reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.
10.	<p>Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition Reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p>
11.	<p>Dilapidation Reports</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 21 Gildershorpe Avenue, and any 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 21 Gildershorpe Avenue 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>
12.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the</p>

Condition	
	commencement of any site works.
	Condition Reason: To protect the amenity of the neighbourhood during construction.
13.	<p>Public Utilities</p> <p>A <i>Public Utility Impact Assessment</i> must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works.</p> <p>Documentary evidence from the relevant public utility authorities confirming that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Energy Australia, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>

DURING BUILDING WORK

Condition	
14.	<p>Site Signage</p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> showing the name, address and telephone number of the principal certifier for the work, and showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ol style="list-style-type: none"> maintained while the building work is being carried out, and removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or Crown building work certified to comply with the Building Code of Australia under the Act, Part 6. <p>Condition Reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>
15.	<p>Restriction on Working Hours</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"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted

Condition	
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm (maximum) Saturday - No work permitted Sunday & public holidays - No work permitted

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

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

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 beforehand.

D62/24

Condition	
	<p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.</p> <p>j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.</p>

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

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

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

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
18.	<p>Occupation Certificate Requirements An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
19.	<p>BASIX Requirements In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</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>
20.	<p>Council's Infrastructure, Vehicular Crossings and Street Verge All external civil work to be carried out on Council property (including the</p>

Condition	
	<p>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:</p> <ul style="list-style-type: none"> (a) All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors. (b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a <i>Pre-paid Works Application Form</i>, prior to issuing an occupation certificate, together with payment of the relevant fees. (c) If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee. (d) The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing. <p>Condition Reason: To ensure rectification of any damage to public infrastructure and that works are completed in accordance with Council's requirements with Council's approval.</p>

OCCUPATION AND ONGOING USE

Condition	
21.	<p>Use of Premises</p> <p>The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.</p> <p>Condition Reason: To ensure the development is used for its intended purpose.</p>
22.	<p>External Lighting</p> <p>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.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
23.	<p>Plant & Equipment</p> <p>Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
24.	<p>Demolition Work Plan</p> <p>A demolition work plan must be developed and be implemented for any demolition works in accordance with AS2601 (2001)- Demolition of Structures.</p> <p>The demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601</p>

D62/24

Condition
Demolition of Structures and Randwick City Council's Asbestos Policy.
<p>The demolition work plan must include details of the demolition, removal, storage and disposal of any hazardous materials (including materials containing asbestos). A copy of the demolition work plan must be provided to the Principal Certifier and Council. A copy shall also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.</p>

DURING DEMOLITION WORK	
	Condition
25.	<p>Demolition Work</p> <p>Any demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard - AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a demolition work plan, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none">• A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro),• Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations• A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",• Council is to be given at least two days written notice of demolition works involving materials containing asbestos,• Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,• A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works. <p>Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.</p> <p>Condition Reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

Development Application Report No. D63/24

Subject: 18 Bass Street, Kingsford (DA/619/2023)


Executive Summary

Proposal:	Alterations and additions to the existing garage/rumpus room fronting Byrd Avenue to create a new dwelling house with front carport and associated site and landscape works, and subdivision of land into two Torrens title lots
Ward:	West Ward
Applicant:	Mr T R Sneesby
Owner:	Ms N A Single, Mr T R Sneesby, Ms L M Single & Mr M W Single
Cost of works:	\$186,120
Reason for referral:	Variation to minimum lot size 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 Minimum subdivision lot size development standard in Clause 4.1 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/619/2023 for alterations and additions to the existing garage/rumpus room fronting Byrd Avenue to create a new dwelling house with front carport and associated site and landscape works, and subdivision of land into two Torrens title lots, at No. 18 Bass Street, Kingsford, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/619/2023 - 18 Bass Street, KINGSFORD NSW 2032 - DEV - Randwick City Council

D63/24

D63/24



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for the minimum subdivision lot size in the R2 zone by more than 10%.

The minimum lot size standard required for each lot at the time of lodgement is 400sqm under Clause 4.1(3) of the RLEP 2012.

The proposal seeks development consent for alterations and additions to the existing double garage and rumpus room to the rear of the existing dwelling facing Byrd Avenue to create a new dwelling house with a double carport structure and associated site and landscape works. The proposed development also includes subdivision of land into two Torrens title lots, one fronting Bass Street and the other lot fronting Byrd Avenue.

The key issues associated with the proposal relate to non-compliance with the minimum subdivision lot size of 400m² specified by Clause 4.1 of RLEP 2012, the non-compliance with the provisions of Sub-Section 2.1 of Part C1, RDCP 2013 in relation to subdivision, non-compliance with the provisions of Sub-section 3.3.3 of Part C1, RDCP 2013 in relation to rear setback and double carport structure forward the proposed front building line on Byrd Avenue.

The proposed Torren Title subdivision is supported, given the consistency with the subdivision pattern in the immediate area in terms of minimum lot size compliance and future desired characteristic of the R2 Zone and the wider urban block bounded by Byrd Avenue and Bass Street, as per the amendments to the current Randwick LEP.

The proposed development will improve the amenity of the existing site and appearance of the existing dwellings providing a positive contribution to the streetscape. The proposed built form, front and rear setbacks, additional soft landscaping and subdivision will be consistent with the established development and subdivision pattern of adjoining lots within the immediate locality and will not be out of character with other development in the streetscape. The proposal will also provide for improved housing diversity and affordability in accordance with the relevant zone objectives.

Subject to conditions, the proposed alterations and additions will not result in any unreasonable amenity impacts to adjoining properties with regards to solar access, privacy, visual bulk and views.

The proposal is recommended for approval subject to non-standard conditions that require an increased driveway crossover width and reduce the width and length of the carport structure as per the following:

- 2 (a) The size of the carport structure shall be reduced in length to a maximum of 5.4m by increasing the front setback on Byrd Avenue (western boundary) and the width to a maximum of 3m for a single carport structure. A hardstand carspace shall be provided adjacent to the carport structure and have a maximum width of 2.5m.

2. Site Description and Locality

The subject site is known as 18 Bass Street, Kingsford and is legally described as Lot 9 in DP 8504. The site is regular in shape with a frontage width of 10.975m to Bass Street, and rear frontage of 11.075m (total) to Byrd Avenue. The site has an allotment depth of 55.355m along the northern side boundary and an allotment depth of 55.755m to the southern side boundary. The land falls approximately 4.39m from the Bass Street boundary to the rear boundary.

Existing on the site is a part one and two storey dwelling house. The existing first floor level of the dwelling is accessed from external stairs; there is no internal stair connection between the ground and first floor level. The rear of the site contains a garage, with a studio above. Vehicular access is from Byrd Avenue. A laundry outbuilding is located in the centre of the site, adjacent to the northern side boundary.

The site is located in a low-density residential area predominantly comprising single and two storey dwelling houses and semi-detached dwelling development.



Figure 1: Front yard of subject site facing Bass Street



Figure 2: Rear yard of the subject site facing Bass Street



Figure 3: Dwelling facing Byrd Avenue



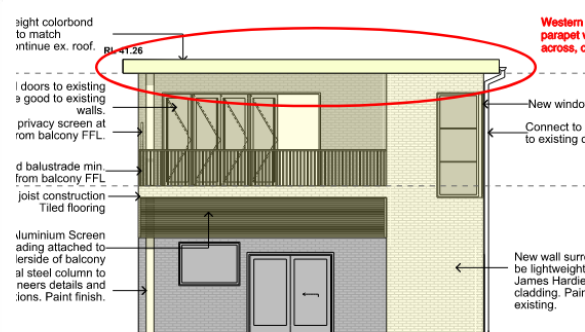
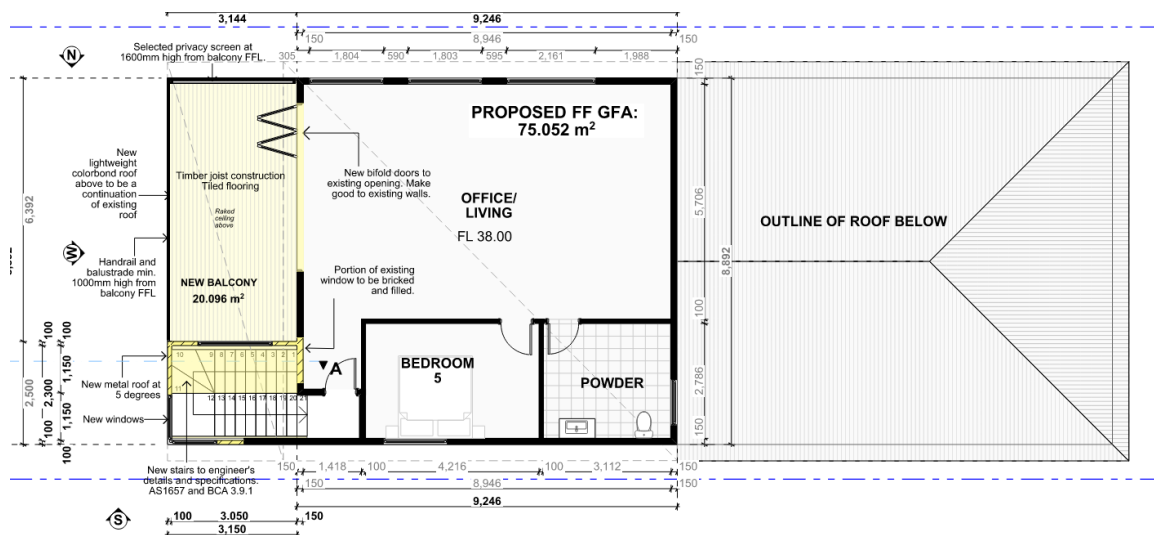
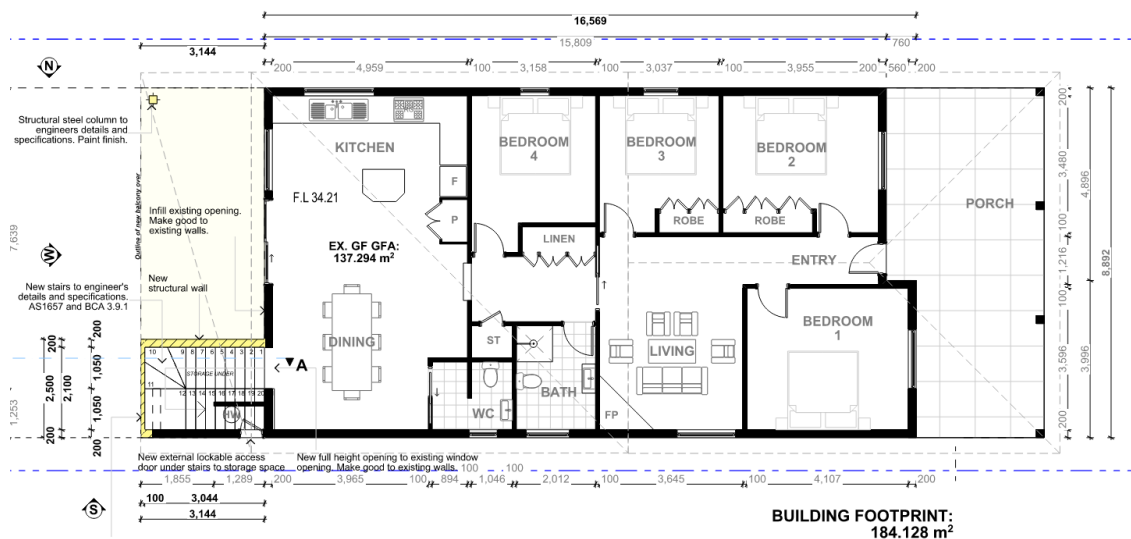
Figure 4: front yard facing Byrd Avenue

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of Council's records revealed that a recent application under DA/104/2022 was approved on the site for minor alterations to erect a first floor deck and enclose an external staircase at the rear of the dwelling house. The application was approved on 14/07/2022.

The approved DA/104/2022 has not yet commenced and relates to separate works to the existing residence fronting 18 Bass Street. The proposed development under this application will be assessed in conjunction with the approved DA/104/2002.

D63/24



WEST ELEVATION

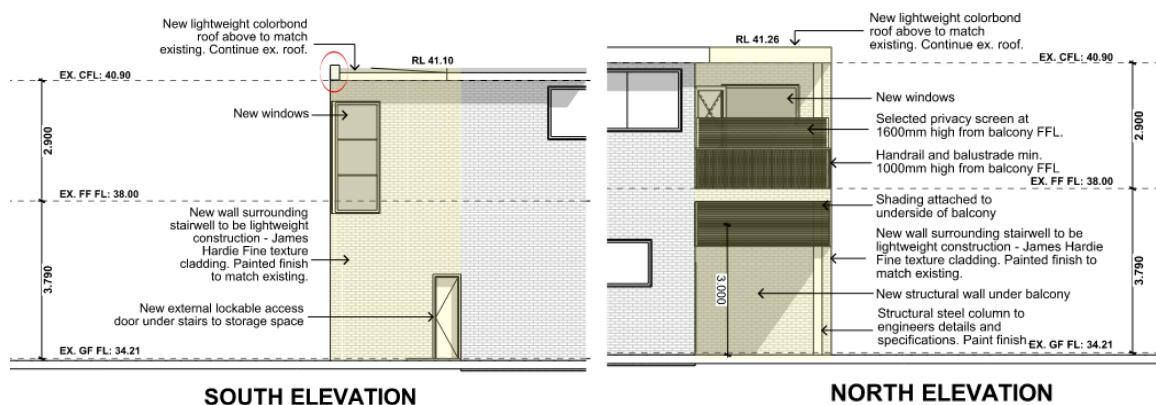


Figure 5: Approved development as viewed from the rear yard (Ground & first floor plans and western, southern and northern elevation – approved under DA/104/2022)

4. Proposal

The application is seeking approval for alterations and additions to the existing garage/rumpus room fronting Byrd Avenue to create a new dwelling house with front carport structure and associated site and landscape works, and subdivision of land into two Torrens title lots.

More specifically, the proposed development comprises of the following works:

- **Demolition** and removal of approx. 148m² of concrete yard space to be replaced by deep soil landscaping; reducing the height of the front fence facing Byrd Avenue from 2.2m to 1m; and partial demolition of front fence facing Bass Street to accommodate a new car space and driveway crossing with new 5.4m driveway gate.
- **Alterations** to the existing double garage and rumpus room structures fronting Byrd Avenue to convert the ground floor double garage into habitable space containing living area, 2 bedrooms and bathroom. Reconfiguration of the first floor level with existing bathroom being retaining and a new proposed open plan living area containing lounge, dining and kitchen and new bedroom 3.
- **Additions** of a stairwell to the rear eastern elevation to connect the ground and first floor level; modifications to the front western façade facing Byre Avenue; changes to the existing fenestration including the addition of a new window on the northern elevation.
- **Construction** of a car space to the existing residence fronting Bass Street and associated works. New carport structure for the proposed dwelling at facing Byrd Avenue.
- **Torrens Tittle Subdivision** of 18 Bass Street to create two new lots with a separate detached dwelling house on each lot.

The lot sizes proposed for the Torrens Tittle subdivision are as follows:

- Lot 101 (Byrd Avenue) = 253m² with a total frontage width of 11.075m to Byrd Avenue
- Lot 102 (Bass Street) = 360m² with a frontage width of 10.975m to Bass Street

To address parking issues in relation to the shortfall, grade and dimensions of the car spaces, the plans have been modified to address these issues and have been considered in the Development Engineering comments below.

Further amended plans have been received by Council on 12 July 2024 to clarify the area of non-compliance with regards to subdivision of the lot sizes and updating Clause 4.6. Minor changes to the rear yard of the dwelling facing 18 Bass Street and updating landscape plan to reflect the changes. The following changes were made:

- The proposed roofline of approved rear additions to DA/104/2022 for 18 Bass St dwelling in red hatching.
- The rear setback for 18 Bass Street dwelling is added on the plans showing the approved extension and not existing footprint.
- The existing retaining wall to the rear yard of 18 Bass Street is moved to the east to be flush with the approved roofline/rear building line of the dwelling at 18 Bass Street to increase the area of the lower level garden.
- Landscape Plan has been updated to reflect the above changes to the rear yard of 18 Bass Street.
- RL's and setbacks are shown on the plans and elevations.

Undated subdivision and POS plans were received by Council on 17 July 2024 to remove the work 'draft' and insert the correct lot size areas on both plans.

The assessment is based on the amended plans received by Council on 12 July 2024 & 17 July 2024.

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.

5.1. Renotification

Renotification was not required as the proposed amendments related to addressing parking grades, dimension and shortfall issues, updating the Clause 4.6, increase in rear yard to 18 Bass Street by relocating on the lower level garden which does not cause any privacy impacts to neighbouring properties, corrections and noting RL's and setbacks on plans.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

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

6.2. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development involves the removal of small insignificant vegetation. There is no significant tree removal on the site. Council's Landscape Development Officer reviewed the proposal and confirmed support for the proposed landscaping treatments, subject to the imposition of conditions which requires a formal Landscape Plan to be submitted to and approved by the certifier which includes achieving compliance with Part C1 DCP 2023 controls for site areas of up to 300m² (refer to Referrals section below). As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

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

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

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.1: Lot Size (min)	At the time of lodgement the minimum subdivision lot size under the LEP 2012 is 400m ²	18 Bass Street = 360m ² 1C Byrd Ave = 253m ²	No. Refer to Clause 4.6 exception to a development standard below.
Cl 4.3: Building height (max)	9.5m	There are no changes proposed to the existing and approved maximum building height under DA/104/2022. The existing maximum building height on the site is 7.56m from the natural ground level.	Yes
Cl 4.4: Floor space ratio (max)	For site area between 300-450m ² = 0.75:1 For lot sizes less than 300m ² = Merit	18 Bass Street = Based on DA/104/2022 the FSR on the site is 0.59:1 (or GFA of 212.4m ²). 1C Byrd Ave = 0.68:1 (or GFA of 172.9m ²)	Yes Meets the objectives of the control.

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 6.9 Development in areas subject to aircraft noise

The property is subject to noise emission from aircraft pass-bys associated with the operation of Sydney Airport and therefore, is subject to Clause 6.9 of the LEP 'Development in areas subject to aircraft noise', being within the ANEF 20.

An Aircraft Noise Intrusion assessment report was prepared by Acoustic Dynamics which outlines a number of construction mitigation measures to be implemented to ensure the indoor design objective for each room is achieved to comply with *Australian Standard AS2021:2015 Acoustics— Aircraft noise intrusion— building siting and construction*.

The application was referred to Council's Environmental Health officer for review and consider the potential acoustic impact and appropriate conditions have been included within the report. See detailed Internal referral comments below under Section 1.1 Environmental health.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Frontage width	Proposed variation	Proposed variation (%)
Clause 4.1: Lot Size (min)	400m ²	18 Bass Street = 360m ²	10.975m	40m ²	10%
		1C Byrd Ave = 253m ²	11.075m	147m ²	36.75%

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

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

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

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

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

is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the Minimum lot size development standard (Clause 4.1)

The applicant's written justification for the departure from the Minimum subdivision Lot Size standard is contained in Appendix 2.

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

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

The objectives of the Minimum subdivision lot size development standard are set out in Clause 4.1 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposal is of a reasonable scale and provides a high quality and durable pair of detached dwellings on their own Torrens title lots which will assist to meet the high demand for additional housing in the Kingsford locality.

The development is commensurate in scale and character with other properties in the streetscape facing Bass Street and Byrd Avenue. The dwellings are two storeys and comply with both the maximum building height and FSR under the LEP and prescribed for site.

The applicant argues that compliance with the development standard is unnecessary in the circumstances of this particular case with consideration of the current Randwick Comprehensive Planning Proposal and LEP which permits a minimum lot size subdivision of 275m² for incoming medium density development forms. Therefore, under the new LEP standard the lot facing Bass Street will comply with the minimum lot size requirements and the future character of the R2 zone. The Byrd Avenue lot would only have a variation of 8%.

The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on privacy, views, solar access and overall amenity of surrounding properties.

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

The development is not within a conservation area or near a heritage item. There are no special features such as trees and views that will be impacted by the proposed development.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that both lots can accommodate suitably designed dwellings which are of adequate dimensions, configuration and amenity. The size and configuration of the proposed lots are consistent in size with adjoining development of the immediate urban block and is considered to be in keeping with the future desired subdivision pattern in the streetscape.

The design of the dwellings is commensurate in scale, bulk, site coverage and materiality with many of the dwelling houses located in the immediate locality.

Assessing officer's comment:

At the time of lodgement, the aims of the planning controls and development standards for minimum lot size of 400m² is to minimise any likely adverse impacts of subdivision and development on the amenity of neighbouring properties by ensuring that subdivision is consistent with the existing and desired character of the area. Furthermore, proposed lot sizes should be able to accommodate development that is suitable for its purpose.

The current planning controls and development standards aim to ensure that new semi-detached dwellings have sufficient size and configuration to maintain a reasonable level of amenity to surrounding properties. Additionally, the desired future character of the area is determined by the current planning controls and development standards applicable to the development.

When taking the above planning controls into consideration the proposed subdivision (with particular regards to the lot facing Bass Street) is considered to be consistent with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the current Randwick DCP and LEP. As such, it is considered that compliance with the development standard is unreasonable or unnecessary as Council has endorsed changes to the minimum lot size requirements and the changes to the subdivision and development of lots within the R2 zone.

In relation to the non-compliance with the current lot size subdivision planning controls, for the lot facing Byrd Avenue, the proposed development demonstrates that the lot can accommodate suitably designed dwellings, which is of adequate dimensions, configuration and provided with sufficient amenity. Appropriate rear private open space and efficient parking and access arrangements is provided for each of the dwellings.

The dwellings are visually acceptable when viewed from the street and neighbouring properties and comply with the built form objectives and controls set out in the DCP.

Overall, the size and configuration of the proposed lots are consistent in size with adjoining development of the immediate urban block and is considered to be in keeping with the future desired subdivision pattern in this section of the block and streetscape.

In conclusion, the applicant's written request has adequately demonstrated that compliance with the Minimum subdivision lot size 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 Minimum subdivision lot size development standard as follows:

- Compatibility with the character and amenity of the area. The proposed Torrens title subdivision will not alter the established character of the area, nor will it introduce an

undesirable precedent to the locality. Byrd Avenue and Bass Street already have an established pattern of lots similar in size to the proposed lots.

- Achievement of an appropriate and supportable bulk and scale for the building. The proposal complies with the maximum FSR prescribed for the site, only adds minor alterations and additions to an existing structure, and also follows the predominant lot pattern found within the locality. As such the subdivision and proposed new dwellings will not dominate the streetscape.

Assessing officer's comment:

In conclusion, it is considered that in this instance there is sufficient environmental planning grounds that would warrant a variation to the minimum lot size standard as it has been demonstrated that the proposed alteration and additions to allow for subdivision into two lots can accommodate a sufficient size and configuration for the occupants of the site whilst maintaining a reasonable level of amenity to surrounding properties.

The proposed development will improve the amenity of the existing site and dwelling presentation as viewed from street through the inclusion of additional canopy trees to the front and rear of the site. The proposed built form and subdivision will be consistent with the established development and subdivision pattern of adjoining lots within the immediate locality and will not be out of character with other development in the streetscape.

The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, based on the provisions outlined in the endorsed Planning Proposal and amendments to the updated Randwick LEP.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Minimum subdivision lot size standard and R2 low density zone is provided below.

Assessment against objectives of Minimum subdivision lot size standard

For the reasons outlined in the applicant's written request, the development is consistent with the objectives of the Minimum subdivision lot size standard.

Assessment against objectives of the R2 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 additional low-density housing for the community in a well serviced area.

The proposed Torrens tittle subdivision and associated works creates an additional dwelling house that responds to the desirable elements in the Byrd Avenue Streetscape and facilitates

a new property frontage on Byrd Avenue, which is consistent in size and frontage width with the neighbouring subdivision pattern in the immediate locality.

The minor changes to the existing natural and built form will not result in any additional unreasonable amenity impacts to the neighbouring properties (in terms of overshadowing, privacy, visual bulk and views) as a result of the subdivision. The proposal will be improving the amenity of the dwellings and provide for additional landscape planting to both lots and enable the conversion of the structure on Byrd Avenue to provide for additional housing demands.

For the above reasons, the development is consistent with the objectives of the Minimum subdivision lot size standard and the R2 low density Residential zone. Therefore, the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the Minimum subdivision lot size standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.

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

9.1. Discussion of key issues

Randwick DCP 2013

Part C1: Low Density Residential

Sub-section 2.1 - Minimum Lot Size and Frontage

Clause 2.1 supplements the LEP provisions in relation to subdivision and aims to ensure that land subdivision respects the predominant subdivision and development pattern of the locality, and creates allotments which are adequate width and configuration to deliver suitable building design and maintain the amenity of neighbouring properties.

Subclause 2.1(i) specifies a minimum frontage width for allotments resulting from the subdivision of land within the R2 zone (Low Density Residential) for the purpose of dwelling houses and semi-detached dwellings is 12m.

The subdivision proposed for Lot 1 (No.1C Byrd Ave) & Lot 2 (No.18 Bass St) have frontage widths of only 11.075m and 10.975m respectively, resulting in a non-compliance with the minimum 12m requirement for each of the lots.

Council has endorsed part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone, specifically to amend clause 4.1 to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m² to 275m², with the exception of land within a Heritage Conservation Area.

As such, the DCP controls relating to frontage width needs to be considered within the context of Planning Proposal and amendment to the Randwick Local Environmental Plan 2012. As such, the frontage width is considered on a merit assessment against the objectives of the clause.

The objectives for minimum lot size and frontage controls under Section 2.1 of the DCP are as follows:

- *To ensure land subdivision respects the predominant subdivision and development pattern of the locality.*
- *To ensure land subdivision creates allotments that have adequate width and configuration, to deliver suitable building design and to maintain the amenity of the neighbouring properties.*

Minimum frontages are an important part of maintaining the subdivision pattern and frontage is also a key determinant of the streetscape and character of an area.

The proposed development demonstrates that the frontage widths of both lots can accommodate suitably designed dwellings which are of adequate dimensions, configuration and amenity. The size and configuration of the proposed lots are consistent in width with adjoining development and is considered to be in keeping with the future desired subdivision pattern in the streetscape.

Appropriate private open space and efficient parking and access arrangements is provided for each of the dwellings. The dwellings are visually acceptable when viewed from the street and neighbouring properties and comply with the built form controls and objectives set out in the DCP.

In addition to the above, under the current LEP and DCP, the minimum lot primary street frontage widths for dual occupancy development in the R2 zone is 15m (being 7.5m each lot and when subdivided results in semi-detached dwellings). The subdivision proposes frontage widths greater than 7.5m for each of the allotment and therefore, complies with the desired future lot size and width envisaged for the area.

For the above reasons, the development is considered to meet the above objectives of the control and will respect the predominant subdivision and development pattern within the immediate locality. As such, the non-compliance is considered acceptable.

Sub-section 3.3.3 - Rear setbacks

The site was originally a parallel road allotment, given the unique nature of the site and the proposed allotment being consistent within the wider urban block it is considered appropriate that the rear setback be assessed on merit having regard to demonstration of the following:

- *Compatibility with the existing development pattern in the subject and adjoining urban blocks.*
- *Provision of adequate private open space with dimensions compliant with the requirements of this DCP.*
- *Potential impacts on the neighbouring dwellings in terms of solar access, privacy and view sharing.*

The dwelling orientated to Byrd Avenue will generally meet the 25% of the allotment depth minimum rear setback provision.

Based on DA/104/2022 the dwelling facing Bass Street has a setback of 5.8m from the new rear boundary, which does not comply with the minimum rear setback of 8m.

The objectives of the rear setback controls are to ensure adequate separation between neighbouring buildings for visual and acoustic privacy and solar access is maintained and to ensure adequate areas are provided on the site for the retention or creation of private open space and deep soil planting.

The proposal meets the objectives of the controls for the following reasons:

- As discussed above under the Clause 4.6 assessment in Section 7 of the report, the proposed lots size and dimensions will be compatible with the existing development pattern in the subject and adjoining urban block.
- The lot facing Bass Street will provide a minimum of 6m x 6m of Private Open Space (POS) to the rear of the dwelling which complies with the minimum POS requirements of the DCP. In addition, adequate deep soil is provided on the site that meets the landscaping and permeable surfaces control objectives.
- As discussed in the relevant section of this report, the additions to the rear of the dwelling facing Byrd Avenue will not result in unreasonable overshadowing and visual amenity impacts to neighbouring properties.
- The proposed rear setback will not result in any adverse impacts on the character of the streetscape. The proposed dwellings will relate to the height, scale and bulk of other dwellings within the immediate locality. The additions are also consistent with the established rear building setback of the adjoining semi and neighbouring dwellings.

Given the above reasons, the proposed rear setback of the development is considered acceptable and will satisfy the objectives of the Control.

Sub-section 5.3 - Visual Privacy

Objective

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

Controls

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

It is not expected that the proposed new window and door openings will result in any overlooking impacts to the neighbouring properties. There are no changes proposed to the dwelling facing Bass Street.

The new window openings proposed to the dwelling facing Byrd Avenue are considered acceptable as the new window opening to the eastern elevation will face primarily overlook the rear yard of the subject site and on the first floor level the new window opening (W03) to the proposed bedroom 3 is a highlight window.

No window openings are proposed to the southern side elevation. To the northern side elevation the new window opening (W02) to the proposed bedroom 2 on the ground floor will be screened by the dividing fence.

As shown in Figure 6, the proposed lounge room window already exists and does not cause any additional privacy concerns as it will overlook the roof area of the adjoining garage and streetscape.



Figure 6: Subject dwelling and neighbouring garage facing Byrd Avenue.

Sub-section 6.1 - Location of Parking Facilities & Sub-section 6.2 - Parking Facilities forward of front façade alignment Sub-section 6.3 - Setbacks of Parking Facilities & 6.6 Carport Configuration

The proposal involves the construction of a new double carport structure located to the front of the dwelling facing Byrd Avenue boundary. In accordance with Council's controls, a double carport width may only be provided where the frontage width is at least 12m.

The site fronting Byrd Avenue has a frontage width of 11.075m, which does not comply with the control.

Whilst the proposed double carport structure is of open design with a pitched roof of approx. 3 degrees from the northern to the southern end of the carport structure, the overall bulk of the structure would dominate the visual appearance of the property frontage and set an undesirable precedent in the locality. For these reasons, it is recommended that the width of the carport structure be reduced to a single width (3m) and the length be reduced to a maximum depth of 5.4m by increasing the front setback to increase sightlines and reduce the visibility of the carport structure as viewed from the streetscape. An additional hardstand carspace constructed of permeable surfaces (i.e. grasscrete) or deep soil permeable area in between concrete wheel strips may be provided adjacent to the carport structure.

10. Conclusion

That the application for alterations and additions to the existing double garage and rumpus room to the rear of the existing dwelling facing Byrd Avenue to create a new dwelling house with a front carport structure and associated site and landscape works including Torrens title subdivision of land into two lots be approved (subject to conditions) for the following reasons:

D63/24

- Compliance with the minimum lot size is considered to be unreasonable or unnecessary in the circumstances of this case and there are environmental planning grounds that would warrant a variation to the development standard, based on the Council current planning controls and Randwick LEP 2012 regarding minimum lot size requirements and the future character of the R2 zone. As such, the written request pursuant to Clause 4.6 of the RLEP 2012 to vary the minimum lot size standard pursuant to Clause 4.1 is considered to be well founded.
- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposed development is consistent with the objectives of the R2 zone in relation to providing for the housing needs of the community whilst enhancing the aesthetic character, recognising the desirable elements of the streetscape and the desired character of the area, protecting the amenity of residents, and encouraging housing affordability.
- Subject to reducing size of the carport structure to a single carspace, the scale and design of the proposal is considered to be suitable for the location, will not result in any unreasonable amenity impacts (with regards to overshadowing, privacy, visual bulk and views) and is compatible with the desired future character of the locality.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Environmental health

Proposed Development:

A development application has been received proposing to undertake alterations and additions to the existing double garage / rumpus room structure to create a new dwelling and Torrens Title subdivision at 18 Bass Street Kingsford.

Comments:

Aircraft noise emissions

The property is subject to noise emission from aircraft pass-bys associated with the operation of Sydney Airport. The location of the site falls within the 20-25 Australian Noise Exposure Forecast (ANEF) 2039 contours. In this regard an Aircraft Noise Intrusion assessment was carried out and a report prepared by Acoustic Dynamics dated 20 October 2023 was provided to Council with the development application.

The report outlines a number of construction mitigation measures to be implemented to ensure the indoor design objective for each room is achieved to comply with *Australian Standard AS2021:2015 Acoustics—Aircraft noise intrusion— building siting and construction*.

Acoustic Dynamic's noise assessment states "Further to our review of the architectural drawings, proposed construction materials, our review of the relevant acoustic criteria and requirements, our analysis and calculations, Acoustic Dynamics advises that the proposed development can be designed and constructed to comply with Randwick LEP Part 6.9 *Development in areas subject to aircraft noise*, Randwick DCP Part 3 *Aircraft noise*, State Environmental Planning Policies and Australian Standard 2021:2015.

The potential acoustic impact has been considered and appropriate conditions have been included in this referral.

1.2. Development Engineer

An amended application has been received alterations and additions to the existing garage/rumpus room fronting Byrd Avenue to create a new dwelling house with front carport and associated site and landscape works, and Torrens title subdivision of land into two lots (variation to subdivision lot size control) at the above site.

This report is based on the following plans and documentation:

- Amended Architectural Plans Rev 05 by Single Builders dated 10/07/2024;
- Statement of Environmental Effects by Tim Sneesby dated 1st September 2023;
- Detail & Level Survey by Sydney Surveyors dated 23/11/2021;
- Additional Parking information sent from applicant in email dated 23/02/2024; (D05227457)

General Comments

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

Parking Comments

Existing Situation

The existing dwelling which fronts Bass Street contains a 5-bedroom residence. Under the parking rates specified in Part B7 of the DCP this would generate a parking demand of 2 off-street carspaces. This has been provided for within the existing double garage at the rear with access from Byrd Avenue. The hardstand area between the garages and Byrd Avenue is also large enough to accommodate additional parking if required.

The current development therefore fully complies with its parking obligation under the DCP.

Proposed Development

The proposed development will result in two separate lots each containing a dwelling with 3 or more bedrooms. The development as a whole would therefore generate a demand for 4 off-street spaces (2 for each lot/dwelling). A total of 3 spaces is proposed resulting in a parking shortfall of 1 space or 25% of the total parking demand. This is an improvement from the previous iteration of the plans which indicated a 2 space (50%) shortfall.

Lot fronting Bass Street

The existing 5-bedroom residence fronting Bass Street will remain but will now only provide one off-street parking space newly accessible from Bass Street resulting in a shortfall of 1 space (50%). An assessment of the carspace by the Development Engineer has revealed the carspace will only just be able to accommodate a compliant carspace when considering the design envelope outlined in Fig 5.2 in Australian Standard 2890.1. The existing piers are only 2.5m apart however are just forward of the additional 300mm clearance required for car doors enabling compliance. This is true for both a forward in or a forward out scenario. No objections are therefore raised.

In assessing the impact of the 1 space parking shortfall it is acknowledged that the site lies within 400m of bus stops on Anzac Parade & just over 700m from the Light Rail Terminus at Kingsford. Inspection of the site, photos provided by the applicant, and examination of past aerial photography (see below) indicate there is sufficient availability of on-street parking to accommodate the 1 space shortfall with minimal impact on the availability of on-street parking. The 1 space shortfall is therefore acceptable in this instance.

Picture 1 - Aerial March 2024



Lot fronting Byrd Street

The new lot/dwelling at the rear fronting Byrd Avenue will comprise of a 3-bedroom residence also requiring the minimum provision of 2-off street carspaces. The amended plans show a new carport which will have provision for two carspaces thereby fully complying with the DCP.

No objections are raised however it will be necessary however to widen the existing vehicle crossing and opening at the rear property alignment to facilitate vehicle movements into the carport spaces. Suitable conditions have been provided in this report.

The additional information indicated appears to indicate the carspace will comply with the minimum requirements of AS 2890.1

Drainage Comments

On site stormwater detention is not required for this development as the development will be decreasing the amount of impervious area thereby already providing a reduction in surface runoff.

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 Byrd Avenue; or
- ii. Directly into Council's underground drainage system located in Byrd Avenue via the existing kerb inlet pit; or
- iii. 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 27th May 2014 it was resolved that;

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

The subject **is not** located within 15m of a mains power distribution pole on the same side of the street hence the above clause **is not** applicable,

Subdivision Comments

A subdivision certificate in respect to the 2-lot subdivision must be issued and subdivision plans registered at NSW Land Registry Services prior to the issuing of a full occupation certificate for this development.

Landscape/Tree Comments

Inspection was undertaken through google street view on Thursday 11th June with pictures of all vegetation on D05047144.

Inspection confirmed a complete absence of vegetation within the rear of the property, small insignificant shrubs within the frontage, the only vegetation in close conflict with works, *Callistemon Viminalis* (Bottlebrush) 4 metres high, good condition, within the Byrd Ave councils verge, adjacent the northern neighbouring No.16 dwelling, while most of the works will be restricted to the rear of the property, also access to be gained directly of Byrd Ave within the rear, protection of the rear tree will be needed so no physical or mechanical damage is done.

All other small vegetation throughout the rear of the subject site, are small and insignificant, so can be removed where needed.

The only aspect that requires assessment is the need for a formal Landscape Plans for **DA/619/2023** with conditions requiring all outlining requirements and the all the inclusions required for the site, which must include **the C1 DCP 2023 controls with a site area of up to 300sqm to achieve compliance**, which must also show all canopy trees which must be measured 2.5 metres from any part of the dwelling/s.

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

1. BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the alterations and additions to existing double garage / rumpus room structure to create a new dwelling and Torrens Title subdivision at 18 Bass Street, Kingsford. The proposal is in direct response to the growing housing needs of the Kingsford locality. The design is commensurate in scale, bulk, site coverage, and materiality to many of the dwelling houses located in the immediate locality.

The proposed works include minor alterations and additions to an existing double garage and rumpus room structure to the rear of the existing 18 Bass Street residence, as well as a Torrens title subdivision, to create a new separate domicile fronting Byrd Avenue.

Clause 4.1 of Randwick Local Environmental Plan (LEP) 2012 relates to the Minimum Subdivision Lot Size requirements and states that "the size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land". As at the time of lodgement for this DA, the Minimum Subdivision Lot Size map stipulated that the maximum Minimum Subdivision Lot Size for 18 Bass Street, Kingsford was 400sqm. While the maximum Minimum Subdivision Lot Size is now 275sqm the old standard applies as Amendment No. 9 introduced an LEP specific savings provision. Under the new LEP standard, the Byrd Avenue lot would only have a variation of 8% and the Bass Street lot would comply.

The draft survey plan submitted with the Development Application at 18 Bass Street, Kingsford indicate that the proposed lot size for the new Byrd Avenue lot has a Minimum Subdivision Lot Size of 253sqm. This results in an 36.8% variation to the development standard and non-compliance of 147 sqm. The new size for the 18 Bass Street lot would be 360sqm This results in an 10.0% variation to the development standard and non-compliance of 147 sqm.

The proposal is of a reasonable scale and provides a high quality and durable pair of detached dwellings on their own Torrens title lots which will assist to meet the high demand for additional housing in the Kingsford locality. The development is commensurate in scale and character with other properties in the streetscape, measuring only 2 storeys and complies with the maximum FSR prescribed for the site; both individually and combined. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

Environmental Planning Grounds Relied Upon

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of: -

- Compatibility with the character and amenity of the area. The proposed Torrens title subdivision will not alter the established character of the area, nor will it introduce an undesirable precedent to the locality. Byrd Avenue and Bass Street already have an established pattern of lots similar in size to the proposed lots.
- Achievement of an appropriate and supportable bulk and scale for the building. The proposal fully complies with the maximum FSR prescribed for the site, only adds minor alterations and additions to an existing structure, and also follows the predominant lot pattern found within the locality. As such the subdivision and proposed new dwellings will not dominate the streetscape.

The request will now further expand on the identified environmental planning grounds.

2. IS THE STANDARD A DEVELOPMENT STANDARD?

Clause 4.1 of the Randwick Local Environmental Plan (LEP) 2012 states that:

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

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

(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(4) This clause does not apply in relation to the subdivision of any land—

- (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or
- (b) by any kind of subdivision under the Community Land Development Act 2021.

A development standard is defined in Section 1.4 of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*

The Minimum Subdivision Lot Size control falls under subsection (a); therefore, the control is a development standard and Clause 4.6 of the Randwick Local Environmental Plan 2012 is applicable.

3. CLAUSE 4.6 OF THE RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4. THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

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

In the case of *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states: -

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The land is located in 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.*

The proposed Torrens title subdivision and associated minor alterations and additions to the existing garage and rumpus room structure provide additional low density housing for the community in a well-located area. The proposed Torrens title subdivision and associated works would create a dwelling house that responds to the desirable elements in the Byrd Avenue streetscape – particularly by facilitating a new property frontage on Byrd Avenue, rather than the existing rear boundary of 18 Bass Street. In this way, the proposal would protect and increase the amenity for the existing residents of Byrd Avenue by improving the streetscape – with a significantly reduced front boundary wall, increased landscaping and greater passive surveillance. Furthermore, the proposal does not raise unacceptable impacts to the amenity of adjoining properties or the public domain, with an acceptable

level of solar access maintained to neighbours, no view loss or unreasonable privacy implications created.

The creation of two smaller lots and a smaller house on the Byrd Avenue facing lot would facilitate greater housing affordability by virtue of their size. The proposed Torrens title subdivision is consistent with the subdivision pattern of the immediate locality (Table 1). As there will be only minor changes to the built form of the proposed Byrd Avenue dwelling, the site will continue to be perceived as is when viewed from either Bass Street or Byrd Avenue.

The variation to the Minimum Subdivision Lot Size does not render the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

'The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.'

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.1 are articulated at Clause 4.1(1):

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

The proposed lot sizes are considered to satisfy the objectives of this standard as there will be minor change to the existing built or natural forms and therefore, no additional amenity impacts will arise as a result of the proposed subdivision. It is considered that the proposed subdivision simply formalises what appears to be *prima facie* two separate dwelling houses currently developed on the subject site.

Furthermore, the proposed subdivision is consistent with the subdivision pattern of the immediate area, in terms of lot size and frontage requirements (as outlined in Table 1) and from a streetscape perspective there will be no change to the subject site, given that the existing dwellings are accessed via separate roads.

Table 1. Lot size and frontages

Address	Frontage (m)	Area (sqm)
28 Bass Street	10.1	346
26 Bass Street	10	338
24 Bass Street	10.1	340
22 Bass Street	10	339
20 Bass Street	11	365
17 Bass Street	9.1	329
15 Bass Street	9	336
14 Bass Street	11	396
13 Bass Street	9.5	341
12 Bass Street	11.1	372
30 Byrd Avenue	10.7	295
28 Byrd Avenue	8.7	264
26 Byrd Avenue	12.6	266
24 Byrd Avenue	9.6	302
22 Byrd Avenue	8.6	238
20 Byrd Avenue	9.1	245
18 Byrd Avenue	9.1	274
16 Byrd Avenue	9.3	283
1D Byrd Avenue	11	244
<i>Proposed Lot 18 Bass Street</i>	<i>11</i>	<i>360</i>
<i>Proposed Lot 1C Byrd Avenue</i>	<i>11.1</i>	<i>253</i>

In addition to the above, the existing dwellings on the land are of a bulk, height and scale that is compatible with and reflective of the surrounding built form, therefore it is considered that the lot sizes are suitable to accommodate the existing dwelling houses and be consistent with objective 1(c) of the development standard. It is reiterated that the two dwelling structures are established on the subject site and given that they are perceived as separate dwelling houses, the proposed subdivision will not result in any undue impacts.

In terms of Floor Space Ratio, open space, landscaping and private open space, compliance is as articulated on the architectural plans, detailed in the SEE and as summarised below. A larger Byrd Avenue lot and smaller 18 Bass Street lot than what is being proposed as part of this application would result in a greater non-compliance with the FSR and DCP controls for the proposed 18 Bass Street lot and hence would risk not meeting objective 1(c) of the development standard.

- The Floor Space Ratio is 0.75:1 for lots 300sqm-450sqm and no maximum for lots < 300sqm:
 - 1C Byrd Avenue: 0.57:1
 - 18 Bass Street: 0.59:1
- Open space is required as 5m x 5m (Byrd) and 6m x 6m (Bass) area:
 - 1C Byrd Avenue: complies with dimensions and area

- 18 Bass Street: complies with area only
- Deep soil area is required as 20% (Byrd) and 25% (Bass) of the site area:
 - 1C Byrd Avenue: 40%
 - 18 Bass Street: 24%

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is the onus of the Council to form an opinion of satisfaction that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

For the reasons detailed in this request, I am of the opinion that Council may form the necessary opinion of satisfaction that there are sufficient environmental planning grounds to support a variation. By contrast, a compliant proposal would not allow the substantial upgrade in residential amenity in the manner intended.

Further, given that the development satisfies the objectives of the zone and the development standard, numerical compliance is considered unreasonable and unnecessary in the circumstances of this case.

Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

According to recent caselaw, Council is required to be satisfied that there are sufficient environmental planning grounds to support a variation to a development standard. Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and need not be site specific. The term 'environmental planning grounds' is not defined and may be interpreted with wide scope.

In addition to the environmental planning grounds detailed under Preconditions 1 and 2, I provide the following comments: -

- Even though the proposal breaches the prescribed Minimum Subdivision Lot Size standard, the development will integrate seamlessly with the locality given the resultant lot sizes will be consistent with the established lot pattern.
- The residential amenity of neighbouring sites regarding solar access, visual privacy, acoustic privacy, outlook and structural integrity is protected by the proposal given that there is an existing structure perceived as a dwelling fronting Byrd Avenue.
- The subdivision boundary is consistent with that of neighbouring lots and the amount of private open space for the resultant 18 Bass Street and 1C Byrd Avenue site is approximately 100sqm for both.
- Nevertheless, the proposal has been skilfully designed and undergone revisions to mitigate any potential impacts on surrounding properties whilst still capturing the desired residential amenity that the sites is entitled to.

For the above reasons, it is considered there are sufficient environmental planning grounds to justify a variation to the Minimum Subdivision Lot Size development standard.

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

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

The more recent appeal of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the

Commissioner's assessment of it). In February 2017, the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

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

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

However, in the judgement of *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, there was further clarification of the construction of Clause 4.6. The Court asserted that:-

"... in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i))."

This is consistent with a previous judgment in *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, where on appeal of a commissioner's decision, the Court affirmed at [78] that "The request cannot 'adequately' address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matters".

Accordingly, regarding the proposed variation to the Minimum Subdivision Lot Size, it is considered that this Clause 4.6 request has in fact demonstrated sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

There is also no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018). Refer also to Section 5 below.

Additionally, under (Initial Action Pty Ltd v Woollahra Municipal Council (2018) at [24], the Chief Judge stated that "The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole". It is considered that this request is consistent with this aspect of the judgment as it does not rely on promotion of the benefits of the development.

According to the relevant case law, there are other common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in *Wehbe v Pittwater Council* (2007).

The five tests under *Wehbe* are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

Test	Comments
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.	<p>The objectives of the development standard are satisfied. Refer to discussion under Precondition 2.</p> <p>The objectives of the standard are concerned with the minimising of adverse impacts flowing from subdivision on neighbouring properties and to accommodate. I conclude that the proposed subdivision size is appropriate as it results in a lot size and built form that is demonstrably compatible with the character, amenity and landform area.</p> <p>The application demonstrates that objectives of the standard are achieved through the qualitative design outcomes rather than a strict numerical approach.</p>
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development however the objective is achieved and strict compliance is unreasonable and unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;	Not applicable — compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as

D63/24

	discussed in part 4 of this document.
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;	Not applicable — the development standards of Minimum Subdivision Lot Size cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved – including neighbouring 20 Bass Street (DA/362/2015) – and others where the standards have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions. The development standard has not been abandoned.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	The zoning of the land is appropriate for the development standard.

5. THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018)).

In assisting the consent authority in forming its opinion of satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), I refer to the discussion concerning objectives for development within the zone in which the development is proposed to be carried out. The objectives and comments are provided under Precondition 2.

The resulting development continues to improve the amenity for the residents in a low density residential environment and the lot size is compatible with the established lot size, dimensions and pattern.

The variation to the Minimum Subdivision Lot Size is able to accommodate suitable development and does not result in development that creates adverse impacts on the amenity of neighbouring properties. The proposal demonstrates harmony with the relevant zone objectives, the objectives of the standard and satisfies the public interest test.

6. CONCLUSION

The purpose of the application is to apply for the Torrens title subdivision of 18 Bass Street and associated minor works to the existing double garage / rumpus room structure to create a new dwelling. The nature of the proposal necessitates a lot size for both the proposed Byrd Avenue (36.8%) and Bass Street (10.0%) lots smaller than the prescribed 400sqm, however, the proposal will be commensurate with the established lot size, dimensions and pattern of the area and facilitate a bulk and siting compatible with surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the Minimum Subdivision Lot Size development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.

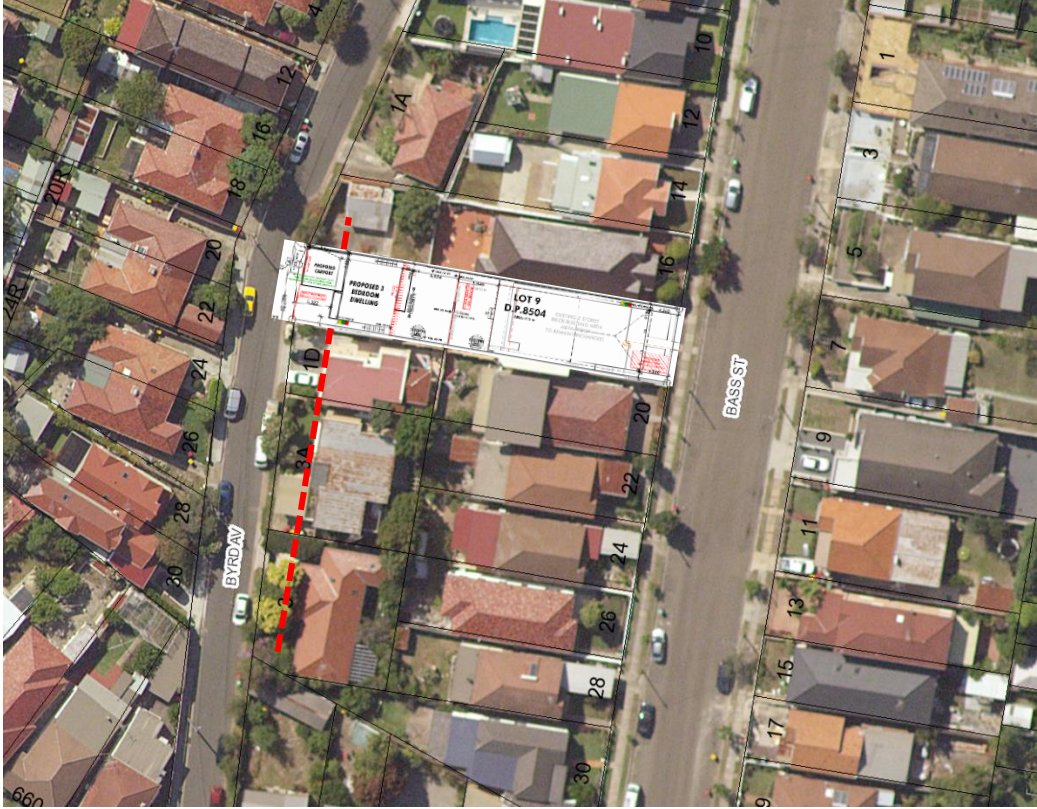
Appendix 3: DCP Compliance Table**3.1 Section C1: Low Density Residential** (use for applications lodged before 1 September 2023)

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): <ul style="list-style-type: none"> • R2 = 400sqm • R3 = 325sqm 	Bass Street = 360m ² Byrd Ave = 253m ²	No. Refer to Clause 4.6 Exception to a development standard above.
	Minimum frontage		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m Minimum frontage for detached dual occupancy in R2 = 18m	The site has a dual frontage. 18 Bass Street = 10.975m 1C Byrd Ave = 11.075m	No. Refer to Section 9.1 Discussion of key issues above.
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site area 18 Bass Street = 360m ² 1C Byrd Ave = 253m ² Proposed site coverage 18 Bass Street = Based on DA/104/2022 the site coverage on the site is 38% (or 137m ²). 1C Byrd Ave = 30% (or 75.4m ²)	Complies
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site area 18 Bass Street = 360m ² 1C Byrd Ave = 253m ² Proposed landscaping 18 Bass Street = Based on DA/104/2022 the landscape area is 24.33% (or 87.6m ²). Despite the minor non-compliance the landscape plan demonstrates that there is adequate	18 Bass Street = Does not comply. However, the non-compliance is marginal (less than 1%) and overall, the site will meet the objectives of the control. 1C Byrd Ave = Complies

DCP Clause	Controls	Proposal	Compliance
		<p>vegetation distributed on the site to achieve a visual balance between building structures and open space.</p> <p>A large canopy tree is proposed to the rear of the dwelling which is capable of reach 8m at maturity. Two additional smaller trees are proposed to the front and rear of the dwelling. This demonstrates the area is capable of growing substantial vegetation.</p> <p>Sufficient private open space is afforded at the rear of the dwelling to ensure functional passive recreation use for the occupants of the site.</p> <p>Adequate contiguous deep soil area for stormwater and infiltration are provided on the site which reduces overland.</p> <p>1C Byrd Ave = 40.12% (or 101.5m²)</p>	
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	<p>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</p>	<p>Site area</p> <p>18 Bass Street = 360m²</p> <p>1C Byrd Ave = 253m²</p> <p>Proposed</p> <p>18 Bass Street =</p> <p>Based on DA/104/2022 the private open space provided is approx. 46.6m² with minimum dimensions of 6m x 6m of contiguous area is provided in the rear yard.</p> <p>1C Byrd Ave = A minimum of 5m x 5m of contiguous private open space is provided to the rear yard.</p>	Complies

D63/24

DCP Clause	Controls	Proposal	Compliance
		The private open spaces are both accessible from the living area and are orientated to maximise solar access.	
3	Building envelope		
3.1	Floor space ratio LEP 2012 = For lot sizes less than 300m² = Merit For site area between 300-450m² = 0.75:1	Site area 18 Bass Street = 360m ² 1C Byrd Ave = 253m ² Proposed FSR 18 Bass Street = Based on DA/104/2022 the FSR on the site is 0.59:1 (or GFA of 212.4m ²). 1C Byrd Ave = 0.68:1 (or GFA of 172.9m ²)	Complies
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	There are no changes proposed to the existing and approved maximum building height under DA/104/2022. Existing maximum building height is 7.56m for the dwelling at Bass Street. The maximum building height for the dwelling at Byrd Ave is approx. 7m. The proposed works to the front of this dwelling will have a maximum height of approx. 6.42m.	Complies
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	There are no changes proposed to the external wall height which was approved at a maximum height of 7.2m under DA/104/2022. The maximum external wall height proposed under this application is 5.25m.	Complies
3.3	Setbacks		
3.3.1	Front setbacks		
	i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary	Minimum = Consistent with average setbacks of the adjoining dwellings. There are no changes proposed to the front	Complies

DCP Clause	Controls	Proposal	Compliance
	<p>street frontage:</p> <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites <p>iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front</p>	<p>setback of the dwelling fronting Bass Street.</p> <p>Proposed = A front setback of 5.322m is proposed to the dwelling fronting Byrd Avenue. This will be generally consistent with the front setback of the adjoining dwelling to the south of the subject site as shown in Figure 9 below.</p>	
	 <p>Figure 9: Showing front and rear established building line within this section of the block</p>		
3.3.2	<p>Side setbacks:</p> <p>Semi-Detached Dwellings:</p> <ul style="list-style-type: none"> • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels <p>Dwellings:</p> <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p>Minimum = Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above</p> <p>Existing =</p> <p>The existing dwellings are setback a minimum of 900mm from the side boundaries.</p> <p><u>Dwelling fronting Bass Street:</u></p> <p>There are no changes proposed to the side</p>	Complies





D63/24

DCP Clause	Controls	Proposal	Compliance
		<p>setback of the dwelling fronting Bass Street.</p> <p>Proposed =</p> <p><u>Dwelling fronting Byrd Avenue:</u></p> <p>To the southern side the proposed front addition is setback 1.072m from the boundary.</p> <p>To the northern side the rear addition is setback 996mm from the boundary.</p> <p>The proposed carport is forward the front building line. Refer to 6.3 for parking facilities.</p>	
3.3.3	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of: -</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts 	<p>Minimum</p> <p>18 Bass Street = 8m</p> <p>1C Byrd Ave = 5.645m</p> <p>Proposed</p> <p><u>18 Bass Street</u> = Based on DA/104/2022 the dwelling will be setback 5.8m from the rear boundary.</p> <p><u>1C Byrd Ave</u> = 6.824m</p>	<p>18 Bass Street = No. Refer to Section 9.1 Discussion of key issues above.</p> <p>1C Byrd Ave = Complies</p>
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, 	<p>No changes are proposed to the dwelling facing Bass Street.</p> <p>The proposed additions to the front and rear of the</p>	Complies



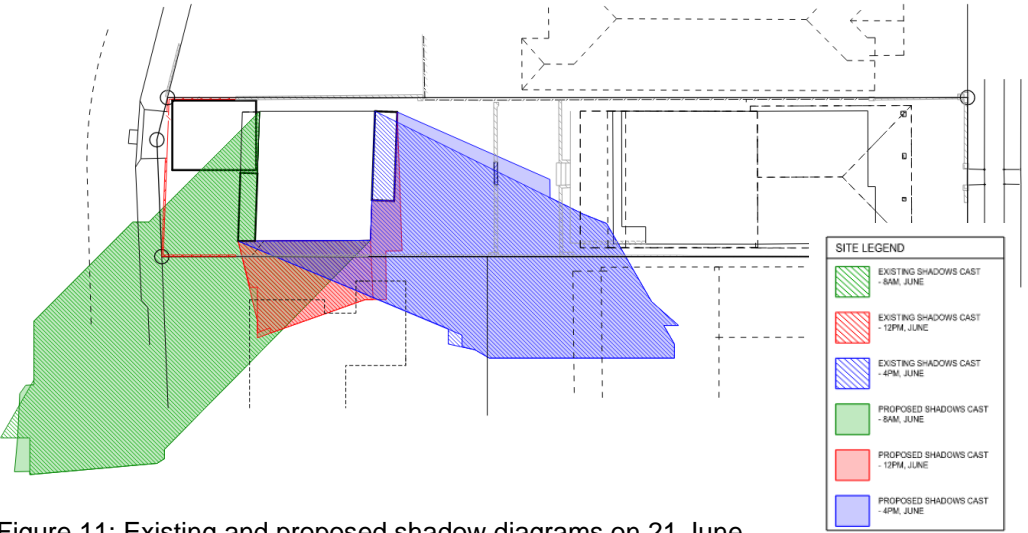
DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> no side elevation greater than 12m encourage innovative design 	<p>dwelling facing Byrd Avenue will improve the façade presentation and provide greater articulation to the sides of the dwelling.</p> <p>The additions will respect and following the contours of the land.</p>	
4.5	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) 	<p>A schedule of colours and finishes has not be provided with the documentation.</p> <p>However, the proposed materials and colour palettes are noted on the plans indicating they will be consistent with the existing building.</p>	Conditioned to comply.
4.6	Earthworks		
	<ul style="list-style-type: none"> i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. 	<p>There are no significant earthworks within 900mm of the side and rear boundaries.</p> <p>The maximum fill on the site is 320mm and cut is 230mm.</p> <p>The proposal includes minor excavation works to the rear of the proposed new dwelling to create a new stairwell connecting the first and ground level. The proposed cut and fill in the rear yards of the proposed lots at Byrd Avenue and Bass Street will allow for better functional private open spaces for the dwellings rather than the spilt levels. The proposed cut and fill will not result in any unreasonable privacy impacts to the neighbouring properties.</p> <p>Appropriate conditions are</p>	Conditioned to comply.

D63/24

DCP Clause	Controls	Proposal	Compliance
		included to ensure that the excavation works are properly guarded and supported to prevent the danger of life, movement of soil and to support the adjacent land and buildings. Adequate conditions have also been included to ensure that adequate provisions are made for drainage.	
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receives a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	<p>Bass Street</p> <p>There are no changes proposed to the north facing windows of the dwelling facing Bass Street.</p> <p>The shadow diagrams in Figure 10 below demonstrate that the POS to the dwelling will continue to receive a minimum of 3 hours of direct sunlight to significant part of the principal private open space.</p> <p>Byrd Avenue</p> <p>The north facing lounge room on the first will receive a minimum of 3 hours of solar access.</p> <p>The shadow diagrams in Figure 11 below demonstrate that the POS to the dwelling will continue to receive a minimum of 3 hours of direct sunlight to significant part of the principal private open space between 8am and 4pm on 21 June.</p>	Complies
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.	The shadow diagrams in Figure 10 below demonstrate the additions proposed to the front and rear of the dwelling facing	Complies

DCP Clause	Controls	Proposal	Compliance
	<p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> • Degree of meeting the FSR, height, setbacks and site coverage controls. • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. • Topography of the subject and adjoining allotments. • Location and level of the windows in question. • Shadows cast by existing buildings on the neighbouring allotments. 	<p>Byrd Avenue will not result in significant overshadowing impacts to the north facing living room windows at No. 1D Byrd Avenue as they will continue to receive a minimum of 3 hours of direct solar access between 8am to 4pm on 21 June.</p> <p>The shadow diagrams in Figure 11 below demonstrate the additional overshadowing impacts to the POS of neighbouring properties are considered to be minor and the dwellings at no. 1D Byrd Avenue and 20 Bass Street will continue to receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p>	
	<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;">  <p>3D SHADOWS - 8am FRONT OF 22 BYRD STREET</p> </div> <div style="width: 50%;">  <p>3D SHADOWS - 8am REAR OF 22 BYRD STREET</p> </div> <div style="width: 50%;">  <p>3D SHADOWS - 12pm FRONT OF 22 BYRD STREET</p> </div> <div style="width: 50%;">  <p>3D SHADOWS - 12pm REAR OF 22 BYRD STREET</p> </div> </div>		

D63/24

DCP Clause	Controls	Proposal	Compliance
	<div style="display: flex; justify-content: space-around;">   </div> <p>Figure10: Proposed Elevational shadow diagrams</p>  <p>Figure 11: Existing and proposed shadow diagrams on 21 June</p>		
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	<p>The submitted development has been accompanied with a BASIX Certificate identifying compliance with thermal and water energy.</p> <p>Both dwellings are well lite and cross ventilated.</p>	Complies
5.3	Visual Privacy		
	Windows		
	<p>i) proposed habitable room windows must be located to minimise any direct viewing of</p>	The proposed new window and door openings will not result in any unreasonable	Refer to Section 9.1 Discussion of key issues above.

DCP Clause	Controls	Proposal	Compliance
	<p>existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	amenity impacts.	
	Balcony		
	<p>iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side)</p> <p>iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers)</p> <p>v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure)</p> <p>vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.</p>	<p>Byrd Avenue:</p> <p>The existing balcony on the first-floor level is already off a living area. The proposed development is reducing the size of the balcony by enclosing the southern side to allow for the proposed dining area, which will reduce the impacts.</p> <p>The landing to the rear of this dwelling is only for access and is not expected to cause significant privacy impacts to the rear yard of the adjoining dwellings when factoring there was an existing landing.</p>	Complies
5.4	Acoustic Privacy		
	<p>i) noise sources not located adjacent to adjoining dwellings bedroom windows</p> <p><i>Attached dual occupancies</i></p> <p>ii) Reduce noise transmission between dwellings by:</p> <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	The proposed layout considers acoustic privacy and is acceptable.	Complies
5.5	Safety and Security		
	i) dwellings main entry on front	Both entries to each of the	Complies

D63/24

DCP Clause	Controls	Proposal	Compliance
	elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	dwellings face street frontages.	
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) retaining existing views from the living areas are a priority over low use rooms iii) retaining views for the public domain takes priority over views for the private properties iv) fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)	There are no view loss impacts identified on the site.	Not applicable.
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways	Lot fronting Bass Street: A hardstand carspace is proposed to the front of the dwelling which is access off Bass Street. Lot fronting Byrd Street: Double carport structure is proposed which is accessed off Byrd Street.	Lot fronting Bass Street – Yes Lot fronting Byrd Street – does not comply. Refer to Section 9.1 Discussion of key issues above.

DCP Clause	Controls	Proposal	Compliance
	(impermeable surfaces)		
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	<p>i) The following may be considered:</p> <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage <p>ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where:</p> <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) 	<p>Lot fronting Bass Street:</p> <p>A hardstand carspace is proposed to the front of the dwelling with part of the carspace located within the piers of the existing veranda.</p> <p>Lot fronting Byrd Street:</p> <p>Double carport structure is proposed which is accessed off Byrd Street.</p>	<p>Lot fronting Bass Street - Yes</p> <p>Lot fronting Byrd Street - does not comply. Refer to Section 9.1 Discussion of key issues above.</p>
6.3	Setbacks of Parking Facilities		
	<p>i) Garages and carports comply with Sub-Section 3.3 Setbacks.</p> <p>ii) 1m rear lane setback</p> <p>iii) Nil side setback where:</p> <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	<p>Lot fronting Bass Street:</p> <p>The hardstand car space is setback a minimum distance of 900mm from the side boundaries which complies with the control.</p> <p>Lot fronting Byrd Avenue:</p> <p>The carport structure is setback 200mm from the northern side boundary.</p>	<p>Lot fronting Bass Street - Yes</p> <p>Lot fronting Byrd Street - does not comply. Refer to Section 9.1 Discussion of key issues above.</p>
6.4	Driveway Configuration		
	<p>Maximum driveway width:</p> <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m <p>Must taper driveway width at street boundary and at property boundary</p>	<p>Lot fronting Bass Street:</p> <p>The single hardstand carspace has a driveway width of 2.4m.</p> <p>Lot fronting Byrd Avenue:</p> <p>Double carport structure has a driveway width of</p>	<p>Lot fronting Bass Street - Yes</p> <p>Lot fronting Byrd Street - Conditioned to comply</p>

D63/24

D63/24

DCP Clause	Controls	Proposal	Compliance
		3.2m.	
6.6	Carport Configuration		
	i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to dwelling iii) 3m maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) front gate allowed (minimum 30% open) viii) Gate does not open to public land	<p>Lot fronting Byrd Avenue:</p> <p>The proposed carport structure is of open design with a pitched roof of approx. 3 degrees from the northern to the southern end of the carport structure. The dimensions of the carport structure are 5.6m in width and 6m in length.</p> <p>The maximum height of the carport structure is 2.7m to the northern side of the post and 2.4m to the southern side of the post which complies with the maximum building height limit of 3m for a pitched roof structure.</p> <p>No solid panel or roller shutter door are proposed.</p> <p>A condition is included which requires the front driveway gate to be a minimum of 30% open design.</p> <p>The gate does not open to public land.</p>	Conditioned to comply.
6.7	Hardstand Car Space Configuration		
	i) Prefer permeable materials in between concrete wheel strips. ii) 2.4m x 5.4m minimum dimensions.	The hardstand carspace fronting Bass Street has minimum dimensions of 2.5m x 5.4m.	Complies
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	<p>Lot fronting Bass Street:</p> <p>No changes are proposed to the existing fencing material.</p> <p>Lot fronting Byrd Avenue:</p> <p>The existing brick will be reused for the front solid fence.</p>	<p>Lot fronting Bass Street -</p> <p>As existing</p> <p>Lot fronting Byrd Avenue -</p> <p>Complies</p>

DCP Clause	Controls	Proposal	Compliance
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) lightweight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.	Lot fronting Bass Street: No changes are proposed except for the opening created for the hardstand carspace and driveway. Lot fronting Byrd Avenue: The proposed solid brick fence height has been reduced from 2.2m to 1m in height.	Lot fronting Bass Street - Complies Lot fronting Byrd Avenue - Complies
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	Clothes drying facilities are located to the rear of each of the dwellings.	Complies

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	1. Space per dwelling house with up to 2 bedrooms	Bass Street	Lot fronting Bass Street -
	2. Spaces per dwelling house with 3	5-bedroom dwelling	

D63/24

D63/24

	<p>or more bedrooms</p> <p>Note: Tandem parking for 2 vehicles is allowed.</p>	<p>house.</p> <p>1 hardstand carparking space is proposed which is accessed off Bass Street.</p> <p>Byrd Avenue</p> <p>3-bedroom dwelling house.</p> <p>2 carapaces within a carport structure are provided to the front of the dwelling which is access off Byrd Avenue.</p>	<p>Does not comply. Refer to Development Engineering comments above in the referral comments section of the report.</p> <p>Lot fronting Byrd Avenue:</p> <p>Complies</p>
--	--	--	---

Responsible officer: Chahrazad Rahe, Senior Assessment Planner

File Reference: DA/619/2023

Development Consent Conditions



D63/24

Folder /DA No:	DA/619/2023
Property:	18 Bass Street, KINGSFORD NSW 2032
Proposal:	Alterations and additions to the existing garage/rumpus room fronting Byrd Avenue to create a new dwelling house with front carport and associated site and landscape works, and Torrens title subdivision of land into two lots (variation to subdivision lot size control)
Recommendation:	Approval

GENERAL CONDITIONS

Condition

1. Approved plans and documentation

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

Plan	Drawn by	Dated	Received by Council
Plan of subdivision	Ian Wicks	10/08/2023	17 July 2024
Sheet No. WD04 (Rev 05)	Single Builders	10/07/2024	10 July 2024
Sheet No. WD06 (Rev 05)	Single Builders	10/07/2024	10 July 2024
Sheet No. WD11 (Rev 05)	Single Builders	10/07/2024	10 July 2024
Sheet No. WD14 (Rev 05)	Single Builders	10/07/2024	10 July 2024
Sheet No. WD15 (Rev 05)	Single Builders	10/07/2024	10 July 2024
Sheet No. WD16 (Rev 05)	Single Builders	10/07/2024	10 July 2024
Sheet No. WD17 (Rev 05)	Single Builders	10/07/2024	10 July 2024

D63/24

Condition			
Sheet No. WD18 (Rev 05)	Single Builders	10/07/2024	10 July 2024
Sheet No. WD19 (Rev 05)	Single Builders	10/07/2024	10 July 2024
Sheet No. WD20 (Rev 05)	Single Builders	10/07/2024	10 July 2024

BASIX Certificate No.	Dated	Received by Council
A506139	23 August 2023	30/08/2023

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 size of the carport structure shall be reduced in length to a maximum of 5.4m by increasing the front setback on Byrd Avenue (western boundary) and the width to a maximum of 3m for a single carport structure. A hardstand carspace shall be provided adjacent to the carport structure and have a maximum width of 2.5m.
- b. The new driveway gate fronting Byrd Avenue must be constructed with individual openings of 30mm wide.
- c. The window area within bedroom 3 (Lot 1 – Byrd Avenue) shall be at least one-tenth (10%) of the area of the room to comply with Part F4 Light and ventilation (DtS) under the National Construction Code (NCC).

Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
3.	Consent Requirements

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

	Condition
	Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.
4.	<p>External Colours, Materials & Finishes</p> <p>The colours, materials and finishes of the external surfaces are to be compatible with the existing building and adjacent development to maintain the integrity and amenity of the building and the streetscape.</p> <p>External materials, finishes and colours of the building are required to match, as closely as possible, the existing building and any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
5.	<p>Section 7.12 Development Contributions</p> <p>In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$186,120 the following applicable monetary levy must be paid to Council: \$930.60.</p> <p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> $IDC = ODC \times CP2/CP1$ <p>Where:</p> <p>IDC = the indexed development cost</p> <p>ODC = the original development cost determined by the Council</p> <p>CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment</p> <p>CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p>
6.	<p>Security Deposits</p> <p>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</p>

Condition
<p><i>Environmental Planning and Assessment Act 1979:</i></p> <ul style="list-style-type: none"> • \$5000.00 - Damage / Civil Works Security Deposit <p>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.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
<p>7. Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p><i>The Sydney Water Tap in™ online service replaces the Quick Check Agents as of 30 November 2015</i></p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ online service is available at:</p> <p>https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
<p>8. Building Code of Australia</p>

	Condition
	<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>
9.	<p>Structural Adequacy</p> <p>Certificate of Adequacy supplied by a professional engineer shall be submitted to the Certifier (and the Council, if the Council is not the Certifier), certifying the structural adequacy of the existing structure to support the upper floor additions.</p> <p>Condition Reason: To ensure the structural integrity of the building is maintained.</p>
10.	<p>Design Alignment Levels</p> <p>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:</p> <p><u>Bass Street</u></p> <ul style="list-style-type: none"> 60mm above the back of the existing footpath at all points opposite. <p><u>Byrd Avenue</u></p> <ul style="list-style-type: none"> Such that the grade of any vehicle crossing across Council's verge between the rear of the layback and rear property boundary does not generally exceed a grade of 12.5% (1 in 8). <p>The design alignment levels at the property boundary as issued by Council and their relationship to the Council roadway/kerb/footpath 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.</p> <p>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.</p> <p>Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881.</p> <p>Condition Reason: To ensure all roadway works are designed and constructed in accordance with Council requirements.</p>
11.	<p>Design Alignment Levels</p> <p>The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of \$658 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.</p> <p>Condition Reason: To ensure all parking and driveway works are designed and</p>

Condition	
	constructed in accordance with the relevant requirements, to Council standard, and to ensure payment of fees to Council.
12.	<p>Internal Carspace Design Bass Street</p> <p>The gradient of the proposed internal carspace accessed from Bass Street must be designed and constructed to not exceed a grade of 5% (1 in 20) in accordance with Australian Standard 2890.1 (2004) – Off Streetcar Parking and the levels of the driveway/s must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate.</p> <p>Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.</p>
13.	<p>Internal Driveway Design Byrd Avenue</p> <p>Plans submitted for the construction certificate shall show a minimum 5.5m wide vehicle opening at the rear property boundary opposite the double carport. The gradient of the proposed internal access driveway/s between carport spaces and Council issued alignment levels must be designed and constructed to not exceed a grade of 12.5% (1 in 8) in accordance with Australian Standard 2890.1 (2004) – Off Streetcar Parking and the levels of the driveway/s must match the alignment levels at the property boundary (as specified by Council).</p> <p>Longitudinal sections of the driveway must be provided with the construction certificate plans, along the extremities of the driveway. The sections shall demonstrate compliance with the Council issued alignment level at the property boundary, together with satisfactory ramp grades in accordance with AS 2890.1 (2004) to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.</p>
14.	<p>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
15.	<p>Stormwater Drainage</p> <p>Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.</p>

	Condition
<p>16. Stormwater Drainage</p> <p>The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval.</p> <p>Condition Reason: To control and manage stormwater run-off.</p> <p>Stormwater runoff from the (redeveloped portion) site shall be discharged either:</p> <ol style="list-style-type: none"> To the kerb and gutter in Byrd Avenue along the site frontage by gravity (preferably without the use of a charged system); OR To Council's underground drainage system in Byrd Avenue via the existing inlet pit located adjacent to the vehicle crossing; OR To a suitably sized infiltration area. As a guide the infiltration area shall be sized based on a minimum requirement of 1 m² of infiltration area (together with 1 m³ of storage volume) for every 20 m² of roof/impervious area on the site. <p>Infiltration areas must be located a minimum of 3.0 metres from any structure (note: this set back requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure) and 2.1 metres from any adjacent side or rear boundary.</p> <p>Prior to the use of infiltration in rear draining lots (where there is no formal overland escape route to Council's kerb and gutter/street drainage system), a geotechnical investigation will be required to determine whether the ground is suitable for infiltration. Should rock and/or a water table be encountered within two metres of the proposed base of the infiltration pit, or the ground conditions comprise low permeability soils such as clay, infiltration will not be appropriate.</p> <p>Condition Reason: To control and manage stormwater run-off.</p>	
<p>17. Stormwater Drainage</p> <p>Any new 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.</p> <p>Condition Reason: To control and manage stormwater run-off.</p>	
<p>18. Excavation Earthworks and Support of Adjoining Land</p> <p>Details of proposed excavations and support of the adjoining land and buildings are to be prepared and be included in the construction certificate, to the satisfaction of the appointed Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported.</p>	
<p>19. Excavation, Earthworks and Support of Adjoining Land</p> <p>A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details</p>	

Condition

the methods of support for any buildings located on the adjoining land, to the satisfaction of the Principal Certifier:

- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or other building that is located on the adjoining land;
- when undertaking demolition work to a wall of a dwelling or other substantial structure that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
- when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land; and
- as otherwise may be required by the Certifier for the development.

The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the Principal Certifier.

Condition Reason: To ensure adjoining land is adequately supported.

20. **Landscape Plan**

A formal Landscape Plan prepared by a qualified professional in the Landscape industry (must be eligible for membership with AILDM, AILA or equivalent) must be submitted to, and be approved by, the Principal Certifier, **prior to CC/commencement of site works** which must include **the C1 DCP 2023 controls with a site area of up to 300sqm to achieve compliance.** detailing the following:

- A Planting Plan & Plant Schedule which includes proposed species, botanic and common names, pot size at the time of planting, quantity, location, dimensions at maturity and any other details required to describe the works.
- A predominance of species that are not reliant on high quantities of moisture and fertilizer for survival.
- A high-quality selection and arrangement of decorative **NATIVE** species throughout the front and rear setbacks to assist with presentation of the development to the streetscapes.
- Dedicated garden areas around the southern, and eastern aspects of the rear yards, to which, decorative lower growing species shall be provided to soften the appearance of dividing/boundary fences.
- All trees planted within both properties must ensure that the DCP 25% site coverage can be achievable, with **all trees to be measured 2.5 metres from any part of the dwelling to achieve compliance.**

Condition Reason: To ensure residential amenity and that appropriate landscaping is provided.

21. **Tree Protection Measures/Street Tree Protection Measures**

In order to ensure retention of the *Callistemon Viminalis* (Bottlebrush) 4 metres high, good condition, within the Byrd Ave councils' verge, adjacent the northern neighbouring No.16 dwelling, 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 both its trunk and canopy to be clearly and accurately shown on all plans.

Condition

- b) Any excavations associated with the installation of new services, pipes, stormwater systems or similar over this frontage can only be located in line with either of the sites side boundaries.
- c) Each of the street trees must be physically protected by installing an evenly spaced star pickets at a setback of 1000mm to its trunk and matching up with the brick wall to the east, gutter to the west, to which, safety para-webbing shall then be permanently attached to completely enclose the tree for the duration of works.
- d) This protection shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: **"TREE PROTECTION, DO NOT REMOVE"**.
- e) Other than the approved works, the applicant is not authorised to perform any other works to this public tree and must contact Council's Landscape Development Officer on 9093-6633 should clearance pruning, or similar works appear necessary. If approval is given, it can only be performed by Council, wholly at the applicants cost, with payment to be received prior to the issue of an Occupation Certificate.
- f) The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during works and prior to any Occupation Certificate.
- g) A refundable deposit in the form of cash, credit card or cheque for an amount of **\$300.00** must be paid at the Cashier on the Ground Floor of the Administrative Centre, **prior to a Construction Certificate** being issued for the development to ensure compliance with the conditions listed in this consent, and ultimately, preservation of the tree.

The refundable deposit will be eligible for refund following an Occupation Certificate, subject to completion and submission of Council's '*Security Deposit Refund Application Form*' and pending a satisfactory inspection by Council's Landscape Development Officer (9093-6633).

Any contravention of Council's conditions relating to the tree at any time during the course of works or prior to an Occupation Certificate may result in Council claiming all or part of the lodged security in order to perform any rectification works necessary, as per the requirements of 4.17 (6) of the Environmental Planning and Assessment Act 1979.

Condition Reason: Protection of existing environment public infrastructure, community assets and significant trees.

BEFORE BUILDING WORK COMMENCES

Condition

22. Building Certification & Associated Requirements

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

Condition

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

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

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

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

23. **Home Building Act 1989**

In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and sections 69 & 71 of the *Environmental Planning and Assessment Regulation 2021*, in relation to residential building work, the requirements of the *Home Building Act 1989* must be complied with.

Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.

24. **Dilapidation Reports**

A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified person to the satisfaction of the appointed Registered Certifier for the development, in the following cases:

- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the zone of influence of the footings of any dwelling, associated garage or other structure located upon an adjoining premises;
- demolition or construction of new dwellings; additions to dwellings or outbuildings, which are sited up to or less than 900 mm from a site boundary (e.g. a semi-detached dwelling, terraced dwelling or other

Condition
<p>building sited less than 900mm from the site boundary);</p> <ul style="list-style-type: none"> • excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises; and • as may be required by the Principal Certifier for the development. <p>The dilapidation report shall include details of the current condition and status of any dwelling, or other structures located upon the adjoining premises and shall include relevant photographs of the structures.</p> <p>The dilapidation report must be submitted to the Principal Certifier, the Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).</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>
<p>25. Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
<p>26. Public Utilities</p> <p>A <i>Public Utility Impact Assessment</i> 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.</p> <p>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.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>
<p>27. Waste Management</p> <p>A Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, is required to be submitted to and approved by Council's Lead specialist Strategic Waste prior to commencement of any works on the site.</p> <p>The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must</p>

D63/24

Condition
<p>include the following details (as applicable):</p> <ul style="list-style-type: none"> • The use of the premises and the number and size of occupancies. • The type and quantity of waste to be generated by the development. • Demolition and construction waste, including materials to be re-used or recycled. • Details of the proposed recycling and waste disposal contractors. • Waste storage facilities and equipment. • Access and traffic arrangements. • The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials. <p><i>Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's website at: https://www.randwick.nsw.gov.au/_data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf</i></p> <p>Condition Reason: To ensure that waste and recycling is appropriately managed.</p>

DURING BUILDING WORK

Condition
<p>28. Site Signage</p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> a) showing the name, address and telephone number of the principal certifier for the work, and b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and c) stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ol style="list-style-type: none"> a) maintained while the building work is being carried out, and b) removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or b) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

Condition

Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

29. **Restriction on Working Hours**

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

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

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

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

30. **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:

- 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.
- 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.
- Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.

D63/24

	Condition
	<p>f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.</p> <p>g) 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) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.</p> <p>j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
31.	<p>Building Encroachments</p> <p>There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p>
32.	<p>Road/Asset Opening Permit</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</p>

Condition

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.

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

33. **Drainage**

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.

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

34. **Acoustic Requirements**

The design and construction of the premises must satisfy the requirements of Australian Standard *AS2021:2015 Acoustics—Aircraft noise intrusion— Building siting and construction*.

The requirements, recommendations and design advice outlined in the Acoustic Report submitted to Council with the development application, prepared by Acoustic Dynamics dated 20 October 2023 are required to be implemented and complied with, except as may be modified by the conditions of this development consent.

Condition Reason: To ensure appropriate amenity is maintained.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition

35. **Occupation Certificate Requirements**

	Condition
	<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>
36.	<p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>
37.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>Prior to the issuing of an occupation certificate the applicant must meet the full cost for a Council approved contractor to:</p> <ol style="list-style-type: none"> Construct a new concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site on Bass Street, to Council's specifications and requirements. Extend/Reconstruct the vehicle crossing and layback on Byrd Avenue to minimum 5.5m width, opposite the vehicle entrance to the proposed double carport. <p>Condition Reason: To ensure rectification of any damage to public infrastructure and that works are completed in accordance with Council's requirements with Council's approval.</p>
38.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.</p> <p>Condition Reason: To ensure rectification of any damage to public infrastructure and that works are completed in accordance with Council's requirements with Council's approval.</p>
39.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering 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:</p>

Condition	
a)	Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
b)	Works on Council land must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
c)	The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

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

40. **Sydney Water**

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

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorized WSC or Sydney Water.

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

Condition Reason: To ensure the development satisfies Sydney Water requirements.

41. **Stormwater Drainage**

The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development approval. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.

Condition Reason: To ensure stormwater drainage works are completed in accordance with Australian Standard and conditions of approval.

42. **Stormwater Drainage**

Should an infiltration area be provided, 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

Condition	
	<p>Certifier and the Council. The works-as-executed plan must include the following details (as applicable):</p> <ul style="list-style-type: none"> • The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes; • Details of infiltration/absorption systems; and • Details of pumping systems installed (including wet well volumes). <p>Condition Reason: To control and manage stormwater run-off.</p>
43.	<p>Stormwater Drainage</p> <p>Should an infiltration area be provided, 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 infiltration system is maintained and that no works which could affect the design function of the infiltration 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.</p> <p>Notes:</p> <ol style="list-style-type: none"> 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. 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. <p>Condition Reason: To control and manage stormwater run-off.</p>
44.	<p>Landscape Certification</p> <p>Prior to any Occupation Certificate, certification from a qualified professional in the landscape industry must be submitted to, and be approved by, the Principal Certifier confirming the date that the completed landscaping was inspected, and that it has been installed in accordance with the 'Landscape Plan' condition earlier in this report, and any relevant conditions of consent.</p> <p>Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.</p> <p>Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.</p>
45.	<p>Waste Management</p> <p>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.</p>

Condition	
46.	Condition Reason: To ensure the ongoing provision of appropriate waste storage.
	Subdivision Certificate/Registration of plans
	A subdivision certificate in respect to the 2-lot subdivision must be issued and subdivision plans registered at NSW Land Registry Services prior to the issuing of a full occupation certificate for this development.
	Condition Reason: To ensure that subdivision work is completed in accordance with specified plans and specifications.

OCCUPATION AND ONGOING USE

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

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

Condition	
51.	Demolition Work Plan A demolition work plan must be developed and be implemented for any demolition works in accordance with AS2601 (2001)- Demolition of Structures. The demolition work must be carried out in accordance with relevant SafeWork

D63/24

Condition
<p>NSW Requirements and Codes of Practice; Australian Standard – AS 2601 Demolition of Structures and Randwick City Council's Asbestos Policy.</p> <p>The demolition work plan must include details of the demolition, removal, storage and disposal of any hazardous materials (including materials containing asbestos).</p> <p>A copy of the demolition work plan must be provided to the Principal Certifier and Council. A copy shall also be maintained on site and be made available to Council officers upon request.</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>52. Demolition Work</p> <p>Any demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard - AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a demolition work plan, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations • A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress", • Council is to be given at least two days written notice of demolition works involving materials containing asbestos, • Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request, • A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works. <p>Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.</p> <p>Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

REQUIREMENTS PRIOR TO THE ISSUE OF SUBDIVISION CERTIFICATE

Condition
<p>53. Sydney Water</p>

	Condition
	<p>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).</p> <p>Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.</p> <p>A Section 73 Compliance Certificate must be completed before a subdivision certificate or occupation certificate can be issued, whichever the sooner.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
54.	<p>Easement</p> <p>The applicant shall create suitable rights of carriageway, easements for services, support and stormwater lines, as required. The applicant shall be advised that the minimum easement width for any stormwater line is 0.9 metres.</p> <p><u>NOTE</u></p> <p><u><i>This shall include a minimum 0.9m wide drainage easement over proposed Lot 1 on the approved plans in favour of Lot 2 to legally discharge stormwater to Byrd Avenue.</i></u></p> <p>Condition Reason: To allow access and maintain stormwater infrastructure.</p>
55.	<p>Public Utilities</p> <p>The applicant must meet the full cost for telecommunication companies, Jemena, Ausgrid and Sydney Water to adjust/relocate their services as required. This may include (but not necessarily be limited to) relocating/installing new service lines and providing new meters. The applicant must make the necessary arrangements with the service authorities.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>
56.	<p>Restriction and Positive Covenant</p> <p>Should a infiltration area be provided, a "restriction on the use of land" and "positive covenant" (under section 88B of the Conveyancing Act 1919) shall be placed on the title of the subject property, in conjunction with the registration of the proposed plan of subdivision for this property, to ensure that the infiltration system is maintained and that no works which could affect the design function of the infiltration 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.</p> <p>Notes:</p> <p>a) The "restriction as to user" and "positive covenant" are to be to the</p>

Condition
<p>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.</p> <p>b) 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.</p> <p>c) The Positive Covenant and Restriction may also be registered on the property using standard forms 13PC and 13RPA available from NSW Land registry services under Sec 88E of the Conveyancing Act prior to an occupation certificate being issued.</p>

Condition Reason: To ensure that future owners are made aware of their responsibilities with respect to the infiltration system, including the requirement that the owners maintain, repair and keep in working order.

57. **Subdivision Certificate**

A formal application for a subdivision certificate is required to be submitted to and approved by the Council and all subdivision conditions of this development consent are required to be satisfied prior to the release of the subdivision plans.

Condition Reason: To ensure that subdivision certificate is completed in accordance with specified plans and specifications.