

Randwick Local Planning Panel (Electronic) Meeting

Thursday 22 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, 22 August 2024

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D67/24

Subject: 5 Mermaid Avenue, Maroubra (DA/209/2024)


Executive Summary

Proposal:	Alterations and addition to existing dual occupancy and construction of a new swimming pool.
Ward:	Central Ward
Applicant:	Alec Pappas Architects Pty Ltd
Owner:	Adrian & Sam Di Blasio
Cost of works:	\$284,900.00
Reason for referral:	The development contravenes the development standard for building height (Clause 4.3 of the Randwick LEP 2012) by more than 10%, and the General Manager has made a discretionary referral due to a potential conflict of interest.

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 building development standard in Clause 4.3 of Randwick Local Environmental Plan 2012.
- B. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012.
- C. 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/209/2024 for alterations and addition to existing dual occupancy and construction of a new swimming pool, at No. 5 Mermaid Avenue, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/209/2024 - 5 Mermaid Avenue, MAROUBRA NSW 2035 - DEV - Randwick City Council

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

- The proposal seeks development consent for alterations and addition to an existing dual occupancy and construction of a new swimming pool.

- Floor space ratio (FSR)
- Building height
- Side setback
- Roof terrace and privacy
- Swimming pools

2. Site Description and Locality

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As the subject site is located along a cliff edge, the site contains a significant slope falling approximately 30m from west to east over a distance of approximately 50m. However, it is important to note that the large portion of the original slope has been excavated as part of works approved under DA/115/2007.



Figure 1: Subject site as viewed from Mermaid Avenue.



Figure 2: View of the existing rear terrace and swimming pool of No. 5 Mermaid Avenue.



Figure 3: View of existing entrance to No. 5A Mermaid Avenue.

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Figure 4: Adjoining multi-level dwelling at No.3 Mermaid Avenue.



Figure 5: Adjoining multi-level dwelling at No. 7 Mermaid Avenue.

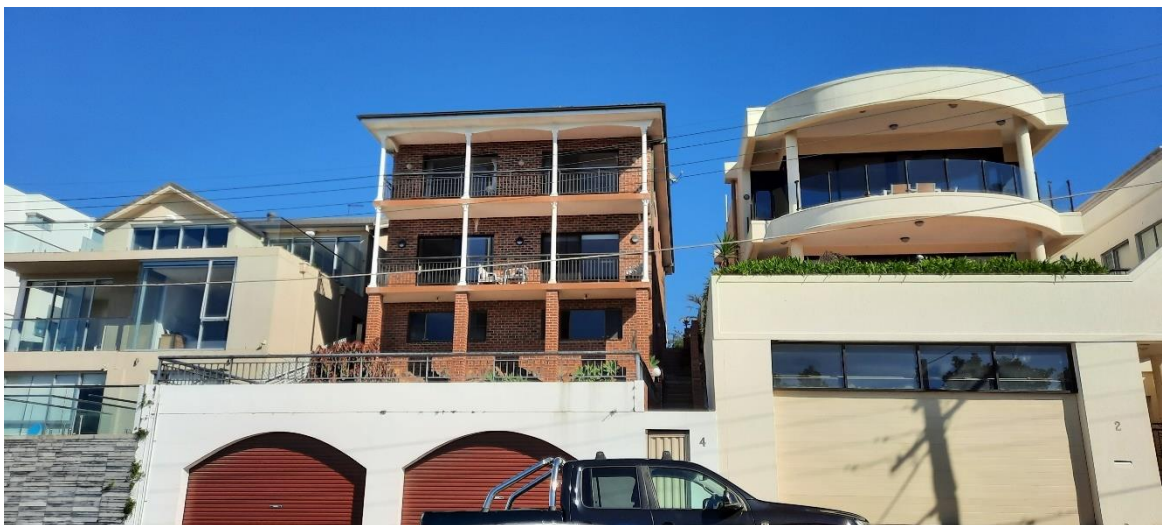


Figure 6: Multi-level dwellings at Nos. 2, 4 and 6 Mermaid Avenue located opposite of subject site.

3. Relevant history

14 February 2007

DA/115/2007 was approved by Council for the demolition of existing dwelling and construction of a dual occupancy comprising of two three-storey dwellings, with internal car parking, swimming pools, terrace and balconies, landscaping, driveway and flat aluminium sheet roofs.

24 February 2009

DA/101/2009 was approved by Council for the subdivision of the dual occupancy development into two strata lots.

22 March 2024

DA/209/2024 (the current application) was lodged.

24 May 2024

Following a review of the application, a request for information was sent to the applicant on 24 May 2024. The following request for additional information/concerns were raised.

1. Strata Plan

The subject site is strata subdivided. No strata plan has been provided as part of the development application.

The proposal seeks to cantilever the swimming pool for No. 5 Mermaid Ave over the entrance of the dwelling at No. 5A Mermaid Ave. This will likely require amendments to the Strata Plan.

It is requested that a Strata Plan, which indicates how the site will be divided across all levels, is prepared and submitted to Council. The Strata Plan will be forwarded to Council's Development Engineering team for review.

2. Clause 4.6 Variation Statements

The proposal seeks variation to the Randwick LEP 2012 building height and floor space ratio (FSR) standards. It is acknowledged that a Clause 4.6 variation statement has been prepared for each variation sought.

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

The environmental planning grounds outlined in the Clause 4.6 variation statement are not considered sufficient to justify contravention to the building height and FSR standard.

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

The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written consent needs to be "sufficient".

- i. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on*

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environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].

- ii. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

Given the context of the site and surrounding properties, the proposed variation to building height and FSR may be supportable. However, the Clause 4.6 variation statements prepared must be revised to ensure sufficient environmental planning grounds are outlined in support of the proposed variation to building height and FSR.

Stating that the proposal complies with the objectives of the control and results in no amenity impacts to neighbouring properties may be used to support the case for variation, but cannot be solely relied upon as sufficient environmental planning grounds. The environmental planning grounds must focus on the circumstances of the site and/or surrounding properties (if applicable) that ultimately contribute to the variations to the building height and FSR development standards.

Clause 4.6 Variation – Building Height

With specific regard to building height, the submitted Clause 4.6 variation statement notes that a maximum building height of 12.37m is proposed. However, calculations based on the Section Plan prepared by APA (Section A - Dwg No. A-21) indicate that a height of 13.8m is proposed from the underside of the slab of Lower Level 0 to the top of the proposed new pool safety barrier.

The Clause 4.6 variation must be updated to correctly reference the maximum building height proposed and the extent of variation sought. To assist with the determination of the proposed building height, it is recommended that a building height plane is prepared to indicate the extent of the built form that is situated above a height of 9.5m from existing ground level.

Additionally, please be advised that as the development standard for building height by more than 10%, referral to the Randwick Local Planning Panel (RLPP) is required.

Clause 4.6 Variation – Floor Space Ratio

Currently, the variation statement prepared states that an FSR of 0.63:1 is proposed but does not state the GFA of the proposal nor the extent of variation proposed. It is requested that the Clause 4.6 variation statement prepared for FSR references the extent of variation in m².

Additionally, the Floor Area Diagrams prepared by APA (Dwg No.A-24) indicate that the stairs have been excluded across multiple floors. Typically, the area of a stair core is only counted on one level as the area immediately above the stairs is a void. However, in situations where a stair core services multiple levels, the void area created by the stairs only applies to the uppermost level.

In this regard, the area of the stairs on Upper Level 1, Lower Level 2 and Lower Level 1 must be included in FSR calculations.

The applicant provided additional information in response to the RFI above on 7 June and 27 June 2024. The additional information provided by the applicant addressed the information/concerns raised in the RFI letter.

4. Proposal

The proposal seeks development consent for alterations and additions to the existing dual occupancy and the construction of a new swimming pool. A summary of the proposed works is provided below.

5 Mermaid Avenue

Upper Level 2

- Addition of a non-trafficable roof to be connected to existing east facing balcony. The proposed roof will be located over a portion of the existing terrace and includes the provision of a skylight.

Upper Level 1

- Removal of existing swimming pool and construction of new swimming pool to the east of existing terrace and pebbled roof. The proposed swimming pool will cantilever over No.5A Mermaid Avenue.
- External wall of kitchen extended to the east over a portion of the existing terrace and swimming pool area.
- Relocation of BBQ area to the southern edge of terrace area.
- Addition of screen planting with timber or metal battens proposed along southern edge of terrace.
- Addition of a non-trafficable, pebbled roof to the north of the existing terrace. The proposed roof will be located over the entrances to both garages and external entrance to No.5A Mermaid Avenue on the level below.

Garage Level

- Internal reconfiguration of existing walls to accommodate changes to the layout and functionality of existing roofs. The proposed alterations include:
 - Reduction to the size of the plant/storage room.
 - Theatre/rumpus room slightly enlarged and shifted to the east.
 - Laundry relocated to allow for direct connectivity with the external drying area and opportunities for natural ventilation.

5A Mermaid Avenue

Garage Level

- Existing external entrance to dwelling to be enclosed with new windows and glazed doors with aluminium framing proposed along elevations.
- Addition of structure to support proposed new swimming pool location for No.5 Mermaid Avenue.
- Extension of the existing roof to the north to cover proposed extension on Lower Level 2.
- Addition of spiral staircase adjacent to driveway which extends to the lowest ground floor.

Lower Level 2

- Extension of Master Bedroom over the existing pebbled roof to accommodate walk-in-robe.
- Replacement of existing eastern elevation screening with coated metal louvres.

Lower Level 1

- Addition of a new pebbled roof with skylight over existing void situated between the existing rumpus room and hallway to the bedrooms.

Lower Level 0

- Conversion of the existing central courtyard into an internal area to accommodate extension to kitchen and dining room.
- Addition of spiral staircase adjacent to kitchen which extends to the driveway level.
- Addition of screen planting along the southern side of existing terrace.

Site works

- Three (3) trees within the internal courtyard of No.5A Mermaid Avenue will need to be removed to accommodate the proposed development.

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 in response to the subject application.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the SEPP (Sustainable Buildings) 2022, Chapter 2 Standards for residential development – BASIX.

6.2. SEPP (Biodiversity and Conservation) 2021

The proposed development will require the removal of three (3) palm trees currently located within the internal courtyard of No.5A Mermaid Avenue.

Council's landscape officer has reviewed the proposed tree removal and concluded that the trees are of little significance and exempt under the DCP 2.5 metre clause. As such, Council's landscape officer raises no objections to the development subject to conditions of consent.

No further consideration of SEPP (Biodiversity and Conservation) 2021 is necessary.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The proposed development area contains land that is wholly within land defined as a '*coastal use area*' and partially within land defined as '*coastal environment area*'. Reference should be made to Figure 7 below.

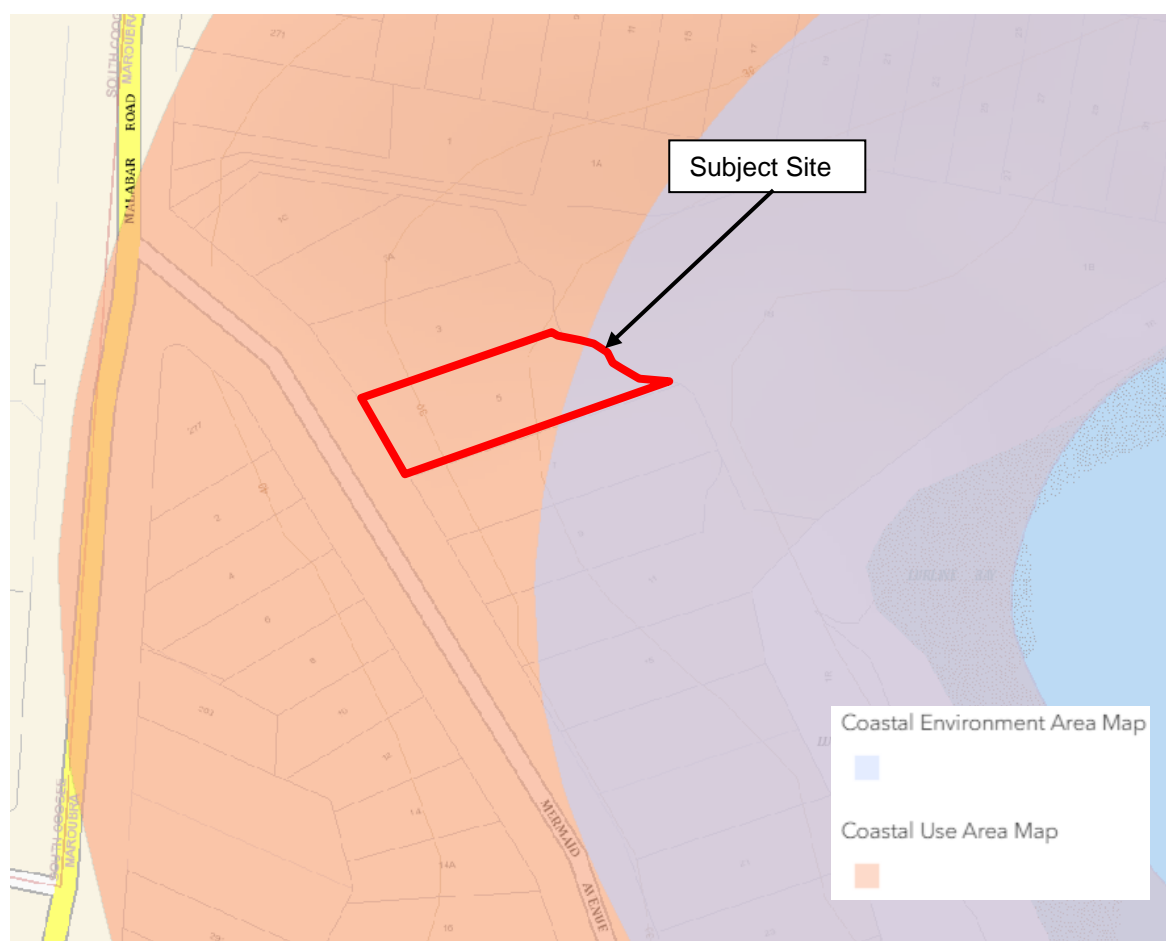


Figure 7: Coastal Management SEPP mapping (Source: NSW Planning Portal Digital EPI Viewer).

Clause 2.10 - Coastal environment area

Subsection (1) of clause 2.10 states:

Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following –

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*

The proposed development relates to alterations and additions to an existing dual occupancy. The proposed works are largely contained within the existing envelope of the building, thus no extensive excavation or vegetation removal is required. Hence, the biophysical, hydrological and ecological environment will not be impacted.

- (b) *coastal environmental values and natural coastal processes,*

The existing use of the site for a residential accommodation in the form of an attached dual occupancy, which will not be altered by the proposed development. The proposed development is unlikely to impact upon any coastal environmental values or natural coastal processes noting the alterations and additions are proposed outside the portion of the site identified as 'coastal environment area'.

- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*

The water quality of the marine estate will not be impacted by the proposed development, with the proposed alterations and additions occurring outside the portion of the site identified as 'coastal environment area'. The site is not located near any of the sensitive coastal lakes identified in Schedule 1.

- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

The subject site is located within an established residential area. Terrestrial and aquatic species, populations and ecological communities will not be affected as a result of the proposal, noting the proposed alterations and additions are located outside of the portion of the site identified as 'coastal environment area'.

- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

No existing public access between Mermaid Avenue and the coastal foreshore is located proximate to the subject site.

- (f) *Aboriginal cultural heritage, practices and places,*

No places of Aboriginal significance are known to exist on the site.

- (g) *the use of the surf zone.*

The proposed alterations and additions will not impact the use of any surf zones noting that the proposed works are to generally occur within the existing envelope of the building and developed upon footprint of the site.

Subsection (2) of Clause 2.10 states;

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that –

- (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
- (ii) *if that impact cannot be reasonably avoided – the development is designed, sited and will be managed to minimise that impact, or*
- (iii) *if that impact cannot be minimised the development will be managed to mitigate that impact.*

As addressed above, the proposed development has been designed and sited to avoid adverse impacts to the items referred to in subsection (1).

Clause 2.11 Coastal use area

Subsection (1) of Clause 2.11 states;

Development consent must not be granted to development on land that is within the coastal use area unless the consent authority –

- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following –*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

No existing public access between Mermaid Avenue and the coastal foreshore is located in proximity to the subject site.

- (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

The subject site is not located in proximity to any public places. The foreshore area that the site adjoins cannot be accessed by the public.

- (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands*

The visual amenity and scenic qualities of the coast will not be compromised by the proposed development, noting the alterations and additions will largely be contained within the existing envelope of the building, and integrate with the existing external design and architectural form.

- (iv) *Aboriginal cultural heritage, practices and places,*

No places of Aboriginal significance are known to exist on the site.

- (v) *cultural and built environment heritage,*

The site is not identified as containing a heritage item nor is it located within a heritage conservation area. Considering the proposal relates to minor alterations and additions to an existing dual occupancy, the character of the area as viewed from the foreshore will remain unchanged.

- (b) *is satisfied that -*

- (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) *if that impact cannot be reasonably avoided – the development is designed, sited and will be managed to minimise that impact, or*
- (iii) *if that impact cannot be minimised - the development will be managed to mitigate that impact.*

The proposed development has been appropriately designed and sited to ensure none of the items listed in clause 2.11(a) will be impacted. No public spaces are located in proximity to the subject site, with the proposed alterations and additions seamlessly integrated with the existing dual occupancy and sympathetic to other dwellings located along Mermaid Avenue.

- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

The proposed alterations and additions are minor in nature and are primarily contained within the existing building and built-upon envelope of the dual occupancy. Therefore, it is considered that the dual occupancy remains of a size and scale that is consistent with other developments located along Mermaid Avenue.

Overall, the proposal is deemed to be consistent with Chapter 2 of SEPP (Resilience and Hazards) 2021.

Chapter 4 - Remediation of Land

The available history of the site indicates that the site has been used for residential purposes for a significant period of time. An inspection of the site has not revealed any land uses that suggest contamination of land has occurred. No significant risk is posed and therefore under Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered suitable for the continued use as a dual occupancy.

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.6:1 (578.52m ²)	0.65:1 (627.97m ²)	No
Cl 4.3: Building height (max)	9.5m	13.8m	No

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 6.6 Foreshore building line

A portion of the site is identified as being located within the foreshore area pursuant to the RLEP 2012 Foreshore Building Line Map. However, no works are sought within the foreshore area. The proposed alterations and additions are landward of the foreshore building line.

Therefore, no further consideration of Clause 6.6 of the RLEP 2012 is necessary.

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:
 - (a) to recognise, protect and enhance the natural, visual and environmental qualities of the scenic areas of the coastline,
 - (b) to protect and improve visually prominent areas adjoining the coastal foreshore,
 - (c) to protect significant public views to and from the coast,
 - (d) to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.
- (2) This clause applies to land identified as “Foreshore scenic protection area” on the Foreshore Scenic Protection Area Map.
- (3) Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development:
 - (a) is located and designed to minimise its visual impact on public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas, and

(b) contributes to the scenic quality of the coastal foreshore.

The proposed alterations and additions have been designed to integrate with the existing form and design of the dual occupancy. As the proposed works have generally been contained within the existing envelope of the building and areas already built-upon, the proposal will not be detrimental to the visual qualities and amenity of the foreshore. The proposed building bulk, scale and height respond to the existing form of the building and the dominant building character of the area, ensuring the proposal contributes to the scenic quality of the coastal foreshore and continues to integrate effectively with existing development within the foreshore area.

The proposal meets the relevant objectives outlined for Foreshore scenic protection areas under Clause 6.7 of the RLEP 2012.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.6:1 (578.52m ²)	0.65:1 (627.97m ²)	49.45m ²	8.5%
CI 4.3: Building height (max)	9.5m	13.8m	4.3m	45.26%

The NSW Department of Planning and Environment (DPE) made amendments to clause 4.6 of the Standard Instrument which commenced on 1 November 2023. The changes aim to simplify clause 4.6 and provide certainty about when and how development standards can be varied.

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

3. *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard*

Pursuant to section 35B(2) of the *Environmental Planning and Assessment Regulation 2021*, a development application for development that proposes to contravene a development standard must be accompanied by a document (also known as a written request) that sets out the grounds on which the applicant seeks to demonstrate the matters of clause 4.6(3).

As part of the clause 4.6 reform the requirement to obtain the Planning Secretary's concurrence for a variation to a development standard was removed from the provisions of clause 4.6, and therefore the concurrence of the Planning Secretary is no longer required. Furthermore, clause 4.6 of the Standard Instrument no longer requires the consent authority to be satisfied that the proposed development shall be in the public interest and consistent with the zone objectives as consideration of these matters are required under sections 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979*, and clause 2.3 of RLEP 2012 accordingly.

Clause 4.6(3) establishes the preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

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

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

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

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

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

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

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

Additionally, in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065, Commissioner Dickson at [78] notes that the avoidance of impacts may constitute sufficient environmental planning grounds "as it promotes "good design and amenity of the built environment", one of the objectives of the EPA Act." However, the lack of impact must be specific to the non-compliance to justify the breach (*WZSydney Pty Ltd* at [78]).

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(3) have been satisfied for each contravention of a development standard. The assessment and consideration of the applicant's request are also documented below in accordance with clause 4.6(4) of RLEP 2012.

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

The applicant's written justification for the departure from the FSR standard is contained in Appendix 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 FSR development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the additional bulk provided is minor and largely within the existing building footprint. The works that relate to additional GFA do not add significant bulk that materially alter the character or appearance of the structure. New form is modest and it relates well with the existing massing. The character of the site or the locality is not detrimentally affected or altered.

The applicant's written request also notes that development in the surrounding area comprises of comparable dwellings along the eastern side of Mermaid Avenue (multiple level stepped down the steep slope towards Lurline Bay), whereas dwellings on the western side of Mermaid Avenue are two to three storeys with street level garages, being set much higher than properties to the east. Immediately north at 3 Mermaid Avenue is a five-storey contemporary dwelling which steps down the site and is of a comparable bulk and scale to the subject dual occupancy. Similarly, the southern neighbour at 7 Mermaid Avenue is a five-storey contemporary dwelling which steps down the site and is of a comparable bulk and scale to the subject dual occupancy.

Moreover, the applicant's written request notes previous variation approvals permitted by Council for recent development consents in the immediate area. These non-compliances demonstrate that within the immediate context of the site Council has consistently permitted developments that have not complied with development standards. Accordingly, a feature or characteristic of the area is that recent developments have not complied with development standards (specifically FSR).

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

The applicant's written justification demonstrates that this objective is satisfied by noting that articulation is achieved and compliance with BASIX is mandatory.

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

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

The development is not within a conservation area or near a heritage item so the objective detailed in Clause 1(c) is not relevant to this development.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the works that add GFA do not result in additional overshadowing, loss of views or amenity impact to any neighbour. The northern neighbour could potentially be affected by the extension to the master bedroom to 5a Mermaid Ave, however the addition is minor, it is within the building footprint, does not rise higher than one storey and is well below the highest point of the adjoining wall to which it is positioned. It is also noted that the northern neighbour is well screened from the proposed works resulting in the bedroom addition as hardly being visible from the site. The other increases in GFA have no ability to potentially impact any neighbour.

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

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

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

- *It has been demonstrated that the proposal and its FSR breach remains consistent with the objectives of the subject zone as well as Clause 4.4 and 4.6 of the Randwick LEP 2022, despite the numerical non-compliance.*
- *The additional GFA is provided with an addition to the kitchen which is within an internal courtyard on the lowest level, the enclosure of the entry area to the lower unit, a minor addition to the main bedroom of the upper unit and by extending the living space below the existing roofline. The areas to which the additional GFA relate have no bearing on neighbours amenity. No view is affected, no additional overshadowing is created, the bulk of the structure when viewed from any public place is not increased, and from neighbouring sites is not increased in any meaningful way.*
- *The non-compliant new structure will not provide any material additional overshadowing, with additional overshadowing falling onto the street, the roof of the southern neighbour and to the very rear (lowest level and most unusable garden area) of the garden of No.9 Mermaid Avenue. No usable area of open space or neighbouring sites is not increased in any meaningful way.*
- *The works do not create any unreasonable visual impact or loss of views. The area to which the works relate are not within the foreground of any water view from neighbouring properties. The works will not create significant building bulk that would affect outlook when viewed from neighbouring properties. In relation to the overall bulk of the existing structure the new works are minimal.*
- *The density of the built form is appropriate and relates well to surrounding development.*
- *The proposal would not compromise the character or nature of the area sought by the local environmental planning framework.*
- *The non-compliant FSR does not result in any unreasonable visual impacts.*
- *The FSR non-compliance assists with providing improved internal amenity for future residents.*

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

The applicant's written request claims that the additional GFA sought has no bearing on amenity of adjoining properties and does not increase the bulk of the structure in any meaningful way when viewed from any public place or neighbouring sites.

While an increase in GFA occurs, the additional GFA generally relates to the enclosure of existing external areas. At No.5 Mermaid Avenue, the only additional GFA sought relates to the extension to the existing kitchen through the shifting of the sliding glass door, resulting in the enclosure of the area identified in Figure 8 below. The enclosure of this space, does not result in any changes to the overall building bulk and form as evident in elevation plan shown in Figure 9.



Figure 8: View of rear elevation of the existing dwelling at No.5 Mermaid Avenue with red line indicating the extent of the external area to be enclosed.

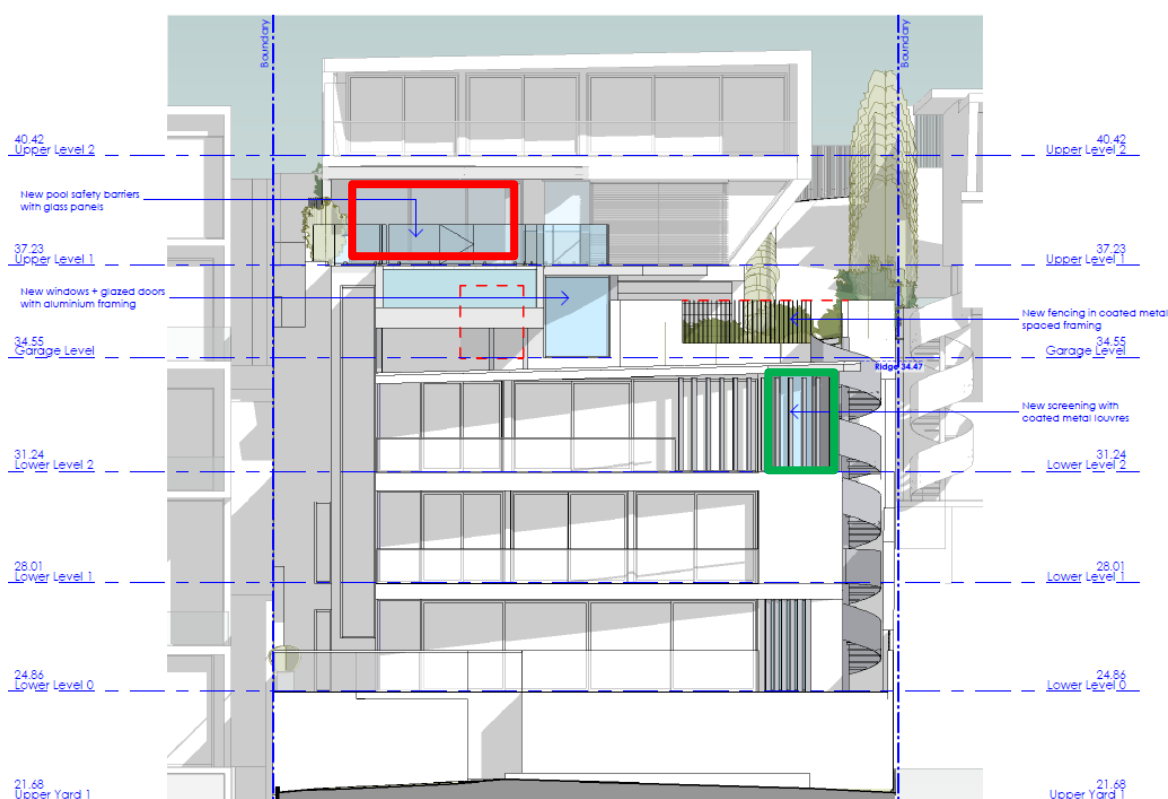


Figure 9: Extract of rear elevation prepared by Alec Pappas Architects. Location of proposed kitchen has been indicated in red outline, while location of walk-in-robe addition has been shown in green outline.

With regard to 5A Mermaid Avenue, additional GFA has been generated as a result of the following proposed changes:

- Enclosure of existing external entry area.
- Addition of walk-in-robe to master bedroom.
- Enclosure of courtyard located adjacent to kitchen.

The proposed alterations and additions seek the enclosure of the area identified in Figure 10 below. This area is centrally located within the site and is already bounded by solid walls and metal batten fencing. As such, the enclosure of this space will not significantly alter the existing building form nor be discernable from the streetscape, or neighbouring properties.

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Figure 10: View of entrance area for dwelling at No.5A Mermaid Avenue with red line indicating extent of external area to be enclosed.

In terms of the walk-in-robe addition to the Master bedroom, the area of the addition is limited to the existing envelope of the pebbled roof, as evident in Figure 11 below. As such, the addition of the walk-in-robe does not further encroach on the existing setbacks of the built form and will seamlessly integrate within the existing envelope of the building, as evident in the rear elevation plan previously shown in Figure 9.

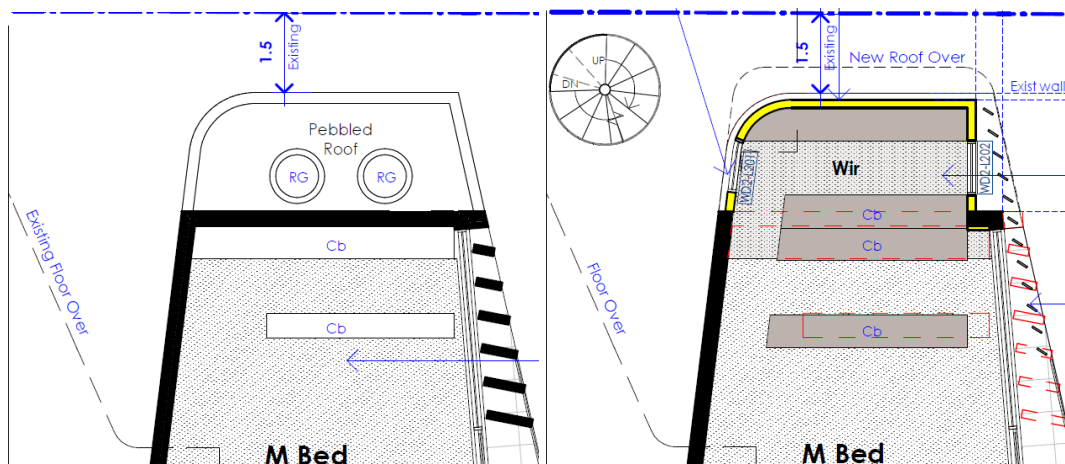


Figure 11: Extract of existing and proposed lower level 2 floor plan prepared by Alec Pappas Architects.

Finally, the proposal seeks to enclose the internal courtyard on lower level 0 to accommodate an expanded open plan dining, living and kitchen area. The enclosure of this area has no bearing on the presentation of the dwelling due to the central location of the courtyard and the existing boundary wall along the northern boundary (see Figure 12 below). As such, the limited increase to building bulk in this location does not result in any amenity impacts to the adjoining property at No.3 Mermaid Avenue.



Figure 12: View of existing northern boundary wall as viewed from existing courtyard proposed to be enclosed.

Overall, the proposed additional GFA sought and subsequent variation to FSR, occurs without generating any additional building bulk that will be discernible from the streetscape or neighbouring properties. As such, the existing relationship of the built form in relation to adjoining properties will remain unchanged, with key amenity considerations such as privacy, solar access and views remaining unaffected by the additional GFA sought.

It is also important to note there have been other FSR variations approved for other properties in the vicinity of the subject site, as identified within the Randwick Council SEPP 1 and Clause 4.6 Register. These variations include.

- 11 Mermaid Avenue – DA/9/2018
 - FSR standard that applied = 0.5:1
 - Approved FSR = 0.746:1
 - Approved variation = 49.3%
- 23 Mermaid Avenue, Maroubra – DA/372/2015
 - FSR standard that applied = 0.5:1
 - Approved FSR = 0.71:1
 - Approved variation 18.3%

The proposed variation sought is considered sympathetic to previous variations approved for other properties along Mermaid Avenue. Thus, the proposed variation will not set an unacceptable precedence for the area.

Conclusion

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

7.2. Exception to the Building Height development standard (Clause 4.3)

The applicant's written justification for the departure from the Height of Buildings is contained in Appendix 3.

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

The applicant's written request seeks to justify the contravention of the Height of Buildings development standard by demonstrating that compliance is unreasonable or unnecessary in

the circumstances of the case because the relevant objectives of the standard are still achieved.

The objectives of the Height of Buildings standard are set out in Clause 4.3 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the additional bulk provided is minor and largely within the existing building footprint; works to the swimming pool are a result of the topography of the site, sloping significantly towards the ocean. The works will provide an addition to the terrace at this level. The overall RL of the structure is not increasing.

The applicant's written request also notes that when viewed from the rear, the works are entirely reasonable given that additional height/bulk is very minor and the form is consistent with surrounding development. The size and scale of the development is not materially altered by the works.

It is further noted that development in the surrounding area comprises of comparable dwellings along the eastern side of Mermaid Avenue (multiple level stepped down the steep slope towards Lurline Bay), whereas dwellings on the western side of Mermaid Avenue are two to three storeys with street level garages, being set much higher than properties to the east. Immediately north at 3 Mermaid Avenue is a five-storey contemporary dwelling which steps down the site and is of a comparable bulk and scale to the subject dual occupancy. Similarly, the southern neighbour at 7 Mermaid Avenue is a five-storey contemporary dwelling that steps down the site and is of a comparable bulk and scale to the subject dual occupancy.

Additionally, the applicant's written request notes previous variation approvals permitted by Council for recent development consents in the immediate area. These non-compliances demonstrate that within the immediate context of the site, Council has consistently permitted developments that have not complied with development standards. Accordingly a feature or characteristic of the area is that recent developments have not complied with development standards.

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

The development is not within a conservation area or near a heritage item so the objective detailed in Clause 1(b) is not relevant to this development.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the pool and adjoining terrace have been designed with the neighbour's amenity in mind. The existing terraces/balconies are all orientated to face the rear, with the upper level 1 extension contributing to this by extending further east, towards the rear. The northern neighbour is too far removed to have any privacy impact. That neighbour (No.3 Mermaid Ave) is also screened by significant vegetation further reducing sightlines. In relation to the southern neighbour (No.7 Mermaid Ave) privacy to this neighbour is protected with an area of pebbled non-trafficable roof provided along the southern edge of the terrace to reduce overlooking to this neighbour, which currently exists. It is noted that the proposed pool/addition terrace will not have any impact on view loss. The water/land interface is to the east of the pool.

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

2. Has the applicant's written request 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:

- *It has been demonstrated that the proposal and its proposed height 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 resultant form will result in built form consistency with surrounding development. The new pool and surrounding terrace and coping will result in a consistent built form with neighbouring site's built form. The area to which the non-compliance relates is a small portion of the site and not a substantial portion. The works seek to relocate an existing pool, the amenity of which was impacted when the neighbouring development at 7 Mermaid Avenue was developed. The relocation of the pool will result in significantly improved amenity for the owner-occupiers by positioning the pool in an area of the site that allows for solar access and views. The pool and surrounding area will continue an existing open space area at ground level, resulting in more of the same in built form terms.*
- *The non-compliant new structure will not provide any material additional overshadowing, with additional overshadowing falling onto the street, the roof of the southern neighbour and to the very rear (lowest level and most unusable garden area) of the garden of No.9 Mermaid Avenue. No usable area of open space or neighbouring windows are affected in terms of overshadowing.*
- *The non-compliance results due to change in topography of the site and the excavated levels beneath the subject area of works. The excavated area has created 3 levels beneath the pool area. Any works at this level would not comply with the standard.*
- *The works do not create any unreasonable visual impact or loss of views. The area to which the works relate are not within the foreground of any water view from neighbouring properties. The works will not create significant building bulk that would affect outlook when viewed from neighbouring properties. In relation to the overall bulk of the existing structure the new works above the building height are minimal.*

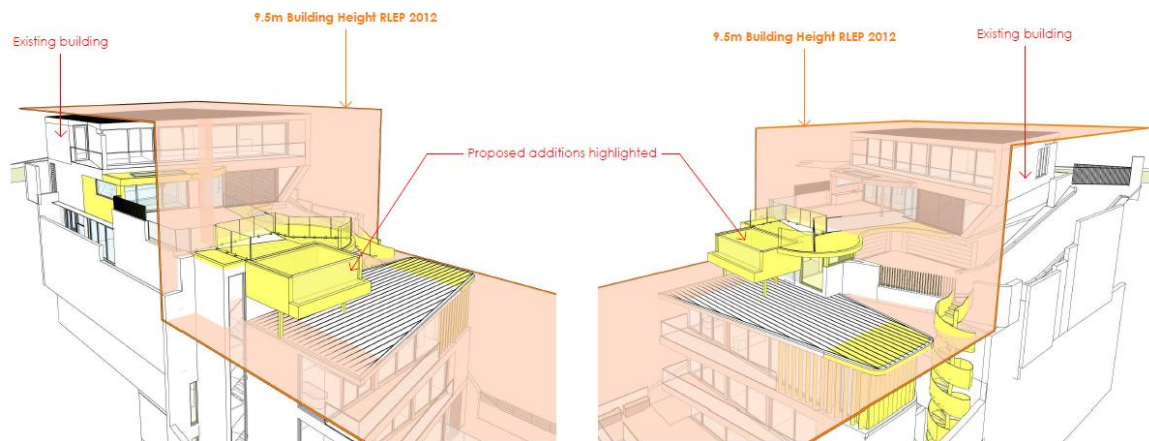
Assessing officer's comment: In conclusion, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant claims that non-compliance with the 9.5m building height standard is due to previous excavation works undertaken to accommodate the dual occupancy. Consequently, any additional works on the upper level 1 terrace would not comply with the height of buildings standard.

The development that originally accommodated the dwelling required excavation, which modified the 'existing' ground levels and resulted in excavated levels directly under the upper terrace area of No.5 Mermaid Avenue. This technical numerical variation to building height is inconsequential and not visibly perceived from elevations of the dwelling, adjoining dwellings, the public streetscape or the foreshore.

Currently, the finished floor level (FFL) of the exiting upper level terrace of No.5 Mermaid Avenue is situated approximately 12.6m above the existing ground level. The height plane diagram indicated in Figure 13 below illustrates the extent of the breach to the 9.5m height of buildings standard.

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Height Plane
Viewed from Rear (South-east)

Height Plane
Viewed from Rear (North-east)

Figure 13: Extract of height plane diagram prepared by Alec Pappas Architects.

The additional trafficable area sought aligns with the existing finished floor levels of the dual occupancy. The only additional building height generated by the proposal in relation to the existing floor levels is limited to the 1.2m high, glass panel pool fence (i.e. the pool water level is consistent with the existing upper level 1 floor level).

The majority of the additional built form which exceeds the height of building standard relates to the swimming pool. However, the location of the swimming pool in relation to the existing built form on the site and adjoining properties does not result in any unreasonable visual or amenity impacts. As noted within the Statement of Environmental Effects, the proposed swimming pool will have no impact on the existing view corridors from No.3 Mermaid Avenue (refer to Figure 14 on the following page). Furthermore, the new location of the swimming pool does not result in any unreasonable overshadowing to No.7 Mermaid Avenue, with the site and adjoining properties continuing to receive adequate direct solar access throughout the day during the winter solstice.

With regard to privacy, due to the topography of the site and opportunity to maximise ocean views, the built form character for properties located on the eastern side of Mermaid Avenue consists of raised terraces, balconies and swimming pools that subsequently enable a degree of overlooking into adjoining private open space areas. Thus, the location of the swimming pool is not inconsistent with the built form character of buildings located along the eastern side of Mermaid Avenue.

The proposed swimming pool does not exceed the existing height of the upper level terrace floor level. The variation proposed is largely as a result of previous excavation works which have lowered the ground level directly under the location of the swimming pool. It is also important to note that the subject site and adjoining sites all slope significantly downwards from street level to the rear boundary, resulting in larger built forms towards the centre and rear of each respective site. Therefore, while the swimming pool is situated above the maximum building height of 9.5m, it remains 1.5m below the existing ground level of the site at street level.

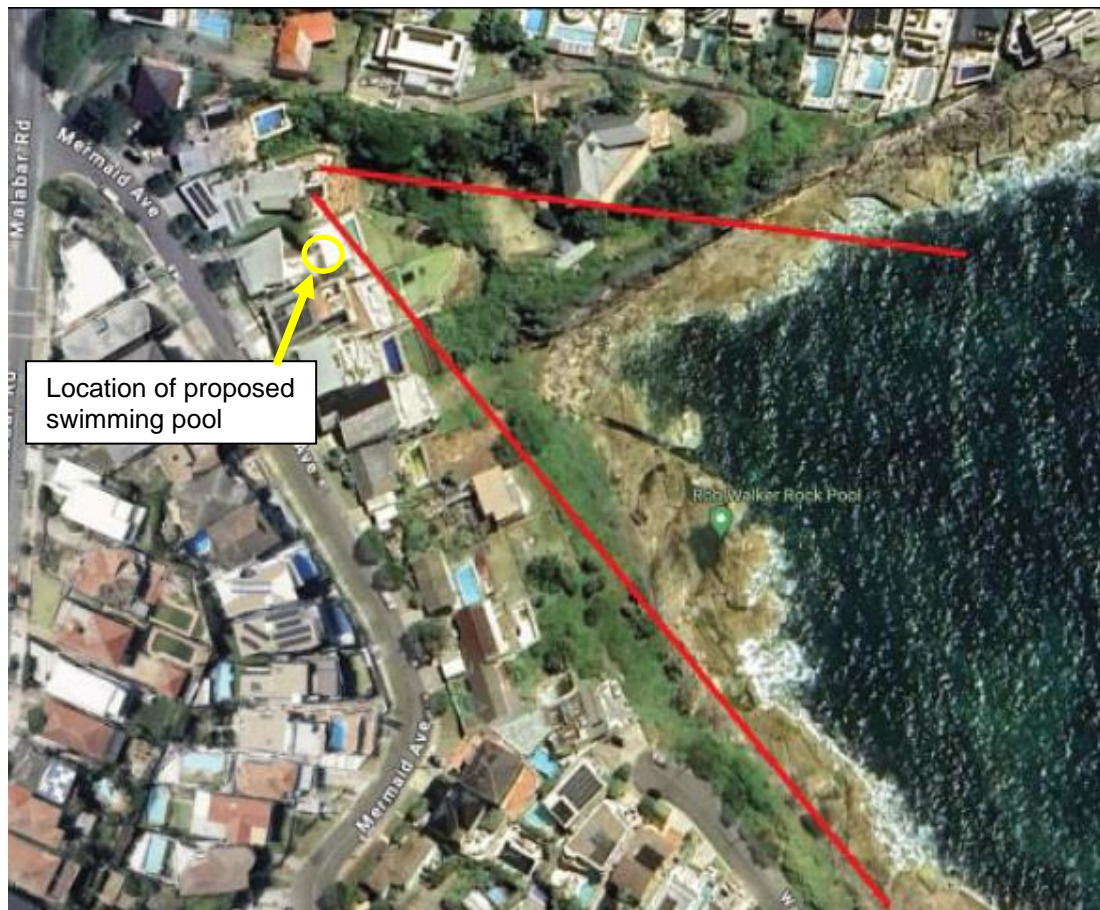


Figure 14: View lines from No.3 Mermaid Avenue, Maroubra, extracted from Statement of Environmental Effects prepared by Damian O'Toole Town Planning and Heritage Services.

Other elements exceeding the height of building standard are generally minor built form, including part of the extended roof and top of the spiral staircase, are of modest visual impact and of no consequence to overlooking (privacy) or overshadowing.

It is important to note that the site contains a significant slope, with the site falling approximately 30m from west to east over a distance of approximately 50m. This slope has resulted in a split level design for the dual occupancy, with the dwelling at No.5 Mermaid Avenue requiring a raised terrace area to provide suitable outdoor amenity.

The proposed variation to building height will not be out of character with the area noting that there have been a number of previous approvals issues on surrounding properties where variations to the height of buildings standard have been approved. These variations include:

- 11 Mermaid Avenue – DA/9/2018
 - Building height standard that applied = 9.5m
 - Approved building height = 17m
 - Approved variation = 78.94%
- 19 Mermaid Avenue, Maroubra – DA/958/2016
 - Building height standard that applied = 9.5m
 - Approved building height = 13.16m
 - Approved variation 38%.
- 23 Mermaid Avenue, Maroubra – DA/372/2015
 - Building height standard that applied = 9.5m
 - Approved building height = 11.1m
 - Approved variation 16.8%.

- 43 Mermaid Avenue, Maroubra – DA/737/2018
 - Building height standard that applied = 9.5m
 - Approved building height = 11.1m
 - Approved variation 16.8%.

Overall, the proposed variation sought is considered sympathetic to previous variations approved for other properties along Mermaid Avenue, and results in no loss of amenity. Thus, the proposed variation sought will not set an unacceptable precedence for the area.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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 4.

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 the discussion in sections 6 & 7, and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 4 and the discussion on key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.

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

9.1. Discussion of key issues

Floor Space Ratio

The subject site has a maximum permissible Floor Space Ratio (FSR) of 0.6:1 (578.52m²) in accordance with Clause 4.4A of the RLEP 2012.

The existing dual occupancy on the site provides for a gross floor area of 583.02m², representing an FSR of 0.605:1. Thus, the subject site has an existing variation of 4.5m² or 0.7%. The proposed development seeks to increase the existing gross floor area (GFA) by 44.95m², resulting in a GFA of 627.97m². Therefore, the proposed development seeks a variation of 49.45m² or 8.5% variation to the FSR standard.

The additional GFA sought is largely contained within the existing envelope of the building, with the majority of additional floor area generated through the enclosure of existing outdoor spaces, such as the light well of No.5A Mermaid Avenue. As such, the overall building form and scale remains relatively unchanged when viewed from the streetscape or neighbouring properties.

The applicant's written justification for the departure from the Floor Space Ratio (FSR) outlines that an exception should be granted to the FSR development standard as the proposed development is consistent with the objectives of the standard.

Reference should be made to section 7.1 of this assessment report for further comments regarding the proposed variation to FSR standards. As previously outlined in this report, it is considered that the requirements of Clause 4.6(3) have been satisfied and that development consent may be granted for development that contravenes the FSR development standard.

Height of Buildings

The subject site has a maximum permissible building height of 9.5m in accordance with Clause 4.3 of the RLEP 2012.

The proposal seeks a variation of 4.3m or 45% to the height of buildings standard.

The significant variation in building height is largely attributed to previous excavation works undertaken on the site to accommodate the current form of the dual occupancy. Currently, the finished floor level (FFL) of the exiting upper level terrace of No.5 Mermaid Avenue is situated approximately 12.5m above the existing ground level.

The applicant’s written justification for the departure from the height of buildings outlines that an exception should be granted to the height of buildings development standard as the proposed development is consistent with the objectives of the control.

Reference should be made to section 7.1 of this assessment report for further comments regarding the proposed variation to height of buildings standards. As previously outlined in this report, it is considered that the requirements of Clause 4.6(3) have been satisfied and that development consent may be granted for development that contravenes the height of building development standard.

Deep soil area and tree canopy

DCP clauses 2.5 and 2.6 of Part C1 of the Randwick DCP outline deep soil area and tree canopy requirements that a determined by site area. Notably control i) of both clauses state that new development or **alterations and additions that change the existing site coverage by more than 10%**, must provide the minimum requirements specified within the respective tables.

The proposal seeks alterations and additions to an existing dual occupancy development. As such, it is important to determine whether an increase to site coverage of more than 10% is proposed.

The existing site coverage of the dual occupancy, which has been determined in accordance with the site coverage definition specified within the DCP, equates to approximately 295.81m² (30.7% of the site area). The proposal seeks to increase the site coverage of the dual occupancy to 317.01m² (32.9% of the site area). This represents an increase of 21.2m² or 7.16% of the existing site coverage of the site.

Therefore, as the proposed alterations and additions do not increase site coverage by more than 10%, the deep soil area and tree canopy requirements do not apply. Nevertheless, it is important to note that the proposed alterations and additions occur on existing impervious surfaces and do not reduce the extent of deep soil area on the site.

Side setback

The proposed alterations and additions do not encroach further beyond the existing front, side and rear setbacks. However, a technical variation occurs due to the addition of a walk-in-robe to the master bedroom of No. 5A Mermaid Avenue. The Randwick DCP specifies the following side setback controls:

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	<i>Merit assessment</i>		
6m to less than 9m	0.9m	0.9m	0.9m + (building height – 7m)
9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	1.5m + 2 x (building height – 7m)
12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	1.8m + 2 x (building height – 7m)

Figure 15: Side setback table extracted from Randwick DCP

The subject site has a frontage width of more than 12m with the proposed walk-in-robe addition situated 9.4m above existing ground level. As such, the following side setback applies to the walk-in-robe:

- $1.8\text{m} + 2 \times (9.4\text{m} - 7\text{m}) = 6.6\text{m}$

The walk-in-robe is proposed to align with the existing 1.5m northern setback of No. 5A Mermaid Avenue. As such, a technical variation of 5.1m is proposed.

Nevertheless, the proposed setback variation to the northern side boundary is considered acceptable given the context of the site for the following reasons:

- The proposed variation is limited to a walk-in-robe which has been designed to align with the existing northern side setback of No.5A Mermaid Avenue and is a minor addition to a predominantly retained dual occupancy development. The remaining alterations and additions proposed are all located within the existing setbacks of the dual occupancy.
- The site slopes significantly from the highest point of the street frontage (western boundary) towards the lower end at the rear (eastern boundary) of the site, with a fall of approximately 30m over a distance of approximately 50m. Due to the topography of the site, the proposed walk-in-robe addition will not be readily visible from the street and will therefore have no impact on streetscape character.
- The proposed variation does not result in any impacts to the northern adjoining property (No.3 Mermaid Avenue). As the proposed walk-in-wardrobe is designed to align with the height and width of the existing northern wall of the master bedroom, no impacts to view corridors or solar access will occur. Additionally, no windows are proposed to the northern elevation of the walk-in-robe, ensuring existing privacy conditions between both properties remain unchanged.

Considering the comments above, variation to the side setback control is acceptable in the context of the site.

Roof terrace and Visual Privacy

The proposal seeks alterations and additions to the existing upper level terrace of No.5 Mermaid Avenue, which is situated over the garage and entry foyer of No.5A Mermaid Avenue. DCP clause 4.4, control ii) states:

- *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 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 alterations and additions largely retain the existing upper level terrace, with existing entertainment facilities, such as the BBQ and swimming pool, proposed to be retained, albeit relocated elsewhere within the terrace. An extension beyond the existing rear setback of the terrace is proposed to accommodate the relocation of the swimming pool.

It is important to note that due to the current arrangement of the site, the upper level rear terrace functions as the only private open space (POS) area for No. 5 Mermaid Avenue. There are no other feasible locations for the POS for No. 5 Mermaid Avenue noting that the remainder of the site behind

the front building line is either occupied by the driveway or allocated to the occupant of No. 5A Mermaid Avenue.

As such, a degree of flexibility in regard to the roof terrace and balcony controls is considered necessary to ensure occupants of No. 5 Mermaid Avenue are provided with an appropriate and useable private open space area that is of high amenity and enables passive recreational activities.

It is important to consider that the proposed alterations and additions do not introduce any new private recreational elements that are not already located within the upper level terrace of No. 5 Mermaid Avenue.

Although it is noted that one of the controls states that roof terraces and balconies are to be *suitably located to prevent direct views to neighbouring habitable windows and private open spaces*, this is considered difficult to comply with given the context of the site. As can be seen in Figure 16 below, the subject site and neighbouring properties are situated along steeply sloping sites which overlook the Pacific Ocean. Subsequently, these properties all contain multi-level dwellings with tiered terraces that allow for ocean views.

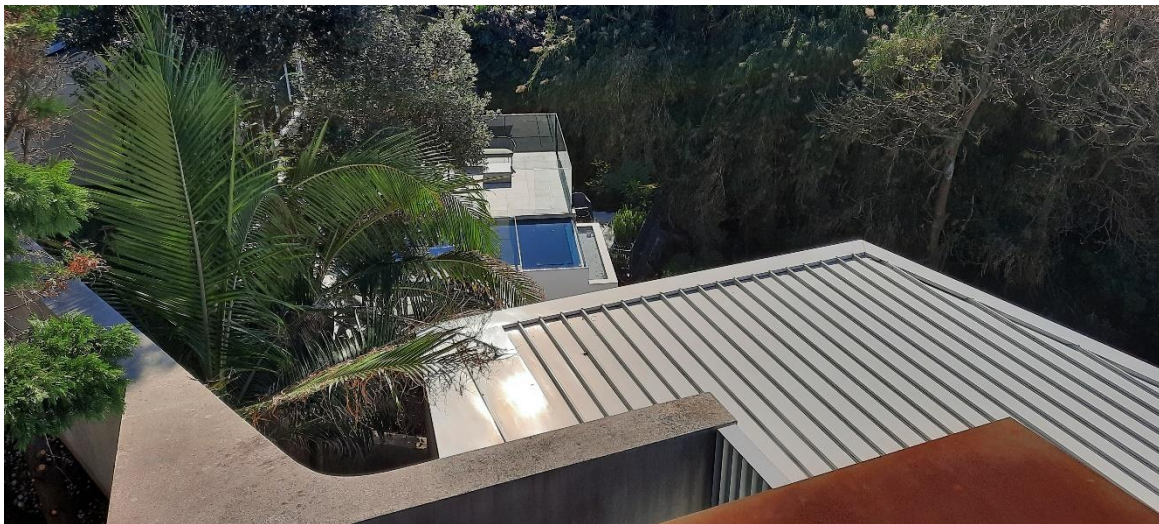


Figure 16: View of existing raised terraces of adjoining properties from the existing upper level terrace of No.5 Mermaid Avenue.

Due to the topography and opportunity to maximise ocean views, the built form character for properties located on the eastern side of Mermaid Avenue consists of raised terraces and balconies that subsequently enable a degree of overlooking into adjoining private open space areas.

While the proposal seeks to relocate the swimming pool to the edge of the existing terrace, the trafficable area of the terrace remains relatively unchanged. The additional area that is proposed beyond the edge of the existing terrace is limited to the proposed swimming pool area, with the pool fence and gate situated further back from the edge of the existing terrace. The proposed location of the swimming pool is not uncommon for the area noting that No. 3 Mermaid Avenue also provides a swimming pool located at the edge of a raised terrace area (as can be seen in Figure 16).

Although overlooking opportunities between properties is inevitable given the topography of the area, the proposal has still made attempts to mitigate privacy impacts to neighbouring properties. New timber/metal batten screens in addition to screen planting have been proposed along the trafficable southern edge of the existing terrace, restricting overlooking opportunities to the balconies and private open space areas of No. 7 Mermaid Avenue.

It should also be noted that no objections were received from neighbouring property owners regarding the proposed alterations and additions sought to the existing upper level terrace.

Overall, the proposed alterations and additions do not significantly alter the existing usage of the terrace or result in significant changes to existing privacy conditions. As such, the proposed alterations and additions to the upper level terrace of No.5 Mermaid Avenue are considered acceptable on merit given the context of the site.

Swimming pool

Part C1, DCP clause 7.5 of the Randwick Comprehensive DCP outlines controls in relation to swimming pools. However, the controls listed under the DCP appear to be more suited to inground swimming pools. As such, a degree of flexibility is considered necessary when assessing the appropriateness of a swimming pool on an upper level terrace.

The following comments are provided with respect to each swimming pool control listed under DCP clause 7.5.

- i) *Locate swimming and spa pools and associated structures:*
 - a. *behind the alignment of the front building façade*
 - b. *to minimise damage to the root system of trees proposed or required to be retained on the subject site and on adjoining properties*
 - c. *to minimise potential noise impacts on the adjoining dwellings.*

The proposed development seeks to relocate the existing swimming pool within the existing upper-level terrace of No. 5 Mermaid Avenue. The proposed swimming pool will remain situated behind the front building façade and will not impact any root systems, satisfying controls a. and b.

With regard to control c, the proposed new location of the swimming pool is not considered to result in any additional acoustic impacts noting the location of the existing swimming pool in relation to No. 7 Mermaid Avenue.

- 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.*

As the pool is located on the upper-level terrace of No. 5 Mermaid Avenue, the proposed pool coping height is well above the existing ground level of the site. However, this is no different to the existing arrangement of the site. Swimming pools within properties to the east of Mermaid Avenue are situated on upper-level terraces in response to the steep topography of the site. As such, variation to control ii) is considered appropriate given the existing arrangement of the site and context of the area.

- iii) *Where pool coping height is above natural ground level, the pool should be located to avoid pool boundary fencing exceeding 2.2m from existing ground level when viewed from adjoining properties.*

Similar to the comments above, the proposal seeks to relocate the swimming pool within the upper level terrace of No. 5 Mermaid Avenue. As such, the new location of the pool fencing will be more than 2.2m above existing ground level as per the existing pool fencing. As per the comments provided in response to control ii), variation to control iii) is considered appropriate given the existing arrangement of the site and context of the area.

- iv) Where pool coping height is above natural ground level and has the potential to create privacy impacts on adjoining properties, appropriate screening or planting extending along the full length of the pool shall be provided to address overlooking. Screen planting must ensure consistency with the Swimming Pools Act 1992 in relation to 'nonclimbable zones'*

It is noted that there is potential to incorporate screening along the northern and southern edges of the swimming pool. However, in accordance with control v) (see below), a condition will not be imposed requiring screening as it may result in impacts to existing view corridors from No. 3 Mermaid Avenue. Notably, the applicant has made attempts to mitigate potential privacy impacts through the inclusion of timber/metal batten screens in addition to screen planting along the trafficable southern edge of the existing terrace.

- v) Despite subclause iv), this requirement may not apply where there is a need to retain existing view corridors from adjoining and nearby properties.*

As per the comments above, strict enforcement of control iv) is not considered appropriate for the context of the site given the screening has the potential to impact view corridors to No.3 Mermaid Avenue.

- vi) Position any decking away from the side and rear boundaries to minimise adverse privacy impacts on the neighbours.*

As per the existing arrangement, the proposed swimming pool is not surrounded by traditional pool decking. Rather, the area around the swimming pool integrates with the existing floor of the upper level terrace, with the swimming pool area defined from the remainder of the upper level terrace by the pool fencing.

Nevertheless, at a minimum, the area immediately surrounding the swimming pool is setback at least 3m from the southern side boundary shared with No. 7 Mermaid Avenue. This represents a 1.5m increase to the setback of the existing pool area from the southern boundary. As such, it is considered that the location of the new swimming pool area does not significantly alter existing privacy conditions between the site and adjoining properties.

- vii) Locate the pool pump and filter away from the neighbouring dwellings. The equipment must be contained within an acoustically treated enclosure that limits noise transmission.*

A condition of consent will be imposed requiring noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

Overall, the proposal seeks to predominantly retain, but relocate, the swimming pool within the upper level terrace of No. 5 Mermaid Avenue. The proposed location of the swimming pool is not uncommon for the area noting that No. 3 Mermaid Avenue also provides a swimming pool located at the edge of a raised external terrace area.

Additionally, the proposed new location of the swimming pool is considered to align with the relevant objectives specified under Part C1 - *Section 7 Fencing and ancillary development* of the Randwick Comprehensive DCP. The relevant objectives are:

- *Ancillary development is to enhance the liveability of dwellings and to maintain reasonable levels of visual amenity, solar access and privacy for neighbouring dwellings.*
- *Ancillary development should not present as a prominent feature and detract from the streetscape character.*

The proposed new location of the swimming pool has a minimal impact on the existing visual amenity and solar access provided to the site and adjoining properties. Potential privacy impacts have been mitigated through the inclusion of timber/metal batten screens in addition to screen planting along the trafficable southern edge of the existing terrace.

Moreover, the proposed swimming pool is located behind the front building line and thus will not be visible from the Mermaid Avenue streetscape. Nevertheless, the proposed location of the swimming pool is compatible with the context of the area with pools situated on upper level terraces a common feature for development along the eastern side of Mermaid Avenue.

Overall, as the relevant objectives have been satisfied, the proposed swimming pool is appropriate for the context of the site.

10. Conclusion

That the application for alterations and addition to existing dual occupancy and construction of a new swimming pool be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

Appendix 1: Referrals

1. External referral comments:

None required.

2. Internal referral comments:

Development Engineering and Landscaping

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

This report is based on the following plans and documentation:

- *Architectural Plans by Alec Pappas and dated 4/2024;*
- *Statement of Environmental Effects by Damian O'Toole dated 04/2024;*
- *Detail & Level Survey by Cibar Land Surveyors dated 18/9/2023;*

General Comments

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

Parking Comments

The proposed development will not impact parking requirements or parking provision. No objections are raised.

Drainage Comments

Stormwater runoff from the (redeveloped portion) site shall be discharged to the existing stormwater system within the property which discharges to the natural watercourse located at the rear of the site as approved under DA/115/2007 and CC/753/2007.

Strata Comments

New Strata Plans shall be prepared and registered for the site that subdivide the existing strata lots and common property to incorporate the proposed alterations & additions into the strata scheme. The developer shall obtain a strata/subdivision certificate and comply with all requirements of NSW Land Registry Services (LRS) in this regard. An appropriate condition has been included in this report.

Landscape Comments

Inspection was undertaken through google street view on Tuesday 26th June 2024 with pictures of all vegetation on Trim D05251995.

*Within the mermaid councils verge adjacent the southeastern aspect of the subject site, mature Cupaniopsis anacardioides (Tuckeroo) 6 metres high, moving to the northeastern aspect, adjacent northern neighbouring property, north of subject site existing driveway, semi mature Cupaniopsis anacardioides (Tuckeroo) 5 metres high, both in good condition, good health, **to be retained and protected.***

Moving within the northern side setback of the property, within the upper ground level, adjacent northern property, measuring the length of the upper internal driveway, mature Cypress pine hedge, good health, good condition, within the eastern curvature of the driveway, adjacent turntable, some pine hedges protrude within the top of the three palm tree canopies, which are growing from the lower ground level 0, below.

While works are within the vicinity of lower ground Palms, then a proposed spiral staircase to upper ground level will be erected, the eastern facing Pines may be in direct conflict with the works, while these Pines are of little significance, removal is justified for the nearby works, these can be removed at any time before or during the construction phase so works can proceed.

*Moving within Level 0, three palms plotted within a small courtyard, measuring close to all three internal wall structures, exempt under the DCP 2.5 metre clause, **all to be removed.***

Moving wholly within the northern neighbour's property, adjacent palms and proposed new spiral stairs within subject site, semi mature Hibiscus species, which some southern aspect branches protrude within the subject site, conditions in this report will apply pruning to any branches that may interfere with subject site works.

The alterations do not increase the existing site coverage/footprint by more than 10%, so the landscaping and tree canopy cover clauses in the C1 DCP 2023 do not apply.

All other vegetation within the works zone is insignificant, so can be removed where needed.

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Appendix 2: Applicant's written request seeking to justify the contravention of the development standard – Floor Space Ratio (FSR)

5 & 5A Mermaid Avenue Maroubra NSW 2035

REQUEST TO VARY DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6 OF RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

TO ACCOMPANY A DEVELOPMENT APPLICATION TO RANDWICK CITY COUNCIL FOR ALTERATIONS AND ADDITIONS TO A DUAL OCCUPANCY DEVELOPMENT

Property: 5 and 5A Mermaid Avenue, Maroubra, NSW 2035.
Proposal: Alterations and additions to an existing dual occupancy development.
Zoning: R2 Low Density Residential.

Development standard to which the request to vary the standard is taken: Clause 4.4 of the Randwick LEP 2012 (LEP 2012) prescribes a maximum floor space ratio of 0.6:1 applying to the site.

1. The Aim of the request

To allow an FSR of 0.65:1 to the site, a non-compliance of 8.5% (being a GFA of 627.97m² on a site area of 964.2m²).

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 Floor Space Ratio in LEP 2012 are given as,

4.4 Floor space ratio

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

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

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

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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 part (3) of the clause, being,

(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—

- compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

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

In assessment of the proposal against parts 3 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 judgment) 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,

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The works are entirely reasonable given the built form context of the site.

The additional bulk provided is minor and largely within the existing building footprint. The works that relate to additional GFA do not add significant bulk that materially alter the character or appearance of the structure. New form is modest and it relates well with the existing massing. The character of the site or the locality is not detrimentally affected or altered.

Development in the surrounding area comprises of comparable dwellings along the eastern side of Mermaid Avenue (multiple level stepped down the steep slope towards Lurline Bay), whereas dwellings on the western side of Mermaid Avenue are two to three storeys with street level garages, being set much higher than properties to the east. Immediately north at 3 Mermaid Avenue is a five-storey contemporary dwelling which steps down the site and is of a comparable bulk and scale to the subject dual occupancy. Similarly, the southern neighbour at 7 Mermaid Avenue is a five-storey contemporary dwelling which steps down the site and is of a comparable bulk and scale to the subject dual occupancy.

Importantly, Council has consistently permitted non-compliances with development standards for recent development consents in the immediate area.

Address	Height	FSR
3A Mermaid Ave (DA/80/2021)	10.84 (14% variation from the 9.5m standard)	
7 Mermaid Ave (DA/9/2018)		0.63:1 (5% variation from 0.6:1 standard)
11 Mermaid Ave (DA/9/2018)	18.72m (97% variation from the 9.5m standard)	0.78:1 (56% variation from 0.5:1 standard)
15 Mermaid Ave (DA/16/2022)	11.5m (21% variation from the 9.5m standard)	
19 Mermaid Ave (DA/958/2016)	10.81m (13.8% variation from the 9.5m standard)	
23 Mermaid Ave (DA/372/2015)	11.1m (16.8% variation from the 9.5m standard)	0.7:1 (14.2% variation from the 0.6:1 standard)

These non-compliances demonstrate that within the immediate context of the site Council has consistently permitted developments that have not complied with development standards. Accordingly a feature or characteristic of the area is that recent developments have not complied with development standards.

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Figure 1: Immediate locality, demonstrating that dwellings on the eastern side of Mermaid Avenue respond to the topography of the site with dwellings providing several levels. The subject site is shown arrowed. From the public domain these dwellings appear as single level and modest in size.

Accordingly, the proposed built form is consistent with surrounding development in that it will also result in a reasonable non-compliance with the development standard.

The size and scale of the development is not materially altered by the works.

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

Articulation is achieved and compliance with BASIX is mandatory.

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

The works are not close to an item or close to a Heritage Conservation Area.

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

The works that add GFA do not result in additional overshadowing, loss of view or impact to outlook to any neighbour. The northern neighbour could potentially be affected by the extension to the master bedroom to 5a Mermaid Ave, however the addition is minor, it is within the building footprint, does not rise higher than one storey and is well below the highest point of the adjoining

5 & 5A Mermaid Avenue Maroubra NSW 2035

wall to which it is positioned. Also noted is that the northern neighbour is also particularly well screened from the proposed works resulting in the bedroom addition as hardly being visible from this site.

The other increases in GFA have no ability to potentially impact any neighbour.

In light of the above, this request provides that the non-compliant FSR 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;

A comparable degree of non-compliance was permitted on the adjoining sites recently.

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 also vary the FSR standard, achieves a better response to the objectives of the subject R2 Low Density Residential Zone in that it provides a high level of

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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

In satisfying Clause 4.6 (3)(b) the consent authority must be satisfied that the applicant has submitted justification that there are sufficient environmental planning grounds to justify the contravention.

This request provides that there is sufficient environmental planning ground to justify the contravention. These ground are:

It has been demonstrated that the proposal and its FSR breach remains consistent with the objectives of the subject zone as well as Clause 4.4 and 4.6 of the Randwick LEP 2012, despite the numerical non-compliance.

The additional GFA is provided with an addition to the kitchen which is within an internal courtyard on the lowest level, the enclosure of the entry area to the lower unit, a minor addition to the main bedroom of the upper unit and by extending the living space below the existing roofline. The areas to which the additional GFA relate have no bearing on neighbours amenity. No view is affected, no additional overshadowing is created, the bulk of the structure when viewed from any public place is not increased, and from neighbouring sites is not increased in any meaningful way.

The non-compliant new structure will not provide any material additional overshadowing, with additional overshadowing falling onto the street, the roof of the southern neighbour and to the very rear (lowest level and most unusable garden area) of the garden of No.9 Mermaid Avenue. No usable area of open space or neighbouring windows are affected in terms of overshadowing.

The works do not create any unreasonable visual impact or loss of views. The area to which the works relate are not within the foreground of any water view from neighbouring properties. The works will not create significant building bulk that would affect outlook when viewed from neighbouring properties. In relation to the overall bulk of the existing structure the new works are minimal.

The density of the built form is appropriate and relates well to surrounding development.

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

The non-compliant FSR does not result in any unreasonable visual impacts.

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The FSR non-compliance assists with providing improved internal amenity for future residents.

Is the variation in the public interest?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be 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 R2 Low 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 R2 Low 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.

Prepared by Damian O'Toole Town Planning Pty Ltd

Appendix 3: Applicant's written request seeking to justify the contravention of the development standard – Height of buildings

5 & 5A Mermaid Avenue Maroubra NSW 2035

**REQUEST TO VARY DEVELOPMENT STANDARD PURSUANT TO
CLAUSE 4.6 OF RANDWICK LOCAL ENVIRONMENTAL PLAN 2012**

**TO ACCOMPANY A DEVELOPMENT APPLICATION TO
RANDWICK CITY COUNCIL FOR ALTERATIONS AND ADDITIONS TO A DUAL OCCUPANCY
DEVELOPMENT**

Property: 5 and 5A Mermaid Avenue, Maroubra, NSW 2035.

Proposal: Alterations and additions to an existing dual occupancy development.

Zoning: R2 Low Density Residential.

Development standard to which the request to vary the standard is taken: Clause 4.3 of the Randwick LEP 2012 (LEP 2012) prescribes a maximum building height of 9.5m 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 13.8m for the works, (being an increase in height of 0.5m to the pool coping and 0.75m to the pool fence). This equates to a non-compliance variance of 45%.

Clause 4.6 of LEP 2012 allows the applicant to request a departure from compliance with a development standard.

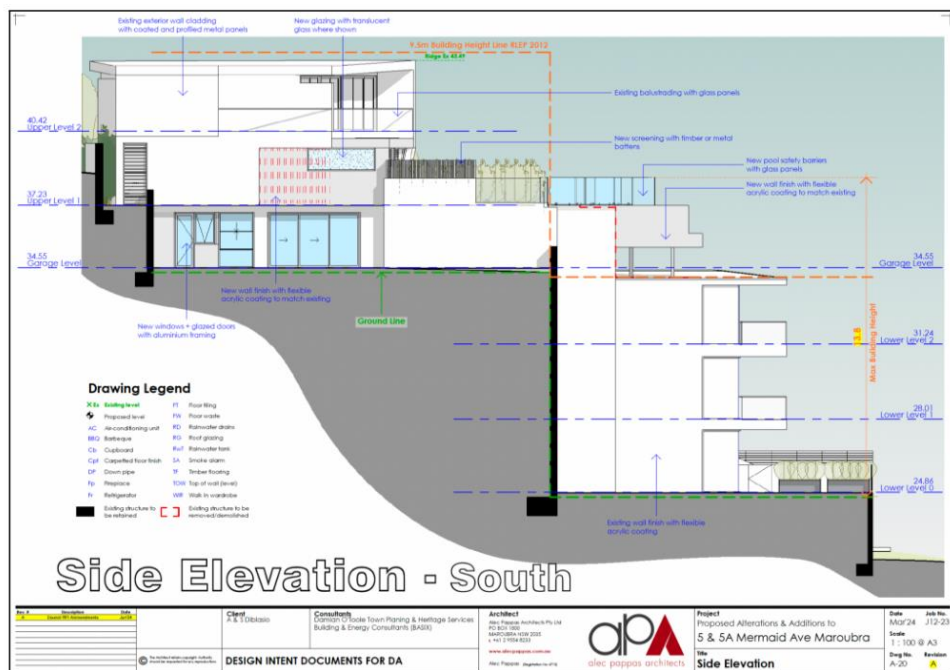


Fig 1 - Image showing new works in relation to the height control.

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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.*

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 part (3) of the clause, being,

(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—

- compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

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

In assessment of the proposal against parts 3 the following is offered.

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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 works are entirely reasonable given the built form context of the site.

The additional bulk provided is minor and largely within the existing building footprint. The works to the swimming pool result due to the topography of the site, due to the slope of the site lowering towards the ocean. The works will provide an addition to the terrace at this level. The overall RL of the structure is not increasing.

When viewed from the rear, the works are entirely reasonable given that additional height/bulk is very minor and the form is consistent with surrounding development. The size and scale of the development is not materially altered by the works.

Development in the surrounding area comprises of comparable dwellings along the eastern side of Mermaid Avenue (multiple level stepped down the steep slope towards Lurline Bay), whereas dwellings on the western side of Mermaid Avenue are two to three storeys with street level garages, being set much higher than properties to the east. Immediately north at 3 Mermaid Avenue is a five-storey contemporary dwelling which steps down the site and is of a comparable bulk and scale to the subject dual occupancy. Similarly, the southern neighbour at 7 Mermaid Avenue is a five-storey contemporary dwelling which steps down the site and is of a comparable bulk and scale to the subject dual occupancy.

Importantly, Council has consistently permitted non-compliances with development standards for

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recent development consents in the immediate area.

Address	Height	FSR
3A Mermaid Ave (DA/80/2021)	10.84 (14% variation from the 9.5m standard)	
7 Mermaid Ave (DA/9/2018)		0.63:1 (5% variation from 0.6:1 standard)
11 Mermaid Ave (DA/9/2018)	18.72m (97% variation from the 9.5m standard)	0.78:1 (56% variation from 0.5:1 standard)
15 Mermaid Ave (DA/16/2022)	11.5m (21% variation from the 9.5m standard)	
19 Mermaid Ave (DA/958/2016)	10.81m (13.8% variation from the 9.5m standard)	
23 Mermaid Ave (DA/372/2015)	11.1m (16.8% variation from the 9.5m standard)	0.7:1 (14.2% variation from the 0.6:1 standard)

These non-compliances demonstrate that within the immediate context of the site Council has consistently permitted developments that have not complied with development standards. Accordingly a feature or characteristic of the area is that recent developments have not complied with development standards.

Accordingly, the proposed built form is consistent with surrounding development in that it will also result in a reasonable non-compliance with the development standard.



Figure 2: Immediate locality, demonstrating that dwellings on the eastern side of Mermaid Avenue respond to the topography of the site with dwellings providing several levels. The subject site is shown arrowed. From the public domain these dwellings appear as single level and modest in size.

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(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 works are not close to an item or close to a Heritage Conservation Area.

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

The pool and adjoining terrace have been designed with the neighbour's amenity in mind.

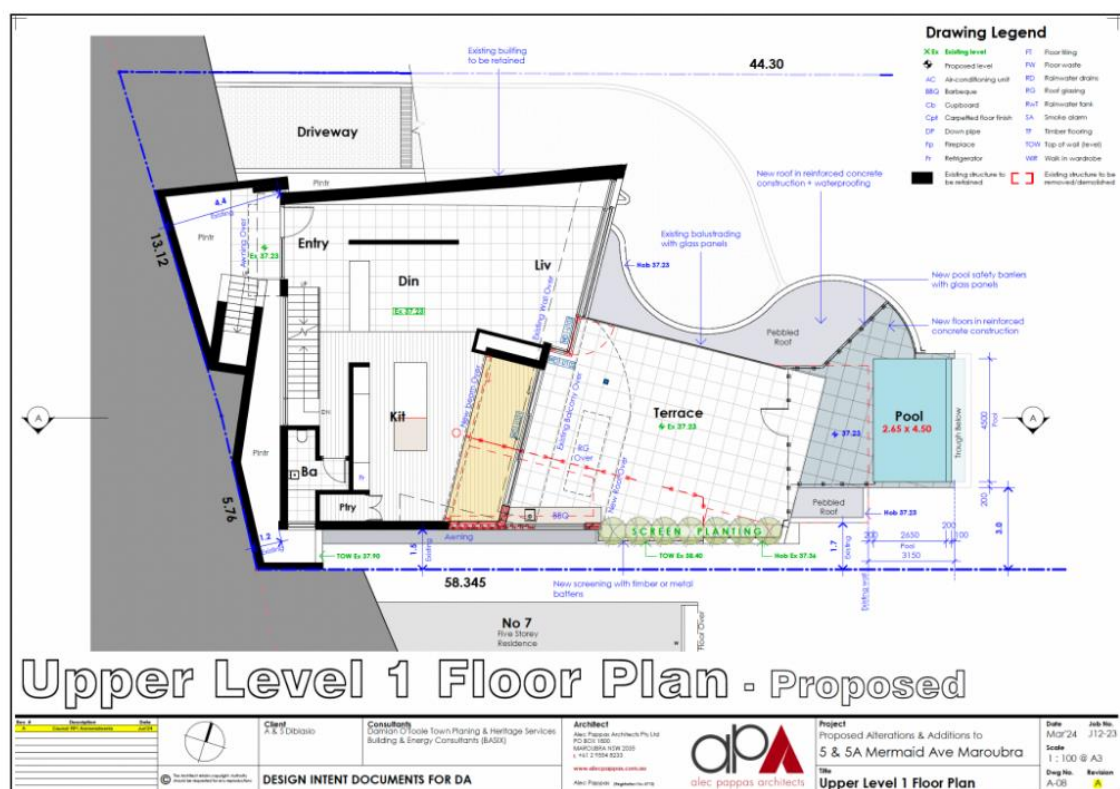


Fig 3 - Image showing the level where the height non-compliances occur, within the red rectangle (pool and new terrace area).

The image above shows the pool and adjoining terrace structures in plan (within the red rectangle).

The existing terraces/balconies are all oriented to face the rear, with the upper level 1 extension contributing to this by extending further east, towards the rear. The northern neighbour is too far removed to have any privacy impact. That neighbour (No.3 Mermaid Ave) is also screened by significant vegetation further reducing sightlines. In relation to the southern neighbour (No.7 Mermaid Ave) privacy to this neighbour is protected with an area of pebbled non-trafficable roof provided along the southern edge of the new terrace to restrict overlooking. Additionally new planting is provided along the southern edge of the terrace to reduce overlooking to this

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neighbour, which currently exists.

It is noted that the proposed pool/additional terrace will not have any impact on view loss. The water/land interface is to the east of the pool. This view is shown in the images below. The figure below shows that the view is unaffected.



Figure 4: View Lines from the northern neighbour are not interfered with.



Figure 5: Photo from No.3a Mermaid Ave noting that the proposed pool (red rectangle) will be within the background of

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neighbouring dwellings. No part of any significant view is affected.

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;

A comparable degree of non-compliance was permitted on the adjoining sites recently.

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 R2 Low Density Residential Zone in that it provides a high level of amenity for occupants and safeguards the street appearance of the site which is consistent with various LEP and DCP heritage requirements.

5 & 5A Mermaid Avenue Maroubra NSW 2035

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

In satisfying Clause 4.6 (3)(b) the consent authority must be satisfied that the applicant has submitted justification that there are 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 proposed height 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 resultant form will result in built form consistency with surrounding development. The new pool and surrounding terrace and coping will result in a consistent built form with neighboring site's built form as shown in figure 2 above. The area to which the non-compliance relates is a small portion of the site and not a substantial portion. The works seek to relocate an existing pool the amenity of which was impacted when the neighboring development at 7 Mermaid Avenue was developed. The relocation of the pool will result in significantly improved amenity for the owner-occupiers by positioning the pool in an area of the site that allows for solar access and views. The pool and surrounding area will continue an existing open space area at ground level, resulting in more of the same in built form terms.

The non-compliant new structure will not provide any material additional overshadowing, with additional overshadowing falling onto the street, the roof of the southern neighbour and to the very rear (lowest level and most unusable garden area) of the garden of No.9 Mermaid Avenue. No usable area of open space or neighbouring windows are affected in terms of overshadowing.

The non-compliance results due to change in topography of the site and the excavated levels beneath the subject area of works. The excavated area has created 3 levels beneath the pool area. Any works at this level would not comply with the standard.

The works do not create any unreasonable visual impact or loss of views. The area to which the works relate are not within the foreground of any water view from neighbouring properties. The works will not create significant building bulk that would affect outlook when viewed from neighbouring properties. In relation to the overall bulk of the existing structure the new works above the building height are minimal.

5 & 5A Mermaid Avenue Maroubra NSW 2035**Is the variation in the public interest?**

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be 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 R2 Low 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 R2 Low 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.

Prepared by Damian O'Toole Town Planning Pty Ltd

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Appendix 4: DCP Compliance Table**3.1 Part C1: Low Density Residential (2023)**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 964.2m ²	
2.1	Minimum lot size		
	Minimum lot size LEP 2012 = 275m² for attached dual occupancy in strata schemes.	Proposed = Both existing strata lots will remain over 275m ² in area.	Yes.
2.2	Lot frontage		
	Dual occupancies		
	Attached = 15m parent lot Detached dual frontage = 9m parent lot Detached single frontage = 18m parent lot	Proposed = No change to the existing lot frontage of 18.88m is proposed.	No change to the existing lot frontage.
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)	Proposed = 317.01m ² (32.9% of site area).	Complies.
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.	Proposed = No change. Deep soil permeable area controls only apply to alterations and additions if the existing site coverage is increased by more than 10%.	Refer to key issues section.
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	Proposed = No tree plantings are proposed. Tree canopy controls only apply to alterations and additions if the existing site coverage is increased by more than 10%.	Refer to key issues section.
2.7	Private open space (POS)		
	Dual Occupancies POS		
	451 to 600 sqm = 5m x 5m 601 or above sqm = 6m x 6m	Proposed = Both dwellings continue to provide a private open space area which satisfies the 6m x 6m requirement.	Yes.

DCP Clause	Controls	Proposal	Compliance
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.6:1 (578.52m²).	Proposed = 0.65:1 (627.97m ²).	Refer to key issues section.
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 13.8m	Refer to key issues section.
	<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 - Impacts on visual amenity, solar access, privacy and views of adjoining properties. 	<p>Proposed =</p> <p>i) Existing location of habitable spaces remain relatively unchanged. The proposed alterations and additions to habitable spaces are contained within the existing envelope of the dual occupancy.</p> <p>ii) & iii) No change to existing ceiling or floor heights proposed. Proposed alterations and additions integrate with existing heights.</p> <p>iv) Existing building height at street frontage is retained. The dwelling will continue to present as a two (2) storey dwelling to the street.</p>	Complies.
3.3	Setbacks		
3.3.1	Front setbacks <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>	Proposed = No change to existing front setbacks proposed. All works are located behind the front building line.	N/A - No change to existing.
3.3.2	Side setbacks	Proposed = The dual occupancy provides side setbacks of 1.5m. The proposed alterations and additions align with the	Acceptable on merit. Refer to key issues section.

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DCP Clause	Controls	Proposal	Compliance																								
	<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	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	existing side setbacks. However, as the master bedroom extension is situated at a height greater than 7m above existing ground level, a setback of 6.6m is required.	
Minimum side setbacks																											
Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m																								
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9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$																								
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3.3.3	<p>Rear setbacks</p> <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p><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 to existing rear setback. No works are proposed forward of the existing rear building line.	N/A – No change to existing.																								
4	Building design																										
4.1	General																										
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> • 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). 	The proposed works are centrally located within the existing built form and will integrate with the existing design and articulation of the dual occupancy. The dual occupancy as viewed from the streetscape will remain unchanged.	Yes.																								
4.3	Alterations and additions to semi-detached and dual occupancy (attached) dwellings																										
	<ul style="list-style-type: none"> i) Respect and enhance architectural character of pair, including symmetry ii) Setback upper addition from street (to rear) with substantial portion of existing front intact iii) Locate upper addition behind apex of hipped 	The existing dual occupancy as viewed from Mermaid Avenue will remain unchanged. The proposed works are generally	Yes.																								

DCP Clause	Controls	Proposal	Compliance
	<p>roofed houses</p> <p>iv) Setback upper addition from gable end 100% of the height increase and retain any existing gable features and chimneys</p> <p>v) Low profile roof form that is visually secondary to existing</p> <p>vi) Avoid exposure of existing blank party walls</p> <p>vii) Materials enhance character of the pair</p>	<p>contained within the existing envelope of the building.</p> <p>The proposed alterations and additions do not result in the exposure of existing blank party walls and have been designed to integrate with the existing external materials and façade of the dual occupancy.</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>The proposal seeks alterations and additions to the existing upper level terrace of No.5 Mermaid Avenue, which is situated over the garage and entry foyer of No.5A Mermaid Avenue.</p> <p>Key amenity considerations, such as privacy and view sharing, are discussed within this report.</p>	Refer to key issues section.
4.5	Roof design and features		
	<p><i>Dormers</i></p> <p>i) Dormer windows do not dominate</p> <p>ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof.</p> <p>iii) Multiple dormers consistent</p> <p>iv) Suitable for existing</p> <p><i>Clerestory windows and skylights</i></p> <p>v) Sympathetic to design of dwelling</p> <p><i>Mechanical equipment</i></p> <p>vi) Contained within roof form and not visible from street and surrounding properties.</p>	<p>No roof dormers are proposed.</p> <p>The proposed skylight is centrally located and integrates with the existing design of the dual occupancy.</p> <p>No mechanical equipment is proposed that is in view from the street or surrounding properties.</p>	Yes, subject to conditions.

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DCP Clause	Controls	Proposal	Compliance
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 	The proposal will consist of materials and colours which integrate with the existing dual occupancy. This is evident through the external finishes schedule prepared by Alec Pappas Architects.	Yes.
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 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. 	No earthworks are required to accommodate the proposed alterations and additions. Existing levels of the site will be retained.	N/A – No earthworks are proposed.
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. 	The proposed alterations and additions are largely contained within the existing envelope of the dual occupancy. As such, the POS of both dwellings will continue to receive direct solar access throughout the day on 21 June.	Yes.
	Solar access to neighbouring development:		
	<ul style="list-style-type: none"> i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight 	The proposed alterations and additions are largely contained within the existing envelope of the dual occupancy. As such, no substantial change to existing solar access to neighbouring properties will occur,	Yes.

DCP Clause	Controls	Proposal	Compliance
	<p>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. 	with No.7 Mermaid Avenue continuing to achieve a minimum of 3hrs of direct sunlight to living areas and POS on 21 June.	
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 proposed alterations and additions seek to relocate the laundry of No.5 Mermaid Avenue to allow for natural light and improved natural ventilation.</p> <p>The existing location and windows to living areas will remain relatively unchanged.</p> <p>A BASIX Certificate has been submitted for both dwellings, demonstrating that sustainability requirements have been achieved.</p>	Yes.
5.3	Visual Privacy		
	Windows		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> windows are offset or staggered minimum 1600mm window sills Install fixed and translucent glazing up to 1600mm minimum. Install fixed privacy screens to windows. Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	No additional windows to habitable rooms are proposed. The only notable change to a habitable window occurs at upper level 1 of No.5 Mermaid Avenue where the sliding glass door has been shifted approximately 2m forward to accommodate the proposed extension to the kitchen. This window continues to	Yes.

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DCP Clause	Controls	Proposal	Compliance
		face the rear boundary and does not result in any additional overlooking opportunities.	
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	The proposal seeks an extension to the existing upper level 1 terrace to accommodate the relocation of the swimming pool. Potential privacy impacts have been discussed within the key issues section of this report.	Acceptable on merit. Refer to key issues section.
5.4	Acoustic Privacy		
	i) Noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	The proposed alterations and additions do not result in the location of potential noise sources adjacent to adjoining bedroom windows. The proposed alterations and additions do not result in the location of noise-generating areas adjacent to quiet areas.	Yes.
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 obstruct casual surveillance (maintain safe access)	The existing entrances into the property remains unchanged. Not change is proposed to existing street numbering for both properties. A new spiral staircase has been proposed to connect the lower level 0 of No.5A Mermaid avenue to the driveway, allowing for alternative access to the street level for current and future residents of No.5A Mermaid Avenue.	
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	The view loss analysis within the submitted SEE states that existing view corridors	Yes.

DCP Clause	Controls	Proposal	Compliance
	<p>areas are a priority over low use rooms</p> <p>iii) Retaining views for the public domain takes priority over views for the private properties</p> <p>iv) Fence design and plant selection must minimise obstruction of views</p> <p>v) Adopt a balanced approach to privacy protection and view sharing</p> <p>vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.</p>	<p>from No.3 Mermaid Avenue will not be impacted.</p> <p>An inspection of the site and surrounding properties has confirmed that no impact to existing view corridors will occur.</p>	
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	All dwellings		
	<p>i) Maximum 1 vehicular access</p> <p>ii) Locate off rear lanes, or secondary street frontages where available.</p> <p>iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling.</p> <p>iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard.</p> <p>v) Tandem parking may be considered</p> <p>vi) Avoid long driveways (impermeable surfaces)</p>	No change to existing vehicle access or parking spaces is proposed.	N/A – No change to existing arrangement.
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	<p>i) Use durable materials</p> <p>ii) Sandstone not rendered or painted</p> <p>iii) Do not use steel post and chain wire, barbed wire or dangerous materials</p> <p>iv) Avoid expansive surfaces of blank rendered masonry to street</p>	No change to existing front, side or rear boundary fencing is proposed.	N/A – No change to existing.
7.5	Swimming pools and Spas		
	<p>i) Locate swimming pools and associated structures: d. Behind the front building line e. Minimise damage to existing tree root systems on subject and adjoining sites. f. Locate to minimise noise impacts on the adjoining dwellings.</p> <p>ii) Pool and coping level related to site topography (max 1m over lower side of site).</p> <p>iii) 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>iv) 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>v) Incorporate screening or planting for privacy</p>	The proposal seeks to relocate the existing swimming pool within the upper level of No.5 Mermaid Avenue. Reference should be made to the key issues section for further analysis.	Acceptable on merit - Refer to key issues section.

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DCP Clause	Controls	Proposal	Compliance
	as above, unless need to retain view corridors. vi) Position decking to minimise privacy impacts. vii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.		
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	The existing clothes drying facility location remains unchanged.	N/A – No change to existing arrangement.
7.9	Utility Connections		
	If power pole is within 15m of site (on same side of street), applicant must meet full cost for Ausgrid to relocate.	Reviewed by Councils Engineer for satisfaction.	N/A – minor works scope

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	1. Space per dwelling house with up to 2 bedrooms 2. Spaces per dwelling house with 3 or more bedrooms Note: Tandem parking for 2 vehicles is allowed.	The proposed alterations and additions do not result in the creation of any additional bedrooms. Nevertheless, both dwellings continue to provide two (2) parking spaces each, satisfying the minimum requirement.	Yes.

3.4 Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Outbuildings and ancillary structures integrated with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large	Reference should be made to Clause 6.7 addressed earlier within this report. To reiterate, The proposed alterations and additions have been designed to integrate with the existing form and design of the dual occupancy. As the proposed works have generally been contained within the existing envelope of the building, the proposal will not be detrimental to the visual qualities and	Yes.

	<p>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>	<p>amenity of the foreshore.</p> <p>Given the foreshore area in proximity to the subject site is not publicly accessible, the proposed works will not be visible from the public domain.</p>	
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Responsible officer: GAT & Associates, Town Planners

File Reference: DA/209/2024

D67/24

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Development Consent Conditions
(Dwellings and Dual Occupancies)



Folder /DA No:	DA/209/2024
Property:	5 Mermaid Avenue, MAROUBRA NSW 2035
Proposal:	Alterations and addition to existing dual occupancy and construction of a new swimming pool.
Recommendation:	Approval

Development Consent Conditions

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
A-02, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-04, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-06, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-08, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-10, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-12, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-14, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-16, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-18, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-19, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-20, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-21, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-22, Rev A	Alec Pappas Architects	June 2024	07.06.2024
A-23, Rev A	Alec Pappas Architects	June 2024	07.06.2024

BASIX Certificate No.	Dated	Received by Council
A1739769	14.03.2024	22.03.2024
A1739770	14.03.2024	22.03.2024

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.

New Strata Plans

Condition
New Strata Plans shall be prepared and registered for the site that subdivide the existing strata lots and common property to incorporate the proposed alterations & additions into the strata scheme. The developer shall obtain a strata/subdivision certificate and comply with all requirements of NSW Land Registry Services (LRS) in this regard. Confirmation of compliance must be obtained from a registered surveyor to the satisfaction of the Principal Certifier prior to the issuing of a full occupation certificate.
Condition Reason: To ensure the strata subdivision is amended to reflect the changes to the built form under the subject application.

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>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
<p>5. 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 \$284,900.00 the following applicable monetary levy must be paid to Council: \$2,849.00.</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>

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Condition	
	<p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p>
6.	<p>Long Service Levy Payments</p> <p>Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with section</p> <p><i>At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p>
7.	<p>Security Deposits</p> <p>The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none"> • \$1,000.00 - 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>
8.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information

	Condition
	<ul style="list-style-type: none">• Water meter installations• Pressure boosting and pump approvals• Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
9.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
10.	<p>Structural Adequacy</p> <p>Certificate of Adequacy supplied by a professional engineer shall be submitted to the Certifier (and the Council, if the Council is not the Certifier), certifying the structural adequacy of the existing structure to support the alterations and additions.</p> <p>Condition Reason: To ensure the structural integrity of the building is maintained.</p>
11.	<p>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
12.	<p>Stormwater Drainage</p> <p>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>

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Condition	
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 from the redeveloped portion of the site is to be drained and discharged to the existing stormwater system which discharges to the existing watercourse at the rear of the site (as approved under DA/115/2007 & CC/753/2007 for the dwellings); and
c)	Any new 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.

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

13. **Building Code of Australia – Swimming Pools**

Swimming Pools and Spa Pools are to be designed and installed in accordance with the requirements of the *Building Code of Australia* and be provided with a child-resistant barrier in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).

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

Temporary pool safety fencing is also required to be provided to swimming pools pending the completion of all building work and swimming pools must not be filled until a fencing inspection has been carried out and approved by the Principal Certifier.

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

Condition Reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area.

14. **Swimming Pool Safety**

Swimming pools are to be designed, installed and operated in accordance with the following general requirements:

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

Condition Reason: To minimise the impact of the pool on adjoining properties and to ensure the safety of the pool/spa area.

15. **Street Tree Protection Measures**

To ensure retention of the trees along Mermaid councils' verge, one adjacent the southeastern aspect of the subject site, mature *Cupaniopsis anacardioides* (Tuckeroo) 6 metres high, moving to the northeastern aspect, adjacent northern neighbouring property, north of

	Condition
	<p>subject site existing driveway, semi mature <i>Cupaniopsis anacardioides</i> (Tuckeroo) 5 metres high, both in good condition, good health, the following measures are to be undertaken:</p> <ul style="list-style-type: none"> a) All documentation submitted for the Construction Certificate application must show their retention, with the position and diameter of their trunks and canopies to be clearly and accurately shown in relation to the site and all work. b) The southern most tree is to be physically protected by the installation of star pickets on all four sides with construction power webbing securely attached to pickets, which shall be located a minimum distance of 2 metres to its north, east and south, matching up with the back of the public footpath to its west, the most northern tree is to be physically protected by the installation of star pickets on all four sides with construction power webbing securely attached to pickets, which shall be located a minimum distance of 2 metres to its south, matching up with the back of the public footpath to its west to enclose the tree on the subject site aspect only, for the duration of works. c) This fencing shall be installed prior to the commencement of construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER." d) To prevent soil/sediment being washed over their root systems, erosion control measures must be provided at ground level around the perimeter of the TPZ's. e) Within the TPZ's there is to be no storage of materials, machinery, nor cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble. 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) The applicant is not authorised to perform any other works to this public tree and must contact Council's Landscape Development Officer on 9093-6633 should clearance pruning or similar be needed. If approval is given, it can only be performed by Council, wholly at the applicants cost, GIVING UP TO SIX WEEKS NOTICE, with payment to be received prior to pruning or any Occupation Certificate. h) The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate. <p>Condition Reason: Protection and/or maintenance of existing environment public infrastructure, community assets and significant trees.</p>
16.	<p>Council's Infrastructure, Vehicular Crossings, street verge</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>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

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Condition
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.

That part of the nature strip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicant's expense.

Condition reason: To ensure the protection of the public domain and enable necessary rectification works.

BEFORE BUILDING WORK COMMENCES

Condition
<p>17. 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>

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

	Condition
18.	<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>
19.	<p>Dilapidation Reports</p> <p>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:</p> <ul style="list-style-type: none"> • excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the zone of influence of the footings of any dwelling, associated garage or other structure located upon an adjoining premises; • demolition or construction of new dwellings; additions to dwellings or outbuildings, which are sited up to or less than 900 mm from a site boundary (e.g. a semi-detached dwelling, terraced dwelling or other building sited less than 900mm from the site boundary); • excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises; and • as may be required by the Principal Certifier for the development. <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>
20.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>

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	Condition
21.	<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>
22.	<p>Public Utilities</p> <p>The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.</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
23.	<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>

Condition

24. **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.

25. **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.
 - 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.
 - 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,

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	Condition
	<p>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>
26.	<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>
27.	<p>Road/Asset Opening Permit</p> <p>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.</p> <p>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.</p> <p>For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.</p>

Condition	
Condition Reason: To ensure the protection of Council land.	
28.	<p>Tree and Vegetation Management</p> <p>Removal of three Palms within the level 0, in direct conflict with works, measuring within 2 metres from dwelling, exempt under the DCP 2.5 metre clause, to be removed, no objections are raised to removing any small vegetation from within this development site where needed to accommodate the works as shown, subject to full implementation of any approved Landscape Plans.</p> <p>Approval is granted for the removal of only those trees located within the area occupied by the approved works, as detailed in this development consent. Requests for the removal (or pruning) of any of the remaining trees on the site are subject to separate application under Council's Tree Preservation Order.</p> <p>Permission is granted for the minimal and selective pruning of only those overhanging branches from the southern aspect tree located on the north neighbouring adjoining property.</p> <p>This approval does not imply any right of entry onto a neighboring property, nor does it allow pruning beyond a common boundary; however, where such measures are desirable in the best interests of correct pruning procedures, and ultimately, the ongoing health of this tree, the applicant must negotiate with the neighbour/tree owner for access to perform this work.</p> <p>All pruning must be undertaken by an Arborist who holds a minimum of AQF Level III/V in Arboriculture, and to the requirements of Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and NSW Work Cover Code of Practice for the Amenity Tree Industry (1998).</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	
29.	<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>
30.	<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</p>

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Condition	
	been fulfilled.
31.	<p>Council's Infrastructure, Vehicular Crossings and Street Verge</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering 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>
32.	<p>Swimming Pool Safety</p> <p>Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the <i>Swimming Pools Act 1992</i>; the <i>Swimming Pools Regulation 2018</i> and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).</p> <p>Condition reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area prior to use.</p>
33.	<p>Swimming Pool Safety</p> <p>A 'warning notice' must be installed in a prominent position in the immediate vicinity of a Swimming Pool [or Spa Pool], in accordance with the provisions of the <i>Swimming Pools Regulation 2018</i>, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.</p> <p>Condition reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area prior to use.</p>
34.	<p>Swimming Pool Safety</p> <p>The owner of the premises must 'register' their Swimming Pool [or Spa Pool] on the NSW Swimming Pool Register, in accordance with the <i>Swimming Pools Act 1992</i>. The Swimming Pool Register is administered by the NSW Government and registration on the Swimming Pool Register may be made on-line via their website www.swimmingpoolregister.nsw.gov.au.</p> <p>Registration must be made prior to the issue of an Occupation Certificate for the pool and a copy of the NSW Swimming Pool Certificate of Registration must be forwarded to the Principal Certifier and Council accordingly.</p>

Condition

Condition reason: To ensure registration of the swimming pool/spa in accordance with relevant legislation.

OCCUPATION AND ONGOING USE

Condition

35. **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.
36. **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.
37. **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 *Protection of the Environment Operations Act 1997 and Regulations*.
- Condition reason: To protect the amenity of the surrounding area and residents.

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

Condition

38. **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 NSW Requirements and Codes of Practice; Australian Standard – AS 2601 Demolition of Structures and Randwick City Council's Asbestos Policy.
- The demolition work plan must include details of the demolition, removal, storage and disposal of any hazardous materials (including materials containing asbestos).
- A copy of the demolition work plan must be provided to the Principal Certifier and Council. A copy shall also be maintained on site and be made available to Council officers upon request.
- Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.

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DURING DEMOLITION WORK

Condition	
39.	<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. D68/24

Subject: 6-10 Bowral Street, Kensington (DA/208/2024)

Executive Summary

Proposal:	Integrated development for the demolition of existing structures to enable the construction of a 10 storey mixed used building and a part 6 and 8 storey residential flat building, separated by a central through site link. The proposal includes 1 commercial tenancy, 34 apartments across two separate towers and two basement levels accommodating 50 car parking spaces, communal open spaces, removal of trees, amalgamation of existing lots, associated site and landscape works.
Ward:	West Ward
Applicant:	D-Studio Architects Pty Ltd
Owner:	Mr D Dugandzic & Mr M I West & Mrs E E West & Mr M B Little & Mrs S Little
Cost of works:	\$21,896,758.00
Reason for referral:	The development contravenes the development standard for building height by more than 10% and the developer has offered to enter into a Voluntary Planning Agreement (VPA).

Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/208/2024 for integrated development for the demolition of existing structures to enable the construction of a 10 storey mixed used building and a part 6 and 8 storey residential flat building, separated by a central through site link. The proposal includes 1 commercial tenancy, 34 apartments across two separate towers and two basement levels accommodating 50 car parking spaces, communal open spaces, removal of trees, amalgamation of existing lots, associated site and landscape works at No. 6-10 Bowral Street, Kensington, for the following reasons:

1. Pursuant to clause 6.14 of RLEP 2012, the proposed development, being for a residential flat building, is not permissible in the E2 Commercial Centre Zone.
2. The proposed development is of an excessive height and is incompatible with surrounding development and the streetscape, resulting in non-compliance with the height of buildings development standard pursuant to clause 4.3 of RLEP 2012.
3. The submitted written request to vary the height of buildings development standard pursuant to clause 4.6 of RLEP 2012 is not considered to be well founded in that it does not sufficiently demonstrate that the proposed non-compliance is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify a variation to the development standard.
4. The proposal is inconsistent with the objectives of the E2 Commercial Centre Zone in that it does not complement the desired future built form outcomes of the locality. The absence of retail activation of the commercial core jeopardises the future Bowral Street Plaza and fails to provide a range of uses that serve the needs of people and employment opportunities.
5. Pursuant to clause 6.11 of RLEP 2012 and Part 4 of the K2K DCP, the proposed development does not exhibit design excellence.
6. Pursuant to clause 6.20 of RLEP 2012 and Part 19 of the K2K DCP, the proposal does not provide an active street frontage.

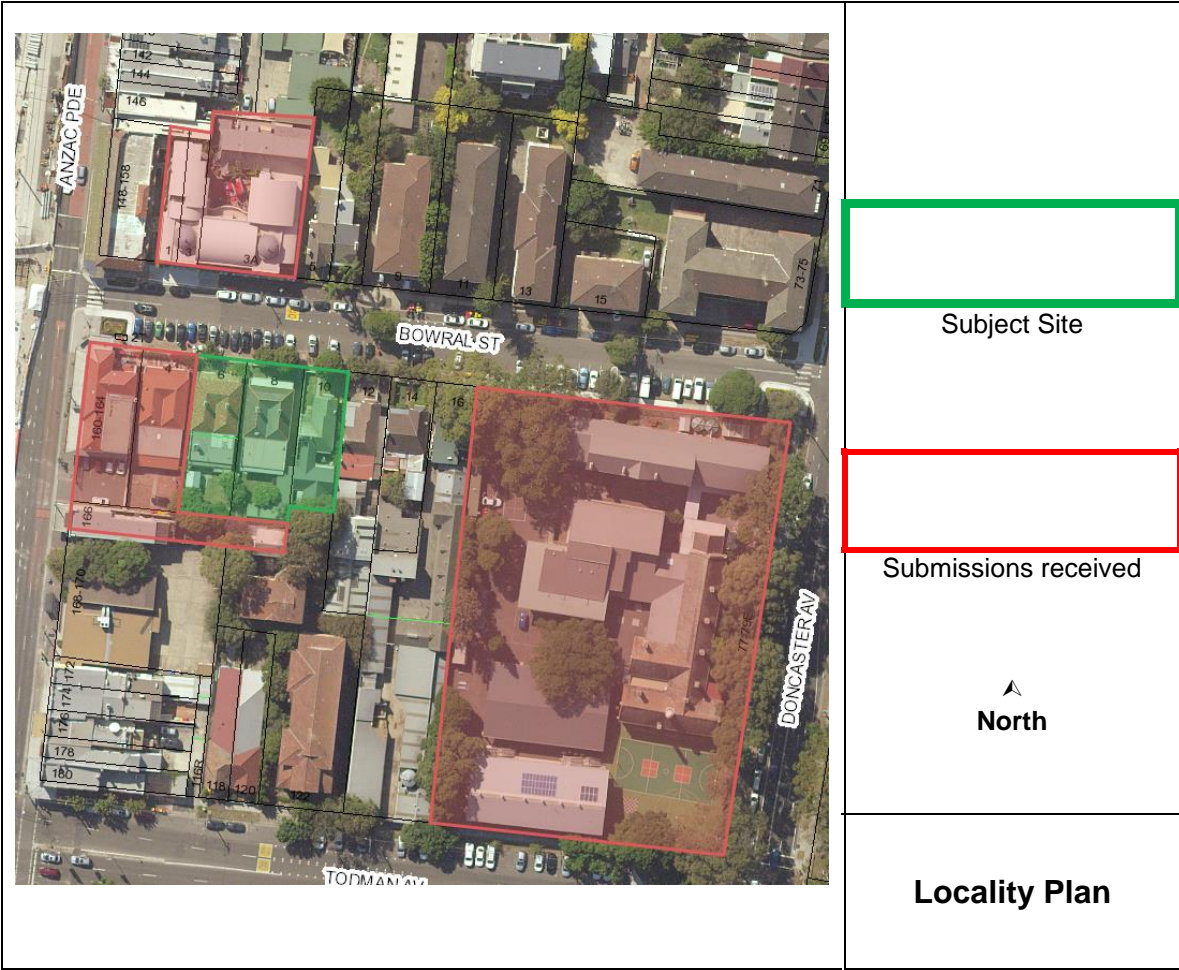
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7. Pursuant to Part 3D-1 of the ADG, the proposal fails to provide sufficient communal open space.
8. Pursuant to Part 3F-1 of the ADG, the proposal fails to comply with the minimum rear setback distances and results in adverse visual privacy impacts.
9. Pursuant to Part 4A of the ADG and Part 13 of the K2K DCP, the proposal fails to provide suitable solar access to residential apartments.
10. Pursuant to Part 4B of the ADG and Part 15 of the K2K DCP, the proposed apartments rely on cross ventilation through windows to the laneway, which is not a suitable outcome.
11. Pursuant to Part 4C of the ADG and Part 12 of the K2K DCP, the proposal fails to comply with the minimum ceiling heights at ground and first floor levels.
12. Pursuant to Part 4D of the ADG, the proposal fails to comply with the maximum room depths for open plan layouts.
13. Pursuant to Part 4F-1 of the ADG, the proposal fails to provide sufficient solar access and ventilation to common corridors and lift lobbies.
14. Pursuant to Part 6 of the K2K DCP, the proposal fails to comply with the maximum storey height and setback controls, and as such, results in adverse overshadowing impacts to neighbouring properties and results in an unacceptable lot amalgamation pattern which may compromise the development potential of adjoining properties.
15. Pursuant to Parts 8 and 21 of the K2K DCP, the proposed laneway is not suitable and gives rise to safety concerns.
16. Pursuant to Part 10.3 of the K2K DCP, the proposal fails to comply with the block controls for Blocks 28B and 28C.
17. Pursuant to Part 14 of the K2K DCP, the proposal results in adverse noise impacts.
18. Pursuant to Part 16 of the K2K DCP, the proposal lacks suitable articulation and includes a blank wall façade to the side elevations.
19. Pursuant to Part 18 of the K2K DCP, the proposal fails to provide an awning to the Bowral Street frontage.
20. Pursuant to Part 20 of the K2K DCP, the proposal fails to provide sufficient landscaped area.
21. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to waste management, public art, sustainability, and water management.
22. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
23. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.

Attachment/s:

Nil



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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for building height by more than 10% and the developer has offered to enter into a Voluntary Planning Agreement (VPA).

The proposal seeks development consent for the demolition of existing structures to enable the construction of a ten (10) storey mixed used building and a part six (6) and part eight (8) storey residential flat building, separated by a central through-site link.

The proposal includes one (1) commercial tenancy and 34 apartments across two (2) separate towers. The proposal includes two (2) basement levels accommodating 50 car parking spaces, as well as communal open space, tree removal, amalgamation of lots, and associated site works.

It is noted that the application is currently subject to a Class 1 appeal against the deemed refusal of the application with the Land and Environment Court (refer No. No. 2024/190152).

The key issues associated with the proposal relate to permissibility of the development within the E2 Commercial Centre zone, non-compliance with the height of buildings development standard, non-compliance with the K2K DCP block controls, overshadowing of neighbouring properties, inadequate floor to ceiling heights, and lack of an active street frontage. The key issues also relate to design excellence, pedestrian access and safety, future redevelopment of neighbouring sites, residential amenity for future occupants, landscaping, and insufficient documentation.

The suitability of the site for the proposed development has not been adequately demonstrated and the proposed development is not in the public interest. In this regard, the proposal is recommended for refusal.

2. Site Description and Locality

The subject site comprises three (3) lots; No. 6 Bowral Street (Lots 1 and 2 in DP 130135), No. 8 Bowral Street (Lot 1 in DP 172438) and No. 10 Bowral Street (Lot 11 in DP 828574).

The subject site, being the amalgamation of three (3) lots, has a site frontage of 35.735m, a site depth of 36.575m and 32.305m along the western and eastern side boundaries, respectively, and a total site area of 1264m².

The site is relatively flat with a 0.5m cross fall between the western and eastern side boundaries.

An aerial photograph of the site is provided in Figure 1. As shown in Figures 2-4, the site is currently occupied by three (3) single storey detached dwellings, which are located on the southern side of Bowral Street between Anzac Parade (to west) and Doncaster Avenue (to east).



Figure 1: Aerial view of subject site (Source: NearMap)



Figure 2: Existing development at No. 6 Bowral Street (Source: Council officer)



Figure 3: Existing development at No. 8 Bowral Street (Source: Council officer)



Figure 4: Existing development at No. 10 Bowral Street (Source: Council officer)

The immediate streetscape is characterised by a mix of development densities and typologies, including residential flat buildings (RFBs), two (2) storey dual occupancies, detached dwelling houses, shop top housing, a public place of worship (Saint George Coptic Orthodox Church), and an educational facility (Kensington Public School).

Directly to the east of the site, at 12 Bowral Street, is a single storey dwelling.

Saint George Coptic Orthodox Church is located to the north of the site, on the opposite side of Bowral Street.

Development to the south of the site, at 122 Todman Avenue, is a four (4) storey RFB.

Directly to the west of the site, at No. 4 Bowral Street, is a single storey dwelling. Further to the west, at Nos. 160-164 Anzac Parade, is a two (2) storey shop top housing building.

Consent was granted on 22 September 2017 to the western adjoining site (No. 4 Bowral Street and Nos. 160-164 Anzac Parade) for the demolition of existing buildings and the construction of a 7 storey shop top housing development comprising three ground floor commercial tenancies and thirty nine residential units above with two levels of basement parking (refer DA/938/2016).

It is noted that this development was approved prior to the gazettal of the Kensington to Kingsford Randwick Development Control Plan (K2K RDCP) provisions on 20 November 2020. It is also noted that this consent has now lapsed.

3. Relevant history

DA/172/2022 was lodged on 06 April 2022 and sought consent for demolition of the existing structures and the construction of a part six, part nine storey residential flat building with shared-way, basement parking and landscaping.

This DA was subject to a Class 1 appeal against the deemed refusal of the application (No. 2022/140932) and was ultimately refused by the Land and Environment Court on 21 June 2023.

4. Proposal

As shown in Figures 5-8, the proposal seeks development consent for the demolition of existing structures to enable the construction of a ten (10) storey mixed used building and a part six (6) and part eight (8) storey residential flat building, separated by a 9m wide central through-site link.

The proposal includes one (1) commercial unit and 34 residential apartments across two (2) separate towers. Specifically, the proposal comprises:

Block A (western building)

- Ground floor – one (1) commercial unit, waste room, services, and communal room.
- Level 1 – void area above commercial unit, one (1) residential unit.
- Levels 2-6 – two (2) residential units.
- Levels 7-8 – two (2) residential units (including one (1) split-level unit).
- Level 9 – one (1) split-level residential unit and non-trafficable roof.

Block B (eastern building)

- Ground floor – loading dock, basement ramp, and two (2) residential units.
- Level 1 – void area above loading dock, three (3) residential units.
- Levels 2-3 – four (4) residential units.
- Levels 4-5 – three (3) residential units.
- Level 6 – one (1) split-level residential unit and rooftop communal open space area.
- Level 7 – one (1) split-level residential unit.
- Level 8 – non-trafficable roof and planter box.

The proposal includes two (2) basement levels with a total of 50 car parking spaces, as follows:

- Lower basement – 32 x car spaces, 6 x bicycle spaces, and 25 x storage cages.
- Upper basement – 18 x car spaces, 5 x motorcycle spaces, 32 x bicycle spaces, 9 x storage cages, 2 x waste rooms, bulky waste room, and services.

The proposed apartment mix comprises:

- 7 x one (1) bed residential units.
- 14 x two (2) bed residential units.
- 12 x three (3) bed residential units.
- 1 x four (4) bed residential unit.

The proposal also includes tree removal, amalgamation of three (3) existing lots to create one (1) lot, and associated site and landscaping works.



Figure 5: Proposed photomontage (Source: D-Studio Architects)



Figure 6: Proposed ground floor plan (Source: D-Studio Architects)

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Figure 7: Proposed north elevation plan (Source: D-Studio Architects)



Figure 8: Proposed section plan (Source: D-Studio Architects)

5. Notification

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

- 77-79E Doncaster Avenue – School Infrastructure NSW

Issue	Comment
Prior to construction, the proposal should be supported by a Construction Management Plan	Noted and agreed
Conditions relating to construction traffic, noise, vibration, and air quality should be imposed	Noted and agreed

- 1-3A Bowral Street – Saint George Coptic Orthodox Church

Issue	Comment
Proposed land use is not permissible and is inconsistent with zone objectives	Agreed – recommendation for refusal
Proposal is not in the public interest	Agreed – recommendation for refusal
Building height non-compliance	Agreed – recommendation for refusal
Non-compliance with K2K DCP block controls (storey height, setbacks)	Agreed – recommendation for refusal
Lack of residential amenity for future occupants	Agreed – recommendation for refusal
Proposal does not promote energy efficiency	Agreed – recommendation for refusal
Inadequate deep soil zones	Agreed – recommendation for refusal
Visual appearance of proposal detracts from appearance of public domain	Agreed – recommendation for refusal

- Urbis – prepared on behalf of No. 4 Bowral Street and Nos. 160-164 Anzac Parade

Issue	Comment
Building storey height and rear setback non-compliances	Agreed – recommendation for refusal
Overshadowing impacts	Agreed – recommendation for refusal
Inconsistent alignment of shared way	Agreed – recommendation for refusal
Location of vehicle turning circle at southern end of through-site link	Agreed – recommendation for refusal

- 1 x unknown address

Issue	Comment
Property value impacts	Not relevant to planning assessment
Concerns regarding height	Agreed – recommendation for refusal
Concerns regarding density	Agreed – recommendation for refusal

6. Relevant Environment Planning Instruments

6.1. Water Management Act 2000

The proposed development is 'integrated development' pursuant to Chapter 3, Part 3 of the Water Management Act 2000.

No response has been provided by Water NSW.

6.2. SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the Sustainable Buildings SEPP.

6.3. SEPP (Housing) 2021

The provisions of the now-repealed SEPP 65, relating to the design of residential apartment development, have been transferred to Chapter 4 of the Housing SEPP.

Section 147 of the Housing SEPP states:

- (1) *Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—*
- (a) *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
 - (b) *the Apartment Design Guide,*
 - (c) *any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

Assessing officer's comment: The development was referred to Council's Design Excellence Advisory Panel (DEAP). The DEAP does not support the proposal in its current form.

The comments provided by the DEAP demonstrate that the proposal does not achieve the design principles for residential apartment development set out in Schedule 9 of the SEPP (refer to DEAP comments at Appendix 1).

As detailed in the below table, an assessment has been carried out against the Design Criteria of the Apartment Design Guide (ADG).

Clause	Design Criteria	Proposal	Compliance
Part 3: Siting the Development			
3D-1	Communal and Public Open Space		
	Communal open space has a minimum area equal to 25% of the site.	Proposed = 298.6m ² (23.6%) The submitted SEE and calculation plans incorrectly include the area of the indoor 'communal room' at ground floor level, which is not an open space area.	No
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	Complies	Yes
3E-1			
	Deep soil zones are to meet the following requirements: 3m dimension, 7% site area	Proposed = 112.4m ² (8.9%), dimensions >3m	Yes
3F-1	Visual Privacy		
	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to	The proposal fails to comply with the following setback requirements:	No

Clause	Design Criteria	Proposal	Compliance												
	<p>the side and rear boundaries are as follows:</p> <table><tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<ul style="list-style-type: none">GF: rear communal terrace encroaches within 6m rear setbackLvl 1: rear balcony to Unit B1.03 encroaches within 6m rear setbackLvl 4: rear balconies to Units A4.02, Unit B4.02, and B4.03 encroach within 9m rear setbackLvl 8: rear living room windows and balcony to Unit A8.02 encroach within 12m rear setback	
Building Height	Habitable Rooms and Balconies	Non-habitable rooms													
Up to 12m (4 storeys)	6m	3m													
Up to 25m (5-8 storeys)	9m	4.5m													
Over 25m (9+ storeys)	12m	6m													
3J-1	Bicycle and Car Parking														
	<p>For development in the following locations:</p> <ul style="list-style-type: none">on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; oron land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p>The site is located within 800m of Kensington Light Rail stop.</p> <p>The K2K DCP parking rates have been applies as these rates are lower than the GTTGD rates.</p>	N/A												
Part 4: Designing the Building															
4A	Solar and Daylight Access														
	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter.	70.6% of apartments will receive at least two (2) hours of sunlight between 9am and 3pm midwinter.	Yes												
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	29.4% of apartments will receive no sunlight	No												

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Clause	Design Criteria	Proposal	Compliance
		between 9am and 3pm midwinter.	
4B	Natural Ventilation		
	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	91% of apartments are naturally cross ventilated.	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Complies	Yes
4C	Ceiling Heights		
	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable – 2.4m Attic spaces – 1.8m at edge with min 30 degree ceiling slope Mixed use areas – 3.3m for ground and first floor These minimums do not preclude higher ceilings if desired.	The proposed ceiling heights of 2.7m comply with the ADG requirement for Levels 2 and above. The proposed 2.7m ceiling heights at ground floor level and Level 1 do not comply with the 3.3m ADG requirement for mixed use areas.	No
4D	Apartment Size and Layout		
	Apartments are required to have the following minimum internal areas: <ul style="list-style-type: none"> Studio - 35m² 1 bedroom - 50m² 2 bedroom - 70m² 3 bedroom - 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m ² each.	Complies	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Complies	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Complies	Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Proposed = 9.5m room depth (maximum)	No

Clause	Design Criteria	Proposal	Compliance															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Complies	Yes															
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Complies	Yes															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Complies	Yes															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Complies	Yes															
4E	Private open space and balconies																	
	<div>All apartments are required to have primary balconies as follows:<table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4 m²</td><td>-</td></tr><tr><td>1 bedroom</td><td>8 m²</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10 m²</td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12 m²</td><td>2.4m</td></tr></table><div>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</div></div>	Dwelling type	Minimum area	Minimum depth	Studio	4 m ²	-	1 bedroom	8 m ²	2m	2 bedroom	10 m ²	2m	3+ bedroom	12 m ²	2.4m	Complies	Yes
Dwelling type	Minimum area	Minimum depth																
Studio	4 m ²	-																
1 bedroom	8 m ²	2m																
2 bedroom	10 m ²	2m																
3+ bedroom	12 m ²	2.4m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Complies	Yes															
4F	Common Circulation and Spaces																	
	The maximum number of apartments off a circulation core on a single level is eight.	Proposed = maximum four (4) units	Yes															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Proposed = 14 x units share lift in Block A	Yes															
4G	Storage																	
	<div>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:<ul style="list-style-type: none">Studio apartments - 4m³1 bedroom apartments - 6m³2 bedroom apartments - 8m³3+ bedroom apartments - 10m³<div>At least 50% of the required storage is to be located within the apartment.</div></div>	Complies	Yes															

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

- (a) *the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide*

Assessing officer's comment: The proposal provides a total of 50 car parking spaces, which exceeds the minimum requirement for 38 parking spaces pursuant to the K2K DCP.

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

Assessing officer's comment: The proposed apartments comply with the minimum ADG requirements.

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

Assessing officer's comment: The proposed ceiling heights of 2.7m comply with the ADG requirement for Levels 2 and above. The proposed 2.7m ceiling heights at ground floor level and Level 1 do not comply with the 3.3m ADG requirement for mixed use areas.

6.4. SEPP (Transport and Infrastructure) 2021

Pursuant to section 2.48 of the Transport and Infrastructure SEPP, the application was referred to Ausgrid. No objection was raised, subject to conditions (refer Appendix 1).

Pursuant to clause 2.122 of the Transport and Infrastructure SEPP, the application was referred to Transport for NSW. No objection was raised, subject to conditions (refer Appendix 1).

6.5. SEPP (Resilience and Hazards) 2021

Chapter 4 of the Resilience and Hazards SEPP applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land. The SEPP requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Refer to comments by Council's Environmental Health Officer at Appendix 1 of this report.

6.6. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned E2 Commercial Centre under Randwick Local Environmental Plan 2012. The proposal seeks consent for a mixed use building and a residential flat building.

Whilst it is acknowledged that residential flat buildings are listed as being permissible with consent in the E2 zone pursuant to clause 2.3 of RLEP 2012, subclause 2.3(4) states that this clause is subject to the other provisions of RLEP 2012. The provisions included at clause 6.14 are these such provisions. Refer to further discussion regarding clause 6.14 of RLEP 2012 below.

The proposal is inconsistent with the objectives of the E2 zone, which seek to strengthen the role of the commercial centre as the centre of business, retail, community, and cultural activity.

The proposed development is not considered compatible with the desired future character envisaged by the applicable planning controls for the following reasons:

- The proposed development results in non-compliance with the height of buildings development standard established in clause 4.3 of RLEP 2012.
- The proposed massing strategy presents substantial variations to the building envelope controls specific to the site established in the K2K DCP.

- The built form does not adequately consider the existing development pattern, having regard to the several non-compliances and the lack of built form transition, nor does it complement the desired future built form outcomes or neighbourhood character.
- The lack of adequate built form transition is inconsistent with the objectives of E2 zone.
- The absence of retail activation of the commercial core jeopardises the future Bowral Street Plaza and fails to provide a range of uses that serve the needs of people and employment opportunities.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	4:1 (No. 6) N/A (Nos. 8-10)	3.94:1 (No. 6)	Yes
CI 4.3: Building height (max)	31m (No. 6) 19m (Nos. 8-10)	31m (No. 6) 24.88m (Nos. 8-10)	Yes No

6.6.1. Clause 4.4 – Floor Space Ratio

There is no floor space ratio (FSR) applying to the subject site pursuant to the Floor Space Ratio Map referred to in clause 4.4(2) of RLEP 2012.

However, pursuant to clause 6.17 of RLEP 2012, a portion of the site (No. 6 Bowral Street) is eligible for an alternative FSR of 4:1 if the development includes community infrastructure. Refer to discussion of clause 6.17 below.

The submitted SEE and gross floor area (GFA) calculation plans have incorrectly excluded the area of the 12 x car parking spaces at basement level which exceed the K2K DCP requirement for 38 x car parking spaces.

Assuming an area of 12.96m² for each parking space, the proposal results in a total GFA of 1,759.12m² for No. 6 Bowral Street, resulting in a compliant FSR of 3.94:1.

6.6.2. Clause 4.6 – Exceptions to development standards

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

6.6.3. Clause 5.10 – Heritage conservation

Refer to comments by Council's Heritage Planner at Appendix 1 of this report.

6.6.4. Clause 6.8 – Airspace operations

In accordance with clause 6.8 of RLEP 2012, the application was referred to the Sydney Airport Corporation. No objection was raised, subject to conditions (refer Appendix 1).

6.6.5. Clause 6.11 – Design Excellence

Clause 6.11 of RLEP 2012 applies to a development application in circumstances where the proposed development will be at least 15m in height. Pursuant to subclause 6.11(3), development consent must not be granted unless the consent authority is satisfied that the proposed development exhibits design excellence.

It is considered that the proposal does not exhibit design excellence. The form, detailed design, and external appearance of the proposed development does not improve the quality or amenity of the public domain, nor does it achieve an acceptable relationship with other buildings on neighbouring sites.

The proposed building design does not respond to the character and qualities of the locality. Council's Design Excellence Advisory Panel (DEAP) concurs with the above and notes:

"The Panel does not support the proposal in its current form. The Panel encourages the Applicant to collaborate more closely with council's urban design team to resolve some of the inherent complexities that arise from an amalgamation that is counter to that which was envisaged in the K2K documentation."

In this regard, Council is not satisfied that the proposal exhibits design excellence pursuant to clause 6.11 of RLEP 2012.

6.6.6. Clause 6.14 – Certain residential accommodation in Zones E1 and E2

Whilst it is acknowledged that residential flat buildings are listed as being permissible with consent in the E2 zone pursuant to clause 2.3 of RLEP 2012, subclause 2.3(4) states that this clause is subject to the other provisions of RLEP 2012. The provisions included at clause 6.14 are these such provisions.

Clause 6.14 of RLEP 2012 states:

- (1) *The objective of this clause is to enable the use of an **existing** dwelling house or residential flat building in certain employment zones.*
- (2) *This clause applies to land in Zone E1 Local Centre or Zone E2 Commercial Centre.*
- (3) *Development consent must not be granted to a dwelling house or a residential flat building on land to which this clause applies unless—*
 - (a) *the development relates to a building that existed when this Plan commenced and was designed or constructed for the purposes of a dwelling house or a residential flat building, and*
 - (b) *the consent authority is satisfied that—*
 - (i) *the development will not detrimentally impact on the desired future character of the locality, and*
 - (ii) *the development will result in satisfactory residential amenity for its residents, and*
 - (iii) *the degree of modification to the footprint and facade of the building is minor.*

The proposal, comprising a new residential flat building, is not permissible in the E2 Commercial Centre zone pursuant to clause 6.14 of RLEP 2012.

The objective of this clause is to enable the use of an existing dwelling house or residential flat building in certain employment zones.

The proposal does not relate to a building that existed when RLEP 2012 commenced, and which was designed or constructed for the purposes of a residential flat building. In this regard, consent must not be granted to a residential flat building at the subject site.

Council is not satisfied that the development will not detrimentally impact on the desired future character of the locality, or that the development will result in satisfactory residential amenity for its residents, or that the degree of modification to the footprint and facade of the building is minor.

6.6.7. Clause 6.17 – Community infrastructure height of buildings and floor space ratio at Kensington and Kingsford town centres

Clause 6.17 of RLEP 2012 relevantly provides as follows:

- (2) *Despite clauses 4.3 and 4.4, the consent authority may consent to development on a site that results in additional building height or additional floor space, or both, in accordance with subclause (4) if the development includes community infrastructure on the site.*
- (3) *In deciding whether to grant development consent, the consent authority must—*
 - (a) *be satisfied that the development is consistent with the objectives of this clause, and*
 - (b) *be satisfied that the community infrastructure is reasonably necessary at Kensington and Kingsford town centres, and*
 - (c) *take into account the nature of the community infrastructure and its value to the Kensington and Kingsford town centres community.*
- (4) *Under subclause (2), a building on land in any of the areas identified on—*
 - (a) *the Alternative Building Heights Map—is eligible for an amount of additional building height determined by the consent authority but no more than that which may be achieved by applying the maximum height specified in relation to that area, and*
 - (b) *the Alternative Floor Space Ratio Map—is eligible for an amount of additional floor space determined by the consent authority but no more than that which may be achieved by applying the maximum floor space ratio specified in relation to that area.*

Part of the subject site, No. 6 Bowral Street, is identified on the Alternate Height of Buildings Map referred to in clause 6.17(4)(a) as having an alternate maximum building height of 31m.

This part of the site is also identified on the Alternate Floor Space Ratio Map referred to in clause 6.17(4)(b) as having an alternate maximum FSR of 4:1.

As the consent authority, Council may consent to development that results in additional building height or floor space ratio, or both, if the development includes community infrastructure. The Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan provides the relevant requirements in relation to community infrastructure.

The submitted letter of offer proposes to enter into a VPA with Council. The letter of offer proposes works in kind in relation to public domain upgrades (to Duke Street and Bowral Street) and green grid links, with any residual amount to be paid as monetary contribution to Council.

Notwithstanding, Council is not satisfied of the following:

- The development is consistent with the following objectives of clause 6.17 of RLEP 2012:
 - To ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities; and
 - To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.
- The Applicant's written request under clause 4.6 of RLEP 2012 has adequately addressed the following matters required to be demonstrated:
 - 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 the contravention of the development standard in clause 4.3 of RLEP 2012.
- The proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 of RLEP 2012 and the objectives for development in the E2 Commercial Centre zone.

It is therefore considered that the proposal is unacceptable with regard to clause 6.17 of RLEP 2012.

6.6.8. Clause 6.20 – Active street frontages at Kensington and Kingsford town centres

Clause 6.20 seeks to promote uses that attract pedestrian traffic along certain ground floor street frontages within the Kensington and Kingsford town centres.

A portion of the Bowral Street frontage is identified as an 'active street frontage' on the Active Street Frontages Map. In this regard, the following of clause 6.20 are applicable, as follows:

- (3) *Development consent must not be granted to the erection of a building on land to which this clause applies unless the consent authority is satisfied that all premises on the ground floor of the building facing the street are to be used for the purposes of commercial premises after the erection of the building.*
- (4) *Development consent must not be granted to a change of use of premises on the ground floor of a building on land to which this clause applies unless the new use is for the purposes of commercial premises.*

The proposed development includes a commercial tenancy at ground floor level of Building A. However, Council is not satisfied that the Bowral Street frontage is suitably activated. As shown in Figure 9 below, the street frontage is obstructed by a large booster structure. The commercial tenancy is recessed by 4m from the street, and it is unclear how the proposed 'commercial terrace' will activate the Bowral Street frontage.

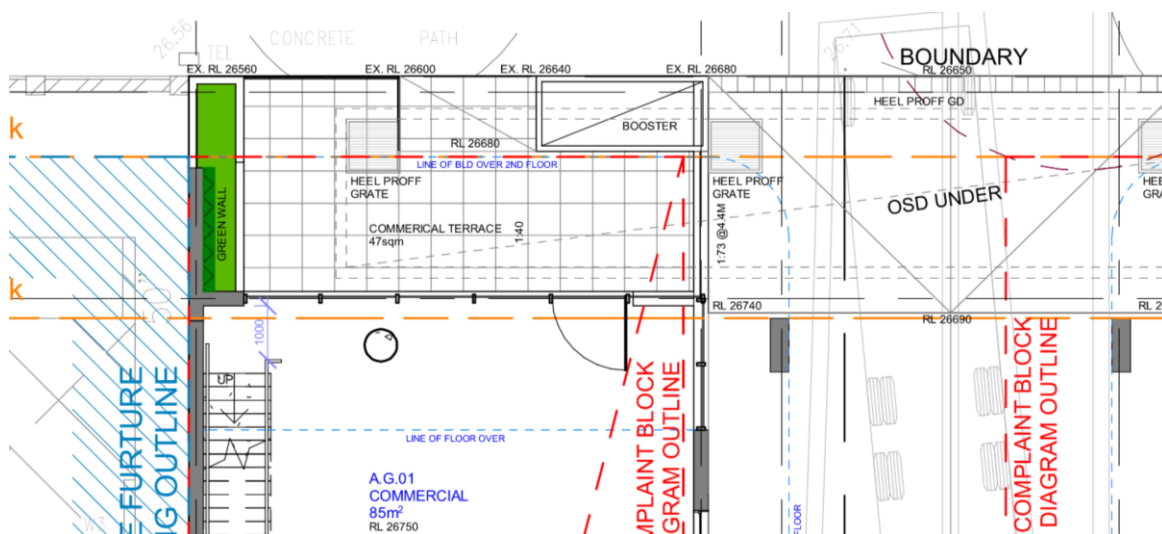


Figure 9: Extract of proposed ground floor plan (Source: D-Studio Architects)

Council is not satisfied that the proposal achieves the objective of clause 6.20, which seeks to promote uses that attract pedestrian traffic along ground floor street frontages. Importantly, the proposal does not include an awning to the Bowral Street frontage, as required by Part 18 of the K2K DCP.

Noting the above, the proposal does not satisfy clause 6.20 of RLEP 2012.

6.6.9. Clause 6.26 – Affordable housing contributions for Kensington and Kingsford town centres

Clause 6.26 of RLEP 2012 states:

- (1) *This clause applies to development, other than excluded development, on land identified as "Area 1" on the Special Provisions Area Map.*

- (2) *When granting development consent to development to which this clause applies, the consent authority may impose a condition requiring an affordable housing contribution equivalent to 5% of the total floor area of the part of the building intended to be used for residential accommodation (the contribution).*
- (3) *A condition imposed under this clause must permit a person to satisfy the contribution by—*
- (a) *for development for the purposes of co-living housing or serviced apartments—a monetary contribution paid to the Council, or*
 - (b) *for other development—*
 - (i) *a dedication, in favour of the Council, of land comprising 1 or more dwellings, each having a gross floor area of at least 50m², and*
 - (ii) *if the dedication under subparagraph (i) does not meet the requirement under subclause (2)—a monetary contribution of the remainder paid to the Council.*
- (4) *A monetary contribution must be calculated in accordance with the Kensington and Kingsford Town Centres – Affordable Housing Plan adopted by the Council on 10 December 2019.*

The submitted letter of offer fails to provide any details regarding an affordable housing monetary contribution. Notwithstanding, further consideration of clause 6.26 is not required as the development application is recommended for refusal.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max) and Cl. 6.17 Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres	31m (No. 6) – Clause 6.17 19m (Nos. 8-10) – Clause 4.3	31m (No. 6) 24.88m (Nos. 8-10)	5.88m (Nos. 8-10)	30.9%

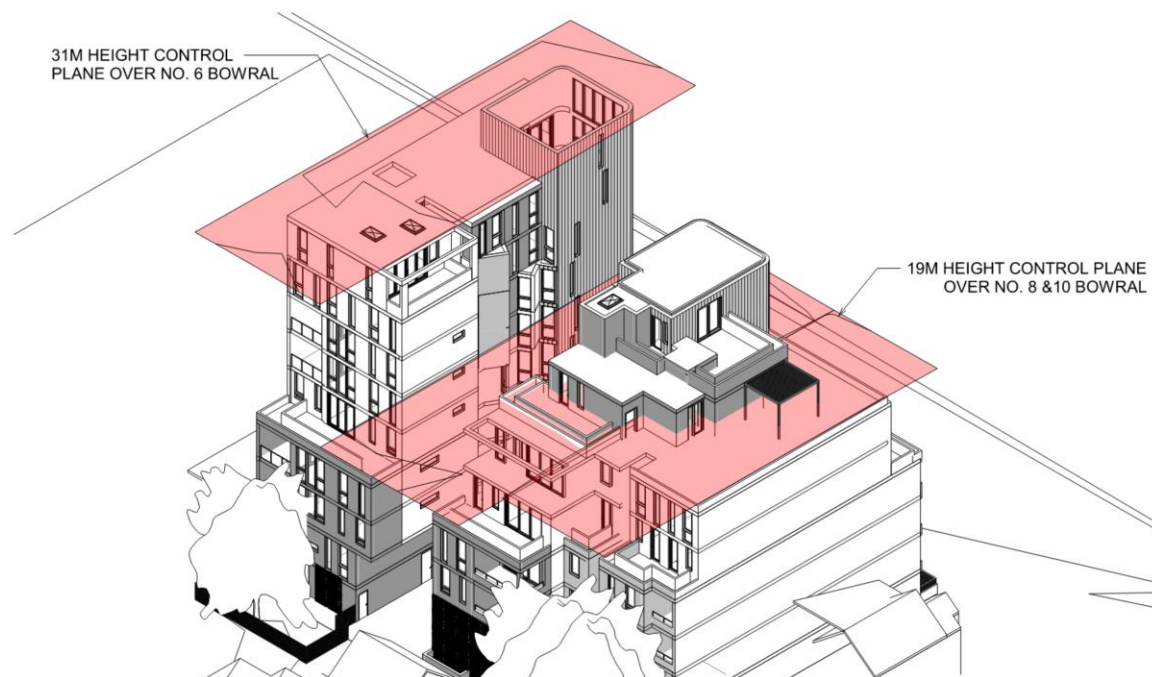


Figure 10: Proposed height plane diagram (Source: D-Studio Architects)

The NSW Department of Planning and Environment (DPE) made amendments to clause 4.6 of the Standard Instrument which commenced on 1 November 2023. The changes aim to simplify clause 4.6 and provide certainty about when and how development standards can be varied.

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

3. *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard*

Pursuant to section 35B(2) of the *Environmental Planning and Assessment Regulation 2021*, a development application for development that proposes to contravene a development standard must be accompanied by a document (also known as a written request) that sets out the grounds on which the applicant seeks to demonstrate the matters of clause 4.6(3).

As part of the clause 4.6 reform the requirement to obtain the Planning Secretary's concurrence for a variation to a development standard was removed from the provisions of clause 4.6, and therefore the concurrence of the Planning Secretary is no longer required. Furthermore, clause 4.6 of the Standard Instrument no longer requires the consent authority to be satisfied that the proposed development shall be in the public interest and consistent with the zone objectives as consideration of these matters are required under sections 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979*, and clause 2.3 of RLEP 2012 accordingly.

Clause 4.6(3) establishes the preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

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

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

is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

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

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

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

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

Additionally, in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065, Commissioner Dickson at [78] notes that the avoidance of impacts may constitute sufficient environmental planning grounds "as it promotes "good design and amenity of the built environment", one of the objectives of the EPA Act." However, the lack of impact must be specific to the non-compliance to justify the breach (*WZSydney Pty Ltd* at [78]).

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(3) have been satisfied for each contravention of a development standard. The assessment and consideration of the applicant's request is also documented below in accordance with clause 4.6(4) of RLEP 2012.

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

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

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

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

The objectives of the Height of Buildings standard are set out in Clause 4.3(1) of RLEP 2012:

- (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.*

Assessing officer's comment: As discussed below, the reasons stated in the applicant's written request are not concurred with. It is considered that the proposal does not uphold objectives (a), (b), or (c) of the development standard, and as such, the applicant has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The proposed built form substantially exceeds the maximum permissible building height applying to the eastern portion of the site. The proposal also exceeds the maximum storey height controls applying to the site under Part 10 of the K2K DCP. The proposed 10 storey western building exceeds the 9 storey control and the proposed 6-8 storey eastern building exceeds the 5 storey control.

In this regard, the proposal fails to respond to the desired future character of the locality and does not provide sufficient transition to Kensington Public School and residential properties to the east. The 6-8 storey eastern building creates additional visual bulk to Bowral Street and fails to complement the overall desired streetscape profile.

The excessive building height results in increased bulk and scale presentation to the public domain and neighbouring sites, poor streetscape proportions, and adverse overshadowing impacts. The proposed built form undermines the desired sense of transition to the eastern part of Bowral Street. The excessive building height also contributes to inadequate floor to ceiling heights at ground and first floor levels.

The proposed distribution of massing and extension of the increased building height beyond that contemplated in the controls does not consider the broader streetscape outcomes of the proposal, nor does it have regard for any future development at neighbouring sites.

The desired future character of the site is established by current planning controls. As detailed in this report, the proposed development is not considered to be compatible with the desired future character envisaged by the current DCP building envelope and block controls.

Additionally, the excessive height, size, and visibility of the proposal will detrimentally impact the significance of the nearby heritage listed Kensington Public School. The proposal fails to provide sufficient height transition to the school buildings, which is contrary to the desired future character of the area.

In conclusion, the applicant's written request has not adequately demonstrated that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

1. *The proposal successfully redistributes floor space and height, resulting in the non-compliance.*
 - a. *The height breach is to the upper two storeys at Nos. 8-10 Bowral Street, which represents a variation of 24.83m. The proposal also includes non-compliances to the Level 7 parapet edge, pergola serving the roof top open space and Level 6 planter boxes.*

- b. *These non-compliances allow for a distribution of floor space, as to achieve a 6m wide open to the sky, shared-way, including two 1.5m wide covered access ways at-grade. The non-compliant building height is therefore in-part a result of the desired building envelope contained within the RDCP, specifically, the shared-way located within the centre of the site between Buildings A and B. The provision of an open shared-way, and considerable rear setbacks (in accord with the ADG), has ultimately relocated the built form and floor space on the upper levels to utilise the site more effectively. This achieves a number of benefits including the delivery of a high quality shared-way activating the locality, protecting amenity and delivering much needed residential accommodation. This will satisfy 1.3 Objects of Act, specifically, (a), (c) and (g). That is, the redistribution of floor area to deliver the shared way is considered to provide a direct benefit to the general public through improving the public domain and delivering a development with good design and amenity.*
- c. *Following the above, the maximum non-compliance will provide an appropriate transition of height from the 31m height standard at No. 6 Bowral Street (including approved developments along Anzac Parade which range from 8-18 storeys) and 19m height limit to the east. The non-compliant, eight storey height transitions to six storeys (which complies with the development standard), and will be consistent with the built form and scale envisaged for the adjoining properties to the east within Block 28C. Importantly, the location of the open shared way separates the built form and provides step in building height along the streetscape (as desired by the LEP), despite the non-compliance.*

Furthermore, these elements have been appropriately setback from site boundaries and are recessive in nature when compared to the lower levels.

The desired building envelope for Block 28B and 28C of the Kensington and Kingsford DCP in Figure 23, in which the proposal is consistent.

2. *The non-compliance is a response to the RDCP building envelope controls*

- a. *As outlined, the non-compliant building height is a result of the desired building envelope per the RDCP. The provision of an open shared-way located centrally through the site has redistributed the floor area on the upper levels, where the 19m height limit applies. Of relevance, the site analysis and iterative design processes (refer to Sheet A002 of the architectural set) has demonstrated that the proposed shared way location is the most appropriate response to the various constraints, thereby introducing the height non-compliance.*
- b. *In addition to the proposed shared-way, the proposal has also sought to provide rear setbacks of 6m to 9m, in accord with the ADG. Importantly, the RDCP includes the provision of a flexible 9 storey zone to the south where a reduced setback can be provided. However, the relocation of floor space above the 19m height limit, as opposed to the rear setback area, represents a superior outcome which will have reduced impacts to the amenity of properties to the south, whilst providing an appropriate transition of built form in an easterly direction and an open shared-way.*
- c. *Ultimately, the proposed building envelopes and distribution of floor space results in a superior urban and architectural design outcome. That is, the provision of additional floor area in alternative locations, including the shared-way or rear setbacks, will adversely impact the amenity and streetscape character of the development.*

3. *The non-compliance is consistent with the desired character of the locality.*

- a. *The proposed non-compliances are appropriately setback from Bowral Street and to the rear of the site. These proposed setbacks, which are consistent with the RDCP, ensure that the variation will not result in any adverse visual impact when viewed from the public domain or neighbouring properties, and will be compatible*

with the desired character of the locality. The variations have been limited in footprint, to ensure the streetscape impact is minimised. As described above, the proposed shared-way provides for a transition and separation of built form as desired by the LEP and DCP, therefore reducing the bulk and scale of the variation.

- b. To the east, the non-compliant elements are also setback considerably from the boundary shared with the neighbouring property. The separation distance and recessed design of the non-compliances ensure that an appropriate transition of built form is provided along Bowral Street, as desired by the RDCP. Furthermore, the proposal provides a compliant six storey, 19m built form within the eastern portion of the site, as to ensure that the desired relationship to Nos. 12 and 16 Bowral Street will be retained. As such, the proposed setbacks and overall architectural design ensures that the non-compliance will be entirely compatible with the character of the locality.*
- c. When considering the proposed height in comparison to the properties to the north and south, the non-compliance will merge, or be absorbed, into the anticipated bulk and scale of the locality. That is, on the northern side of Bowral Street the 31m height limit (as is permitted by the alternative building height) extends to the eastern boundary of Nos. 1-3 Bowral Street (St George Coptic Orthodox Church). Given it is unlikely that the adjacent church will be redeveloped, the non-compliant height opposes a structure that is uncharacteristic of the streetscape and will ensure that the impact created by the proposal will be less apparent by virtue of the differing typologies.*
- d. Similarly, and when considering the properties to the rear, it is noted that a 54m height limit is permitted. The properties to the rear are subject to an approval for an 18 storey mixed use development at Nos. 172-180 Anzac Parade and 116R Todman Avenue. Where the properties to the rear are not captured as part of the abovementioned approval, the proposed separation and height of the approved development will limit any visual or physical impact.*

4. The non-compliances achieve a high level of design excellence, based on site analysis

- a. The proposal delivers a high quality urban and architectural design which clearly exhibits design excellence, despite non-compliance. That is, the proposal has undergone in-depth site analysis and refinement to reach the proposed outcome. The arrangement of floor space and subsequent building height non-compliance have been informed by the desired DCP envelope. As such, the distribution of floor area is considered the most appropriate response to the streetscape, whilst protecting the amenity of neighbouring properties.*
- b. The maximum extent of non-compliance is appropriately integrated into the overall building form. The non-compliance will not be visually jarring as the built form is situated within a well-articulated mass extending seamlessly between the varying building heights. That is, the difference in height between the alternative and standard controls will be maintained, although shifted slightly to the east as a result of the previously mentioned constraints. Importantly, the non-compliant elements form part of a recessed built form and includes framing, balcony articulation, fenestration and contemporary materiality to ensure that design excellence is achieved. The provision of the open, shared-way also assists with the LEP desired transition of height.*

5. Additional non-compliances improve the amenity of future residents.

- a. The proposed non-compliance also allows for the provision of a rooftop communal open space with pergola. Whilst the pergola will vary the standard, it will provide for weather protection and better use of the area. The location of the communal open space allows for maximum access to sunlight and results in no adverse privacy impacts due to the location of the space and significant setbacks from the planter boxes.*

- b. *The minor non-compliance to the Level 6 planter boxes will also allow for the provision of roof top planting, and do not result in any adverse impact to the streetscape or surrounding properties. These roof top planter not only improve and soften the architectural design, but also provide for a privacy buffer to surrounding properties and is therefore acceptable.*

6. *Orderly and economic use of land*

- a. *The social benefits of providing housing stock within a highly sought after location should be given weight in the consideration of the variation request. The distribution of floor space is predicated on the allotment shape, principles of the DCP and lot ownership pattern. This has resulted in building envelopes which necessitates a form and scale that breaches the 19m building height limit. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of residential accommodation within a well located and well-designed development.*
- b. *Insistence on compliance with the height control would also result in the removal of a roof top pergola and planter boxes, which is a disproportionate response to the relatively minor impacts created by these elements. These non-compliances provide distinct benefits to the amenity of the future occupants, without any adverse impacts to the streetscape or neighbouring properties.*

7. *Limited environmental impacts*

- a. *It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:*
 - i. *The extent of the additional height creates no significant adverse overshadowing impacts to adjoining properties when compared to a compliant building envelope. That is, although the additional height results in a minor degree of overshadowing, it will retain adequate solar access to neighbouring properties, including the residential flat buildings to the south. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant;*
 - ii. *The height breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the height breach will have no greater impact on the privacy of adjoining properties when compared to a compliant built form. The non-compliant elements are setback considerably from respective boundaries, are orientated to the public domain and will not result in any further overlooking. When considering the southern (rear) setback, the openings similarly include greater setbacks which mitigate any aural or visual impact. As such, the loss of privacy caused by the non-compliant elements would be insignificant; and*
 - iii. *The height breach will not result in any significant view loss as the subject site does not contain any significant views across or from the public domain. The maximum height non-compliance is limited and is consistent with the building height of the surrounding locality. As such, the extent of view loss caused by the non-compliant element would be insignificant.*

8. *The proposal meets aims and objectives of key planning documents*

- a. *The proposed development meets the objectives of the development standard and meets the objectives of the E2 Commercial Centre zone (as further detailed in Section 7 below);*

- D68/24**
- b. *The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*
 - i. *The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site (1.3(c));*
 - ii. *To promote the delivery and maintenance of affordable housing (1.3(d));*
 - iii. *The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).*
 - c. *The variation to the height of buildings development standard will give better effect to the aims of Chapter 4 Design of residential apartment development, of the Housing SEPP. In particular:*
 - i. *The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i));*
 - ii. *To achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define (clause 2(3)(b));*
 - iii. *To contribute to the provision of a variety of dwelling types to meet population growth (clause 2(3)(f));*
 - iv. *Approval of the proposed variation will support a variety of housing types by providing a well-located and compact development that will be a better choice for families (clause 2(3)(g)).*

Assessing officer's comment: For reasons discussed within this report, Council does not concur with the reasons stated in the applicant's written request. On this basis, the applicant has not adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have not been satisfied and that development consent may not be granted for development that contravenes the Height of Buildings development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013 and 2020

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	Refer to Sections 6 and 7 of this report.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Not applicable.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the K2K DCP 2020. Refer Appendix 3 of this report.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is inconsistent with the dominant character of the locality. The proposal will 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 has insufficient area to accommodate the proposed land use and associated structures. Therefore, the site is not considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal fails to promote the objectives of the zone and will result in adverse impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

Communal Open Space

Pursuant to Part 3D-1 of the ADG, at least 25% of the site area is to be provided as communal open space.

The submitted SEE and calculation plans incorrectly include the area of the indoor 'communal room' at ground floor level, which is not an open space area. Based on Council's calculations, the proposal provides approximately 298.6m² of communal open space, which equates to only 23.6% of the site area and fails to comply with the 25% requirement.

Concern is raised regarding the usability of the communal open space located towards the south-eastern corner of the building (at ground floor level) due to its irregular width/configuration, lack of solar access, and direct interface with residential units and the driveway ramp. Additionally, it is unclear if the rooftop communal open space of the eastern building would be accessible to residents of the western building.

Noting the above, the proposed communal open space is not considered suitable. This forms a reason for refusal.

Amenity Impacts

Concern is raised regarding amenity impacts for future occupants of the proposed development, as outlined below:

- Visual privacy – the proposal fails to comply with the minimum setback requirements pursuant to Part 3F-1 of the ADG, as follows:
 - Ground floor: rear communal terrace encroaches within 6m rear setback zone
 - Level 1: rear balcony to Unit B1.03 encroaches within 6m rear setback zone
 - Level 4: rear balconies to Units A4.02, Unit B4.02, and B4.03 encroach within 9m rear setback zone
 - Level 8: rear living room windows and balcony to Unit A8.02 encroach within 12m rear setback zone

Additionally, it is unclear if the angling of walls and windows between the eastern and western buildings would provide suitable privacy mitigation as it appears that some direct views may still be achieved between the buildings.

- Lack of solar access – pursuant to Part 4A of the ADG, a maximum of 15% of apartments in a building should receive no direct sunlight between 9am and 3pm at midwinter. The proposal fails with the maximum requirement as 29.4% of apartments will receive no sunlight between 9am and 3pm (midwinter). Additionally, concern is raised regarding a lack of solar access to private open space areas. For example, the large south-facing terrace to Unit B1.03 is overhung by the building above and is unlikely to receive any direct solar access.
- Acoustic privacy – there are several habitable room windows which are oriented towards the laneway/shared zone (and to the void area above). The laneway is dominated by service areas and vehicular access points which results in an undesirable environment for future residents in terms of noise, odor, and security. Concerns are also raised regarding noise impacts to the units adjacent to the roof top communal open space.
- Natural ventilation – whilst the submitted SEE states that the numeric ADG requirements of Part 4B are achieved, the proposed apartments rely on cross ventilation through windows to the laneway/shared way, which is not a suitable outcome in terms of noise and odour.
- Insufficient ceiling heights – the proposed 2.7m floor to ceiling heights at ground and first floor levels fail to comply with the minimum requirements pursuant to Part 4C of the ADG and Part 12 of the K2K DCP.
- Room depths – the proposed open plan living rooms are up to 9.5m in depth and fail to comply with the maximum 8m requirement pursuant to Part 4D of the ADG.
- Common spaces – the proposal fails to achieve Part 4F-1 of the ADG as it does not allow for daylight intake or ventilation to common corridors and lift lobbies.

As detailed above, the proposed development is likely to result in adverse amenity impacts for future occupants and so should be refused.

Overshadowing Impacts

Part 6 of the K2K DCP seeks to ensure that development does not unreasonably diminish sunlight and visual amenity to neighbouring properties.

Concern is raised regarding overshadowing impacts to the property at No. 12 Bowral Street. The submitted solar diagrams demonstrate that the 2 x east-facing windows at No. 12 Bowral St currently receive solar access between 12 noon and 2pm (at midwinter).

The proposed building will inhibit all solar access, outlook, and ventilation to these windows. Whilst it is acknowledged that a complaint building would likely result in a similar extent of overshadowing, consideration should be given in the proposed design to reasonably retain some light and ventilation currently enjoyed by No. 12 Bowral St.

Additionally, the proposed non-compliances with the K2K DCP block controls result in a built form which significantly increases overshadowing of the neighbouring properties to the rear. This forms a reason for refusal.

Lot Amalgamation

With regard to Part 6 of the K2K DCP, concern is raised regarding the proposed lot amalgamation pattern. The proposed development is not supported in its current form as it may limit and/or compromise the development potential of the adjoining properties at Nos. 160-166 Anzac Pde, No. 4 Bowral St, and Nos. 12-16 Bowral St.

The proposed location of the laneway/shared zone further to the east (relative to K2K DCP block controls) would impact the alignment of the laneway with future development at adjoining properties. Additionally, the non-compliances with the rear setback controls are likely to result in adverse amenity impacts (i.e. overshadowing and overlooking) to future development at adjoining properties.

The application does not provide sufficient information or demonstrate adequate analysis of the likely future development pattern of the urban block. Noting that substantial variations are sought from the K2K RDCP block controls, the proposal should be accompanied by robust contextual investigations to justify why an alternative built form massing is an improved outcome.

Insufficient information has been provided to demonstrate that adequate efforts have been made to amalgamate with adjoining properties. Additionally, the proposal is not supported by context drawings showing the wider urban block, including details of existing and approved development. This forms a reason for refusal.

Building Heights

As detailed above, the proposal fails to comply with the maximum 19m building height development standard applying to the eastern portion of the site. The proposal also fails to comply with the maximum storey height controls pursuant to Part 6 of the K2K DCP.

The proposed 10 storey building exceeds the 9 storey control for No. 6 Bowral Street and the proposed 6-8 storey building exceeds the 5 storey control for No. 8-10 Bowral Street. In addition, the proposal also fails to comply with the floor to ceiling heights required (i.e. 3.5m for the ground floor level and 3.3m for first floor level) and compliance with the floor to ceiling heights will result in further height breach.

In this regard, the proposal fails to respond to the desired future character of the locality and does not provide sufficient transition to Kensington Public School and residential properties to the east. The 6-8 storey eastern building creates additional visual bulk to Bowral Street and fails to complement the overall desired streetscape profile.

The excessive building height results in increased bulk and scale presentation to the public domain and neighbouring sites, poor streetscape proportions, and adverse overshadowing impacts. The proposed built form undermines the desired sense of transition to the eastern part of Bowral Street. The excessive building height also contributes to inadequate floor to ceiling heights at ground and first floor levels.

The proposed distribution of massing and extension of the increased building height beyond that contemplated in the controls does not consider the broader streetscape outcomes of the proposal, nor does it have regard for any future development at neighbouring sites.

Non-compliance with the maximum storey height controls is not supported and forms as reason for refusal.

Laneway/Shared Zone

Council is not satisfied that the proposed laneway/shared zone achieves the relevant objectives at Part 8 of the K2K DCP, as outlined below:

- *To establish a network of laneways that encourage pedestrian movements and social gathering spaces*

The proposal does not provide suitable activation of the laneway and does not provide any opportunities for passive surveillance. Safety concerns are raised as the delineation of pedestrian and vehicular pathways is unclear. Additionally, it is unclear if suitable sightlines are provided for vehicles entering/exiting the basement car park.

The laneway design should be revised to ensure that it is identifiable by users and has a public character. Insufficient information has been provided to confirm that materials and finishes (i.e. paving, tree planting, and furniture) are integrated with adjoining streets and public places.

- *To provide leafy, green and useable laneways*

The laneway does not provide suitable greening and does not contribute to the landscape scheme of the development site. The viability of the proposed green walls at ground floor level is questionable. Additionally, the proposed buildings will overshadow the laneway which would compromise its ability to function as a useable space.

- *To facilitate vehicular access and servicing to properties fronting Anzac Parade and Gardeners Road.*

The proposed relocation of the laneway further to the east (relative to K2K DCP block controls) is not supported as it would impact the alignment of the laneway with future development at adjoining properties which front Anzac Parade.

Built Form Envelope

Part 10 of the K2K DCP prescribes the desired future character and built form controls for Blocks 28B and 28C, in which the subject site is located. Refer to Figures 11 and 12.

Substantial variations are sought from the K2K RDCP block controls, however, the proposal is not accompanied by robust contextual investigations to justify why an alternative built form massing is an improved outcome.

The proposed non-compliant rear setbacks result in adverse amenity impacts (i.e. overshadowing and overlooking) to neighbouring properties, as well as to future occupants at the subject site. For example, the increased building depths at lower levels has created several internalised rooms with poor residential amenity.

The proposed non-compliances result in a built form which significantly increases overshadowing of the neighbouring properties to the rear, and places several habitable room windows, and balcony edges much closer to the southern boundary than what was envisaged within the K2K DCP. The proposed non-compliances do not have regard for the desired built form relationships established for adjoining sites within the urban block and the nearby Todman Square Precinct. This will detract from the emerging character of the key node and is a reason for refusal.

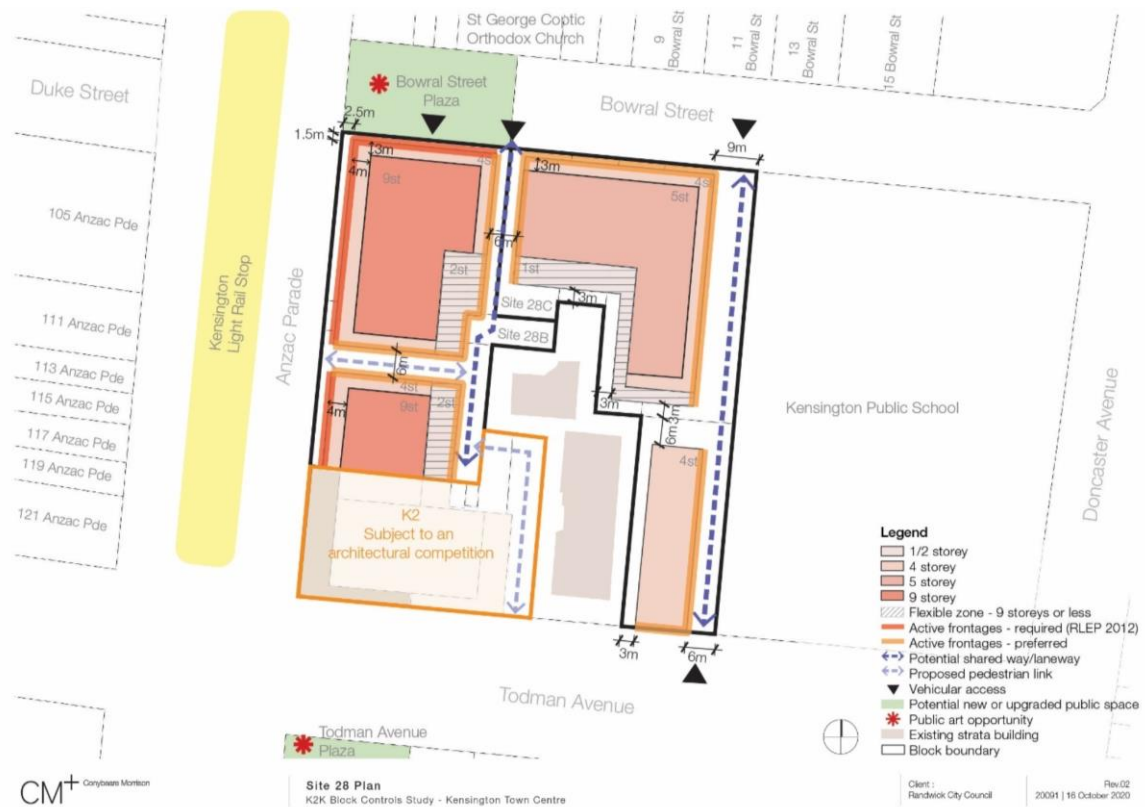


Figure 11: Site 28 Block Plan (Source: K2K DCP)

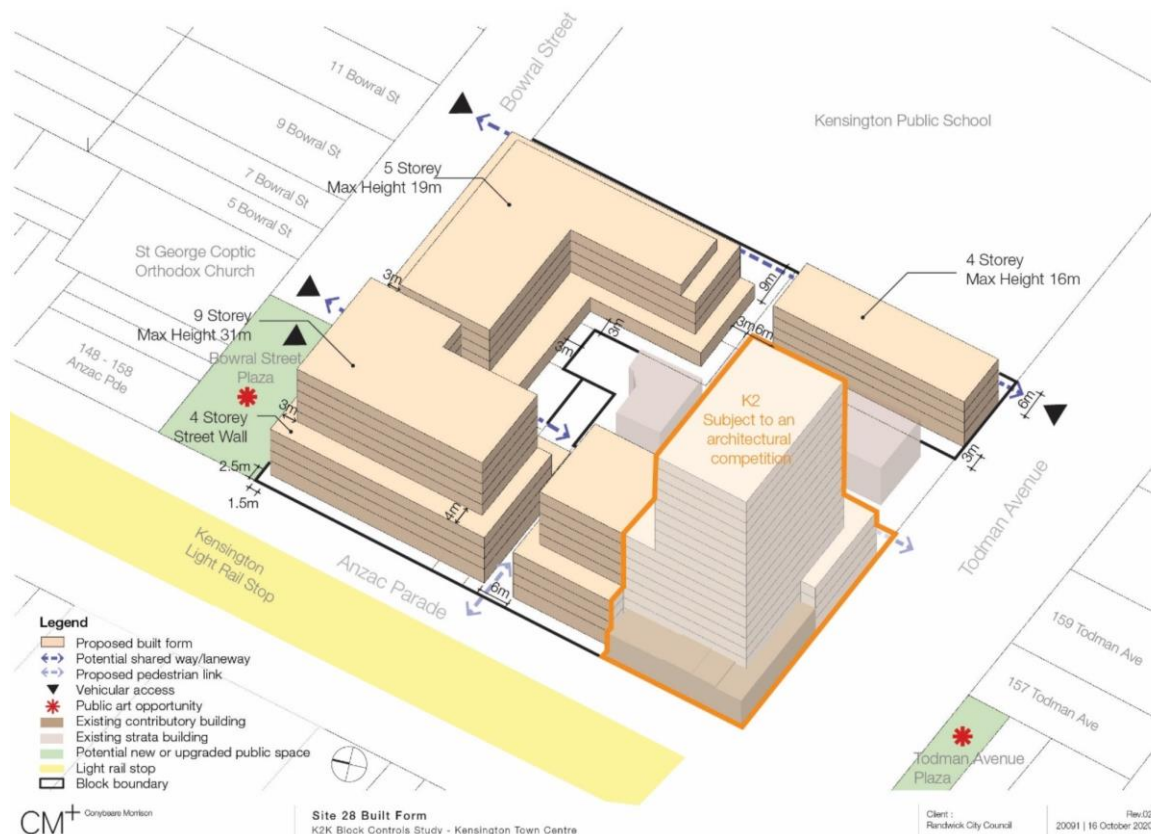


Figure 12: Site 28 Built Form Plan (Source: K2K DCP)

Active Street Frontages

Pursuant to clause 6.20 of RLEP 2012 and Part 19 of the K2K DCP, an active street frontage is to be provided to the western portion of the Bowral Street frontage. Additionally, the proposal does not include an awning to the Bowral Street frontage, as required by Part 18 of the K2K DCP.

With reference to the block controls, Part 6 of the K2K DCP requires a 1.5m setback from the Bowral Street boundary (to widen the footpath) and a further 4m setback above the four storey street wall. This is to provide a footpath widening on the south side of Bowral Street and to provide additional amenity for pedestrians using the footpath and the future Bowral Street Plaza.

The proposed development includes a commercial tenancy at ground floor level of Building A. However, Council is not satisfied that the Bowral Street frontage is suitably activated in accordance with the relevant requirements. The street frontage is obstructed by walls, planter boxes, meter boxes, fire booster, and utility boxes. The commercial tenancy is recessed by 4m from the street, and it is unclear how the proposed 'commercial terrace' will activate the Bowral Street frontage.

The proposal does not provide an active street frontage or contribute to the retail activation of the commercial core and the future of the Bowral Street Plaza. This forms a reason for refusal.

Landscaping

The proposed development does not achieve compliance with Part 20 of the K2K RDCP, which requires at least 100% of the total site area to be landscaped area. The proposal provides only 80.5% of the site area as landscaping.

The deep soil zones located along the southern boundary of the site would have little to no solar access. Additionally, several of the proposed planter boxes do not appear to have sufficient soil depth to accommodate viable plantings or suitable configuration for maintenance. For example, it is unclear how the deep planter box between Unit B2.03 and Unit B2.04 would be accessed for maintenance or if sufficient solar access would be provided to the planter – refer Figure 13.



Figure 13: Extract of proposed Level 2 floor plan (Source: D-Studio Architects)

To meet the shortfall in landscape area, additional landscaping should be considered for the upper-level balconies and the roofs of the western building. Details of how the area requirements for deep soil and communal open space are achieved have not been provided. Additionally, details of the maintenance and the establishment period of the proposed green walls, including maintenance access to the eastern building roof top landscaping, have not been provided.

Noting the above, the proposed landscape scheme is not considered suitable and does not provide sufficient information. This forms a reason for refusal.

Sustainability

Part 22 of the K2K DCP requires the submission of a site-wide sustainability strategy which considers passive environmental design, management of amenity within the site, impact on neighbouring properties, water conservation and management, and energy generation and minimisation.

The information submitted with the application does not demonstrate how the above issues have been addressed including rainwater harvesting, photovoltaic panels, and electronic vehicle charging. Insufficient information has been submitted and this forms a reason for refusal.

Public Art

Part 29 of the K2K RDCP requires sites with frontages greater than 12m to incorporate artistic elements into the built form such as creative paving, window treatments, canopy design, balustrading, signage and wayfinding, and lighting.

The proposed east elevation would present as a large 5-6 storey blank wall, exposed to view when travelling west along Bowral Street. Consideration has not been given to providing a temporary public art mural on this wall or to providing permanent public artwork/s in the proposed laneway/shared zone.

The submitted SEE states that these requirements may be imposed as a condition of consent, however, control (f) in Part 29 requires the submission of an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA. Insufficient information has been submitted and this forms a reason for refusal.

10. Conclusion

That the application for integrated development for the demolition of existing structures to enable the construction of a 10 storey mixed used building and a part 6 and 8 storey residential flat building, separated by a central through site link. The proposal includes 1 commercial tenancy, 34 apartments across two separate towers and two basement levels accommodating 50 car parking spaces, communal open spaces, removal of trees, amalgamation of existing lots, associated site and landscape works at No. 6-10 Bowral Street, Kensington, be refused for the following reasons:

1. Pursuant to clause 6.14 of RLEP 2012, the proposed development, being for a residential flat building, is not permissible in the E2 Commercial Centre Zone.
2. The proposed development is of an excessive height and is incompatible with surrounding development and the streetscape, resulting in non-compliance with the height of buildings development standard pursuant to clause 4.3 of RLEP 2012.
3. The submitted written request to vary the height of buildings development standard pursuant to clause 4.6 of RLEP 2012 is not considered to be well founded in that it does not sufficiently demonstrate that the proposed non-compliance is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify a variation to the development standard.
4. The proposal is inconsistent with the objectives of the E2 Commercial Centre Zone in that it does not complement the desired future built form outcomes of the locality. The absence of retail activation of the commercial core jeopardises the future Bowral Street Plaza and fails to provide a range of uses that serve the needs of people and employment opportunities.
5. Pursuant to clause 6.11 of RLEP 2012 and Part 4 of the K2K DCP, the proposed development does not exhibit design excellence.

6. Pursuant to clause 6.20 of RLEP 2012 and Part 19 of the K2K DCP, the proposal does not provide an active street frontage.
7. Pursuant to Part 3D-1 of the ADG, the proposal fails to provide sufficient communal open space.
8. Pursuant to Part 3F-1 of the ADG, the proposal fails to comply with the minimum rear setback distances and results in adverse visual privacy impacts.
9. Pursuant to Part 4A of the ADG and Part 13 of the K2K DCP, the proposal fails to provide suitable solar access to residential apartments.
10. Pursuant to Part 4B of the ADG and Part 15 of the K2K DCP, the proposed apartments rely on cross ventilation through windows to the laneway, which is not a suitable outcome.
11. Pursuant to Part 4C of the ADG and Part 12 of the K2K DCP, the proposal fails to comply with the minimum ceiling heights at ground and first floor levels.
12. Pursuant to Part 4D of the ADG, the proposal fails to comply with the maximum room depths for open plan layouts.
13. Pursuant to Part 4F-1 of the ADG, the proposal fails to provide sufficient solar access and ventilation to common corridors and lift lobbies.
14. Pursuant to Part 6 of the K2K DCP, the proposal fails to comply with the maximum storey height and setback controls, and as such, results in adverse overshadowing impacts to neighbouring properties and results in an unacceptable lot amalgamation pattern which may compromise the development potential of adjoining properties.
15. Pursuant to Parts 8 and 21 of the K2K DCP, the proposed laneway is not suitable and gives rise to safety concerns.
16. Pursuant to Part 10.3 of the K2K DCP, the proposal fails to comply with the block controls for Blocks 28B and 28C.
17. Pursuant to Part 14 of the K2K DCP, the proposal results in adverse noise impacts.
18. Pursuant to Part 16 of the K2K DCP, the proposal lacks suitable articulation and includes a blank wall façade to the side elevations.
19. Pursuant to Part 18 of the K2K DCP, the proposal fails to provide an awning to the Bowral Street frontage.
20. Pursuant to Part 20 of the K2K DCP, the proposal fails to provide sufficient landscaped area.
21. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to waste management, public art, sustainability, and water management.
22. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
23. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.

Appendix 1: Referrals

1. External referral comments:

1.1. Transport for NSW

TAB A- TfNSW advisory comments and suggested conditions

Potential proposed 'Shared Zone'

Comment:

TfNSW has identified that the development proposes shared zone but has named it as a 'shared right of way'. The submitted Transport Impact Assessment (TIA) does not clarify the intention, however if a Shared Zone is the intention, TfNSW recommend the relevant Planning Authority inserting the recommended condition below in any Planning Approval issued.

Suggested condition:

In NSW, TfNSW is responsible for the setting and signposting of safe and appropriate speed limits in accordance with the NSW Speed Zoning Guidelines.

The Applicant shall provide TfNSW how the following criteria is to be met for a 10 km/h shared zone in accordance with TDT2014/003 *Design and Implementation of shared zones including provisions for parking*:

- Site classification:
 - To classify as a Category 1 shared zone, the road related area must provide clearly different coloured and textured surface treatments from the surrounding roads and does not have any kerbs. This is a requirement for 'Greenfield' locations.
 - To classify as Category 2 shared zone the road must provide adequate entry/exit treatments and traffic calming. For a Category 2 shared zone to be considered it is to have narrow or no footpaths, where pedestrians are forced to use the road. Category 2 requires approval to retain kerbs and must maintain traffic flow where there is provision for parking. Justification is required if the proposed shared zone kerb and gutter is retained.
- Site information:
 - Mid-block 7 day traffic volume and traffic speed data analysis including photos of count location/s (for Category 2)
 - The design must clearly highlight to drivers that the priority is for pedestrians.
 - Design principles:
 - The design principles for shared zones are to be defined to ensure the proposed scheme incorporates the necessary features to provide an appropriately safe environment. The proposed scheme must clearly define the:
 - Street space / kerb and gutter / delineation
 - Entrance / exit points
 - Traffic signs
 - Pavement surface
 - Traffic calming features / treatments
 - Forward visibility
 - Vehicle mix and accessibility requirements.
 - Car parking
 - Bicycles
 - Mobility and vision impaired requirements
 - Lighting and drainage

Please send the information to development.sydney@transport.nsw.gov.au

Sydney Light operation impact

Comment

The proposed development is located proximity to the light rail corridor. The construction related activities are likely to impact on Sydney Light Rail infrastructure and operation as the tower crane movement would have the potential to encroach Sydney Light Rail corridor during the construction.

Recommendation:

It is requested that the applicant be conditioned to:

- Provide the following prior to the issue of the Construction Certificate:

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- Details of the proposed tower crane location and craneage diagram as well as its operation for TfNSW endorsement; and
- Details of current public liability insurance cover for a sum acceptable to TfNSW.
- Sign Works Deed / Agreement with TfNSW and/or Altrac and the Sydney Light Rail Operator prior to the issue of the Construction Certificate.

Suggested Conditions of Consent:

Tower Crane Arrangement

Prior to the issue of the Construction Certificate, the applicant shall provide details of the proposed tower crane location and craneage diagram as well as its operation for TfNSW endorsement.

Works Deed / Agreements

Prior to the issue of any construction certificate or any preparatory, demolition or excavation works, whichever occurs first, if required by TfNSW, Works Deed (s) between the applicant, TfNSW and/or Altrac and the Sydney Light Rail Operator must be agreed and executed by the parties. These agreements may deal with matters including, but not limited to, the following:

- Sydney Light Rail Operational requirements.
- Sydney Light Rail access requirements.
- Altrac and Sydney Light Rail Operator policies, rules and procedures compliance requirements.
- Indemnities and releases.
- Security of costs.
- Insurance requirements and conditions.
- TfNSW, Altrac and the Sydney Light Rail Operator's recovery of costs from the applicant for costs incurred by these parties in relation to the development (e.g., review of designs and reports, legal, shutdown /power outages costs including alternative transport, customer communications, loss of revenue etc) risk assessments and configuration change processes.
- Interface coordination between the Sydney Light Rail Operator and the subject development construction works, including safety interface.
 - Interface Assess Deed Poll and Safety Interface Agreement between the applicant and the Sydney Light Rail Operator must be agreed and executed by the parties. This agreement may deal with matters including, but not limited to, the following:
 - Pre and post construction dilapidation reports.
 - The need for track possessions.
 - Review of the machinery to be used during excavation/ground penetration / construction works.
 - The need for track monitoring.
 - Design and installation of lights, signs, and reflective material.
 - Endorsement of Risk Assessment/Management Plan and Safe Work Method Statements (SWMS).
 - Endorsement of plans regarding proposed craneage and other aerial operations.
 - Erection of scaffolding/hoarding.
 - Light Rail Operator's rules and procedures; and
 - Alteration of rail assets such as the OHW along of track and associated hoarding demarcation system, if undertaken by the applicant.
- Altrac and the Sydney Light Rail Operator's reviews and impact assessment of the applicant's proposal, engineering design and construction works methodology on Sydney Light Rail Operations and assets.
- Attendance and participation in the construction works risk assessment of construction activities to be performed in, above, about, and/or below the Sydney Light Rail Corridor.
- Arrangements for shutdowns and Sydney Light Rail restricted operations related costs attributed to the applicant; and
- Sydney Light Rail site works access approval and access permit to work.

Insurance Requirements

Prior to the issue of the relevant Construction Certificate, the applicant must hold current public liability insurance cover for a sum acceptable to TfNSW. TfNSW's standard public liability insurance requirement for this type of development adjacent to a rail corridor is minimum of \$250M. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The applicant is to contact TfNSW to obtain the level of insurance required for this proposal. Prior to issuing the relevant Construction Certificate the PCA must witness written proof of this insurance in conjunction with TfNSW's written advice to the applicant on the level of insurance required.

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1.2. Sydney Water



D68/24

30 April 2024

Our reference: N/A

Julia Warren
Randwick City Council
julia.warren@randwick.nsw.gov.au

RE: Development Application DA/208/2024 at 6-10 Bowral Street, Kensington.

Thank you for notifying Sydney Water of DA/208/2024 at 6-10 Bowral Street, Kensington, which proposes the demolition of all existing structures and the construction of a 10 storey shop top housing development and a part 6 & 8 storey residential flat building with 2 basements containing car parks. There would be a total of 34 residential apartments and total GFA of 3,502.1m². Sydney Water has reviewed the application based on the information supplied and provides the following Sydney Water requirements to assist in planning the servicing needs of the proposed development.

Sydney Water position:	No objection – Condition of Consent applies.
Condition of Consent which applies:	Section 73 and Building Plan Approval required See Attachment 1 for recommended wording for Sydney Water conditions to be included in the consent letter.
Additional comments:	
Other information:	This advice is not formal approval of our servicing requirements. Detailed requirements will be provided once the development is referred to Sydney Water for further applications. The Sydney Water DA Referral Information Sheet enclosed contains details on how to make further applications to Sydney Water. A copy of this should be provided to the proponent in conjunction with the development consent.

More requirements can be found in Attachment 1 & 2. If you require any further information, please contact the Growth Planning Team at urbangrowth@sydneywater.com.au.

Yours sincerely,

Growth Planning Team
City Growth and Development, Business Development Group
Sydney Water, 1 Smith Street, Parramatta NSW 2150

The advice in this letter has been prepared under Section 78 of the *Sydney Water Act 1994*. This advice is not formal approval of our servicing requirements and is to be forwarded from Council to the Applicant as part of the development application referral process.
Sydney Water Corporation ABN 49 776 225 038
1 Smith St Parramatta 2150 | PO Box 399 Parramatta 2124 | DX 14 Sydney | T 13 20 92 | www.sydneywater.com.au
Delivering essential and sustainable water services for the benefit of the community



Attachment 1 – Recommended Development Conditions

Prior to the issue of an Occupation/Subdivision Certificate:

Section 73 Compliance Certificate

A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Our assessment will determine the availability of water and wastewater services, which may require extensions, adjustments, or connections to our mains. Make an early application for the certificate, as there may be assets to be built and this can take some time. A Section 73 Compliance Certificate must be obtained before an Occupation or Subdivision Certificate will be issued.

Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator.

Go to the Sydney Water website or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

Prior to the issue of a Construction Certificate/Complying Development Certificate:

Building Plan Approval

The plans must be approved by Sydney Water prior to demolition, excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Any amendments to plans will require re-approval. Please go to [Sydney Water Tap in®](#) to apply.

Sydney Water recommends developers apply for a Building Plan Approval early as to reduce unnecessary delays to further referrals or development timescales.

Tree Planting

Certain tree species placed in proximity to Sydney Water's underground assets have the potential to inflict damage through invasive root penetration and soil destabilisation. Section 46 of the Sydney Water Act specifies what might occur when there is interference or damage to our assets caused by trees.

For any trees proposed or planted that may cause destruction of, damage to or interference with our work and are in breach of the Sydney Water Act 1994, Sydney Water may issue an order to remove that tree or directly remove it and seek recovery for all loss and associated compensation for the removal.

For guidance on types of trees that can cause damage or interference with our assets see Sydney Water webpage Wastewater blockages. For guidance on how to plant trees near our assets, see Diagram 5 – Planting Trees within Sydney Water's [Technical guidelines – Building over and adjacent to pipe assets](#).

The advice in this letter has been prepared under Section 78 of the *Sydney Water Act 1994*. This advice is not formal approval of our servicing requirements and is to be forwarded from Council to the Applicant as part of the development application referral process.

Sydney Water Corporation ABN 49 776 225 038

1 Smith St Parramatta 2150 | PO Box 399 Parramatta 2124 | DX 14 Sydney | T 13 20 92 | www.sydneywater.com.au

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Attachment 2 – Requirements for Commercial and Industrial Developments (for information)

Trade Wastewater Requirements

If this development is going to generate trade wastewater, the property owner must submit an application requesting permission to discharge trade wastewater to Sydney Water's sewerage system. You must obtain Sydney Water approval for this permit before any business activities can commence. It is illegal to discharge Trade Wastewater into the Sydney Water sewerage system without permission.

The permit application should be emailed to Sydney Water's Business Customer Services at businesscustomers@sydneywater.com.au

A Boundary Trap is required for all developments that discharge trade wastewater where arrestors and special units are installed for trade wastewater pre-treatment.

If the property development is for Industrial operations, the wastewater may discharge into a sewerage area that is subject to wastewater reuse. Find out from Business Customer Services if this is applicable to your development.

Backflow Prevention Requirements

Backflow is when there is unintentional flow of water in the wrong direction from a potentially polluted source into the drinking water supply.

All properties connected to Sydney Water's supply must install a testable Backflow Prevention Containment Device appropriate to the property's hazard rating. Property with a high or medium hazard rating must have the backflow prevention containment device tested annually. Properties identified as having a low hazard rating must install a non-testable device, as a minimum.

Separate hydrant and sprinkler fire services on non-residential properties, require the installation of a testable double check detector assembly. The device is to be located at the boundary of the property.

Before you install a backflow prevention device:

1. Get your hydraulic consultant or plumber to check the available water pressure versus the property's required pressure and flow requirements.
2. Conduct a site assessment to confirm the hazard rating of the property and its services. Contact PIAS at NSW Fair Trading on 1300 889 099.

For installation you will need to engage a licensed plumber with backflow accreditation who can be found on the Sydney Water website:

<https://www.sydneywater.com.au/plumbing-building-developing/plumbing/backflow-prevention.html>

The advice in this letter has been prepared under Section 78 of the *Sydney Water Act 1994*. This advice is not formal approval of our servicing requirements and is to be forwarded from Council to the Applicant as part of the development application referral process.

Sydney Water Corporation ABN 49 776 225 038

1 Smith St Parramatta 2150 | PO Box 399 Parramatta 2124 | DX 14 Sydney | T 13 20 92 | www.sydneywater.com.au

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Water Efficiency Recommendations

Water is our most precious resource and every customer can play a role in its conservation. By working together with Sydney Water, business customers are able to reduce their water consumption. This will help your business save money, improve productivity and protect the environment.

Some water efficiency measures that can be easily implemented in your business are:

- Install water efficiency fixtures to help increase your water efficiency, refer to WELS (Water Efficiency Labelling and Standards (WELS) Scheme, <http://www.waterrating.gov.au/>
- Consider installing rainwater tanks to capture rainwater runoff, and reusing it, where cost effective. Refer to <https://www.sydneywater.com.au/your-business/managing-your-water-use/water-efficiency-tips.html>
- Install water-monitoring devices on your meter to identify water usage patterns and leaks.
- Develop a water efficiency plan for your business.

It is cheaper to install water efficiency appliances while you are developing than retrofitting them later.

Contingency Plan Recommendations

Under Sydney Water's [customer contract](#) Sydney Water aims to provide Business Customers with a continuous supply of clean water at a minimum pressure of 15meters head at the main tap. This is equivalent to 146.8kpa or 21.29psi to meet reasonable business usage needs.

Sometimes Sydney Water may need to interrupt, postpone or limit the supply of water services to your property for maintenance or other reasons. These interruptions can be planned or unplanned.

Water supply is critical to some businesses and Sydney Water will treat vulnerable customers, such as hospitals, as a high priority.

Have you thought about a contingency plan for your business? Your Business Customer Representative will help you to develop a plan that is tailored to your business and minimises productivity losses in the event of a water service disruption.

For further information please visit the Sydney Water website at: <https://www.sydneywater.com.au/your-business/managing-trade-wastewater/commercial-trade-wastewater.html> or contact Business Customer Services on 1300 985 227 or businesscustomers@sydneywater.com.au.

The advice in this letter has been prepared under Section 78 of the *Sydney Water Act 1994*. This advice is not formal approval of our servicing requirements and is to be forwarded from Council to the Applicant as part of the development application referral process.

Sydney Water Corporation ABN 49 776 225 038

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1.3. Sydney Airport Corporation



D68/24

Reg No.: 24/0313

Friday, 12 April 2024

To: RANDWICK CITY COUNCIL & NSW PLANNING
PORTAL

Notice to Proponent of Property Development

Dear Sir / Madam,

Application for approval of a controlled activity pursuant to:

*s.183 Airports Act - Notification of decision under Reg 15A (2) of the Airports (Protection of
Airspace) Reg's 1996*

Proposed Activity: PROPERTY DEVELOPMENT
Location: 6-10 BOWRAL STREET KENSINGTON
Proponent: RANDWICK CITY COUNCIL & NSW
PLANNING PORTAL
Date: 09/04/2024

Sydney Airport received the above application from you.

This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 45.72 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.

The application sought approval for the PROPERTY DEVELOPMENT to a height of 59 metres Australian Height Datum (AHD).

In my capacity as Manager, Airfield Spatial & Technical Planning and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, I have no objection to the erection of this development to a maximum height of 59 metres AHD.

The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.

Sydney Airport

Sydney Airport Corporation Limited ACN 082 578 809 — The Nigel Love Building, 10 Arrivals Court, Locked Bag 5000
Sydney International Airport NSW 2020 Australia — Telephone +61 2 9667 9111 — sydneyairport.com.au

SYD Classification: Confidential

D68/24

Should you wish to exceed this height a new application must be submitted.

Should the height of any temporary structure and/or equipment be greater than 45.72 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.

Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.

Information required by Sydney Airport prior to any approval is set out in Attachment A.

"Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).

The height of the prescribed airspace at this location is 70 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones:

Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).

Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.

Sincerely,



Peter Bleasdale
Manager, Airfield Infrastructure Technical Planning

Sydney Airport

- 2 -

SYD Classification: Confidential

1.4. Ausgrid



TELEPHONE: 13 13 65
EMAIL: development@ausgrid.com.au

This letter is Ausgrid's response under section 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

24-28 Campbell St
Sydney NSW 2000
All mail to
GPO Box 4009
Sydney NSW 2001
T +61 2 13 13 65
ausgrid.com.au

Ausgrid does not object to the proposed development.
The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.

Ausgrid Overhead Powerlines are in the vicinity of the development

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

The "as constructed" minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website at www.ausgrid.com.au.

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer's cost.

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website:
www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

For new connections or to alter the existing electrical connection to the property from the Ausgrid network, the proponent should engage an Accredited Service Provider and submit a connection application to Ausgrid as soon as practicable. Visit the Ausgrid website for further details:
<https://www.ausgrid.com.au/Connections/Get-connected>

Should you have any enquiries, please contact Ausgrid at development@ausgrid.com.au

Regards,
Ausgrid Development Team

For Official use only

1.5. NSW Police

No concerns raised, subject to conditions.

D68/24

1.6. Water NSW

No response received.

2. Internal referral comments:

2.1. Heritage Planner

Controls

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

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

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

Part A, Section 9 of the Kensington to Kingsford DCP outlines the objectives and controls in relation to Heritage items and contributory buildings within the Kensington and Kingsford town centres.

Comments

- *Demolition of existing dwellings: As noted in the description of the site, the existing dwellings date from late Victorian period, and although somewhat modified, show numerous salvageable original features, both external and internal.*
- *Construction of residential tower building: The proposal has responded in terms of its bulk, scale, height and form, in accordance with the Kensington to Kingsford Town Centres DCP. The drawings indicate that the new development will comprise of two parts of differing scale, with appropriate articulation and as noted softer curved edges, which have the capacity to better reference secondary articulations.*
- *Setback and Public Space Engagement: The front setbacks appear to be consistent with the setbacks envisaged as part of the block controls for the site prescribed within the K2K DCP. However, the suggestion outlined below under public art and public spaces requires more detailed consideration, especially in view of any proposed utilitarian and services spaces and equipment or enclosures located at the Bowral side of the development.*
- *Height: Details of height compliance are deemed to belong to the remit of Council Planning more properly.*
- *Materials and finishes: The indicative materials and finishes provided are substantially neutral and visually sympathetic to precinct. The rounded edges are commended as providing softer lines.*

Recommendation

The following conditions should be included in any consent:

- *Detailed photographically documented salvage plan. This needs to be submitted for both external and internal historical features. These are to be professionally deemed to be either capable or not of recycling to specialist outlets.*

- *Design Modification - Consider a rounded edge to the balcony presentation at the north-east corner (Bowral Street).*
- *Public Art: In the former submission a 'Public Art' strategy was presented. This is currently lacking. A 'Public Art' document and strategy is therefore to be developed in consultation with Council. It should take into consideration as an interpretive strategy:*
 1. *Indigenous considerations – place, custodianship, activities*
 2. *The Anzac Parade Heritage Study (Sue Rosen)*
 3. *The K2K documentation*
 4. *The historical Kensington Model Suburb project, which was the first competition-based town planning scheme in Australia and in which Bowral Street stood at the centre (winner Walter Liberty Vernon).*
 5. *Reference to local heritage elements such as the local public school (and its alumni such as Justice Lionel Murphy and Sir Harold Wyndham), the original village church located opposite (inside current religious property), and the racing industry (e.g. the Gai Waterhouse stables)*

The resulting Public Art strategy/interpretive strategy is to be developed beyond its being conceptual and decorative, and to the satisfaction of Council prior to the issue of a Construction Certificate. It should be engaging and educational. It should firstly clarify with Council the intention/timeframe of a public space at the intersection of Bowral Street and Anzac parade. It should also include a strategy for greening; paving (e.g., artistic paving); street furnishings/seating facility; a lighting strategy; an exposed blank walls strategy; 2D and/or 3D artworks or elements.

2.2. Environmental Health Officer

Comments:

Prior to determination of the application, further information is required to be provided in relation land contamination assessment, to assess the suitability of the proposed development, in accordance with the provisions of SEPP 55, Contaminated Land Management Act 1997 and Council's Contaminated Land Policy 1999.

Recommendation:

The following information is required to be provided with the development application.

1. *A Preliminary Site Contamination Investigation must be undertaken and a report, prepared by a suitably qualified environmental consultant is to be submitted to Council prior to determination of the application.*

This Preliminary Investigation shall be carried out in accordance with the requirements of the NSW EPA Guidelines and is to be undertaken by a suitably qualified environmental consultant. The Preliminary Site Contamination Investigation is to identify any past or present potentially contaminating activities and must be provided to Council, in accordance with Council's Land Contaminated Land Policy. The Preliminary Site Contamination Investigation report is to be submitted to Council prior to any consent being granted.

Should the Preliminary Site Contamination Investigation be unable to justifiably conclude that the site is currently suitable for the proposed use, a Detailed Site Contamination Investigation must be undertaken by an independent appropriately qualified environmental consultant.

2. *The reports are to be carried out in accordance with Council's Contaminated Land Policy 1999 and relevant NSW EPA Guidelines for Contaminated Sites. Also, as detailed in the Planning Guidelines to SEPP 55 – Remediation of Land,*

the report is to assess the nature, extent and degree of contamination upon the land. The Detailed Site Contamination report must be sufficiently detailed and be submitted to and approved by Council.

- i) *Should the Detailed Site Investigation Report not find any site contamination to both land and groundwater, the conclusion to the report must clearly state that 'the land is suitable for its intended land use' posing no immediate or long term risk to public health or the environment and is fit for occupation by persons, together with clear justification for the statement.*
- ii) *Should the Detailed Site Investigation Report identify that the land is contaminated and the land requires remedial works to meet the relevant Health Based Investigation Level, a Remediation Action Plan (RAP) is required to be submitted to and approved by Council prior to commencing remediation works.*

The RAP is also required to be reviewed and be acceptable to the accredited site auditor.

The RAP is to be prepared in accordance with the relevant Guidelines made or approved by NSW Office of Environment & Heritage/Environment Protection Authority, including the Guidelines for Consultants Reporting on Contaminated Sites.

This RAP is to include procedures for the following:

- *Excavation of Hydrocarbon-contaminated soil,*
 - *Validation sampling and analysis,*
 - *Prevention of cross contamination and migration or release of contaminants,*
 - *Site management planning,*
 - *Groundwater remediation, monitoring and validation,*
 - *Procedures for any unexpected finds.*
3. *Any remediation works are to be carried out in accordance with the requirements of the Contaminated Land Management Act 1997, environmental planning instruments applying to the site, guidelines made by the NSW Environment Protection Authority (EPA) and NSW Planning & Infrastructure, Randwick City Council's Contaminated Land Policy 1999 and the Protection of the Environment Operations Act 1997.*
 4. *Should the remediation strategy including the 'capping' or 'containment' of any contaminated land, details are to be included in the Site Audit Statement (SAS) and Environmental Management Plan (EMP) to the satisfaction of the Site Auditor.*

Details of the SAS and EMP (including capping and containment of contaminated land) are also required to be included on the Certificate of Title for the subject land under the provisions of section 88 of the Conveyancing Act 1919.

5. *In relation to any asbestos contamination, a comprehensive remediation strategy and remedial action plan must be developed, to the satisfaction of the Site Auditor and NSW Department of Health or other suitably qualified and experienced specialist to the satisfaction of the Site Auditor.*

The remediation strategy and remedial action plan must demonstrate that the land will be remediated in accordance with relevant guidelines (if any) and to a level or standard where no unacceptable health risk remains from asbestos

exposure, which shall be verified upon completion of the remediation works to the satisfaction of the Site Auditor.

2.3. Strategic Planning Officer

Introduction

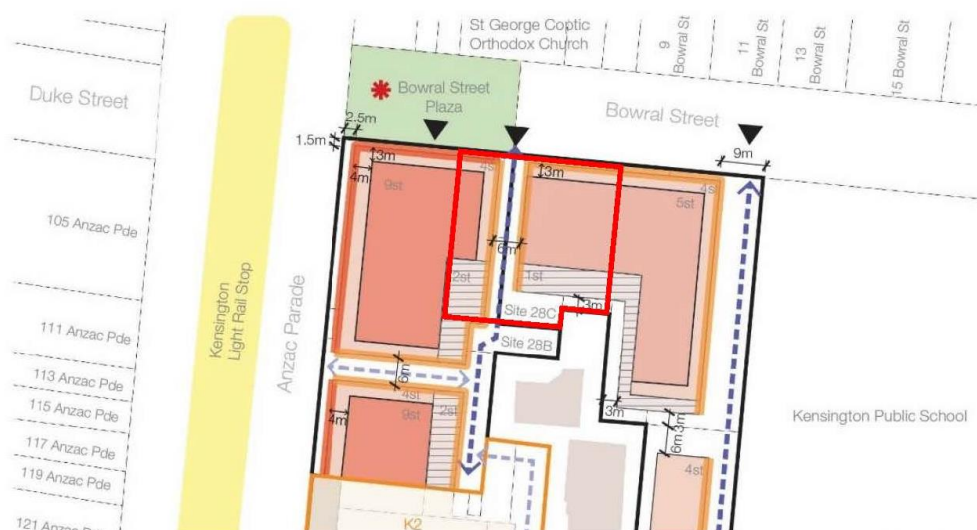
This Strategic Planning review of DA208-2024 was requested by Ferdinando Macri/Julia Warren, based on the Architectural plans prepared by DStudio Architects Pty Ltd and the Landscape DA Documentation prepared by Ground Link Landscape Architects for a new residential apartment building, incl. ground floor commercial and basement carparking, at 6-10 Bowral Street, Kensington, received by Randwick City Council (RCC) on 22 March 2024.

Planning background

The site is not within a Heritage Conservation Area (HCA). There are no heritage listed items or contributory buildings on the site, or in proximity of the site. The site is within 100m (1-2 minute) walk of the Kensington Light Rail stop. The subject property of approx. 1,264m² area, has a 35.46m frontage to Bowral Street.

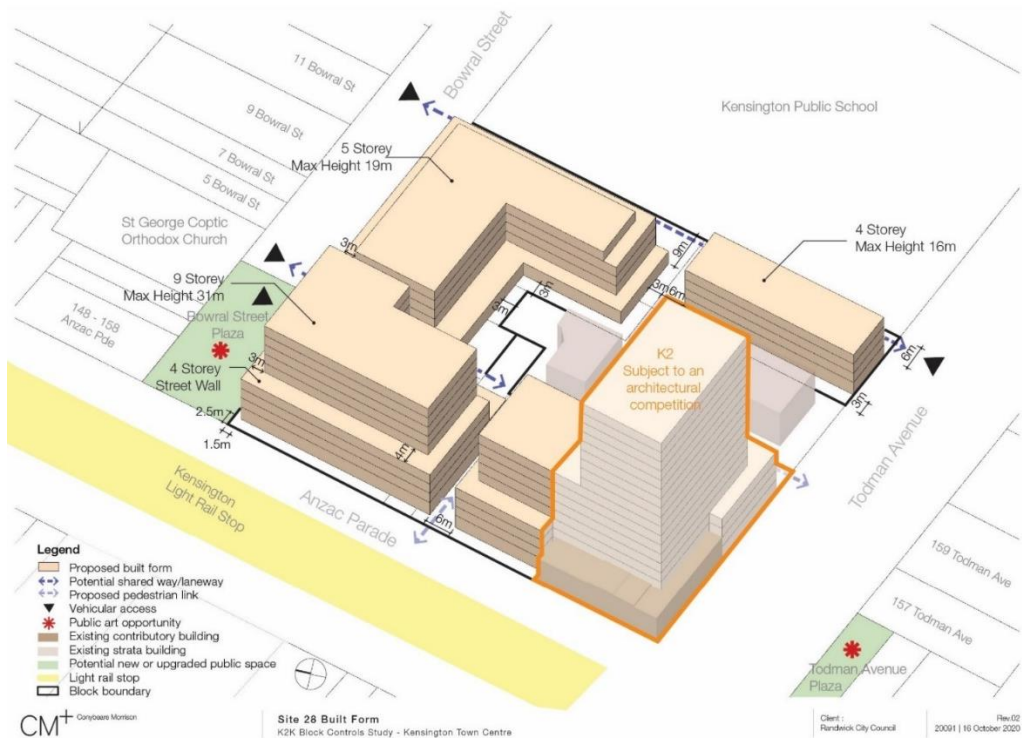
Vehicular access is from Bowral Street. A future north-south laneway will link Todman Avenue to Bowral Street serving the properties along Anzac Parade, removing the need for footpath cross overs. It is proposed that Bowral Street will be closed at Anzac Parade to create a pedestrian plaza with paving, landscaping, lighting, street furniture and public art. Access to the site would be retained from Bowral Street/the new laneway.

The site is located within Block 28B and 28C of the Kensington Town Centre DCP and is subject to the objectives and controls contained within the Randwick DCP 2013 Part E6 – Kensington and Kingsford Town Centres (RCC, Nov 2020). The design of the development should also address the requirements of the Apartment Design Guide (ADG) that supplements the SEPP No.65 – Design Quality of Residential Apartment Development.



The 28B/C block includes to the south the K2 node site (refer DCP Part E6 K2K). This site, owned by Scape Student Accommodation, has completed an architectural competition process and has an approved DA 414/2020 (17 June 2021) to redevelop the site. The redevelopment will deliver a 6m wide north-south laneway (pedestrian link and vehicular access) from Todman Avenue to the mid-block. In the future the remaining development sites, in between, will complete the new laneway access from Todman Avenue to Bowral Street.

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Zoning

The site is zoned E2 Commercial Centre, and the proposed land use is permitted under RLEP 2012.

Height of building / ceiling height / active frontages

The alternative maximum building height permitted for the site is 31m for 6 Bowral Street and 19m for 8 and 10 Bowral Street, under RLEP 2012. A maximum 9 storey building is permitted on 6 Bowral Street and 5 storeys on 8 and 10 Bowral Street (refer to 6. Built Form, Building Heights, (b)).

Property	RLEP 2012 Maximum HOB	DA/208/2024 HOB	Percentage exceedance	RLEP 2012 Maximum Permitted - Storeys	DA/208/2024 Storeys
6 Bowral Street	31m	31.1m	0.3%	9	10 (11% exceedance)
8 Bowral Street	19m	25.2m	33%	5	8 (60% exceedance)
10 Bowral Street	19m	22.8m	20%	5	7 (40% exceedance)

6 Bowral Street

For 6 Bowral Street the proposal exceeds the maximum height by one storey (an 11% exceedance). The additional storey exceeds the height limit and should be removed. There is an inappropriate floor-to-ceiling height at Ground Floor Level (2.85m instead of the ADG recommended 3.3m for commercial uses) that should be corrected.

Active frontages for this part of the development site frontage are mandatory. The ADG also recommends 3.3m floor-to-ceiling height for commercial uses at the First Floor Level (2.8m floor-to-ceiling is proposed for the mezzanine level).



D68/24

For 6 Bowral Street there is a minor overall height exceedance (in metres) of 0.3%, as a result of the non-compliant floor-to-ceiling levels noted above. Only non-habitable minor exceedances towards the middle of the building, of minor visual impact and overshadowing, for lift/stair over-runs, pergolas, and the like, may be considered on merit. The Applicant should amend the scheme to achieve compliance with the RDCP 2013 and the ADG.

8 and 10 Bowral Street

For 8 and 10 Bowral Street the proposal significantly exceeds the maximum height limit, with 7 and 8 storey buildings (40% and 60% exceedance respectively). The additional 2 and 3 storeys exceed the height limit and should be removed. There are significant overall height exceedances (in metres) of 20% and 33% respectively.

Active frontages for this part of the development site frontage are preferred. Further, the ADG recommends 3.3m floor-to-ceiling height for residential Ground Floor Level uses to provide for future adaptability and flexibility of use. The proposed 2.7m floor-to-ceiling is inadequate and should be increased to 3.3m. The exceedances include habitable spaces. Only minor non-habitable exceedances in height (metres) may be considered on merit.

Density

For 6 Bowral Street the alternative maximum Floor Space Ratio (FSR) is FSR 4:1 under RLEP 2012. The proposed FSR is compliant at FSR 3.6:1.

Property	RLEP 2012 Maximum FSR	DA/208/2024
6 Bowral Street	FSR 4:1	FSR 3.6:1
8 Bowral Street	N/A	N/A
10 Bowral Street	N/A	N/A

D68/24



Site amalgamation

The Lot Amalgamation requirement of a minimum street frontage of 20m is satisfied, with a site frontage of approx. 35.5m.

Massing, built form, setbacks

A four storey street wall is required to the Bowral Street frontage in accordance with the DCP block control plan. A compliant four storey street wall is proposed for both east and west buildings.

The Block 28B/28C controls require a 1.5m overall building setback from the Bowral Street property boundary (to widen the footpath), and a further 4m setback above the four storey street wall. This is to provide a footpath widening on the south side of Bowral Street (that has greater solar access), to provide additional amenity for pedestrians using the footpath and the future Bowral Street Plaza.

This footpath widening should be a seamless extension of the existing paved footpath and should be clear and unhindered by any physical structure. No walls, planter boxes, meter boxes, fire booster, utility boxes or the like are to be in this zone. This zone should be free for pedestrian use and provide clear passage. The Applicant should amend the scheme to achieve compliance with this requirement.

Laneway

The laneway is to be in accordance with Randwick DCP Part E6, section 8 Laneway/Shared Way Zones. The laneway should be identified by users and have a public character (the appearance of a typical Council laneway), include materials and finishes (paving materials, tree planting, furniture) integrated with adjoining streets and public places, and be graffiti and vandalism resistant. It should have appropriate pedestrian scale lighting for personal security. Paving should be designed (with reinforced concrete slab subsurface) to support heavy trucks, including waste collection vehicles.

Interface with 12 Bowral Street

The adjoining house to the east of the proposed development (12 Bowral Street) according to plan A003 – Demolition Plan has a wall with two windows on this east boundary.

Randwick DCP Part C2 Medium Density Residential section 5.1 has an objective – To ensure development retains reasonable levels of solar access to the neighbouring properties and the public domain, further Part E6 Kensington and Kingsford Town Centres section 6.1 has as an objective – To ensure the development does not unreasonably diminish sunlight and visual amenity to neighbouring properties.

Consideration should be given in the design of the new apartment building to reasonably retain some of the light and ventilation currently enjoyed by the neighbour. If the redevelopment of the 12 Bowral Street property can be shown to be imminent then no action is required. However, if not, then providing localised light wells/setbacks in the subject development should be considered.

Awning

An awning is to be provided to the Bowral Street frontage for the length of the commercial frontage, and in accordance with the requirements of Randwick DCP Part E6, section 18 Awnings.

Exposed common wall

The east elevation of the proposed development would present as a large five storey blank wall (six storeys as proposed), exposed to view when heading west along Bowral Street. Consideration should be given to providing a temporary public art mural on this wall and to provide permanent public artwork/s in the proposed laneway in accordance with Council's Public Art Strategy as per DCP Part E6, section 29 Public Art.

Apartment amenity/privacy

Regarding plan A103, Floor 2 plan, a concern is raised regarding the two very deep ventilation/light slots and the viability of the proposed planter boxes proposed within them.

A concern is raised regarding the privacy of resident bedrooms in the middle of the plan, that look to the laneway. Whilst the angling of the walls and window views appear to preserve privacy in many cases, there are some instances where direct views may still be possible from bedroom to bedroom. The angles of the windows should prevent direct views from one apartment into another apartment's bedroom.

Regarding plan A102, apartment B1.03, a concern is raised regarding the appropriateness/ amenity provided by the very large south facing terrace, overhung by the building above. This terrace space would not receive sunshine and would be more useful if accessed from living spaces, rather than a small door from the second bedroom.

Landscape

RDCP Part E6 K2K, section 20 Landscape Area, requires the total landscape area to be provided on the site to be at least 100% of the total site area (indicated on the drawings as 1,264m²). The landscape area may be spread throughout the building and site and can be provided at roof top, terraces, balconies, green walls and on the ground plane.

DA Plan A000 indicates that the DA design achieves 80.5% landscape area. To meet the shortfall in landscape area (19.5%), it is suggested that additional landscape should be considered for the upper-level balconies and the roofs of the west building (6 Bowral Street). Details on how the area requirements for deep soil and communal open space

are delivered, are to be provided. Regarding Control g), in this case it is acceptable for roof tops to contribute more than 30% towards the total landscape area.

Details on the maintenance and the establishment period of the proposed green walls need to be provided, including maintenance access to the east building roof top landscaping (Floor 8, A109).

ADG compliant planting on structure

In many instances the landscaping of the development is on structure. In these cases, the soil depth and volume is critical to its long term success. The ADG Part 4P Planting on structures requirements need to be met to ensure that the proposed landscaping establishes and flourishes into the future.

Existing site and neighbouring trees

A large existing tree (T10) in the southwest of the properties, is proposed to be removed as part of the works (Landscape plan LDA-01). This large existing tree should be retained, subject to Arborist advice on health and life expectancy. Further, the two large trees (T14 and T15) that are in the neighbouring property to the southeast (very close to the site boundary), in particular their root zones should be protected from damage – both their canopy and root zone (usually to the extent of the drip zone) should be protected. Basement and other construction works should be setback accordingly to prevent impacts to the long-term health of these trees.

Sustainability

Best practice environmentally sensitive design (ESD), energy efficiency, water conservation, waste and resources minimisation apply to all redevelopment in the K2K town centres. The building design should meet the requirements of RDCP Part B3 ESD and RDCP E6 section 22. Sustainability, including minimum GBCA 4 Star Green Star rating (previously equivalent to 5 star) certified rating, consideration of PV panels and battery storage, and providing EV charging points.

Flooding

Flood management is to be in accordance with Randwick DCP Part E6, section 23 Water Management, Controls a) and b), including assessment as to the appropriate ground floor level for habitable uses, thresholds for car park ramp entry and for Water Sensitive Urban Design (WSUD).

Parking

Maximum parking rates are to be in accordance with Randwick DCP Part E6 K2K, section 21 Transport, Traffic, Parking & Access, and as the development has ready access to public transport and services, are generally one third less than the standard TfNSW rate that applies elsewhere in the Randwick LGA.

Local automated waste collection system (LAWCS)

Waste management is to comply with the objectives and controls, specifically control (h), in RDCP E6 section 22. Sustainability, with the development incorporating a local automated waste collection system (LAWCS) in accordance with the Council's guideline: Localised Automated Waste Collection Systems Using Mobile Vacuum Vehicles Design and Implementation Guidelines.

Affordable housing

Randwick DCP E6 section 30. Affordable housing requires all new development within the K2K town centres to contribute towards affordable housing to cater for a mix of income groups including very low, low and middle income households.

Contributions are to be provided in accordance with the Kensington and Kingsford Town Centres Affordable Housing Plan (RCC 2019) for the K2K town centres – a rate of 5% applies, as a percentage of the residential gross floor area, to be dedicated towards affordable housing. The contribution is to be provided through a dedication of completed units, with the remainder paid as a monetary contribution in accordance with the Plan.

Community infrastructure

Randwick DCP E6 section 31. Community infrastructure requires all new development within the K2K town centres to contribute towards community infrastructure such as civil infrastructure, public roads and drainage, public domain, recreation areas and facilities, community facilities and physical facilities that support the built environment, and which benefit the wider community.

In accordance with Clause 6.17 of the RLEP 2012 the alternative building height and additional floor space ratio is only achievable where Council and the proponent of the DA have agreed to, or entered, a planning agreement for the basis of paying the Community Infrastructure Charge (CIC). The delivery of community infrastructure is to be carried out in accordance with the Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan 2019. The community infrastructure will be delivered on a given site by a Voluntary Planning Agreement (VPA).

Consideration should be made to contributing to the proposed street closure and construction of the Bowral Street Plaza (incl. paving, landscaping, lighting, street furniture, public artwork) that would adjoin the development.

The following types of community infrastructure contributions may be considered:

- *A monetary contribution (CIC)*
- *Dedication of land or property*
- *Carrying out works*
- *A combination of all the above.*

2.4. Waste Officer

The Waste Management Plan (WMP) submitted is not satisfactory for the following reasons:

General issues

1. *The document provided by Elephant Foot Consultant (EFC) is titled 'Operational Waste Management Plan' (OWMP), however, the document consistently refers to as a 'report' rather than a 'plan.' The 'report' has been prepared by EFC for their client, not for Council to consider as a WMP required by Council.*
2. *The Demolition and Construction Waste Management Plan have not been provided. The applicant needs to submit an appropriately **signed** WMP that includes both OWMP and Demolition and Construction WMP.*
3. *The WMP includes several conditions under section 1.2 that do not demonstrate the applicant's commitment to implementing the plan. Conditions such as "The figures presented in the report are an estimate only..." "building manager will adjust waste management operations..." and "...no assurance is made that the OWMP reflects the actual outcome of the proposed waste facilities, services, and operations..." lacking clarity and do not provide assurance that the proposed WMP will be implemented effectively. They introduce uncertainty and undermine accountability, as there is no guarantee of the plan's accuracy or suitability for the purpose. The*

applicant must adhere to the proposed plan and refrain from altering the size and number of bins as they want. Any changes must be approved by council.

Technical issues

4. Residential waste collection

4.1 Localised Automated Waste Collection System (LAWCS)

- *The development falls under K2K where Localised Automated Waste Collection System (LAWCS) is required to be implemented. The current OWMP states that the conventional bin system will be implemented for up to 3 years, prior to switching to LAWCS – this will not be accepted and the LAWCS must be implemented straight away.*
- *Council does not accept the email “Endorsement LAWCS 6-10 Bowral Street, Kensington” (D05251890) provided by a LAWCS system supplier Aerbin. A comprehensive detailed LAWCS system design is required.*
- *Pipe network is not detailed on the plans, this is not acceptable. The pipe network is required on plans to show how it will connect all tanks within waste storage rooms 1 & 2 to the outlet point. Detail design is required.*
- *WMP fails to mention how residents from Core 1 will safely access FOGO chute within Core 2.*
- *WMP fails to mention how access from the LAWCS will be prohibited from commercial tenants, and how the commercial waste room will prohibit access to resident tenants.*
- *More detail on the odour, vermin, stormwater preventatives are also required.*

4.2 Bulky waste collection

- *Bulky waste room is proposed on basement level 1, however, details on how bulky waste will be transported to the ground floor for collection, within the loading bay, and the location of the bulky waste room may not be considered practical due to the distance from the stairs / lifts – bulky items currently show to have to be transported through the car park. Best practice recommends 10m from lift exit.*

5 Commercial Waste

- *Commercial waste collection is proposed to be twice weekly – weekly collection should be considered. Therefore, number and sizes of bins & associated storage rooms is to be revised.*
- *Provide detail on how waste generated by retail on level 1 will be transported to commercial waste storage room on ground floor.*

6 Waste Vehicle swept path

- *Current swept path shown on “A101 - Ground Floor” (P00341795) drawing fails to show how the truck will turn to the site from Bowral St. Given the Plaza is proposed, there is a sharp 90 degree turn that needs to be considered for truck access.*
- *The drawing fails to demonstrate that a height clearance of 5m for truck access and operation has been provided.*

2.5. Design Excellence Advisory Panel

1. Context and Neighbourhood Character

The Panel believes that there is a need for Council to review the intended use and the nature of the through site link on the subject block. A view was raised by the Panel that the through site link on the subject site should be considered more as an access / servicing driveway, and may not be a pleasant pedestrian environment. The proposed shared way is convoluted and possibly dangerous for pedestrians with little surveillance. It is also unnecessary as there is already fine grained accessibility around the site.

The Panel did not consider the position of the through site link in relation to the future Bowral Street Plaza, however a view as raised that the through site link should be considered as a service access way and re-located to the western edge of the subject site in order to better consolidate the floor plans and unit amenity above.

Notwithstanding the above the Panel believe that any proposal should include a block wide context drawing showing relevant approvals and K2K urban structure (including sites 28B+28C+K2, and extending to Doncaster Ave.), and an analysis of options. The Panel believe it would be in the applicant's interest to work collaboratively with council and that there may be alternatives that both parties can support.

The Panel does not support the removal in this proposal of the ground floor active frontage extending along the whole of the subject site. Ground floor commercial space and activation along Bowral Street will reinforce the planned future plaza.

2. Built Form and Scale

The depth of the built form appears to be a product of applying only the minimum site setbacks under the ADG, to the rear boundary, though rear balconies to the eastern building do not comply. The whole building does not comply with the K2K envelope structure. The increased building depth at lower levels has created a number of internalised rooms and challenges the amenity of the proposal, and the neighboring buildings. It is the Panels understanding that the K2K envelope included a "flexible" zone of 1 storey along the southern side of the allowable envelope. The inclusion within this proposal of a 4 storey minimum setback, very deep built form, significantly increases the overshadowing of the neighbour to the rear, and places a number of habitable room windows, and balcony edges much closer to the southern boundary than what was envisaged within the K2K Masterplan.

The Panel does not support the height breach on the eastern building, which positions more than a whole apartment above the height limit and reduces solar access to the western building. A height breach in this location may be considered as long as the built form does not contain habitable private space.

3. Density

The significant number of dwellings that receive no sunlight on the winter solstice is indicative of the inability of this proposal to deliver the allowable density. The Panel believes that the building typology chosen in this proposal is not the best choice for this site with its particular site conditions and Masterplan requirements.

A closer connection between the context analysis and the chosen building typology should be explored, and pure south facing apartments limited or removed from the proposal.

4. Sustainability

Not discussed in detail at the Panel meeting however the following observations are made on the drawings set:

- *North facing windows at upper levels have little to no sun shading.*
- *South facing windows appear to have no weather protection.*
- *Very limited use of solar panels on rooftop areas.*
- *Structural transfer between basement levels and ground floor seems unnecessary at this scale and density. Clarifying the structural design approach may reduce reliance on heavily reinforced transfer zones and reduce the buildings carbon footprint.*
- *No indication of rainwater harvesting or electric car charging.*

5. Landscape

Shaded deep soil zones located along the southern boundary have little to no access to sunlight at all times of the year.

Very narrow deep soil zones appear to be counted towards the required percentage at the south-eastern corner of the site.

Multiple instances of Landscape planter areas being counted that are either under cover of roof forms above, or do not appear to have sufficient planting/soil depth. These shaded, narrow slot planters will be difficult to plant viably and to maintain.

6. Amenity

A number of apartments that do not receive any sunlight to living room windows at June 21 is approximately 29%. Significantly this is almost double the maximum allowable under the ADG.

There are a large number of habitable room windows facing into the void above the through site link which will have challenging privacy and amenity outcomes. The lift lobbies have a very limited outlook via slots.

Floor to floor height of Ground and First floors does not comply with the ADG minimums for a mixed-use zoning. (understood that current E2 Commercial Centre zoning would allow shop-top housing and therefore would be considered mixed use within the ADG). Floor-to-floor heights to residential floors are lower than City of Sydney recommended heights, and need to be justified.

7. Safety

Not discussed in detail at the Panel Meeting. Potential safety issues with restricted pedestrian view lines into basement ramp.

8. Housing Diversity and Social Interaction

Communal outdoor areas being counted at ground floor (south eastern corner) are not usable spaces, with very challenged amenity, narrow widths, and interfaces directly onto bedrooms and driveway ramp.

Unclear if communal open space on rooftop of building B (eastern building) is accessible to the residents of building A (western building).

Position of ground floor communal room is not ideal with no solar access and no activation of the shared right of way. The Panel suggested that the communal facilities could be positioned adjacent to the rooftop communal area on the eastern building.

9. Aesthetics

Care needs to be taken to articulate in some way the large blank side walls that a 6-10 storey building will present to existing 2-storey neighbours.

Clear delineation between upper setback building elements, and lower street wall elements is a positive strategy. However the Panel does not support the revised proposal as there are a number fundamental issues within the overall proposal, as outlined above.

SUMMARY AND RECOMMENDATIONS

The Panel does not support the proposal in its current form. The Panel encourages the Applicant to collaborate more closely with council's urban design team to resolve some of the inherent complexities that arise from an amalgamation that is counter to that which was envisaged in the K2K documentation.

2.6. Landscape Officer

1 street tree will still be removed under this new scheme. Previously T5 along western boundary was in direct conflict with the driveway/Through Site Link, now T4 just to its east is affected. I can't object to this as a more centrally located access seems to address many other undesirable/non-compliant aspects of the development;

All trees within development site still require removal, consistent with past design/scope of works & conditions, including T10 – no issue;

Neighbouring trees T13 & T15 are still sited clear of new basement design – no issue;

However, while the previous Basement was well clear of neighbouring T14 (large Lemon Scented Gum), the new Basement will now encroach significantly closer, within its 5.8m TPZ & 2.7m SRZ. The Arborist Report relies purely on the presence of the existing house/footprint within no. 10 Bowral St to state that no roots will exist in this area, but as piling for two levels of basement will be performed in such close proximity, to a much greater depth, and given that it's a 20m tall tree with dwellings surrounding it on all sides, further site investigations are warranted in the form of root mapping. I understand that the existing dwelling may restrict the ability to do this to the full extent, but ultimately, a high degree of certainty is needed before we could agree to what they're proposing. Root Mapping (with photos) in the form of an Addendum to their Arborist Report is needed. They can contact me to discuss further if needed;

Their SEE states that the overall Landscape Area is still deficient at 80.5% (100% required for K2K). If they've completely re-designed this whole development to address all of the other matters that have been raised then the same should also be expected for this component. They currently do not provide a reasonable justification for this other than it should be 'considered acceptable'- Need to amend Architectural & Landscape Plans to address shortfall by increasing landscape treatment to upper floors and vertical planes wherever possible;

Landscape Plans also need to be amended to highlight soil depth & dimensions of all planters on podium, which was a requirement for the previous scheme.

2.7. Development Engineer

No response received.

2.8. Building Compliance Officer

No response received.

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



Clause 4.6 Variation Statement – Building Height (Clause 4.3)

1. Height of Buildings Standard

Clause 4.3 of RLEP 2012 relates to the maximum height requirements and refers to the *Height of Buildings Map*. The relevant map identifies the subject site as having a maximum height of 21m to No. 6 Bowral Street, and 19m to Nos. 8 and 10 Bowral Street. It is noted however that the subject site is located within the Kensington and Kingsford Town Centre which permits additional height and refers to the *Alternative Building Heights Map*. The relevant map identifies that No. 6 Bowral Street is permitted an alternative maximum height of 31m, whilst Nos. 8 and 10 Bowral Street will continue to rely on the standard building height of 19m.

Building height is defined as:

- building height (or height of building)** means—
- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
 - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The relevant maps [sheets *Height of Buildings_001* and *Alternative Height of Building_001*] indicates that the maximum building height permitted at the subject site is 19m for Nos. 8 and 10 Bowral Street and 31m for No. 10 Bowral Street, respectively.

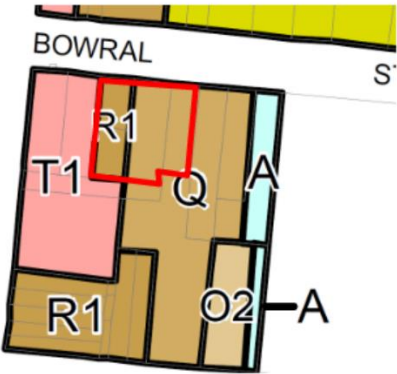


Figure 19 Extract from the Height of Buildings Map [R1=21m, Q=19m]



Figure 20 Extract from the Alternative Height of Buildings Map [U1=31m]

2. Proposed variation to height of buildings development standard.

The architectural plans indicate that the proposed development has a height of 31m to the top of the tenth storey where the 31m alternative building height applies and is therefore compliant. Where the base 19m building height standard applies, the proposal provides a maximum height of 24.83m to the top of the eight storey parapet and is therefore non-compliant. This is measured from natural ground line in accordance with the definition of height under the RLEP 2012.

Accordingly, the proposal is non-compliant with the 19m building height development standard and seeks a maximum variation of 5.83m or 30.6%. The proposal also contains additional non-compliances, as follows:

- **Level 7 Parapet Edge:** Height of 21.35m to 22.35m, representing a variation of 2.35m to 3.35m;
- **Roof top communal open space pergola:** Height of 21.15m, representing a variation of 2.15m; and
- **Level 6 Planter Boxes:** Height of 19.15m to 19.25m, representing a variation of 0.15m to 0.25m.

It is noted that the sixth storey is below maximum 19m development standard, except for the pergola to the rooftop communal open space, as outlined above.

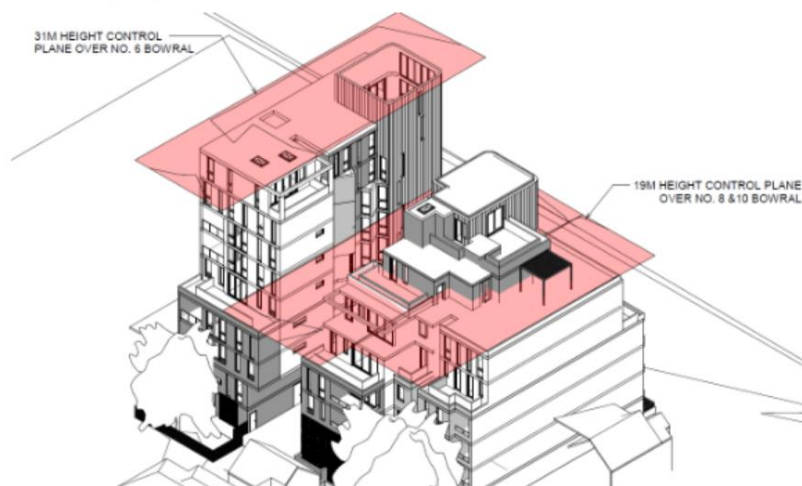


Figure 21 Height Blanket Diagram

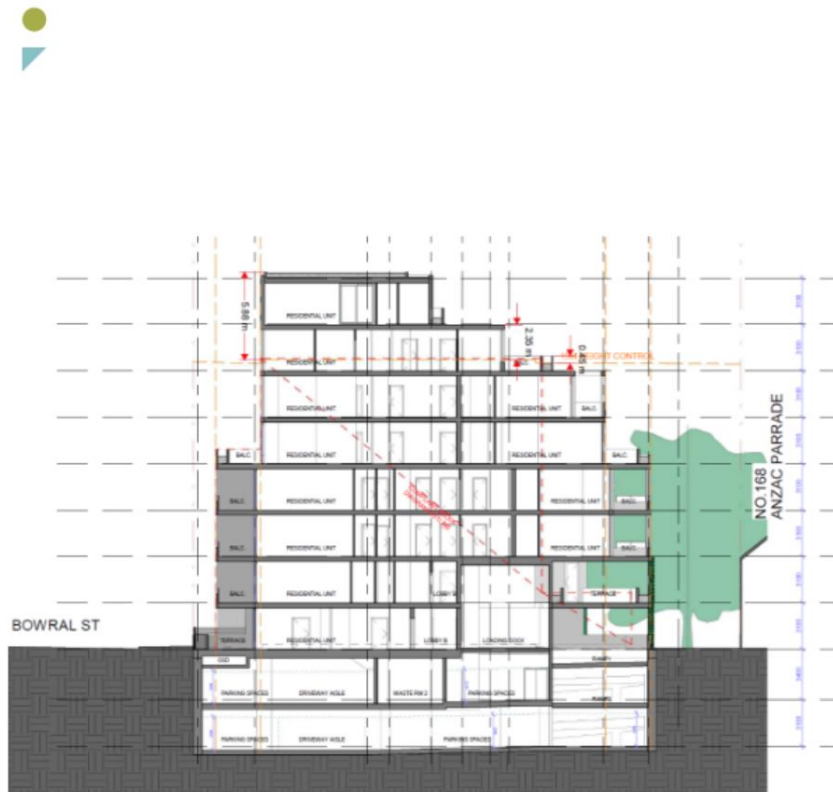


Figure 22 Section demonstrating proposed non-compliances

3. Clause 4.6 to RLEP 2012

The objectives and provisions of clause 4.6 are as follows:

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

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

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

(5) *(Repealed)*

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) *(Repealed)*

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

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

The development standards in clause 4.3 are not "expressly excluded" from the operation of Clause 4.6.

4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

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

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

The judgement goes on to state that:

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

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

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

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

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

The objectives and relevant provisions of clause 4.3 of RLEP 2012 are as follows, inter alia:

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

In order to address the requirements of Subclause 4.6(4)(a)(iii), the objectives of Clause 4.3 are addressed in turn below.

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

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

“22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.”

Council does not have any specific desired future character objectives under RLEP 2012 but reiterate that the desired future character is set by the applicable planning controls. However, the use of a DCP to determine desired future character of an LEP was overturned by Preston CJ in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115. That is, the desired future character of the locality is not defined under RLEP 2012 and is subjective.

Therefore, the desired future character of the neighbourhood must be set by the existing, recently approved and proposed buildings within the neighbourhood. The subject site is zoned B2 Local Centre within a locality which is anticipated to undergo a significant increase in density. That is, the existing size and scale of development in the immediate locality is not definitive. Directly to the east and west, the neighbouring properties are underdeveloped and do not represent the desired future character of the locality as anticipated by the relevant development standards and controls. Similarly and to the south, these buildings are also underdeveloped relative to the standards. Importantly, although the church structure to the north of the subject site and education facility further to the east are considered part of the local character, they do not represent the anticipated increase of density as envisaged. Regardless, these building have been considered as part of the character of the locality given the architectural variety they provide to the streetscape.

The proposal is best described as a mixed-use development which is permissible in the zone and is consistent with the desired future character of the locality. Importantly and when considering nearby approvals, the following is noted:

- The allotments to the west at Nos. 4 Bowral Street and 160 Anzac Parade are subject to development consent for an eight storey mixed use development (under DA/938/2016). However, it is noted that this was approved prior to the gazettal of the recent LEP and DCP amendments and is therefore permitted a greater building height;
- Further to the south-west is Nos. 172-180 Anzac Parade and 116R Todman Avenue which is subject to an approval for the construction of an 18 storey mixed use development under DA/414/2020 per the current planning controls; and
- A number of other large mixed use developments have been approved in the locality, including Nos. 111-125 Anzac Parade and Nos. 182-190 Anzac Parade to the south-west and Nos. 18-26 Ascot Street to the north.

As evidenced by these recent approvals, the character within the locality is undergoing transformation, better reflecting Council’s desired character and density. Accordingly, the proposed height encroachment does not result in a building which is incompatible with the desired character and typology of developments throughout the locality. The non-compliant elements are provided within a high-quality built form which is well articulated and is consistent with the objectives and principles of the LEP and DCP. The variations have integrated various elements to reduce bulk and scale at the point of greatest variation, including considerable setbacks, framing, parapet edges, balcony articulation and glazing, within a recessed floorplate. Of most relevance, the design includes an open shared-way, which is a critical

element desired on the subject site and assists in mitigating the impacts of bulk and scale. The built form, which is consistent with the intent of Blocks 28B and 28C, is considered to respond to the existing and desired future character of the locality.

Furthermore, it is also noted that the proposal provides a building envelope which is reflective of the objectives of the RDCP and character of the locality, in that the development will provide a stepped built form with open shared-way appropriately addressing the streetscape and rear of the site. This ensures that despite non-compliance, the proposal is consistent with the desired building pattern in the locality. The burden on insisting on strict compliance would result in the removal of high quality, residential apartments which would be an unreasonable and unnecessary outcome given the scale of the proposal is compatible with the character of the locality. Additionally, the proposal does not result in any adverse impacts to the amenity of the neighbouring properties as is discussed in objective (c).

The proposal is therefore consistent with objective (a), despite the height breach.

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

The subject site is not located within a heritage conservation area and is not adjacent to a heritage or contributory item. However, the site is within proximity to a number of heritage items including *Crewell Victorian Terrace House* (I124) at No. 58 Doncaster Avenue, *Detached Cottage Group* (I125) at Nos. 69-82 Doncaster Avenue, *Kensington Public School Buildings* (I126) at Nos. 77-79E Doncaster Avenue and *Victorian Mansion* (I127) at Nos. 86-92 Doncaster Avenue.

With regards to the nearby heritage items, *Kensington Public School Buildings* bears the greatest relationship to the subject site. However, and when considering the proposed non-compliance, this heritage item is separated by three properties (being Nos. 12 to 16 Bowral Street) which are permitted a maximum height of 19m (upon redevelopment), in addition to the compliant portion of the proposed development. Given the physical and visual separation between the heritage item and non-compliant elements, the built form will not be visually obtrusive or jarring given it is designed within a recessive and simplified built form. As discussed, the width of the variation is limited and maintains the anticipated step in the built form (improved through the open shared-way) as desired by both the LEP and DCP. Accordingly, as the proposal will continue to deliver a built form which is anticipated on the subject site (albeit in slightly modified location), the extent of non-compliance will have no adverse impact to the heritage character of this item.

Following this, the contemporary built form is integrated with framed elements, balcony articulation, fenestration and high quality materials, as to limit impact. Importantly, the part of the building which bears the greatest relationship to the Kensington Public School Buildings is the podium form, which is compliant with the 19m standard. Accordingly, as the proposal will deliver a built form which is anticipated on the subject site, the extent of non-compliance will have no adverse impact to the heritage character of this item.

With regards to the remaining heritage items (as listed above), these are located on the eastern side of Doncaster Avenue. The non-compliant built form will have no impact to these items by virtue of the considerable separation. The proposal is therefore consistent with objective (b).

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

In terms of visual bulk, the scale of the proposed development has largely been addressed in response to objective (a). For the reasons discussed in relation to objective (a), including setbacks, design and materiality, the proposed development represents a scale which is compatible with the existing and desired future character of the locality. Furthermore, when viewed from the public domain and neighbouring properties, the design and siting of the non-compliance provides considerable visual and physical separation thus mitigating any potential sense of enclosure or visual impact. The contemporary design, including modulation, balcony articulation and fenestration, in conjunction with the modern materials and neutral colour scheme, ensures that the proposal is not visually jarring from the streetscape.

In terms of privacy, the height breach does not result in any adverse additional privacy impacts. The areas of the height breaches are concentrated to Bowral Street and are setback considerably from the rear boundary. When considering the openings to the south, these are compliant with the ADG separation requirements which therefore mitigates potential overlooking.

To the west, the non-compliances are generally provided blank façades and minimal openings (as they oppose the shared-way), which limits any impacts. To the east, the proposal is setback considerably from the neighbouring properties and is predominantly provided as a blank façade. As such, the parts of the building which do not comply with the height development standard do not result in any further privacy impact beyond a compliant built form given the above-mentioned design measures.

With regards to overshadowing, the proposed height breach will not result in any adverse overshadowing as opposed to an entirely compliant built form. The shadow diagrams submitted with the architectural plans confirm that whilst the non-compliances will result in a minor increase in overshadowing, this is consistent with the increase of density envisaged by the RLEP and RDCP. That is, despite the site orientation and anticipated density, the proposal will retain appropriate solar access to the neighbouring properties during mid-winter. As such, the additional overshadowing impact as a result of the height breach when compared to a compliant development are insignificant.

In terms of view loss, the proposed variation will not result in any significant loss of views or outlook compared to a building with a compliant height. Importantly, there are no significant views currently enjoyed across the subject site from the public domain or neighbouring properties and the applicable planning controls effectively anticipate a continuous 31m and 19m high built form along Bowral Street. As the existing buildings are under-developed relative to the height control, the expectation to retain views through the permissible building envelope is considered unreasonable. It follows that there is a reasonable expectation that the views would be lost with any redevelopment of the site and therefore loss of views must be considered against the back drop of the permissible planning controls. Accordingly, any potential loss of views created by the non-compliance is considered to be reasonable within the Local Centre zone.

Therefore objective (c) is achieved.

Clause 6.17 - Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres

The objectives and relevant provisions of clause 6.17 of RLEP 2012 are as follows, inter alia:

- (a) to allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,*
- (b) to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,*
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.*

As the proposal complies with the alternative building height standard applies, this objectives are therefore satisfied.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))

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

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum building height:

1. The proposal successfully redistributes floor space and height, resulting in the non-compliance.

- a. The height breach is to the upper two storeys at Nos. 8-10 Bowral Street, which represents a variation of 24.83m. The proposal also includes non-compliances to the Level 7 parapet edge, pergola serving the roof top open space and Level 6 planter boxes.
- b. These non-compliances allow for a distribution of floor space, as to achieve a 6m wide open to the sky, shared-way, including two 1.5m wide covered access ways at-grade. The non-compliant building height is therefore in-part a result of the desired building envelope contained within the RDCP, specifically, the shared-way located within the centre of the site between Buildings A and B. The provision of an open shared-way, and considerable rear setbacks (in accord with the ADG), has ultimately relocated the built form and floor space on the upper levels to utilise the site more effectively. This achieves a number of benefits including the delivery of a high quality shared-way activating the locality, protecting amenity and delivering much needed residential accommodation. This will satisfy 1.3 Objects of Act, specifically, (a), (c) and (g). That is, the redistribution of floor area to deliver the shared way is considered to provide a direct benefit to the general public through improving the public domain and delivering a development with good design and amenity.
- c. Following the above, the maximum non-compliance will provide an appropriate transition of height from the 31m height standard at No. 6 Bowral Street (including approved developments along Anzac Parade which range from 8-18 storeys) and 19m height limit to the east. The non-compliant, eight storey height transitions to six storeys (which complies with the development standard), and will be consistent with the built form and scale envisaged for the adjoining properties to the east within Block 28C. Importantly, the location of the open shared way separates the built form and provides step in building height along the streetscape (as desired by the LEP), despite the non-compliance.

Furthermore, these elements have been appropriately setback from site boundaries and are recessive in nature when compared to the lower levels.

The desired building envelope for Block 28B and 28C of the Kensington and Kingsford DCP in **Figure 23**, in which the proposal is consistent.

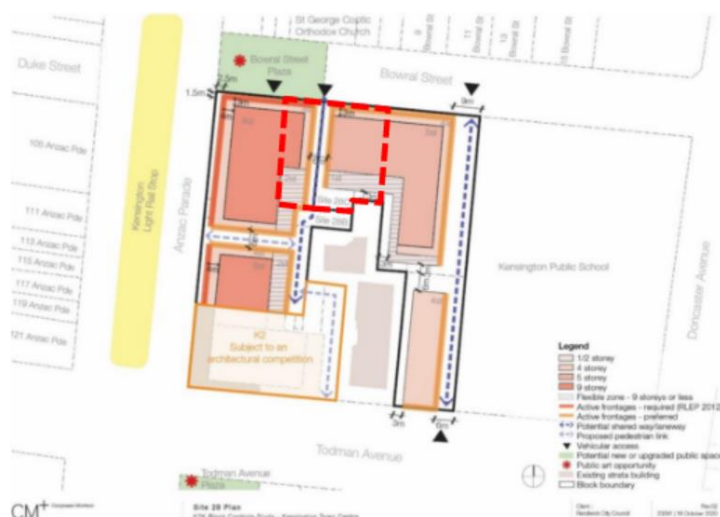


Figure 23 Building envelope controls per the DCP

2. The non-compliance is a response to the RDCP building envelope controls

- a. As outlined, the non-compliant building height is a result of the desired building envelope per the RDCP. The provision of an open shared-way located centrally through the site has redistributed the floor area on the upper levels, where the 19m height limit applies. Of relevance, the site analysis and iterative design processes (refer to Sheet A002 of the architectural set) has demonstrated that the proposed shared way location is the most appropriate response to the various constraints, thereby introducing the height non-compliance.
- b. In addition to the proposed shared-way, the proposal has also sought to provide rear setbacks of 6m to 9m, in accord with the ADG. Importantly, the RDCP includes the provision of a flexible 9 storey zone to the south where a reduced setback can be provided. However, the relocation of floor space above the 19m height limit, as opposed to the rear setback area, represents a superior outcome which will have reduced impacts to the amenity of properties to the south, whilst providing an appropriate transition of built form in an easterly direction and an open shared-way.

- c. Ultimately, the proposed building envelopes and distribution of floor space results in a superior urban and architectural design outcome. That is, the provision of additional floor area in alternative locations, including the shared-way or rear setbacks, will adversely impact the amenity and streetscape character of the development.

3. The non-compliance is consistent with the desired character of the locality.

- a. The proposed non-compliances are appropriately setback from Bowral Street and to the rear of the site. These proposed setbacks, which are consistent with the RDCP, ensure that the variation will not result in any adverse visual impact when viewed from the public domain or neighbouring properties, and will be compatible with the desired character of the locality. The variations have been limited in footprint, to ensure the streetscape impact is minimised. As described above, the proposed shared-way provides for a transition and separation of built form as desired by the LEP and DCP, therefore reducing the bulk and scale of the variation.
- b. To the east, the non-compliant elements are also setback considerably from the boundary shared with the neighbouring property. The separation distance and recessed design of the non-compliances ensure that an appropriate transition of built form is provided along Bowral Street, as desired by the RDCP. Furthermore, the proposal provides a compliant six storey, 19m built form within the eastern portion of the site, as to ensure that the desired relationship to Nos. 12 and 16 Bowral Street will be retained. As such, the proposed setbacks and overall architectural design ensures that the non-compliance will be entirely compatible with the character of the locality.
- c. When considering the proposed height in comparison to the properties to the north and south, the non-compliance will merge, or be absorbed, into the anticipated bulk and scale of the locality. That is, on the northern side of Bowral Street the 31m height limit (as is permitted by the alternative building height) extends to the eastern boundary of Nos. 1-3 Bowral Street (St George Coptic Orthodox Church). Given it is unlikely that the adjacent church will be redeveloped, the non-compliant height opposes a structure that is uncharacteristic of the streetscape and will ensure that the impact created by the proposal will be less apparent by virtue of the differing typologies.
- d. Similarly, and when considering the properties to the rear, it is noted that a 54m height limit is permitted. The properties to the rear are subject to an approval for an 18 storey mixed use development at Nos. 172-180 Anzac Parade and 116R Todman Avenue. Where the properties to the rear are not captured as part of the abovementioned approval, the proposed separation and height of the approved development will limit any visual or physical impact.

4. The non-compliances achieve a high level of design excellence, based on site analysis

- a. The proposal delivers a high quality urban and architectural design which clearly exhibits design excellence, despite non-compliance. That is, the proposal has undergone in-depth site analysis and refinement to reach the proposed outcome. The arrangement of floor space and subsequent

building height non-compliance have been informed by the desired DCP envelope. As such, the distribution of floor area is considered the most appropriate response to the streetscape, whilst protecting the amenity of neighbouring properties.

- b. The maximum extent of non-compliance is appropriately integrated into the overall building form. The non-compliance will not be visually jarring as the built form is situated within a well-articulated mass extending seamlessly between the varying building heights. That is, the difference in height between the alternative and standard controls will be maintained, although shifted slightly to the east as a result of the previously mentioned constraints. Importantly, the non-compliant elements form part of a recessed built form and includes framing, balcony articulation, fenestration and contemporary materiality to ensure that design excellence is achieved. The provision of the open, shared-way also assists with the LEP desired transition of height.

5. Additional non-compliances improve the amenity of future residents.

- a. The proposed non-compliance also allows for the provision of a rooftop communal open space with pergola. Whilst the pergola will vary the standard, it will provide for weather protection and better use of the area. The location of the communal open space allows for maximum access to sunlight and results in no adverse privacy impacts due to the location of the space and significant setbacks from the planter boxes.
- b. The minor non-compliance to the Level 6 planter boxes will also allow for the provision of roof top planting, and do not result in any adverse impact to the streetscape or surrounding properties. These roof top planter not only improve and soften the architectural design, but also provide for a privacy buffer to surrounding properties and is therefore acceptable.

6. Orderly and economic use of land

- a. The social benefits of providing housing stock within a highly sought after location should be given weight in the consideration of the variation request. The distribution of floor space is predicated on the allotment shape, principles of the DCP and lot ownership pattern. This has resulted in building envelopes which necessitates a form and scale that breaches the 19m building height limit. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of residential accommodation within a well located and well-designed development.
- b. Insistence on compliance with the height control would also result in the removal of a roof top pergola and planter boxes, which is a disproportionate response to the relatively minor impacts created by these elements. These non-compliances provide distinct benefits to the amenity of the future occupants, without any adverse impacts to the streetscape or neighbouring properties.



7. Limited environmental impacts

- a. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
 - i. The extent of the additional height creates no significant adverse overshadowing impacts to adjoining properties when compared to a compliant building envelope. That is, although the additional height results in a minor degree of overshadowing, it will retain adequate solar access to neighbouring properties, including the residential flat buildings to the south. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant;
 - ii. The height breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the height breach will have no greater impact on the privacy of adjoining properties when compared to a compliant built form. The non-compliant elements are setback considerably from respective boundaries, are orientated to the public domain and will not result in any further overlooking. When considering the southern (rear) setback, the openings similarly include greater setbacks which mitigate any aural or visual impact. As such, the loss of privacy caused by the non-compliant elements would be insignificant; and
 - iii. The height breach will not result in any significant view loss as the subject site does not contain any significant views across or from the public domain. The maximum height non-compliance is limited and is consistent with the building height of the surrounding locality. As such, the extent of view loss caused by the non-compliant element would be insignificant.

8. The proposal meets aims and objectives of key planning documents

- a. The proposed development meets the objectives of the development standard and meets the objectives of the E2 Commercial Centre zone (as further detailed in Section 7 below);
- b. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - i. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site (1.3(c));
 - ii. To promote the delivery and maintenance of affordable housing (1.3(d));
 - iii. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).
- c. The variation to the height of buildings development standard will give better effect to the aims of Chapter 4 Design of residential apartment development, of the Housing SEPP. In particular:



- i. The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i));
- ii. To achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define (clause 2(3)(b));
- iii. To contribute to the provision of a variety of dwelling types to meet population growth (clause 2(3)(f));
- iv. Approval of the proposed variation will support a variety of housing types by providing a well-located and compact development that will be a better choice for families (clause 2(3)(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly the desired building envelope, location and design of the shared-way and relationship to surrounding properties. Insistence on compliance with the height will result in the removal of a number of residential apartments and communal open space elements which is a disproportionate outcome given the limited impacts of the proposal. Specifically, the additional height does not significantly impact the amenity of the neighbouring properties (when compared to a compliant development) and has been designed to address Bowral Street and ensure the non-compliance is not visual jarring from the public domain or neighbouring properties.

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

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

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.



6. Conclusion

This written request has been prepared in relation to the proposed variation to the 19m height of buildings development standard contained in Clause 4.3 of RLEP 2012.

Having regard to all of the above, it is our opinion that compliance with the alternative maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.



Planning Ingenuity Pty Ltd

Statement of environmental effects
REF: M230413 74



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Appendix 3: DCP Compliance Table**3.1 Section E6: Kensington and Kingsford Town Centres**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
PART A			
2.	Urban Design and Place-Making		
2.1	Guiding Principals		
	A statement must be submitted with all DAs that demonstrates consistency with the Guiding Principles of this Part.	The Applicant has submitted a statement to assess the proposal against the relevant objectives and controls in Section E6.	Yes
3.	Desired Future Character		
3.2	Strategic Node Sites		
	Submit a statement with the DA demonstrating how the proposed design meets the desired future character of the relevant town centre and where applicable, the strategic node site based on the block controls contained in Part B.	The Applicant has submitted a statement to assess the proposal against the relevant objectives and controls in Section E6.	Yes
4.	Design Excellence		
	All new development involving the construction of a new building or external alterations to an existing building is to meet the requirements of Clause 6.11 of the RLEP 2012 relating to design excellence Buildings are to be designed to achieve at least 5-star green star performance as a component for achieving design excellence on strategic node sites.	The proposal is not considered to uphold the relevant provisions in relation to design excellence. Refer to comments by Council's Design Excellence Advisory Panel at Appendix 1.	No
5.	Floor Space Ratio		
	<p>(a) The maximum FSR that can be achieved on a site is shown on the RLEP 2012 FSR Map. An alternative FSR is applicable in accordance with the RLEP 2012 Alternative FSR Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions Plan (see Part D for details on Community Infrastructure Contribution)</p> <p>(b) In relation to the Kensington Town centre where an existing FSR Map does not apply, the Alternative FSR Map is applicable for the purposes of calculating the Community Infrastructure contribution referred to in clause (a) for any floor space</p>	The proposal complies with the maximum FSR pursuant to RLEP 2012. Refer to discussion at Section 6.6 of this report.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>above the existing height maximum control shown on the RLEP 2012 Height Map</p> <p>(c) A minimum non-residential FSR of 1:1 is to be provided at each strategic node site within the Todman Square, Kingsford Midtown and Kingsford Junction Precincts, in accordance with Clause 4.4 of the RLEP 2012</p> <p>(d) Non-residential floor space must be designed to be accessible, useable and functional for the purposes of commercial, business, entertainment and retail activities and the like</p>		
6.	Built Form		
	<p>Lot Amalgamation</p> <p>(a) A minimum street frontage of 20m is to be provided for each development site along Anzac Parade and Gardeners Road</p> <p>(b) When development/redevelopment /amalgamation is proposed, sites between and adjacent to developable properties are not to be limited in their future development potential</p> <p>(c) Where a development proposal results in an isolated site, the applicant must demonstrate that negotiations between the owners of the lots have commenced prior to the lodgement of the DA to avoid the creation of an isolated site. The following information is to be included with the DA:</p> <ul style="list-style-type: none"> (i) evidence of written offer (s) made to the owner of the isolated site* and any responses received (ii) schematic diagrams demonstrating how the isolated site is capable of being redeveloped in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve an appropriate urban form for the location, and an acceptable level of amenity (iii) schematic diagrams showing how the isolated site could potentially be integrated into the development site in the future in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve a coherent built form outcome for the block. 	<p>Concerns are raised regarding the creation of isolated sites. Insufficient information has been provided to justify the proposed lot amalgamation pattern.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	(d) Where lot consolidation cannot be achieved to comply with the maximum envelopes in the block diagrams, alternative designs may be considered where the proposal exhibits design excellence and can demonstrate consistency with the relevant objectives of the block controls (Part B).		
	<p>Building Heights</p> <p>(a) The maximum height that can be achieved on a site is shown on the RLEP 2012 Height Map. An alternative maximum height is applicable in accordance with the RLEP 2012 Alternative Height Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions Plan. (see Part D for details on Community Infrastructure Contribution)</p> <p>(b) The maximum number of storeys on a site is to comply with the following:</p> <ul style="list-style-type: none"> i) on sites with a maximum of 16m – 4 storeys ii) on sites with a maximum of 19m – 5 storeys iii) on sites with a maximum of 31m – 9 storeys iv) on sites with a maximum 57m – 17 storeys v) on sites with a maximum 60m – 18 storeys 	<p>The proposal does not comply with the maximum building height or maximum number of storeys.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No
	<p>Street Walls</p> <p>(a) Buildings must be designed with a street wall height of 4 storeys</p> <p>(b) On sites with contributory buildings, the consent authority may consider a variation to the four-storey street wall height requirement of between 2 and 6 storeys if the design:</p> <ul style="list-style-type: none"> (i) results in an improvement to the contributory building in accordance with established heritage principles to avoid facadism (ii) meets the objectives of this clause and exhibits design excellence (iii) retains contributory or heritage elements; and 	<p>The proposal provides a street wall height of 4 storeys.</p>	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	(iv) provides a transition to neighbouring sites.		
	Building Setbacks (a) DAs are to comply with the minimum ground floor and upper level setbacks illustrated in the relevant block diagrams in Part B (b) Development that results in an exposed party wall on an adjoining building is to incorporate architectural or vertical landscape treatment to improve visual amenity	The proposal fails to provide suitable setback distances. Refer to discussion at Section 9.1 of this report.	No
7.	Through Site Links/Mid-Block Connections		
	(a) Through site links and mid-block connections are to be provided in accordance with the relevant block diagram in Part B (b) Where new site links or variations are proposed, the consent authority is to consider the need for and desirability of the links or connections having regard to the objectives of this section (c) Through site links and mid-block connections are to have an easement for public access on title or covenant on title unless identified for dedication to Council (d) Through-site links/ mid-block links are to be designed to: <ul style="list-style-type: none"> (i) have a minimum width of 6m, and a clear height of at least 6m (ii) be direct and publicly accessible 24 hours a day (iii) allow visibility along the length of the link and be open to the sky as much as is practicable (iv) be easily identified by users and have a public character (v) include signage advising of the publicly accessible status of the link and the places to which it connects (vi) be clearly distinguished from vehicle accessways (vii) align with breaks between buildings so that views are extended and there is less sense of enclosure (viii) provide active edges and opportunities for natural surveillance (ix) include materials and finishes (paving materials, tree planting, 	N/A	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>furniture etc.) integrated with adjoining streets and public spaces and be graffiti and vandalism resistant</p> <p>(x) ensure no structures (for example, electricity substations, carpark exhaust vents, swimming pools etc.) are constructed in the through-site link; and</p> <p>(xi) include landscaping to assist in guiding people along the link while enabling long sightlines.</p> <p>(e) Through-site links are only to pass through or under a building where:</p> <p>(i) the building's height is greater than 3 storeys; and</p> <p>(ii) the maximum distance of the link under any structure is 18m</p>		
8.	Laneway/Shared Way Zoned		
	<p>(a) Laneways and shared zones are to be provided in accordance with the relevant block diagram (see Part B)</p> <p>(b) Laneways are to be a minimum of 6 metres wide (for larger developments, a carriageway width greater than 6 metres may be required) and shall provide landscaping, lighting and high quality materials and finishes and opportunities for art to enhance the pedestrian environment</p> <p>(c) Buildings that front lanes shall be articulated to create visual interest and shall incorporate passive surveillance by orienting windows and balconies onto the lane</p> <p>(d) Ground floor uses fronting lanes shall incorporate openings onto the lane so as to contribute to the enjoyment and activation of the lane including outdoor dining</p> <p>(e) Applicants are to negotiate Rights of carriageway with adjoining property owners where required for access.</p>	<p>The proposed shared way does not comply with the relevant design considerations.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No
9.	Heritage Conservation		
	<p><u>All Development</u></p> <p>(a) All development involving heritage items are to be in accordance with requirements for heritage set out in Part B2 of the DCP</p> <p>(b) All development involving heritage items and contributory buildings are required to:</p>	Refer to comments by Council's Heritage Officer at Appendix 2.	On merit, subject to conditions

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> (i) Adhere to the principles of the Burra Charter (ii) Include the submission of a Heritage Impact Statement (or Heritage Impact Assessment) which considers the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage items within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories (c) Development located within the vicinity of another local government area requires the preparation of a Heritage Impact Statement to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area. 		
PART B			
10.	Block Controls		
10.2	Strategic Node Sites		
	<p><i>Todman Square Precinct, Kensington</i></p> <ul style="list-style-type: none"> (a) Future built form at Todman Square must be consistent with the applicable block envelope controls shown in Figures 6, 7, 8 and 9 (b) DAs for strategic node sites are to be undertaken in accordance with the winning design of the architectural design competition (c) A minimum non-residential floor space is to be provided in accordance with Clause 6.17 of the RLEP 2012 (d) Buildings are to respond to the site's context to provide visual interest and minimise and mitigate potential for overshadowing and privacy impacts upon surrounding land uses (e) Buildings are to be well articulated and respond sensitively to nearby heritage and contributory buildings in accordance with the requirements under section 9 Part A of this DCP 	<p>The proposed development and non-compliances with the block controls do not have regard for the desired built form relationships established for the Todman Square Precinct. This will detract from the emerging character of the key node.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>(f) Buildings are to ensure a cohesive urban design outcome across the Todman Square Precinct in terms of built form, scale and massing and contribute to a high quality streetscape environment</p> <p>(g) Built form within 'Flexible Zones' is to be designed to comply with the maximum building height in the RLEP 2012, objectives of this clause and the requirements of the ADG to achieve a suitable transition to adjoining lower scale development</p> <p>(h) Continuous active street frontages on the ground floor and adjacent to laneways are to be provided in accordance with the requirements of section 19 Part C of this DCP</p> <p>(i) A multi-functional creative space with a minimum floor area of 200m² is to be provided at the K1 site and dedicated to Council. Floor area for the creative space is to be excluded from the total gross floor area of the site</p> <p>(j) A public plaza is to be provided immediately north of the K1 site in accordance with Figure 6</p> <p>(k) An innovation hub with a minimum floor area of 200m² is to be provided at the K3 site and dedicated to Council. Floor area for the innovation hub is to be excluded from the total gross floor area of the site</p> <p>(l) Green walls, roofs and landscaping is to be provided in accordance with section 21 Part C of this DCP.</p>		
10.3	Block by Block Controls – Other Sites		
	<p>(a) Development must be consistent with the relevant block envelope controls including heights, setbacks, street walls, mid-block links and laneways</p> <p>(b) Built form within 'Flexible Zones' is to be designed to comply with the maximum building height in the RLEP 2012, objectives of this clause and the requirements of the ADG to achieve transition to adjoining lower scale development.</p>	<p>The proposed development does not comply with the block controls for Blocks 28B and 28C.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No
PART C			
11.	Housing Mix		
	(a) Development is to comprise a mix of apartment types, where gardens, adaptability and accessibility are more easily achievable for elderly people,	The proposal complies with the controls for housing mix:	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)						
	<p>families with children, or people living with disabilities</p> <p>(b) At least 20% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be self-contained studio dwellings or one-bedroom dwellings, or both</p> <p>(c) At least 20% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be 3 or more-bedroom dwellings and</p> <p>(d) Family friendly apartments of 3 bedrooms or more are to be located on the lower four floors of the building.</p>	<ul style="list-style-type: none">20.58% one bed units38.23% three + bed units							
12.	Floor to Ceiling Heights								
	<p>(a) Minimum floor to ceiling heights are to be provided for all development in accordance with the following requirements:</p> <table><tr><th>Ground Floor</th><th>First Floor</th><th>Upper Floors</th></tr><tr><td>3.5m</td><td>3.3m</td><td>2.7m</td></tr></table>	Ground Floor	First Floor	Upper Floors	3.5m	3.3m	2.7m	<p>The proposed floor to ceiling heights at ground and first floor levels do not comply with the numeric controls.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No
Ground Floor	First Floor	Upper Floors							
3.5m	3.3m	2.7m							
13.	Solar and Daylight Access								
	<p>(a) Solar access is to be provided in accordance with the recommendations of PART 4 of the Apartment Design Guide (ADG)</p> <p>(b) Buildings must ensure that areas of private or public open space are oriented to achieve the recommended level of solar amenity as per the ADG</p>	<p>The proposal fails to comply with the ADG requirements for solar access.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No						
14.	Acoustic Privacy								
	<p><u>Residential uses</u></p> <p>(a) All new development is to be constructed to achieve the following acoustic amenity criteria for the residential component of the building in accordance with Australian Standard AS2107:2016 based on an acoustic report specified in clauses d) and k). For the purposes of this clause, the residential component includes dwellings situated within shop top housing, mixed use buildings, or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation.</p> <p>(b) In naturally ventilated spaces for the residential component, the repeatable maximum Leq (1hour) should not exceed: i) 35 dB(A) between 10.00 pm and 7.00 am in sleeping areas when</p>	<p>Concerns are raised regarding noise impacts to units facing the laneway/shared zone. The laneway is dominated by service areas and vehicular access points which results in an undesirable environment for future residents.</p> <p>Concerns are also raised regarding noise impacts to the units adjacent to the roof top communal open space.</p>	No						

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>the windows are closed; ii) 40 dB(A) in sleeping areas when windows are open (24 hours); iii) 45 dB(A) in living areas (24 hours) when the windows are closed, and iv) 50 dB(A) in living areas (24 hours) when the windows are open.</p> <p>(c) Where natural ventilation cannot achieve the limits listed in clause b) the development is to include mechanical ventilation, air conditioning or other complying means of ventilation (in accordance with the ventilation requirements of the Building Code of Australia and Australian Standard AS 1668.2-2012), when doors and windows are shut. In such circumstances the repeatable maximum Leq (1 hour) with the alternative ventilation operating should not exceed:</p> <ul style="list-style-type: none"> (i) 38 dB(A) between 10.00 pm and 7.00 am in sleeping areas; (ii) 46 dB(A) in living areas (24 hours); (iii) (45 dB(A) in sleeping areas between 7.00 am and 10.00 pm. <p>(d) Notwithstanding the general noise criteria for environmental noise set out in clauses b) and c) for habitable rooms in the residential component of the proposed development is to incorporate noise control measures to ensure the standard LA10 Condition imposed by Liquor & Gaming NSW is satisfied inside those occupied spaces with doors and windows closed and the alternative ventilation is operating as follows:</p> <ul style="list-style-type: none"> (i) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7am and midnight. (ii) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) between midnight and 7am. (iii) The noise from licensed premises shall be inaudible in 	Refer to discussion at Section 9.1 of this report.	

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>any habitable room of any residential premises between the hours of midnight and 7am</p> <p>(iv) For this clause, the LA10* can be taken as the average maximum deflection of the noise level emitted from the licensed premises.</p> <p>(e) For the purpose of acoustic assessment with respect to clauses a), b) c) and d) the assessment must identify the noise environment for the site as a result of the existing situation (including any business operations that include outdoor areas for use by patrons, and/or the provision of music entertainment) and noise generated by commercial premises within the mixed use building (this may involve consideration of potential uses if the commercial use is unknown at the time of the application for the mixed-use building).</p> <p>(f) All development is to be designed to minimise noise transition between apartments by adopting general noise concepts of:</p> <p>(i) locating busy, noisy areas next to each other and quieter areas next to other quiet areas, for example, living rooms next to living rooms, bedrooms with bedrooms</p> <p>(ii) locating bedrooms away from busy roads and other existing or potential noise sources</p> <p>(iii) using storage or circulation zones within the apartment to buffer noise from adjacent apartments, mechanical services or corridors and lobby areas; and</p> <p>(iv) minimising the amount of party (shared) walls with other apartments.</p> <p>(g) Noise transmission is to be reduced from common corridors by providing seals at entry doors</p> <p>(h) Conflicts between noise, outlook and views are to be resolved using design measures such as double glazing, operable screening and ventilation taking into account noise targets for habitable rooms as identified in clauses b) c) and d) above are assessed inside</p>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>the rooms with doors and windows closed and ventilation operating.</p> <p>(i) The design of the building is to address the requirements of clause d) with respect to noise from licensed premises and noise/vibration from mechanical plant and ventilation ducts associated with plant and equipment (including kitchen exhausts) serving the commercial spaces.</p> <p>(j) The design of new buildings or substantial alterations to existing buildings are to take into account the following noise conditions that would apply to each commercial tenancy in the development:</p> <p>(i) Noise from commercial plant and the use of the premises when assessed as in LAeq, 15 minute must not exceed the LA90, 15 minute background noise level by more the 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises when in use.</p> <p>(ii) Noise from the provision of entertainment and patron noise when assessed as an LA10* enters any residential use through and internal to internal transmission path is not to exceed the existing internal LA90, 15 minute level in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use within the mixed use development between the hours of 7am and midnight, and is to be inaudible between midnight and 7am.</p> <p>(iii) For any gymnasiums or similar facilities in mixed use development the above noise conditions would apply noting that the noise limits include the creation of noise as a result of any vibration induced into the building structure is to be inaudible in any residence between the hours of 10pm and 7am the following day.</p>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>(iv) The noise limits in this clause applies with doors and windows closed and mechanical ventilation operating.</p> <p>(k) A noise and vibration assessment report, prepared by an appropriately qualified acoustical consultant/engineer, is to be submitted with DAs for new buildings or substantial alterations to existing buildings that include residential units or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation and any other sensitive land uses, addressing appropriate measures to minimise potential future noise and vibration impacts permissible in the B2 Local Centre Zone including amplified music associated with restaurants, small bars and cafes, noise from light rail movements. This assessment is to:</p> <p>(i) be prepared having regard to the NSW Environmental Protection Authority's Noise Policy for Industry, the DECC (EPA) Assessing Vibration, a Technical Guideline, and relevant Australian Standards pertaining to noise measurements and the noise conditions identified above</p> <p>(ii) incorporate an assessment of external noise sources and internal noise sources (such as mechanical ventilation) with respect to the criteria specified in b), c) and d); and</p> <p>(iii) detail the design measures needed to achieve the required internal acoustic amenity specified in b), c) and d).</p> <p>(iv) To maintain the intent of the acoustic objectives, prior to the issue of a Construction Certificate or an Occupation Certificate, a certificate of acoustic compliance confirming compliance with the specified noise limits referred to above and the noise design base for the mixed use building or alterations to existing buildings is to be submitted to Council.</p>		
15.	Natural Ventilation		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>(a) All buildings are to be designed to comply with the Apartment Design Guide (SEPP 65) to maximise opportunities for natural ventilation and sunlight by providing a combination of:</p> <ul style="list-style-type: none"> - corner apartments - dual aspect apartments - - shallow, single-aspect apartments - openable windows and doors - other ventilation devices <p>(b) Window placement, size, glazing selection and orientation are to maximise opportunities for cross ventilation, taking advantage of prevailing breezes;</p> <p>(c) Internal corridors, lobbies, communal circulation spaces and communal areas shall incorporate adequate natural ventilation;</p> <p>(d) Basements levels including spaces used for storage, garbage areas or commercial activities, are to be designed to include natural ventilation;</p> <p>(e) Apartment depth is to be limited to maximise the opportunity for cross ventilation and airflow.</p>	<p>Cross ventilation through operable windows to the laneway/shared way are relied upon which results in adverse amenity impacts for future occupants.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No
16.	Articulation and Modulation		
	<p>(a) All buildings are to provide articulation by incorporating a variety of window openings, balcony types, balustrades, fins, blade walls, parapets, sun-shade devices and louvres to add visual depth to the façade;</p> <p>(b) The design of buildings are to avoid large areas of blank walls. Where blank walls are unavoidable, they must be treated and articulated to achieve an appropriate presentation to the public domain;</p> <p>(c) Ground floor shopfronts must demonstrate 'fine grained' articulation by dividing the façade into discreet bays or sections;</p> <p>(d) Entries to business premises should be clearly defined and distinguished from entries to residential components;</p> <p>(e) Specific architectural response to articulation and modulation is to be provided at key node sites through the architectural competition process;</p>	<p>The proposed design lacks suitable articulation and includes a blank wall façade to the side elevations.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>(f) Building articulation should be sympathetic and complementary to the adjoining built form;</p> <p>(g) Corner buildings are to be expressed by giving visual prominence to parts of the façade (eg a change in building articulation, material or colour, roof expression or increased height). Corner buildings should be designed to add variety and interest to the street and present each frontage as a main street.</p>		
17.	Materials and Finishes		
	<p>(a) External walls are to be constructed of high quality and durable materials and finishes. Materials that may be subject to corrosion, susceptible to degradation or high maintenance costs are to be avoided;</p> <p>(b) Architectural treatment of street facades is to clearly define a base, middle and top sections of a building so as to divide the mass of the building;</p> <p>(c) A combination of finishes, colours and materials are to be used to articulate building facades;</p> <p>(d) Design windows that can be cleaned from inside the building; and</p> <p>(e) For sites adjoining heritage and contributory buildings, materials and finishes are to allow for their clear interpretation.</p>	<p>The proposed materials and finishes are considered satisfactory.</p>	Yes
18.	Awnings		
	<p>(a) Continuous pedestrian shelter must be provided to Anzac Parade, Gardeners Road and secondary streets by elements including awnings, posted verandas, colonnades or cantilevered building mass</p> <p>(b) The design of new awnings should complement the design of adjoining awnings and complement the building façade</p> <p>(c) Awnings are to be carefully located and set back to avoid obstructing vehicle sightlines, traffic signals, intersections, pedestrian crossings and other critical road infrastructure.</p> <p>(d) Awnings should wrap around corners where a building is sited on a street corner</p> <p>(e) Awning dimensions for buildings fronting Anzac Parade, secondary streets off Anzac Parade, and Gardeners Road are to provide:</p> <p>– a minimum width of 3m</p>	<p>The proposal does not provide an awning to the Bowral Street frontage.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> – a minimum soffit height of 3.5m and no higher than 4.2m above the footpath – a minimum 1 metre setback from the kerb – a low profile, with slim vertical fascias or eaves, generally not exceeding 300mm <p>(f) In relation to laneways, awnings: - must be well designed to provide shelter for entrances and should relate to the ground floor building uses such as outdoor dining; - are to be cantilevered with no posts (with a retractable arm); - must allow for a minimum 1.8m path of travel along the building edge.</p>		
19.	Active Street Frontages		
	<p>(a) Required active frontages are to be provided in accordance with RLEP 2012 (Clause 6.20) Active frontages Map</p> <p>(b) Preferred active frontages are to be provided in accordance with Part B – Block Controls of this DCP c)</p> <p>(c) A minimum of 80% of the street frontage on Anzac Parade is to incorporate transparent glazing on the ground floor façade</p> <p>(d) The ground floor is to maximise entries or display windows and provide at least 1 pedestrian opening per 5m of facade on Anzac Parade or secondary streets and wrapping shopfronts around corners</p> <p>(e) The ground floor of uses fronting lane ways must provide a continuous retail frontage with at least 1 pedestrian entry or door per 10m of façade</p> <p>(f) The ground floor of uses fronting mid-block links/arcades must provide at least one 1 pedestrian entry or door per 15m of façade</p> <p>(g) A minimum of 50% of a blank wall (larger than 10m²) visible from the public domain must incorporate greenery and/or public art</p> <p>(h) Entrances to internally oriented shopping or commercial arcades and the arcades themselves, must be a minimum of 6m wide</p> <p>(i) Solid non-transparent roller shutters are discouraged. Where security grills or screens are required, they are to be installed at least 1m behind the glazing line and of lattice design with an openness to allow viewing of the</p>	<p>The proposal does not provide an active street frontage or contribute to the retail activation of the commercial core and the future of the Bowral Street Plaza.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>interior and internal lighting to spill onto the footpath</p> <p>(j) Incorporate outdoor dining wherever possible in accordance with Part D12, Footpath Dining and Trading of DCP 2013.</p>		
20.	Landscape Area		
	<p>(a) The total landscaped area to be provided on a site is to be at least 100% of the total site area, spread throughout the site and building as shown in Figure 16.</p> <p>(b) Landscaped open space requirements of Chapter C2 (Medium Density Residential) do not apply to land within the Kingsford and Kensington Town Centres other than clauses 2.2.2 and 2.3 relating to deep soil areas and private and communal open space.</p> <p>(c) Landscaping must be suitable to the building orientation aspect, wind and other relevant environmental factors.</p> <p>(d) A minimum of 40% of the total gross landscaped area including communal open space is to include areas with sufficient soil depth and structure to accommodate mature trees and planting. A combination of trees, shrubs and ground cover is encouraged to make the landscaping more attractive and long lasting.</p> <p>(e) A minimum of 25% of the ground plane and share-ways are to be landscaped sufficient in size and dimensions to accommodate trees and significant planting.</p> <p>(f) Green walls can only contribute up to 20% of the total gross landscaped area and will be assessed on the merits of the proposal in terms of quality of green infrastructure and verification from a qualified landscape architect.</p> <p>(g) Roof tops can only contribute up to 30% of the total gross landscape area and the area is to be designed to maximise visibility of planting from the public domain. Rooftops may include communal food farms and food production areas.</p> <p>(h) Technical, structural and ongoing maintenance arrangements of proposed roof top gardens and green walls are to be documented by a qualified landscape architect and</p>	<p>The proposal provides 80.5% of the site area as landscaping which does not comply with the 100% requirement.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>incorporated into the development proposal.</p> <p>(i) The area dedicated to roof top solar (PV infrastructure) is not to be counted as part of the total gross landscape area.</p> <p>(j) Where green roofs and green walls are provided, these shall comply with requirements contained in Chapter B4 (clause 4).</p> <p>(k) Despite the provision of a green wall, all facades are to meet design excellence requirements including building articulation and modulation specified in section 16 of this section of the DCP.</p> <p>(l) In addition to the requirements of Part B4 (Landscaping and Biodiversity), all DAs for sites within the Kensington and Kingsford town centres must submit a landscape plan addressing the following requirements:</p> <ul style="list-style-type: none"> (i) quantity of landscaping provided on site; (ii) scaled drawings of all areas; (iii) how landscaping would complement the architectural style of building and assists in its presentation to the streetscape and high visibility; (iv) rainwater harvesting and other irrigation methods proposed; (v) full construction details of soil profile, method of attachment to the building, and drainage/waterproofing; and (vi) engineering certification confirming building can withstand planting and associated structures. <p>Note 1 'Ground plane' refers to spaces between buildings on the ground level providing for landscaping, pedestrian access and physical connections to the street.</p> <p>Note 2: 'Gross Landscape Area' refers to the sum of all landscaped areas within a development and may include (but is not limited to) ground plane, gardens, outdoor terraces, planter boxes, sky gardens, roof terraces, and green walls.</p>		
21.	Transport, Traffic, Parking & Access		
	(a) Vehicle parking within the Kensington and Kingsford town centres is to be	Concerns are raised regarding the	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>provided in accordance with the rates outlined in the tables below. Parking requirements for all other development types not specified in the table below are contained in section 3.2 Vehicle Parking Rates (of Chapter B7)</p> <p>(b) Where practical, parking access and/or loading is to be provided from secondary streets (rather than directly off Anzac Parade or gardeners Road), set back at least 6m from the intersection or the rear lane</p> <p>(c) Basement carpark access must comply with the requirements of B8: Water Management</p> <p>(d) Parking access and/or loading areas are to be designed as recessive components of the elevation so as to minimise the visual impact</p> <p>(e) Parking is to be accommodated underground where possible</p> <p>(f) Sub-basement car parking is to be no more than 1.2m above existing ground level;</p> <p>(g) Provide flexible hardstand area for the purposes of bicycle maintenance and repairs</p> <p>(h) Where a variation to the DCP Car Parking rates is sought, the proponent shall respond directly to Control i), 3.3 Exceptions to Parking Rates of the DCP 2013</p> <p>(i) A Green Travel Plan is required to accompany all DAs for new buildings and substantial alterations to existing buildings. The Green Travel Plans is to set out:</p> <ul style="list-style-type: none"> (i) Future travel mode share targets, specifically a reduction in car driver mode share ii) (ii) Travel demand management strategies to encourage sustainable travel iii) (iii) Initiatives to implement and monitor travel measures such as car share and bike share; and iii) (iv) alignment with Control i), 3.3 Exceptions to Parking Rates of this DCP. <p>(j) Car share spaces are to be provided in accordance with Part B7: 2.2 (Car Share) of this DCP</p>	<p>laneway/shared way.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>(k) All DAs are to provide electric charging stations in an accessible location on site.</p> <p><i>Note 1: Any provision of parking above the maximum requirements will be counted towards gross floor area.</i></p>		
22.	Sustainability		
	<p>(a) All buildings must achieve a minimum green star certification rating of 5 or equivalent (other recognised rating tools)</p> <p>(b) DAs for strategic node sites must be designed to achieve a GBCA exceeding Five-Star Green Star Design as Built with a sustainability strategy giving priority to the following innovations: -</p> <ul style="list-style-type: none"> - Waste collection (e.g. Automated underground waste) - Renewable energy opportunities - Water harvesting and re-use - Vertical and Roof Greening - Buildings shall incorporate passive design strategies in addition to materials which have less embodied energy, reducing operational energy and focussing on on-going well being of occupants <p>(c) All development must address the requirements of Part B3- Ecologically Sustainable Development of this DCP</p> <p>(d) Applications for new commercial office development premises and hotel/motel accommodation with a floor area of 1,000m² or more must achieve a minimum NABERS 6- star Energy and NABERS 5-star or 6-star Water rating</p> <p>(e) All development must provide 1 electric vehicle charging point per 5 parking spaces where onsite parking is provided.</p> <p>(f) All development must address the requirements of B6 Recycling and Waste Management</p> <p>(g) All new buildings are to provide a space for storage and sorting of problem waste such as E-waste, clothing, and hazardous waste.</p> <p>(h) All new development (other than alterations and additions, or development that is minor or ancillary in nature) is to incorporate a localised automated waste collection system in accordance with Council's Automated Collection System Guidelines.</p>	<p>Insufficient information has been provided in relation to a site-wide sustainability strategy.</p>	<p>No</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
23.	Water Management		
	<p>(a) DAs must address Part B8 – Water Management of the Randwick DCP 2013 in relation to water conservation, groundwater and flooding and Water Sensitive Urban Design</p> <p>(b) In addition to requirements of Part B8, applications for basement level/s must include:</p> <ul style="list-style-type: none"> (i) detailed designs by a qualified hydrological or structural engineer for a water-proof retention system (fully-tanked structure) with adequate provision for future fluctuations of water table variation of at least +/- 1 metre; and (ii) certification from a second qualified hydrological engineer experienced in the design of structures below a water table that the design of the groundwater management system will not have any adverse effects on surrounding property or infrastructure. 	Insufficient information has been provided in relation to water sensitive urban design.	No
24.	Aircraft Operations		
	<p>(a) DAs involving the use of cranes during construction and light poles must ensure compliance with Clause. 6.8 of the RLEP 2012 in relation to Airport Operations</p> <p>(b) Applications for new buildings and cranes during construction must meet the requirements of Part F3 - Sydney Airport Planning and Noise Impacts of the Randwick DCP 2013</p> <p>(c) Applications for development that exceed 51m AHD at Kingsford will be subject to an assessment process under the Airports (Protection of Airspace) Regulations, 1996.*</p>	Concurrence has been received from the Sydney Airport Corporation (refer to Appendix 2).	Yes
PART D			
27.	Solar Access – Public Open Space		
	<p>(a) New buildings and alterations and additions to existing buildings are to be designed to ensure that that the following locations shown on Figures 17a and 17b are not overshadowed by more than 10% in mid-winter (June 22nd) between the hours of 12noon and 2pm:</p> <ul style="list-style-type: none"> – Kensington Public School – Duke St Plaza 	The proposed development complies with the solar access provisions for the Bowral St Plaza.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> – Bowral St Plaza – Uni Lodge Plaza – Addison St Plaza – Kokoda Park – Todman Ave Plaza – Meeks St Plaza – Borrodale Road widening – Town Square Plaza – Market Site corner – Triangle site corner – Dacey Gardens <p>(b) New buildings and alterations to existing buildings are to retain solar access to a minimum of 50% of the site area of key public places identified in a) and shown on Figures 17a and 17b for a minimum of 3 hours in mid-winter (June 22nd).</p>		
28.	Wind Flow		
	<p>(a) DAs are to include a Wind Impact Assessment for new buildings over nine (9) storeys in height. The findings of the Wind Impact Assessment are to provide design solutions to minimise the impact of wind on the public and private domain</p> <p>(b) Development must not create a ground level environment where additional generated wind speeds exceed:</p> <ul style="list-style-type: none"> (i) 10 metres per second for active frontages along Anzac Parade and (ii) 16 metres per second for all other streets <p>(c) Buildings over 9 storeys are to incorporate design features that ameliorate existing adverse wind conditions so that the above criteria is achieved</p> <p>(d) Building design is to minimise adverse wind effects on recreation facilities and open spaces within developments</p> <p>(e) Balconies are to be designed to minimise wind impacts and maximise usability and comfort through recessed balconies, operable screens, pergolas and shutters</p> <p>(f) Balconies must be recessed on buildings over 45m in height.</p>	N/A	N/A
29.	Public Art		
	(a) Public Art is to be generally be consistent with Council's Public Art Strategy	Insufficient information has been	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)									
	<p>(b) All sites with frontages greater than 12 metres and corner sites, must incorporate artistic elements into the built form such as creative paving, window treatments, canopy design, balustrading, signage and wayfinding, lighting to assist illumination levels after dark and the promotion of active uses in the public spaces</p> <p>(c) In addition to clause 29(b) site specific public art is to be provided on identified sites, plazas and mid-block links as per the block by block controls in Part B of this DCP</p> <p>(d) Public art is to be located in areas which offer the public a free and unobstructed visual experience of the work</p> <p>(e) Incorporate creative lighting, decorative elements and/or murals in laneways, share ways and pedestrian links</p> <p>(f) Submit an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA.</p>	submitted in relation to public art.										
30.	Affordable Housing											
	<p>(a) All development within the 'Kensington and Kingsford Town Centres Affordable Housing Contributions Area' (Figure 18) must contribute towards the provision of affordable housing based on the following rates:</p> <p><small>Table – Affordable Housing Contributions</small></p> <table><tr><th>Date of DA lodgement</th><th>Percentage of residential gross floor area to be dedicated towards affordable housing</th><th>Equivalent Monetary contribution *</th></tr><tr><td>From 13 August 2020 up to and including 13 August 2022</td><td>3%</td><td>\$324.38/sqm</td></tr><tr><td>After 13 August 2022</td><td>5%</td><td>\$540.62/sqm</td></tr></table> <p><small>* where less than whole unit is provided</small></p> <p>(b) Affordable Housing contributions are to be provided in accordance with the Affordable Housing Plan 2019 for the Kensington and Kingsford Town Centres</p> <p>(c) The affordable housing contribution rate is to apply to the residential gross floor area component of the development</p> <p>(d) Contributions towards affordable housing are to be provided through a dedication of completed units with any remainder paid as a monetary contribution in accordance with the affordable housing contributions table referred to in clause a).</p>	Date of DA lodgement	Percentage of residential gross floor area to be dedicated towards affordable housing	Equivalent Monetary contribution *	From 13 August 2020 up to and including 13 August 2022	3%	\$324.38/sqm	After 13 August 2022	5%	\$540.62/sqm	The submitted letter of offer fails to provide any details regarding an affordable housing monetary contribution.	No
Date of DA lodgement	Percentage of residential gross floor area to be dedicated towards affordable housing	Equivalent Monetary contribution *										
From 13 August 2020 up to and including 13 August 2022	3%	\$324.38/sqm										
After 13 August 2022	5%	\$540.62/sqm										
31.	Community Infrastructure											

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>(a) In accordance with Clause 6.17 of the RLEP 2012 an alternative building height and additional floor space ratio may be achievable where Council and the proponent of the DA have agreed to or entered into a planning agreement for the basis of paying the Community Infrastructure Charge</p> <p>(b) The delivery of Community Infrastructure is to be carried out in accordance with the Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan 2019.</p>	Refer to discussion at Section 6.6 of this report.	No
32.	Public Domain and Landscape		
	<p>(a) Development within the public domain is to be consistent with Figures 17a and 17b: The Public Domain Strategy.</p> <p>(b) DAs for new buildings and substantial alterations and additions to more than 50% of the existing floor area are to be accompanied by a Public Domain Plan that demonstrates consistency with the public domain objectives within this DCP and addresses the following:</p> <ul style="list-style-type: none"> (i) street levels (ii) interface between the public and private domains, including levels (iii) detail of the entire adjoining streets (iv) collection, flow and treatment of stormwater (v) paving and other hard surfaces (vi) street trees and other vegetation – Randwick Street Tree Master Plan (vii) lighting (viii) safety (ix) seating and other furniture (x) stairs and other methods of managing gradient change (xi) refuse bins (xii) signage, including interpretation and wayfinding signage (xiii) public art (xiv) water sensitive urban design (WSUD) such as landscaped swales to improve the quality of water entering the ground (xv) through site links and shared zones <p>(c) Street trees are to be provided in accordance with the Randwick Street Tree Master Plan and the Light Rail Urban Design Guidelines.</p>	N/A	N/A

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	(d) Development adjacent to lanes should provide for: <ul style="list-style-type: none"> (i) Active ground floor uses to encourage pedestrian activity (ii) Adequate setbacks from sensitive land uses such as residential and schools (iii) Adequate lighting to address safety (iv) Design solutions that maintain public access at all times regardless of mobility impairments (v) Business servicing that can reasonably take place with minimal pedestrian conflict. 		
34.	Air Quality		
	(a) DAs are to include a report from a suitably qualified air quality consultant that addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants (b) DAs are to submit a statement which explains how the proposal has addressed the NSW Government 'Development near rail corridors and busy roads – Interim Guideline' (c) Air intake for proposals are to be sited well away from Anzac Parade or the pollution source (e.g on top of tall buildings) or provided with filtration to remove particulates; and (d) DAs for sensitive land uses such as childcare centres, schools or aged care facilities must submit an air quality study prepared by a suitably qualified expert demonstrating how air pollution exposure and health risks will be mitigated.	N/A	N/A

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/208/2024

Development Application Report No. D69/24

Subject: 6 Fenton Avenue, Maroubra (DA/510/2018/A)

Executive Summary

Proposal:	Section 4.56 Modification to an approved boarding house development including deletion of the basement level car park and provision of two on-site car spaces and an on-street carshare space along front setback (Fenton Avenue frontage), deletion of studio over parking area at the rear, reducing the number of approved rooms from 18 to 17, changes to floor layout and changes to external materials and finishes (northern elevation).
Ward:	Central Ward
Applicant:	Abad Kareem
Owner:	Savannah No.1 Pty Ltd
Cost of works:	\$1,341,417.00
Reason for referral:	Original determination by RLPP and approval granted by LEC

Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.56 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. 510/2018 for an approved boarding house development including deletion of the basement level car park and provision of on-site parking, deletion of studio over parking area at the rear, reducing the number of approved rooms from 18 to 17, changes to floor layout and changes to external materials and finishes at No. 6 Fenton Avenue, Maroubra, in the following manner:

Amend the following Conditions

- **Amend Condition 1 to read:**

Approved Plans & Supporting Documentation

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>
DA-04.00 Rev 10	Pinnacle Plus	28 October 2019
DA-04.10 Rev 11	Pinnacle Plus	29 October 2019
DA-04.20 Rev 11	Pinnacle Plus	29 October 2019
DA-04.30 Rev 10	Pinnacle Plus	28 October 2019
DA-04.40 Rev 10	Pinnacle Plus	28 October 2019
DA-04.50 Rev 10	Pinnacle Plus	28 October 2019
DA-05.00 Rev 11	Pinnacle Plus	29 October 2019
DA-05.05 Rev 10	Pinnacle Plus	28 October 2019
DA-06.00 Rev 10	Pinnacle Plus	28 October 2019
DA-06.10 Rev 10	Pinnacle Plus	28 October 2019
DA-06.20 Rev 8	Pinnacle Plus	29 October 2019
DA-06.30 Rev 10	Pinnacle Plus	28 October 2019
DA-06.40 Rev 11	Pinnacle Plus	29 October 2019
DA-08.50 Rev 11	Pinnacle Plus	29 October 2019
DA-08.51 Rev 11	Pinnacle Plus	29 October 2019

LS01 Issue A	Melissa Wilson Landscape Architects	2 October 2019
LS02 Issue A	Melissa Wilson Landscape Architects	2 October 2019

<i>BASIX Certificate No.</i>	<i>Dated</i>
943134M_04	18 November 2019

EXCEPT where amended by:

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

Plan	Drawn by	Dated	Received by Council
Site Plan S4.56-03.00 Rev 3	Pinnacle Design Studio	16 July 2024	16 July 2024
Ground Floor S4.56-04.10 Rev 4	Pinnacle Design Studio	16 July 2024	16 July 2024
First Floor S4.56-04.20 Rev 3	Pinnacle Design Studio	16 July 2024	16 July 2024
Second Floor S4.56-04.30 Rev 3	Pinnacle Design Studio	16 July 2024	16 July 2024
Third Floor S4.56-04.40 Rev 3	Pinnacle Design Studio	16 July 2024	16 July 2024
Roof S4.56-04.50 Rev 3	Pinnacle Design Studio	16 July 2024	16 July 2024
Section A S4.56-05.00 Rev 3	Pinnacle Design Studio	16 July 2024	16 July 2024
Section B and C S4.56-05.10 Rev 1	Pinnacle Design Studio	8 February 2024	16 July 2024
Front and Rear Elevations S4.56-06.00 Rev 3	Pinnacle Design Studio	21 June 2024	16 July 2024
North Elevation S4.56-06.10 Rev 3	Pinnacle Design Studio	16 July 2024	16 July 2024
South Elevation S4.56-06.20 Rev 2	Pinnacle Design Studio	21 June 2024	16 July 2024
External Materials and Finishes S4.56-08.10 Rev 1	Pinnacle Design Studio	8 February 2024	16 July 2024

Amend Condition 2 by adding:

- d) The bin storage structure on the northern boundary is to be lowered to a maximum height of 1.8m.

Amend Condition 3 to read:

- The Boarding House Management Plan dated October 2019, prepared by ABC Planning Pty Ltd, shall be amended to include the following aspects to the satisfaction of Council's Manager Development Assessment:

- The number of approved parking spaces being 3.

- The restriction on the number of approved lodgers being 17.
- ~~No boarding room will be occupied by more than 1 single lodger.~~
- Fire and Flood Evacuation procedures.
- All new occupants of this development must be informed of evacuation procedures.
- Any recommendations of the acoustic report No. BA190718 Version D, dated October 2019 and prepared by Blackett Acoustics (as amended in accordance with condition no. 4).
- The minimum length of stay for lodgers shall be three (3) months with the same room being let out to the same lodger for no less than three (3) months, and no maximum length of stay.
- No party policy.
- Apply a management policy that restricts use of the communal open space on the ground and third floor levels as follows:
 - prohibits access to and use of communal open space from between 10:00pm and 7:00am each day.
 - restricts the maximum number of people permitted to occupy the rooftop communal area to 10 people.
 - no live or amplified music.

Amend Condition 33 to read:

33. The garbage room shall be sized to contain a total of 10 x 240 litre bins (comprising 5 garbage bins, 4 recycle bins & 21 green waste) and with adequate provisions for access to all bins. Details showing compliance are to be included in the construction certificate.

Amend Condition 90 to read:

Flooding

90. The PCA shall be satisfied that all flood control/mitigation requirements have been provided in accordance with the approved plans and conditions of consent including but not limited to;
- All habitable floor is provided at or above RL 6.72 AHD being the level of the 1% AEP (1 in 100yr flood) + 0.5m freeboard
 - The open hardstand carspaces are provided at or above RL 5.89 AHD being the level of the 5% AEP (1 in 20yr) flood.
 - Flood Storage has been provided under the ground floor.

A copy of the relevant documentation is to be forwarded to Council's Development Engineers

Amend Condition 112 to read:

112. Maximum permanent resident occupancy shall be 17 persons.



Delete the following conditions:

- Condition 5 - Car Share Spaces
- Condition 6 - Car Hoist
- Condition 8 - Geotechnical Investigation Report
- Condition 16 - Flooding
- Condition 17 - Acid Sulphate Soil Investigation
- Condition 25 - Car Hoist
- Condition 26 - Flood Management
- Condition 30 - Groundwater

- **Condition 31 - Groundwater**
- **Condition 34 - Waste Storage Area**
- **Condition 63 - Groundwater & Stormwater during construction**
- **Condition 91 - Flood Gate**
- **Condition 96 - Basement**

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Attachment/s:

1.  LEC Devt Consent Conditions - DA/510/2018 - 6 Fenton Ave - SHARP
 MFD_20191224_105812.pdf



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1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) under Council's Delegations of Authority in accordance with the Ministers Direction, because the original application was determined by the RLPP (Refusal) before consent was granted by the NSW Land and Environment Court, and the modifications are not of minimal environmental impact.

The original development application was referred to the RLPP because more than 10 unique submissions by way of objection were received.

The original development application was approved by the NSW Land and Environment Court for demolition of the existing structures and construction of a 4 level boarding house comprising 18 boarding rooms above basement parking for 6 vehicles plus two at-grade spaces and associated site works.

The proposed modification involves the deletion of one boarding room in a studio above the parking area at the rear of the site and the removal of the basement level car park. The proposed modified development will contain 17 boarding rooms and 3 at-grade parking spaces.

The application was publicly notified in accordance with the Randwick Community Engagement Strategy. Five submissions in objection were received by Council. The key concerns raised in the submissions relate to the reduction in on-site parking and the impact on parking congestion in the street.

The key assessment issue relates to parking and traffic impacts.

The approved boarding house development was granted consent under the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP), which has since

been repealed and replaced by the State Environmental Planning Policy (Housing) 2021 (Housing SEPP). Despite the reduction in on-site parking, the proposed modified development will comply with the parking requirements for the similar 'co-living' form of housing under the new Housing SEPP. This parking rate requirement of 0.2 spaces per room is also consistent and compliant with the parking requirements for boarding houses within accessible areas under Division 2 of the Housing SEPP, noting the use is still classified as a boarding house under the previous control framework at the time of the original approval. Furthermore, the site has good access to public bus transport reducing the reliance of private car travel and encouraging the use of sustainable modes of transport by the future residents. In addition, the proposal will moderate the intensification of the approved boarding house by reducing the number of boarding rooms by one to a total of 17 boarding rooms. The proposed modified development is therefore acceptable in terms of parking.

The proposal will not result in any adverse impact on the performance of the external road network or key intersections in the locality. The proposed modified development is acceptable in terms of traffic impacts.

The proposed modified development is therefore recommended for approval.

2. Site Description and Locality

The site is legally described as Lot 5 and Lot 6 in DP 312363, with a street address of 6 Fenton Avenue, Maroubra. The site is regular in shape, is relatively flat and has a northwestern to southeastern orientation.

The site comprises a single dwelling house with a garage at the rear accessed via a right-of-way that benefits Nos. 2-4, 6, and 8 Fenton Avenue. Refer to **Figures 1 and 2**.

No building works have commenced on the site.



Figure 1 – View of existing site from Fenton Avenue



Figure 2 – View of right-of-way access from Chapman Avenue (metal fence)

3. Background and Current Approval

On 13 December 2018, the development application was refused by the RLPP primarily on the grounds of non-compliance with the R3 zone objectives and the Building Height development standard under RLEP and the controls in the former ARH SEPP and insufficient parking and flooding impacts.

On 6 February 2019, the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against Council's refusal of the development application. Following a Section 34 conference, the applicant provided Council with amended plans which addressed the contentions raised in the proceedings.

The application was approved by the NSW Land and Environment Court on 24 December 2019 (NSWLEC 1640) for demolition of existing structures and construction of a new 4 level boarding house comprising 18 boarding rooms above basement parking for 6 vehicles plus two at-grade spaces and associated site works.

4. Proposal

The originally lodged modification application seeks to modify the consent in the following way:

<i>Level/Elevation</i>	<i>Proposed Modification</i>
<i>Basement</i>	<ul style="list-style-type: none"> deletion of the basement level car park comprising 6 car parking spaces, 4 motorcycle parking spaces, car lift access and bin storage room. The flood storage under the building will be retained.
<i>Ground Level</i>	<ul style="list-style-type: none"> removal of the car lift at the rear of the site provision of two on-site car spaces and 3 motorcycle spaces provision of an on-street carshare space along front setback (Fenton Avenue frontage)

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	<ul style="list-style-type: none"> provision of a bin storage room and meter room on the northern boundary reconfiguration of the bathroom to Unit 3 to accommodate hydrant storage. Unit 3 will no longer be an accessible unit. Changes to the lobby including removal of the circular planter, relocation of the bicycle racks and addition of FIP cabinet and meter room adjacent to the stairwell provision of a laundry cabinet in the communal room extension to the living area Unit 4 (accessible unit) inclusion of a planter box at rear communal area, adjacent to the car parking area deletion of studio above the parking area at the rear of the site
<i>First Floor</i>	<ul style="list-style-type: none"> provision of a privacy screen to the lobby provision of meter room adjacent to the stairwell extension to the internal living area Unit 10 Unit 10 will be an accessible unit (formerly Unit 3)
<i>Second Floor</i>	<ul style="list-style-type: none"> provision of a privacy screen to the lobby provision of meter room adjacent to the stairwell extension to the living area Unit 16 (accessible unit)
<i>Third Floor</i>	<ul style="list-style-type: none"> provision of an external door to the stairwell opening to the communal rooftop provision of bench seating to the edge of the communal rooftop area
<i>Northern Elevation</i>	<ul style="list-style-type: none"> replacement of the vertical timber cladding and off form concrete with colorbond monument axon cladding (vertical dark colour metal cladding)

The originally lodged modification would reduce the:

- number of approved boarding rooms by 1, from 18 to 17;
- gross floor area (GFA) by 41.6m² from 384.6m² to 343m²;
- approved floor space ratio (FSR) from 1.04:1 to 0.92:1; and
- number of on-site parking spaces from 8 to 2.

The proposed modification will not change to the approved building height and setbacks of the boarding house.

Amended Proposal

On 2 July 2024, the applicant submitted amended plans, resulting in:

- increased number of at-grade car parking spaces by 1, from 2 to 3;
- a reduction in the number of motorcycle spaces by 2, from 3 to 1;
- extension to the bin room at the northern boundary; and
- relocation of the bicycle rack and a meter room to the southern boundary.

On 16 July 2024, Council received updated plans showing the at-grade car spaces at RL5.89 AHD in accordance with the flood requirements. This assessment is based on the amended plans received 16 July 2024.

Figures 3 to 8 provide a comparison of the approved and proposed modified development.



Figure 4 – Ground Floor Plan (proposed modified – as amended)

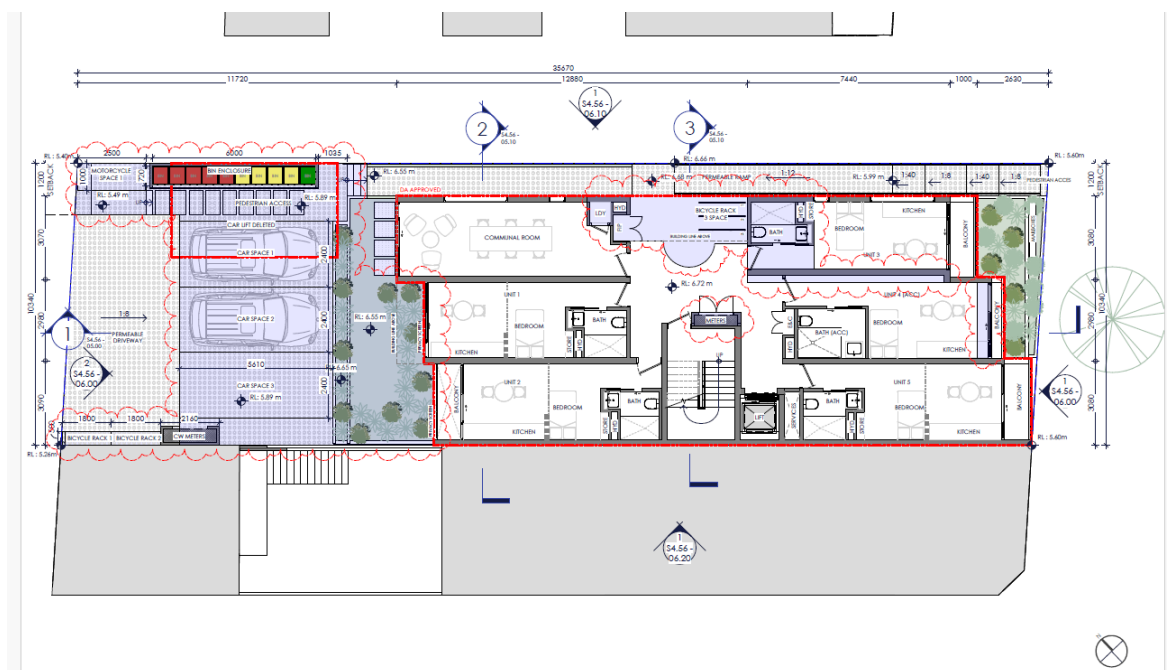
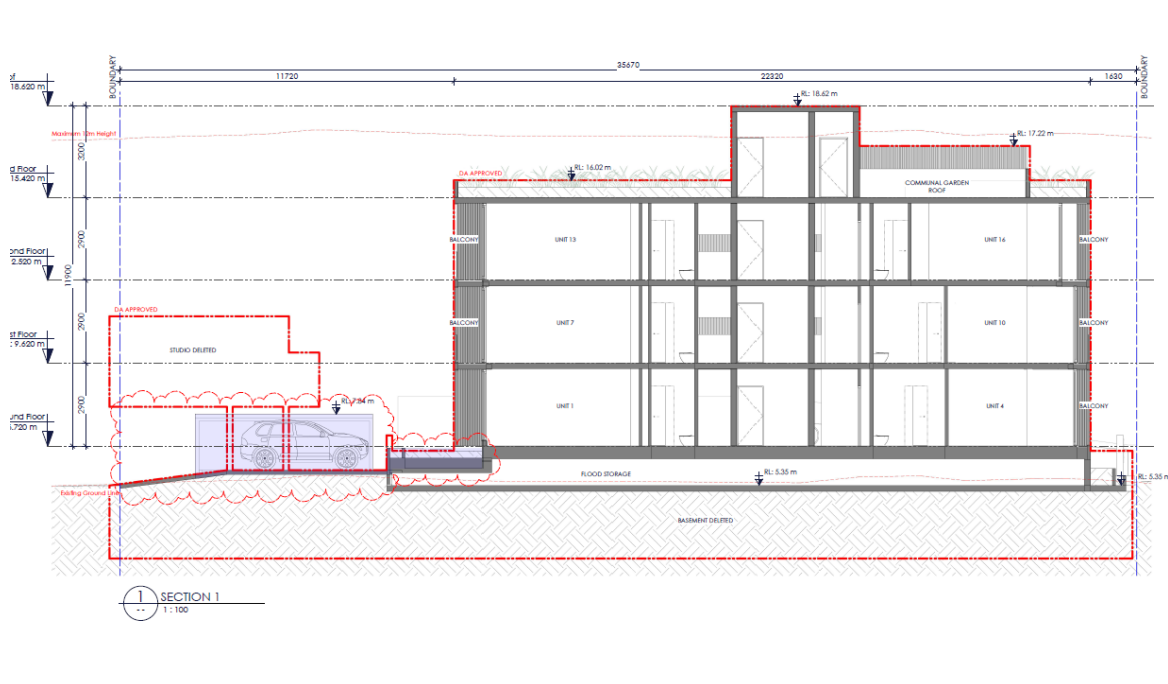
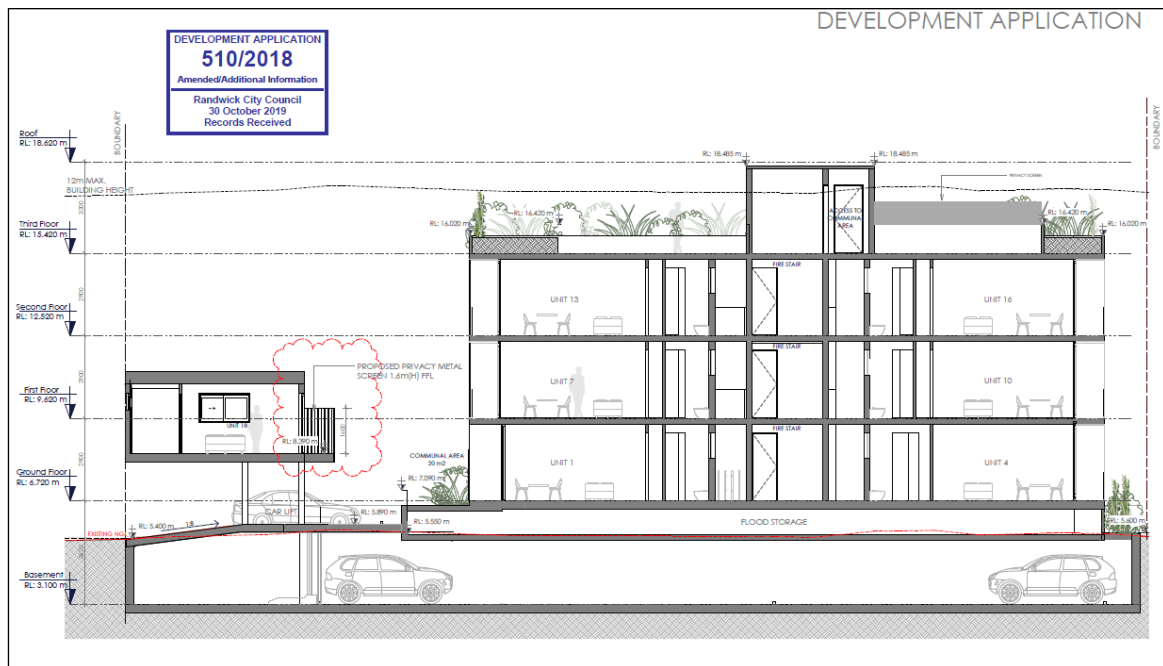


Figure 4 – Ground Floor Plan (proposed modified – as amended)



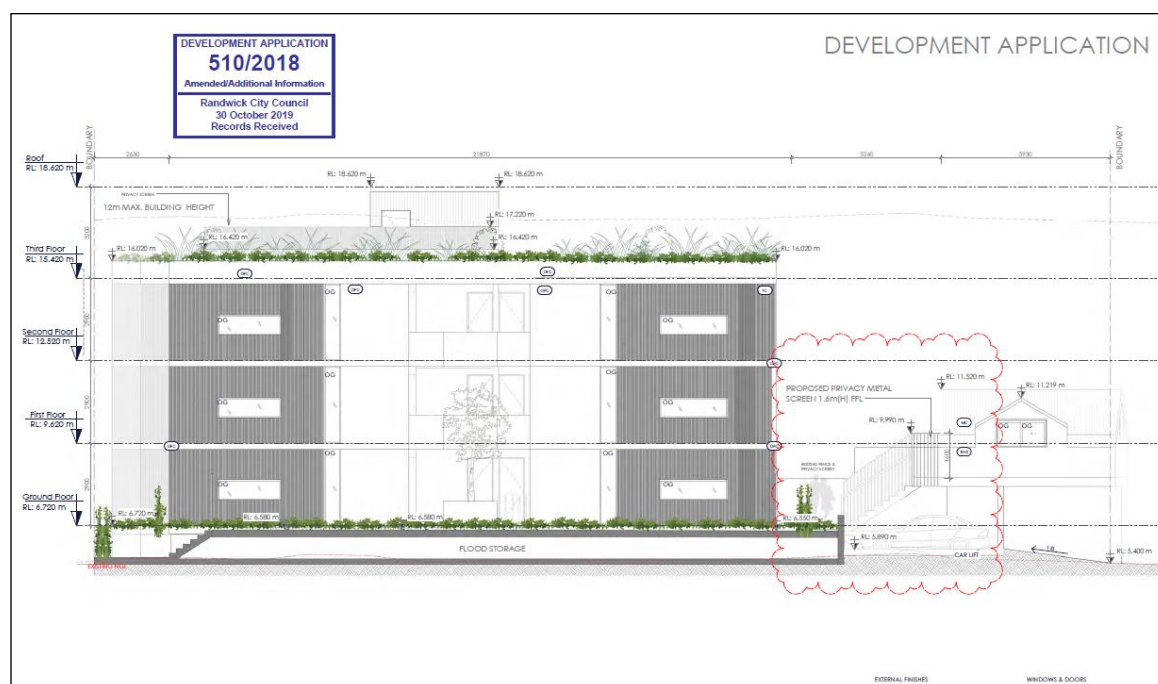


Figure 7 – North Elevation (approved)

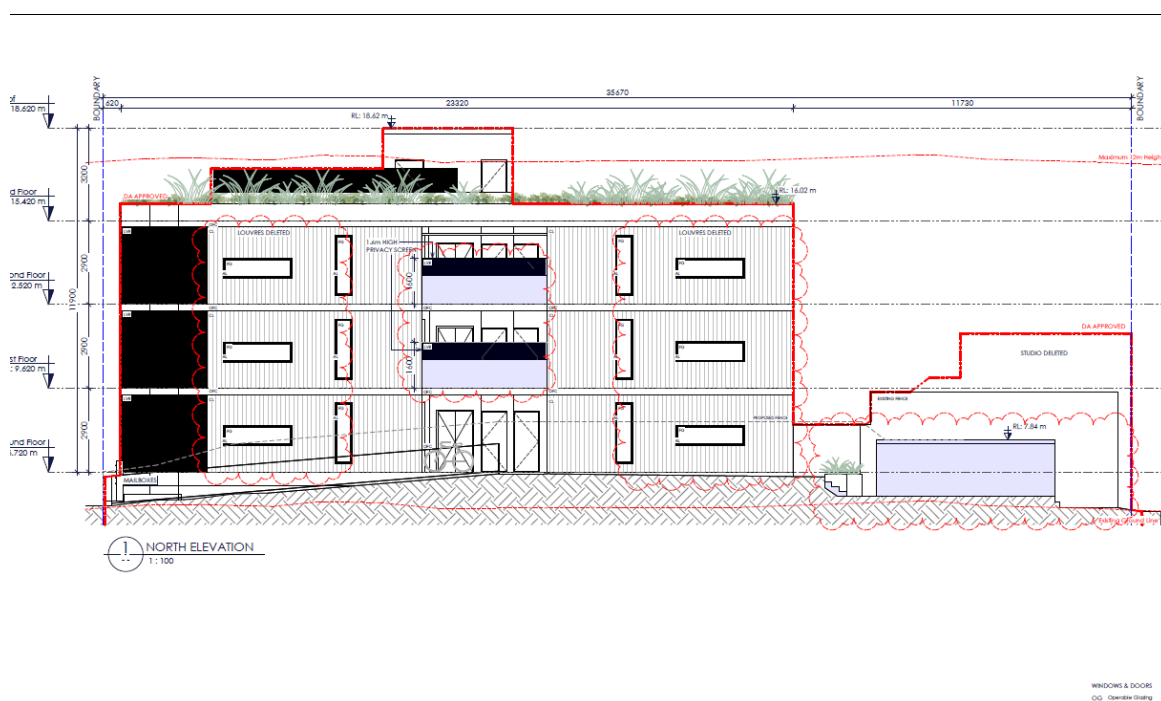


Figure 8 – North Elevation (proposed modified – as amended)

5. Section 4.56 Assessment

Section 4.56 of the *Environmental Planning and Assessment Act 1979* states that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if -

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: The proposed modifications would not fundamentally alter the originally approved development for the following reasons:

- The approved building envelope in terms of the setbacks and height will not change.
- There would be no change to the use and operation of the approved boarding house.
- The density and intensity of the proposed modifications remain largely the same and if anything, are reduced due to one less boarding room, such that equal or lesser environmental impacts would be expected.
- The proposed modifications would result in lesser visual impacts due to the removal of the studio building above the parking area at the rear of the site.
- The approved landscape works remain largely unchanged.
- The proposed modifications would not constitute a change to the “material or essential features” of the approved development.

On that basis, Council accepts that the proposed modified development is substantially the same development as the development for which the consent was originally granted.

- (b) it has notified the application in accordance with-**
(i) the regulations, if the regulations so require, and
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment: In accordance with the provisions of Council’s Community Engagement Strategy, the application was placed on neighbour notification for a period of fourteen (14) days between 23/02/2024 to 18/04/2024 and the adjoining property owners were notified in writing of the proposal and invited to comment.

- (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and**

Comment: Council issued notification letters to each person who made a submission in respect of the relevant development application of the proposed modification, in accordance with the provisions of Council’s Community Engagement Strategy (as noted above).

- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.**

Comment: Six submissions were received in objection to the proposed modification. Of these, one submission supported the proposal, and five submissions were in objection. A summary of the key issues raised in the objection submissions is provided below.

- **19 Chapman Avenue**

Issue	Comment
The proposed reduction in on-site parking spaces will have an adverse impact on parking congestion in the surrounding streets	The proposed reduction in parking on the site is consistent with the policy shift to reduced parking for similar forms of diverse housing under the current Housing SEPP. Council’s Development Engineer raised no objection to the reduction in parking or parking congestion in the surrounding streets. Refer to the Key Issues section of this report.
Public bus transport to the CBD is at capacity	This is not a relevant matter for consideration as the capacity of public bus services is out of the control of Council. This is a matter for Sydney

	Buses.
Fenton Avenue currently has parking restrictions and the proposed car share space in front of the site will not offset the adverse parking impacts resulting from a reduction in parking on the site.	The originally proposed car share space at the front of the site has been removed from the proposal. In any event, the amended proposal is acceptable in terms of parking. Refer to the Key Issues section of this report.

- **2-4 Fenton Avenue**

Issue	Comment
Insufficient parking and increased congestion	The amended proposal is acceptable in terms of parking. Refer to the Key Issues section of this report.
Unsafe parking and increased foot traffic at night	Council's Development Engineer raised no objection in terms of traffic, parking and pedestrian safety in and around the site.
Increased parking in the street will impact the local community quality of life and environmental aesthetics	The amended proposal provides adequate parking on the site and is not expected to have a significant adverse impact on the amenity of the street.
The proposal deviates from the parking requirements and will establish an undesirable precedent.	The proposal complies with the car parking requirements for similar development under the current Housing SEPP. Whilst each application is determined on its merits, it is not expected an undesirable precedent would be established by the proposed modified development.

- **2-4 Fenton Avenue**

Issue	Comment
Proposed change to external finishes will increase retained heat and create noise issues from steel cladding and echo effect. The northern elevation will be subject to solar radiation and increase amount of heat absorbed, increase temperature inside the building reducing amenity for occupants. The black colour will exacerbate heat absorption.	The proposed colorbond monument axon cladding incorporates thermal qualities and is not expected to retain heat or reduce amenity for the future occupants.
Reduction in greenery will increase heat island effect and loss of visual privacy	The proposal will result in no reduction in the approved landscape area at ground level and the green roof.
Water sensitive urban design has been neglected.	Council's Development Engineer raised no objection in terms of stormwater drainage arising from the proposed modified parking layout.
The increase in non-permeable sealed ground and lack stormwater retention and flooding will result in adverse impacts.	The proposal will not result in any reduction in permeable area across the site. Council's Development Engineer raised no objection in terms of stormwater drainage and flooding.
Reduction in laundries will result in increase drying in rooms and damp and mould issues.	A laundry cabinet will be provided within the indoor communal room. The removal of laundry facilities within each room is not expected to increase damp and mould issues in the boarding rooms.
Removal of on-site managers residence will increase risk ant-social behaviour.	The approved plans do not indicate a manager's residence on the site.
Reduction in common open space will lessen amenity for residents	The proposed modified development will not result in any reduction in the approved quantum of communal area available for future occupants.

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Reduction in parking adverse impact on access and amenity within the street	Refer to discussion above and in the Key Issues section of this report.
Proposed development does not align with existing local character	The proposed modified development will not result in any change to the overall height, bulk and scale and therefore it would maintain the existing local character, predominantly in accordance with the original approval.
Lack of bin storage and inadequate access to street for bin collection	The proposed modification provides a new bin storage area along the northern boundary at ground level. Council's Development Engineer raised no objection in relation to the size, capacity and access to the bin storage area.
Reduced solar access and ventilation to adjacent properties	The proposed modified development will not result in any change to the approved built form other than removal of the studio above the parking area. The proposal will therefore not result in any additional overshadowing impacts to the adjoining properties beyond what has already been approved by the LEC.
Limited floor area and amenity for the residents of the boarding house	The proposed modified development will not result in any significant change to the approved internal layout of the boarding rooms. The proposal will therefore not result in any reduced internal amenity beyond what has already been approved by the LEC.
Poor solar access, acoustic amenity and private open space	The proposed modified development will not result in any significant change to the approved built form and design or the intensification of the use, resulting in no additional impacts in terms of solar access, acoustic amenity and private open space (balconies) beyond what has already been approved and deemed acceptable by the LEC.
No integration of energy efficient facilities such as rooftop solar or water retention for watering plants	This is not a matter for consideration under this modification application as there will be no change to the rooftop garden or sustainability measures required under the approved BASIX.

- **194 Marine Parade**

Issue	Comment
Lack of parking in the street exacerbated by the time restrictions	The amended proposal is acceptable in terms of parking. Refer to the Key Issues section of this report.

- **Chapman Avenue**

Issue	Comment
The reduction in parking will increase parking congestion in the street	The amended proposal is acceptable in terms of parking. Refer to the Key Issues section of this report.

6. Key Issues

Parking

The approved boarding house provides a basement parking level for 6 vehicles and 4 motorcycle spaces accessed via a car hoist, and 2 at-grade car spaces, including one car share space, accessed from the right-of-way (ROW) at the rear of the site, equating to a total of 8 car spaces on the site.

The proposed modification involves removal of the basement parking level and a corresponding reduction from 8 car spaces to 3 car spaces. The quantum of motorcycle spaces will also be reduced from 4 motorcycle spaces to 1 motorcycle space on the site.

Concerns have been raised in the submissions in relation to the reduction in on-site parking and the impact this would have on parking congestion in the surrounding streets.

The applicant submitted a Traffic and Parking Statement (TPS) with the modification application to assess the traffic and parking impacts associated with the reduced parking provision on the site. The TPS considers that the reduced parking provision is acceptable based on a parking rate of 0.2 spaces per room applicable to the new form of 'co-living' housing under the State Environmental Planning Policy (Housing SEPP) 2021. The TPS also considers that adequate motorcycle and bicycle parking has also been provided in accordance with the Housing SEPP.

As outlined in the 'Section 4.15 Assessment' table below, the approved boarding house development was granted consent under the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP), which has since been repealed and replaced by the new Housing SEPP 2021.

An assessment against the relevant controls in both the repealed ARH SEPP and the current Housing SEPP has been undertaken to guide the merit assessment.

Under the repealed ARH SEPP, the applicable parking rate of 0.5 spaces per boarding room (not carried out by or on behalf of a social housing provider) is a development standard, that if complied with, cannot be used to refuse consent. Based on the previously approved number of boarding rooms of 18, the parking requirement is 9 car spaces (0.5 spaces x 18 boarding rooms). The approved development provided a total of 8 car spaces, which represents a shortfall of 1 car space. The proposed modified development provides 3 car spaces, which represents a shortfall of 6 car spaces when considered against the parking rate for boarding houses under the former ARH SEPP.

Under the new Housing SEPP, the applicable parking rate for a 'co-living' development of 1 space per 5 rooms (within an accessible area) is a non-discretionary standard and the motorbike and bicycle parking requirements no longer have a compulsory numerical component. A total of 3 car spaces are required (0.2 spaces x 17 boarding rooms), based on the reduced parking rate for 'co-living' development. As the proposed modified development (as amended) provides 3 car spaces on the site, it complies with the parking requirement under the Housing SEPP 2021. Council notes that this parking rate of 0.2 spaces (within an accessible area) is also applicable to a boarding house use under division 2 of the Housing SEPP 2021 and that a consistent parking provision has been secured as a part of the amended scheme, given that the proposal sought this use at the time of the original court determination.

In addition to the car parking rates, the motorcycle and bicycle rates have also changed from the numerical requirement of 0.5 spaces per boarding room under the ARH SEPP, to a non-prescriptive requirement of '*adequate bicycle and motorcycle spaces*' for a similar co-living development under the Housing SEPP. The applicant's TPS concludes the provision of bicycle and motorcycle spaces on the site is adequate.

The proposed modified development is acceptable in terms of parking for the following reasons:

- Whilst the existing approved boarding house is not the same as a 'co-living' development under the new Housing SEPP, it does share similar characteristics, and therefore applying the reduced parking rate to the proposed modified development has merit. On that basis, the modified proposal (as amended) complies with the less onerous parking controls for similar development under the Housing SEPP.
- The site has good access to public transport being located approximately 270m walking distance from a public bus stop on Marine Parade, which provides regular services to Sydney Airport, Bondi Junction, Maroubra Beach and the City. The development is therefore located on 'accessible' land under the Housing SEPP, and the application of a reduced parking rate is appropriate in this circumstance.

- There is no intensification of land use as there would be no increase to the number of boarding rooms, instead, the number of boarding rooms will be reduced by one, which will also assist in moderating the parking demand generated by the proposed modified development.
- The reduction in parking is likely to assist in providing more affordable housing on the site as boarding rooms with parking facilities generally attract higher rents, and this outcome is consistent with the overall policy shift in favor of reduced parking for similar diverse housing developments under the new Housing SEPP.
- The proposal provides 5 bicycle spaces on the site, which is two more than required under the former ARH SEPP, and is adequate in terms of the bicycle provisions under the current Housing SEPP would encourage the use of sustainable transport modes by the future residents.
- The provision of 1 motorcycle space is adequate for the site, noting the constraints imposed by the approved building footprint and the competing demands for space at ground level for other uses such as the waste facility and site permeability / landscaping.

The originally lodged modification application proposed a Go-get car share space at the street frontage of the site to assist with offsetting the reduction in on-site parking. Council's Development Engineer raised concerns with the feasibility of a public car share space due to it being in a significant flood zone and the lack of evidence provided by the applicant from the carshare company in support of a space at that location. The applicant subsequently removed the proposed car share space from the amended proposal.

Council's Development Engineer reviewed the amended proposal and raises no objection to the provision of 3 car spaces and 1 motorcycle car space on the site.

On that basis of the above merit assessment, the removal of the basement parking level and the corresponding reduction in parking on the site is acceptable and can be supported.

Traffic

The *Roads and Maritime (RMS) Guide to Traffic Generating Developments 2002* does not include traffic generation rates for boarding house developments. The applicant's TPS includes an assessment of the expected traffic generation of the modified development on a 'first principles' approach, which considers the total number of on-site car parking spaces provided, and the expected time periods at which the residents would depart from and arrive at the development.

Based on the TPS, the proposed development will result in a net increase in traffic generation of 2 vehicle trips / hour during both the weekday AM and PM peak periods, which equates to only one additional vehicle trip every 30 minutes. The assessment concludes that this will have no material impact on the performance of the external road network or key intersections in the locality and accordingly, no external improvements will be required to facilitate the development.

The amended proposal includes one additional car space on the site. Whilst the applicant's TPS was not updated to reflect the increase in on-site parking under the amended proposal, the additional car space is not likely to trigger any significant additional traffic beyond what has already been assessed, noting that Council's Development Engineer raised no objection to the amended proposal in that regard.

The proposed modified development, as amended, is therefore acceptable in terms of traffic generation and impacts on the surrounding road network.

7. Referral comments

Council's Development Engineer provided the following comments:

General Comments

There are no objections to the proposed modification subject to the comments and conditions in this consent.

Parking CommentsApproved Development

The approved boarding house development was granted consent under the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) which has since been repealed and replaced with the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

The proposed boarding house was approved by the L&E court for 18 rooms. Under the applicable parking control at the time of 1 space per 2 rooms under the ARH SEPP the required parking provision was deemed to be 9 spaces.

Eight spaces were provided including 1 carshare space and 1 accessible space in a basement carpark & accessed via a car lift, which was deemed to be satisfactory.

Section 4.56 proposal

The total number of rooms is proposed to be reduced from 18 to 17 and the basement carpark is proposed to be deleted with some carspaces relocated to ground level and reduced in number to 2 carspaces only. An on-street carspace is also proposed to be dedicated for a carshare space.

Although originally assessed under the AHSEPP it is noted the approved boarding house development is similar in nature to the 'co-living' use under the new Housing SEPP (2021), which will be the applicable control for similar development going forward and the submitted traffic report has therefore considered the corresponding car parking rates in its assessment of the S4.56 application.

Clause 68(2) of the Housing SEPP (2021) specifies the following car parking rates for co-living development;

- 0.2 parking spaces for development in an accessible area
- Otherwise 0.5 spaces per room.

The boarding house is within 270m of bus stops with regular and frequent services to destinations such as the City and Bondi Junction and therefore would meet the criteria for an "accessible area" as defined in the Housing SEPP.

When considering the updated parking control the development would require a minimum provision of $0.2 \times 17 = 3.4$ (say 3 spaces). The proposed development provides 3 off-street spaces and therefore would meet the new control.

Motorbike and Bicycle Parking

Under Clause 30(h) in the old AHSEPP (2009) motorbike and bicycle parking were compulsory requirements and were to be provided at the rate of 1 space per 5 rooms resulting in a provision of 4 motorbike and 4 bicycle spaces for the approved development.

Under the new Housing SEPP 2021) being the applicable control for new developments going forward there is no longer any compulsory requirement for motorbike and bicycle parking. Clause 69(1) (h) Of the Housing SEPP (2021) only states;

(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.

The Section 4.56 application proposes up to 1 motorbike and 5 bicycle spaces. This is considered to be adequate and no objections are raised to the revised amount of motorbike and bicycle parking.

Carshare Space

As the proposed development would now meet the new parking controls a carshare space is no longer considered critical to meet the parking provision. Condition 5 may therefore be deleted. Note this does not prohibit the installation of a carshare space if desired.

The parking provision is considered satisfactory however with the deletion of the basement and associated car lift, a number of conditions relating to these aspects are no longer required. Conditions 5, 6 & 25 are therefore recommended to be deleted.

Flooding Comments

The site is significantly impacted by flooding with the following flood levels specified.

- **The level of the 5% AEP (1 in 20yr) flood level on the site is RL 5.89 AHD**
- **The level of the 1% AEP (1 in 100yr) flood level on the site is RL 6.22 AHD**

The minimum flood planning level for habitable floor is RL 6.72 AHD (1% AEP + 0.5m)

Approved Development

The approved development included a car-lift with the platform at ground level entry and any openings provided above the 1% AEP (1 in 100 yr) flood level, which complied with Part B8 of Council's DCP.

The proposed basement was protected from flooding by this elevated entrance and required tanking and waterproofing of the basement by conditions 30 & 31 in the consent.

Section 4.56 proposal

With the deletion of the basement three hardstand spaces are now proposed to be provided at ground level with access from the Right of Way at the rear of the site.

Part B8 of Council's DCP requires that hardstand carspaces be provided at or above the level of the 5% AEP (1 in 20yr) flood level being RL 5.89 in this instance.

The level of the 5% AEP (1 in 20yr) flood level on the site is RL 5.89 AHD. This generally translates to flood depths of between 0.3 & 0.5m across the site

The submitted plans indicate three internal carspaces are to be provided at 5.89 AHD and therefore meet the minimum requirements of the DCP. The carspaces are access by a sloped ramp at 1 in 8 directly accessed from the Right of Way. This is satisfactory.

With the deletion of the basement the proposed development a number of conditions relating to the flood protection of the basement are therefore no longer required and may be deleted from the consent. This includes conditions 16, 26, & 91. Condition 27 will also need to be amended.

Geotechnical Comments

With the deletion of the basement the proposed development will no longer encroach into the water table and conditions relating to the management of ground water & tanking of the basement are therefore no longer required. This includes conditions 30, 31, 63 & 96 which are recommended for deletion.

8. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</p> <p>The development, as modified, will continue to achieve the minimum performance levels/targets associated with water, energy, and thermal efficiency, as was originally approved. Standard conditions of consent requiring the continued compliance of the development with the SEPP: BASIX were included in the original determination.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>State Environment Planning Policy (Affordable Rental Housing) 2009</p> <p>The approved boarding house development was granted consent under the provisions of the <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> (ARH SEPP). The ARH SEPP has since been repealed and replaced by the new <i>State Environmental Planning Policy (Housing) 2021</i>.</p> <p>State Environmental Planning Policy (Housing) 2021</p> <p>The modification application is not saved under the General savings provisions as it relates to a development application determined before the commencement date. Notwithstanding, it is reasonable to consider the relevant requirements under the Housing SEPP in the assessment of the modification application.</p> <p>Under the Housing SEPP, there have been significant changes to boarding houses, most notably boarding houses are now to be used for affordable housing, and to be managed by a registered community housing provider. In addition, a new form of 'co-living' housing, which is typically made up of small private rooms with communal indoor and outdoor spaces has been introduced under the Housing SEPP. The approved boarding house on the subject site is similar to but not the same, as the new 'co-living' development noting the alternate control framework applicable under the Housing SEPP 2021.</p> <p>As the approved boarding house does not fit into either the new boarding house or the 'co-living' form of housing under the Housing SEPP, the proposed modification is assessed on merit. An assessment against the relevant controls in both the repealed ARH SEPP and the current Housing SEPP has been undertaken to guide the merit assessment. In this case, there will be no change to the existing approved boarding house envelope or the overall built form and design, except for the deletion of a standalone studio above the parking area at the rear of the site and the subterranean basement parking level. The key change relevant under the proposed modification relates to the reduction in on-site parking. This aspect has been addressed in the Key Issues section of this report.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.</p> <p><i>Clause 4.3 - Building Height</i> Pursuant to the Height of Buildings Map referred to in clause 4.3 (2) of the RLEP, the maximum building height for the site is 12m. The proposed modified development will not change the approved building height.</p> <p><i>Clause 4.4 - Floor Space Ratio</i> The maximum permissible FSR for the site is 0.9:1, pursuant to clause 4.4 of the RLEP (1.4:1 with the bonus 0.5:1 FSR, pursuant to the former ARH SEPP). The approved development has an FSR of 1.04:1. The proposed modified development will have an FSR of 0.92:1, which represents a reduction in the approved GFA and FSR.</p>

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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	<p>Part C4 of Randwick Comprehensive DCP 2013 establishes the objectives and controls for boarding houses. The relevant requirements are addressed below.</p> <p><i>Boarding Rooms</i> The approved development includes two accessible units at the ground floor (Units 3 and 4). Under the proposed modification, the layout of the bathroom to Unit 3 will be adjusted slightly and the common internal wall between Units 3 and 4 will shift 270 mm to the north.</p> <p>Unit 4 will now become slightly larger and is retained as an accessible unit. Unit 10, which is located directly above on the first floor, will become an accessible unit in lieu of the Unit 3.</p> <p>The living area of both accessible units (4 and 10) will also be extended by shifting the glass line 400mm to the east, resulting in a corresponding reduction in the size of the external balcony.</p> <p>The proposed modification would not alter compliance with the room size requirements. The general layout and internal amenity of each of the boarding rooms would be maintained in accordance with the approved development.</p> <p><i>Visual Privacy</i> A privacy screen will be provided on the northeastern side of the lobby at the first and second floors and the northeastern and southwestern sides of the communal rooftop area in accordance with Condition 2(c) of the development consent. However, a detailed specification has not been provided and the subject condition has not been adequately satisfied. It is therefore recommended that Condition 2(c) remains on the existing development consent.</p> <p><i>Communal Kitchen Bathroom and Laundry facilities</i> The approved plans identify a laundry within the kitchen joinery in each boarding room. The proposed modified plans remove the laundry from each room and provide a laundry cabinet in the communal room. There are no specific requirements for laundries other than a requirement for it to be provided in a communal room if not provided in the boarding rooms.</p> <p><i>Plan of Management</i> Due to the proposed modified on-site parking and access, reduction in the number of boarding rooms and occupants, the approved Plan of Management would need to be modified accordingly. A condition to this effect is included in the recommended development consent.</p> <p>The proposed modified development will not result in any changes to the provision of indoor and outdoor communal area, the location of the main entry and safety and visual and acoustic amenity.</p>
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore, the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9. Conclusion

The application is recommended for approval for the following reasons:

- The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.
- The modified development will comply with the parking requirements for the similar 'co living' form of housing under the current State Environmental Planning Policy (Housing) 2021.
- The site has good access to public bus transport thereby reducing the reliance of private car travel and encouraging the use of sustainable modes of transport by future residents.
- The modified development will moderate the intensification of the approved boarding house by reducing the number of boarding rooms on the site by one boarding room.

Responsible officer: Thomas Mithen, Environmental Planner

File Reference: DA/510/2018/A

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Annexure 'A'

Savannah No. 1 Pty Ltd v Randwick City Council

Development Conditions of Consent

GENERAL CONDITIONS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated
DA-04.00 Rev 10	Pinnacle Plus	28 October 2019
DA-04.10 Rev 11	Pinnacle Plus	29 October 2019
DA-04.20 Rev 11	Pinnacle Plus	29 October 2019
DA-04.30 Rev 10	Pinnacle Plus	28 October 2019
DA-04.40 Rev 10	Pinnacle Plus	28 October 2019
DA-04.50 Rev 10	Pinnacle Plus	28 October 2019
DA-05.00 Rev 11	Pinnacle Plus	29 October 2019
DA-05.05 Rev 10	Pinnacle Plus	28 October 2019
DA-06.00 Rev 10	Pinnacle Plus	28 October 2019
DA-06.10 Rev 10	Pinnacle Plus	28 October 2019
DA-06.20 Rev 11	Pinnacle Plus	29 October 2019
DA-06.30 Rev 10	Pinnacle Plus	28 October 2019
DA-06.40 Rev 11	Pinnacle Plus	29 October 2019
DA-08.50 Rev 11	Pinnacle Plus	29 October 2019
DA-08.51 Rev 11	Pinnacle Plus	29 October 2019
LS01 Issue A	Melissa Wilson Landscape Architects	2 October 2019
LS02 Issue A	Melissa Wilson Landscape Architects	2 October 2019

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LS03 Issue A	Melissa Wilson Landscape Architects	2 October 2019
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BASIX Certificate No.	Dated
943134M_04	18 November 2019

Supporting Documentation		
Document	Author	Dated
Preliminary Geotechnical Investigation Report (Revision O)	Geotechnical Consultants Australia Pty Ltd	27 September 2019
Flood Risk Management Report	Paz Engineering	November 2018
Flood protection statement	Paz Engineering	2 October 2019

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements and submitted to Council for approval prior to the issue of a Construction Certificate:

- a) The Landscape Plan LS02 Issue A, prepared by Melissa Wilson Landscape Architects, dated 2 October 2019 shall be updated to reflect the reduced rooftop communal area as shown on the third floor plan DA-04.40 Revision 10, dated 28 October 2019.
- b) The length of entry landing to Unit 18 shall be reduced by 1.5m measured from the northeastern edge of the landing, so that the landing is reduced in length to permit the entry into unit 18 to be a maximum 1.2 m wide. The privacy screens provided to the staircase and landing area must be constructed with either:
 - Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
 - Fixed lattice/slats with individual openings not more than 30mm wide;
 - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
- c) A privacy screen having a height of 1.6m (measured above the FL of the rooftop communal area on the third floor roof and FL of the lobby area at the first and second floors) shall be provided to the northeastern and southwestern sides of the rooftop communal area, and northeastern side of the lobby area at the first and second floors.

Privacy screen/s must be constructed with either:

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- Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
 - Fixed lattice/slats with individual openings not more than 30mm wide;
 - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
3. The Boarding House Management Plan dated October 2019, prepared by ABC Planning Pty Ltd shall be amended to include the following aspects to the satisfaction of Council's Manager Development Assessment:
- The number of approved parking spaces being 8 including 1 x car share space and 1 x accessible space.
 - The restriction on the number of approved lodgers being 19.
 - No boarding room will be occupied by more than 1 single lodger for the single rooms, or 2 lodges for the double room at the rear.
 - Fire and Flood Evacuation procedures.
 - All new occupants of this development must be informed of evacuation procedures.
 - Any recommendations of the acoustic report No. BA190718 Version D, dated October 2019 and prepared by Blackett Acoustics (as amended in accordance with condition no. 4).
 - The minimum length of stay for lodgers shall be three (3) months with the same room being let out to the same lodger for no less than three (3) months, and no maximum length of stay.
 - No party policy.
 - Apply a management policy that restricts use of the communal open space on the ground and third floor levels as follows:
 - prohibits access to and use of communal open space from between 10:00pm and 7:00am each day.
 - restricts the maximum number of people permitted to occupy the rooftop communal area to 10 people.
 - no live or amplified music.
4. An amended acoustic report prepared by a suitably qualified and experienced person shall be obtained. The amended acoustic report must demonstrate that the boarding house development will comply with the relevant provisions of the Protection of the Environment Operations Act 1997, NSW EPA Noise Control Manual & Industrial Noise Policy and Council's conditions of consent. The report must be submitted to and approved by the Manager Development Assessment prior to the issue of any Construction Certificate.
- Car Share Space**
5. A minimum of 1 carspace within the development shall be reserved for use and managed by a 'car share' operator. The use of the carshare space for occupants must be managed by the boarding house operator. The Boarding House Management Plan dated October 2019, prepared by ABC Planning Pty Ltd shall be amended to include the following requirements:

The car share space must;

- a) be made available to the car share operator without fee or charge.
- b) be signposted for use only by car share vehicles and be well lit.
- c) be publicly accessible at all times.

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- d) be made available at the same time the boarding house commences operations.
- e) be accompanied by adequate Insurances including public liability.
- f) be accompanied by promotional strategies to encourage awareness and participation of residents of the development in the scheme

Car Hoist

6. Plans submitted for the construction certificate shall demonstrate compliance with the following requirements in respect to the proposed car hoist to the satisfaction of the PCA:
- a) The car hoist platform shall be protected by a surrounding minimum 1.2m high fence with the section above the proposed brick wall (i.e. above RL 6.55) being of a free and open form.
 - b) The entrance to the car hoist shall be protected by a swinging gate (outside the flood barrier) and flashing light warning system.
 - c) The car hoist will have a roof platform that will lower to RL 5.89 AHD when hoist is at basement level.
 - d) The car hoist shall not be fully enclosed with full-height walls and / or roof.
 - e) The default position of the car hoist shall be at ground level.

A copy of the approved hoist plans and specifications are to be forwarded to Council's Development Engineers.

Rooftop Landscaping

7. The landscaped area of roof surrounding the communal open space shall be non-trafficable and accessed for maintenance purposes only.
8. **Geotechnical Investigation Report**
The Construction Certificate drawings and all works shall incorporate and be carried out in accordance with the recommendations of the Preliminary Geotechnical Investigation Report, G19252-1, prepared by GCA, dated 27 September 2019.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a 'Construction Certificate' is issued by either Randwick City Council or an Accredited Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the construction certificate.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Consent Requirements

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

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External Colours, Materials & Finishes

10. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Director of City Planning prior to issuing a construction certificate for the development.

Section 7.12 Development Contributions

11. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,341,417 the following applicable monetary levy must be paid to Council: \$13,414.15.

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 6999 or 1300 722 542 for the indexed contribution amount prior to payment.

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Compliance Fee

12. A development compliance and enforcement fee of \$1341.40 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

Long Service Levy Payments

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

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

Security Deposits

14. The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making

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good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17 of the *Environmental Planning and Assessment Act 1979*:

- \$8,000.00 - Damage / Civil Works Security Deposit

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

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

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

Sydney Water Requirements

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

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

The Sydney Water Tap in™ online service replaces the Quick Check Agents as of 30 November 2015

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

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

Sydney Water's Tap in™ in online service is available at:
<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

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

Flooding

16. Full manufacturer's specifications & design certification of the proposed flood gate & basement entry are to be forwarded to Council for approval. It must be suitably demonstrated that the basement is suitably protected up to RL 6.52 AHD.

Acid Sulphate Soil Investigation

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17. Additional acid sulphate soil investigation are to be undertaken following demolition by a suitably consultant to confirm that the land is not affected by acid sulphate soils. The report is to be submitted to council prior to the issue of the construction certificate.

Should the assessment determine that the land is affected by acid sulphate soils, an acid sulphate soils management plan is to be prepared for the development prior to the commencement of excavation to outline necessary management and mitigation measures to the satisfaction of Council.

Acoustic Amenity

18. The residential units are to achieve the following internal acoustic amenity criteria:
- a) In naturally ventilated residential units; the repeatable maximum L_{Aeq} (1 hour) shall not exceed:
 - 35 dB(A) between 10pm and 7am in sleeping areas when the windows are closed;
 - 45 dB(A) in sleeping areas when windows are open;
 - 45 dB(A) in living areas (24 hours) when the windows are closed, and
 - 55 dB(A) in living areas when the windows are open.
 - b) In residential units provided with mechanical ventilation, air conditioning or other complying means of ventilation, when doors and windows are shut, the repeatable maximum L_{Aeq} (1 hour) shall not exceed:
 - 38 dB(A) between 10pm and 7am in sleeping areas;
 - 46 dB(A) in living areas (24 hours).

Details of compliance with the relevant criteria is to be included in the construction certificate application and written confirmation of compliance is to be provided to the Council and the Certifying Authority, by the Acoustic consultant, **prior to the construction certificate being issued.**

Street Tree Management

19. The applicant must submit a payment of **\$390.50** (GST inclusive) to cover the following costs:
- a) For Council to remove, stump-grind and dispose of the existing unauthorized planting from the Fenton Street verge, centrally across the width of the site;
 - b) For Council to supply, plant and maintain 2 x 25 litre *Banksia serrata* (Saw Toothed Banksia's) back on the Fenton Street verge at the completion of all works, spaced evenly across the frontage.

This fee must be paid into Tree Amenity Income at the Cashier on the Ground Floor of the Administrative Centre prior to a Construction Certificate being issued for the development.

The applicant must contact Council's Landscape Development Officer on 9093-6613 (quoting the receipt number), and giving at least four working weeks-notice (allow longer for public holidays or extended periods of rain) to arrange for removal of the existing tree prior to the commencement of site works, as well as upon completion, to arrange for planting of the replacements.

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After this, any further enquiries regarding scheduling/timing or completion of tree works are to be directed to Council's Tree Preservation & Maintenance Coordinator on 9093-6963.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Compliance with the Building Code of Australia & Relevant Standards

20. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, it is a *prescribed condition* that all building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
21. Access and facilities for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Certifying Authority.

BASIX Requirements

22. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 97A of the *Environmental Planning & Assessment Regulation 2000*, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

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

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

Site stability, Excavation and Construction work

23. A report must be obtained from a suitably qualified and experienced *professional engineer/s*, which includes the following details, to the satisfaction of the Certifying Authority for the development:-
 - a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjacent land.
 - b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
 - c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.

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- d) The adjoining land and buildings located upon the adjoining land must be adequately supported at all times throughout demolition, excavation and building work, to the satisfaction of the *Principal Certifying Authority*.
- e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the *Certifying Authority*.

Traffic conditions

- 24. The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with these requirements.

The height of the building must not be increased to satisfy the required driveway gradients.

- 25. Plans submitted for the construction certificate shall demonstrate compliance with the following requirements in respect to the proposed car hoist to the satisfaction of the PCA
 - a) The car hoist platform shall be protected by a surrounding minimum 1.2m high fence with the section above the proposed brick wall (i.e. above RL 6.55) being of a free and open form.
 - b) The entrance to the car hoist shall be protected by a swinging gate (outside the flood barrier) and flashing light warning system.
 - c) The car hoist will have a roof platform that will lower to RL 5.89 AHD when the hoist is at basement level.
 - d) The car hoist shall not be fully enclosed with full-height walls and / or roof.
 - e) The default position of the car hoist shall be at basement level (i.e. with no visible structure at ground level).

A copy of the approved hoist plans and specifications are to be forwarded to Council's Development Engineers.

Flood Management

- 26. Windows, vents and other openings into the basement carpark are to be located at least 300 mm above or suitably protected from the determined 1 in 100 year flood level. Details demonstrating compliance with this condition are to be included in the construction certificate documentation.
- 27. The ground floor level located along shall be designed to *structurally* withstand hydrostatic pressure/stormwater inundation from floodwater during the probable maximum flood (PMF) event as defined in the Floodplain Management Manual (New South Wales Government, January 2001). Structural Engineering certification confirming that this condition has been complied with shall be submitted to the certifying authority with the construction certificate.

This requirement does not necessitate the development being flood proof/water tight up to the PMF event, rather the requirement is to ensure that the development will not be *structurally* damaged in manner that could endanger lives during the PMF event.

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Stormwater Management

28. Stormwater drainage plans have not been approved as part of this development consent. Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the certifying authority prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the certifying authority. The drawings and details shall include the following information:
- a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
 - b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
 - c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
 - i. Roof areas
 - ii. Paved areas
 - iii. Grassed areas
 - iv. Garden areas
 - d) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
 - e) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
 - f) The details of any special features that will affect the drainage design e.g. the nature of the soil in the site and/or the presence of rock etc.
29. The site stormwater drainage system is to be provided in accordance with the following requirements;
- a) The stormwater drainage system must be provided in accordance with the relevant requirements of Building Code of Australia and the conditions of this consent, to the satisfaction of the *Certifying Authority* and details are to be included in the construction certificate.
 - b) The stormwater must be discharged (by gravity) either:
 - i. Directly to the kerb and gutter in front of the subject site in Fenton Avenue; or
 - ii. Directly into Council's underground drainage system located in Fenton Avenue via a new kerb inlet pit and new section of pipe to the existing kerb inlet pit; or

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- iii. To Council's underground/street drainage system located in Chapman Avenue street via a private drainage easement through adjoining land/premises; or
- c) Should stormwater be discharged to Council's street drainage system, an on-site stormwater detention system must be provided to ensure that the maximum discharge from the site does not exceed that which would occur during a 10% AEP (1 in 10 year) storm of one hour duration for existing site conditions. All other stormwater run-off from the site for all storms up to the 5% AEP (1 in 20 year) storm is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the certifying authority. If discharging to the street gutter the PSD shall be restricted to the above or 25 L/S, whichever the lesser.

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

NOTES

- Should it be demonstrated that effective OSD storage is not possible on the site due to flooding at more frequent storm events, consideration will be given to removing the OSD requirement. Any request must be forwarded to Council's Development Engineering Coordinator in writing and supported by appropriate documentation prepared by a hydraulic engineer.
- d) Should stormwater be discharged to an infiltration system the following requirements must be met;
- i. Infiltration systems/Absorption Trenches must be designed and constructed generally in accordance with Randwick City Council's Private Stormwater Code.
 - ii. The infiltration area shall be sized for all storm events up to the 5% AEP (1 in 20 year) storm event with provision for a formal overland flow path to Council's Street drainage system.

Should no formal overland escape route be provided for storms greater than the 5% AEP (1 in 20yr) design storm, the infiltration system shall be sized for the 1% AEP (1 in 100yr) storm event.
 - iii. Infiltration areas must be a minimum of 3.0 metres from any structure (Note: this setback requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure)
 - iv. Infiltration areas must be a minimum of 2.1 metres from any site boundary unless the boundary is common to Council land (e.g. a road, laneway or reserve).
- e) Determination of the required cumulative storage (in the on-site detention and/or infiltration system) must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.

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

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

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

- g) If connecting to Council's underground drainage system, a reflux valve shall be provided (within the site) over the pipeline discharging from the site to ensure that stormwater from Council drainage system does not surcharge back into the site stormwater system.
- h) Any new kerb inlet pits (constructed within Council's road reserve) are to be constructed generally in accordance with Council's standard detail for the design of kerb inlet pits.
- i) Generally all internal pipelines must be capable of discharging a 1 in 20 year storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.
- j) A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.

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

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

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Sketch details of a standard sediment/silt arrester pit may be obtained from Council's Drainage Engineer.

- k) The floor level of all habitable, retail, commercial and storage areas located adjacent to any detention and/or infiltration systems with above ground storage must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be provided.

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

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

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

- m) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
- n) A 'V' drain (or equally effective provisions) are to be provided to the perimeter of the property, where necessary, to direct all stormwater to the detention/infiltration area.
- o) Mulch or bark is not to be used in on-site detention areas.
- p) 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.
- q) Any onsite detention/infiltration systems shall be located in areas accessible by residents.

Groundwater

30. As the proposed basement level/s may extend into the water table (or be affected by fluctuations of the water table), the following requirements apply:

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- a) The design and construction of the basement level/s must preclude the need for dewatering after construction.

That part of the development that may be impacted by the water table must include a water proof retention system (i.e. a fully tanked structure) with adequate provision for future fluctuations of water table levels. (It is recommended that a minimum allowance for a water table variation of at least +/-1.0 metre beyond any expected fluctuation be provided). The actual water table fluctuation and fluctuation safety margin must be determined by a suitably qualified professional.

- b) Groundwater management systems shall be designed to transfer groundwater around, through or under the proposed development without a change in the range of the natural groundwater level fluctuations in the locality.

Where an impediment to the natural flowpaths is created as a result of the nature of the construction methods utilised or the bulk of the below-ground structure, artificial drains such as perimeter drains and through drainage may be utilised. These systems may only be utilised where it can be demonstrated that the natural groundwater flow regime is restored both up-gradient and down-gradient of the site, without any adverse effects on surrounding property or infrastructure.

Groundwater management systems:

- Are to be designed to be easily maintained.
- Should have a design life of 100 years.

- c) The basement level/s of the building must be designed by a structural engineer who is qualified and experienced in the design of structures below a water table. Details of the proposed methods of managing groundwater, tanking and waterproofing must be submitted to and approved by the certifying authority, prior to issuing the **construction certificate**. A copy of the engineer's qualifications and experience must also be submitted to the Certifying Authority.

In the event of the development being modified in a manner that changes building/structural loads or alters the basement design, a suitably qualified and experienced structural engineer must certify that the design of the basement remains adequate for the site conditions.

31. Prior to the issue of a construction certificate, a report must be submitted to and approved by the Certifying Authority, detailing the proposed methods of excavation (including support), managing groundwater and dewatering the site.

The report is to be prepared by a suitably qualified and experienced Geotechnical and/or Hydrogeological Engineer and include:

- a) Details of compliance with relevant approvals and licences (e.g. Council's conditions of consent and Water Licence from the Office of Water.
- b) The proposed method of excavation, shoring/piling and dewatering.
- c) Assessment of the potential risk of off-site impacts such as damage to surrounding buildings or infrastructure due to differential sediment compaction and surface settlement during and following pumping of groundwater. *Note: The assessment must demonstrate that the proposed*

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method of excavation and dewatering will not pose an unacceptable risk of damage.

- d) The zone of any possible settlement.
- e) Details of the proposed temporary disposal of groundwater and/or construction site stormwater to Council's drainage system. *Note: Prior to discharging groundwater (or site stormwater) into Council's stormwater drainage system, separate written approval must be obtained from Council in accordance with Section 138 of the Roads Act 1993.*
- f) The location of any proposed re-injection points in relation to the property boundaries (where re-injection equipment is to be located on land other than the subject premises, the written consent of the owner must also be provided to Council).
- g) Details of groundwater quality and proposed disposal of any potentially contaminated groundwater in an environmentally sensitive manner. The details must demonstrate compliance with relevant requirements and approvals of the Office of Environment & Heritage, Council and the Protection of the Environment Operations Act 1997.
- h) The program to monitor fluctuations of the water table during dewatering/ construction to ensure that the conditions of consent and other relevant requirements are satisfied.
- i) The location of all proposed monitoring and pumping equipment in relation to the property boundaries (where monitoring or pumping equipment is to be located on land other than the subject premises, the written consent of the owner must also be provided to Council).
- j) Details of any consultation and arrangements made with owners of any potentially affected nearby premises (i.e. in relation to access, monitoring and rectification of possible damage to other premises)
- k) Certification that the proposed methods of dewatering and excavation are:
 - appropriate and in accordance with 'best practice' principles; and
 - should not result in any unacceptable levels of settlement or damage of the adjoining or nearby buildings within the zone of influence.

A copy of the approved report must be submitted to Council, (for Council's record keeping purposes and as confirmation that this condition has been complied with), prior to the commencement of any site construction works.

Any practices or recommendations made by the consulting engineer/s in the approved report must be implemented accordingly and the dewatering process must be monitored by the consulting engineer/s to the satisfaction of the Principal Certifying Authority.

Waste Management

32. 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 Director of City Services.

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The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):

- 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.

Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's Customer Service Centre.

33. The garbage room shall be sized to contain a total of 11x 240 litre bins (comprising 5 garbage bins, 4 recycle bins & 2 green waste) and with adequate provisions for access to all bins. Details showing compliance are to be included in the construction certificate.
34. The waste storage areas are to be provided with a tap and hose and the floor is to be graded and drained to the sewer to the requirements of Sydney Water.

Public Utilities

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

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

Undergrounding of Site Power

36. Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Fenton Avenue. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements. 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.

Landscape Plans

37. Written certification from a qualified professional in the Landscape/Horticultural industry (must be eligible for membership with a nationally recognised organisation/association) must state that the Landscape Plans submitted for the Construction Certificate are substantially consistent with those by Melissa Wilson Landscape Architects, dwg's LS01 - 03, issue A, dated 02/10/19, with both this statement and plans then to be submitted to, and be approved by, the PCA/Certifying Authority.

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REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity.

Certification and Building Inspection Requirements

38. Prior to the commencement of any building works, the following requirements must be complied with:

- a) a Construction Certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.

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 *Principal Certifying Authority* (PCA) must be appointed 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 and any applicable requirements of the *Home Building Act 1989* must be satisfied accordingly; 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 Certifying Authority*; and
- e) at least two days notice must be given to the Council, in writing, prior to commencing any works.

Home Building Act 1989

39. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, the relevant 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 Certifying Authority and Council.

Dilapidation Reports

40. A dilapidation report (incorporating photographs of relevant buildings) 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

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the subject site and any other property or public land which may be affected by the works, to the satisfaction of the *Principal Certifying Authority*.

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

Construction Site Management Plan

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

- location and construction of protective site fencing / hoardings;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- details of proposed sediment and erosion control measures;
- site access location and construction
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- 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.

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

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

Demolition Work Plan

42. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant environmental/work health and safety provisions and the following requirements:

- a) The Demolition Work Plan must be submitted to the Principal Certifying Authority (PCA), not less than two (2) working days before commencing any demolition work. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

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

- b) Any materials containing asbestos (including Fibro) must be safely removed and disposed of in accordance with the NSW Work Health and Safety Regulation 2017, SafeWork NSW Code of Practice for the Safe Removal of Asbestos, Protection of Environment Operations (Waste) Regulation 2014 and Council's Asbestos Policy.

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Construction Noise & Vibration Management Plan

43. A *Construction Noise & Vibration Management Plan*, prepared in accordance with the Environment Protection Authority (EPA) Guidelines for Construction Noise and Assessing Vibration, by a suitably qualified person, is to be developed and implemented prior to commencing site work and throughout the course of construction, in accordance with the following requirements:

- a) Noise and vibration emissions during the construction of the building and associated site works must not result in an unreasonable loss of amenity to nearby residents.

Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management strategies.

- b) The *Construction Noise & Vibration Management Plan* must include details of measurements, analysis and relevant criteria and demonstrate that the noise and vibration emissions from the work satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997*, current EPA Guidelines for Construction Noise and Assessing Vibration and Councils conditions of consent.

- c) A further report/correspondence must be obtained from the consultant as soon as practicable upon the commencement of works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.

- d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to Council and the PCA.

A copy of the *Construction Noise & Vibration Management Plan* and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to Council and the Principal Certifying Authority accordingly.

Public Liability

44. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$10 million and a copy of the Insurance cover is to be provided to the Principal Certifying Authority and Council.

Construction Traffic Management

45. An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Fenton Street for the duration of the demolition & construction works.

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

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commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.

The requirement for a Works Zone may be varied or waived only if it can be demonstrated 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.

46. A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to commencement of any site work [or]

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:

- 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 & Traffic Authority, 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

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.

47. 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.

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48. Documentary evidence from the relevant public utility authorities confirming they have agreed to the proposed works and that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifying Authority prior to the commencement of any demolition, excavation or building works.

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

Street Tree Management

49. At least 4 weeks prior to the commencement of any site works (including demolition), the applicant must determine if the row of three mature Hibiscus tileaceus (Cottonwoods), which are located on Council's Chapman Avenue verge, between the vehicle crossing and corner of Fenton Avenue, will require clearance pruning so as to avoid physical damage to the trees, as well as to allow for access and on-street parking of construction vehicles, machinery and similar.

Should this be necessary, the applicant must then contact Council's Landscape Development Officer directly on 9093-6613 to arrange a site inspection to confirm the location and extent that is permissible. If approval is given, it can only be performed by Council or Council's authorized contractors, wholly at the applicant's cost, with the required fee for this needing be paid into Tree Amenity Income at the Cashier on the Ground Floor of the Administrative Centre, prior to pruning, and prior to any Occupation Certificate.

The applicant must quote the receipt number to Council's Landscape Development Officer once payment has been made, giving a time frame of up to four weeks (allow longer for public holidays or extended periods of rain) for the pruning to be performed.

After this, any further enquiries regarding scheduling/timing or completion of the tree works are to be directed to Council's Tree Preservation & Maintenance Coordinator on 9093-6858.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity during construction.

Inspections during Construction

50. Building works are required to be inspected by the *Principal Certifying Authority*, in accordance with the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

Building & Demolition Work Requirements

51. The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with Randwick City

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Council's Asbestos Policy and the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- The Protection of the Environment Operations Act 1997;
- Protection of Environment Operations (Waste) Regulation 2014;
- Randwick City Council Asbestos Policy.

A copy of Council's Asbestos Policy is available on Council's web site or a copy can be obtained from Council's Customer Service Centre.

Removal of Asbestos Materials

52. Any work involving the demolition, storage or disposal of asbestos products and materials must be carried out in accordance with the following requirements:

- Work Health & Safety legislation and SafeWork NSW requirements
- Preparation and implementation of a *demolition work plan*, in accordance with AS 2601 (2001) – Demolition of structures; NSW Work Health and Safety Regulation 2017 and Randwick City Council's Asbestos Policy. A copy of the demolition work plan must be provided to Principal Certifying Authority and a copy must be kept on site and be made available for Council Officer upon request.
- A SafeWork NSW licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by SafeWork NSW or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifying Authority.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'Danger Asbestos Removal In Progress' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 20014*. Details of the disposal of materials containing asbestos (including receipts) must be provided to the Principal Certifying Authority and Council.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifying Authority as soon as practicable after completion of the asbestos related works, which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

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

Excavations, Back-filling & Retaining Walls

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53. All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations must be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

Retaining walls, shoring or piling must be provided to support land which is excavated in association with the erection or demolition of a building, to prevent the movement of soil and to support the adjacent land and buildings, if the soil conditions require it. Adequate provisions are also to be made for drainage.

Details of proposed retaining walls, shoring, piling or other measures are to be submitted to and approved by the Principal Certifying Authority.

Support of Adjoining Land

54. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 E of the *Environmental Planning & Assessment Regulation 2000*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

Sediment & Erosion Control

55. Sediment and erosion control measures, must be implemented throughout the site works in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom.

Details must be included in the Construction Site Management Plan and a copy must be provided to the Principal Certifying Authority and Council. A copy must also be maintained on site and be made available to Council officers upon request.

Dust Control

56. During demolition excavation and construction works, dust emissions must be minimised, so as not to result in a nuisance to nearby residents or result in a potential pollution incident.

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

Dust control measures and practices may include:-

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

Temporary Site Fencing

57. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site throughout demolition, excavation and construction works, to the satisfaction of Council, in accordance with the following requirements:

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

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- b) Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
- c) All site fencing and hoardings must be structurally adequate, safe and be constructed in a professional manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible.
- d) An overhead ('B' Class) type hoarding is required to be provided to protect the public (unless otherwise approved by Council) if:
 - materials are to be hoisted (i.e. via a crane or hoist) over a public footway;
 - building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment;
 - it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or occupants upon adjoining land;
 - as may otherwise be required by WorkCover, Council or the PCA.

Notes:

- *Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.*
- *If it is proposed to locate any site fencing, hoardings, amenities or articles upon any part of the footpath, nature strip or public place at any time, 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.*

Public Safety & Site Management

58. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with to the satisfaction of Council:

- 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) 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.
- c) All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

Note: It is an offence under the Protection of the Environment Operations Act 1997 to cause or be likely to cause 'pollution of waters', which may result in significant penalties and fines.

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- d) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open outwards into the road or footway.
- e) Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
- f) 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.

Site Signage

59. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:

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

Restriction on Working Hours

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm only • Saturday - No work permitted • Sunday & public holidays - No work permitted
Additional requirements for all development	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

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Survey Requirements

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

- prior to construction (pouring of concrete) of footings and boundary retaining structures,
- prior to construction (pouring of concrete) of each floor slab,
- upon completion of the building, prior to issuing an *Occupation Certificate*,
- as otherwise may be required by the PCA.

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

Building Encroachments

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

Groundwater & Stormwater during construction

63. Details of the proposed connection and or disposal of any, groundwater or construction site stormwater to Council's stormwater drainage system must be submitted to and approved by Council's Development Engineering Coordinator, prior to commencing these works, in accordance with section 138 of the *Roads Act 1993*.

Details must include the following information:

- Site plan
- Hydraulic engineering details of the proposed disposal/connection of groundwater or site stormwater to Council/s drainage system
- Volume of water to be discharged
- Location and size of drainage pipes
- Duration, dates and time/s for the proposed works and disposal
- Details of water quality and compliance with the requirements of the *Protection of the Environment Act 1997*
- Details of associated plant and equipment, including noise levels from the plant and equipment and compliance with the requirements of the *Protection of the Environment Act 1997* and associated Regulations and Guidelines
- Copy of any required approvals and licences from other Authorities (e.g. A water licence from the Department of Planning/Department of Water & Energy).
- Details of compliance with any relevant approvals and licences

Road/Asset Opening Permit

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64. 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:
- a) 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.
 - b) Council's Road / Asset Opening Officer must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out.
 - c) Relevant *Road / Asset Opening Permit* fees, construction 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,
 - d) The owner/developer 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* or occupation of the development (whichever is sooner).
 - e) Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
 - f) Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date.
 - g) Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf.
 - h) The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each days activities and upon completion.
 - i) The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand.
 - j) Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident.
 - k) The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place.

Roadway

65. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention

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to excavate below the base of the footings. The notice is to include complete details of the work.

Traffic Management

66. 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.
67. All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 - Traffic Control Devices for Works on Roads, at all times.
68. All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.

Stormwater Drainage

69. Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the principal certifying authority.

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

70. Any required dewatering must be monitored by the consulting Engineer/s to the satisfaction of the principal certifying authority and documentary evidence of compliance with the relevant conditions of consent and dewatering requirements must be provided to the principal certifying authority and the Council.

The site conditions and fluctuations in the water table are to be reviewed by the consulting Engineer prior to and during the excavation/construction process, to ensure the suitability of the excavation and dewatering process and compliance with Council's conditions of consent.

71. A separate written approval from Council is required to be obtained in relation to any proposed discharge of groundwater into Council's drainage system external to the site, in accordance with the requirements of Section 138 of the Roads Act 1993.

Tree Removal

72. Due to their small size and insignificance, no objections are raised to removing all vegetation from within the subject site where necessary so as to accommodate the works as shown, subject to full implementation of the approved landscaping.

Pruning of Neighbours Trees

73. Permission is granted for the minimal and selective pruning of only those lower growing, lower order branches from the southern aspects of the trees that are located wholly within the rear setback of the adjoining private property to the north, 2-4 Fenton Street, being the Gum and Banksia at the rear, as well as the row of Bottlebrush's further to their east, only where they overhang the common boundary, into the subject site, and need to be pruned in order to avoid damage to the trees; or; interference with the approved works.
74. This approval does not imply any right of entry onto a neighbouring property nor does it allow pruning beyond a common boundary; however, where such measures are desirable in the best interests of correct pruning procedures, and

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ultimately, the ongoing health of these trees, the applicant must negotiate with the neighbour/tree owner for access to perform this work.

75. All pruning can only be undertaken by a Practicing Arborist who holds a minimum of AQF Level III in Arboriculture, and to the requirements of Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and NSW Work Cover Code of Practice for the Amenity Tree Industry (1998).

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifying Authority' Issuing an 'Occupation Certificate'.

Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Occupation Certificate Requirements

76. An Occupation Certificate must be obtained from the Principal Certifying Authority prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning & Assessment Act 1979*.

Fire Safety Certificates

77. Prior to issuing an interim or final Occupation Certificate, a single and complete *Fire Safety Certificate*, encompassing all of the essential fire safety measures contained in the *fire safety schedule* must be obtained and be submitted to Council, in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2000*. The *Fire Safety Certificate* must be consistent with the *Fire Safety Schedule* which forms part of the Construction Certificate.

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

Structural Certification

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

BASIX Requirements & Certification

79. In accordance with Clause 154B of the *Environmental Planning & Assessment Regulation 2000*, a Certifying Authority must not issue an Occupation Certificate for this development, unless it is satisfied that any relevant BASIX commitments and requirements have been satisfied.

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Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the *Principal Certifying Authority* and Council upon issuing an Occupation Certificate.

Noise Control Requirements & Certification

80. The operation of plant and equipment shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

In this regard, the operation of the plant and equipment shall not give rise to an $L_{Aeq, 15 \text{ min}}$ sound pressure level at any affected premises that exceeds the background $L_{A90, 15 \text{ min}}$ noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.

Street and/or Sub-Address Numbering

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

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

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

Acoustic Report

82. A report, prepared by a suitably qualified and experienced consultant in acoustics, shall be submitted to the Council prior to an occupation certificate being issued for the development, which demonstrates and certifies that noise and vibration from the development satisfies the relevant provisions of the Protection of the Environment Operations Act 1997, NSW EPA Noise Control Manual & Industrial Noise Policy, Council's conditions of consent (including any relevant approved acoustic report and recommendations), to the satisfaction of Council. The assessment and report must include all relevant fixed and operational noise sources.

Compliance and Registration

83. Places of Shared Accommodation must comply with the *Local Government (General) Regulation 2005* and the *Boarding Houses Act 2012* and the premises must also be registered with NSW Fair Trading and Council (as applicable) prior to issuing an occupation certificate. The premises must also be registered with Council prior to occupation and on an annual basis, and the approved registration/inspection fee is to be forwarded to Council **prior to occupation**.

Council's Infrastructure, Vehicular Crossings & Road Openings

84. The owner/developer must meet the full cost for Council or a Council approved contractor to:
- a) Re-Construct a full width concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the Right of Way on Chapman Avenue.
 - b) Re/construct a 1.3m wide concrete footpath along the full site frontage on Fenton Avenue. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.

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85. Prior to issuing a final occupation certificate or occupation of the development (whichever is sooner), the owner/developer must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc. which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
86. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
 - b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
 - c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.
87. The naturestrip upon Council's footway shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu Turf or similar. Such works shall be installed prior to the issue of a final Occupation Certificate.

Service Authorities**Sydney Water Requirements**

88. 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 authorised WSC or Sydney Water.

The Section 73 Certificate must be submitted to the Principal Certifying Authority and the Council prior to issuing of an *Occupation Certificate*.

Undergrounding of Power

89. The PCA shall ensure that all power supply to the development site has been provided as an underground (UGOH) connection from the nearest main pole in Fenton Avenue, with all work completed to the requirements and satisfaction of

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Ausgrid and at no cost to Council. All private poles must be removed prior to the issuing of an occupation certificate.

Flooding

90. The PCA shall be satisfied that all flood control/mitigation requirements have been provided in accordance with the approved plans and conditions of consent including but not limited to;
- All habitable floor is provided at or above RL 6.72 AHD being the level of the 1% AEP (1 in 100yr flood) + 0.5m freeboard
 - The open hardstand carspaces are provided at or above RL 5.89 AHD being the level of the 5% AEP (1 in 20yr) flood.
 - The entrance to the car hoist / basement is provided at RL 5.89 AHD (1 in 20yr flood) while also protected by a fully installed and operational floodgate up to RL 6.52 AHD (1 in 100yr flood + 0.3m freeboard)
 - Flood Storage has been provided under the ground floor.

A copy of the relevant documentation is to be forwarded to Council's Development Engineers

91. Certification of the completed & installed flood gate shall be provided to the satisfaction of the PCA and Council (if Council is not the PCA) prior to the issuing of any occupation certificate. As part of this process Council reserves the right to require a practical demonstration of the completed flood gate technology to the satisfaction of Council's Engineers.

Flooding Restriction underneath slab

92. A "restriction on the use of land" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the area underneath the ground floor slab shall not be fully enclosed or used for the storage of goods to ensure that the flood storage area is maintained. Such restriction shall not be released, varied or modified without the consent of the Council.
- The "restriction on the use of land" is to be to the satisfaction of Council. A copy of Council's wording/layout for the restriction may be obtained from Council's Development Engineer.

Stormwater Drainage

93. A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration system is maintained and that no works which could affect the design function of the detention/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.

Notes:

- a. 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.
- 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.

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94. 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 Certifying Authority and the Council. The works-as-executed plan must include the following details (as applicable):

- The location of any detention basin/s with finished surface levels;
- Finished site contours at 0.2 metre intervals;
- Volume of storage available in any detention areas;
- The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
- The orifice size/s (if applicable);
- Details of any infiltration/absorption systems; and
- Details of any pumping systems installed (including wet well volumes).

95. The applicant shall submit to the Principal Certifying Authority (PCA) and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the PCA.

96. The applicant shall submit to the Principal Certifying Authority (PCA) and Council certification from a suitably qualified and experienced professional engineer, confirming that the walls of the basement have been fully tanked and waterproofed to prevent the entry of all groundwater in the basement level/s and that any required sub-soil drainage systems have been provided in accordance with the conditions of this consent. There must be no dry weather seepage/groundwater flows discharging to Council's street gutter or underground drainage system.

Waste Management

97. Prior to the occupation of the development, the owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services for the premises.
98. The waste storage areas shall be clearly signposted.

Landscaping

99. Prior to issuing any Occupation Certificate, certification from a qualified professional in the landscape/horticultural industry must firstly be submitted to, and be approved by, the PCA, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Landscape Plans by Melissa Wilson Landscape Architects, dwg's LS01 – 03, issue A, dated 02/10/19.
100. Suitable strategies must also be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.
101. The nature-strip upon Council's Fenton Street footway shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to the issue of any Occupation Certificate.

OPERATIONAL CONDITIONS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

Use of parking spaces

102. The car spaces within the development (other than the carshare space) are for the exclusive use of the occupants of the building and the car spaces (other than the carshare space) must not be leased to any person/company that is not an occupant of the building.

External Lighting

103. 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.

Fire Safety Statements

104. A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council (at least on an annual basis) in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2000*.

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

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

Environmental Amenity

105. The operation of the premises including all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the plant and equipment shall not give rise to an $L_{Aeq, 15 \text{ min}}$ sound pressure level at any affected premises that exceeds the background $L_{A90, 15 \text{ min}}$ noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Department of Environment & Climate Change Noise Control Guidelines.

106. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage to other premises.

107. The use of all outdoor areas are restricted as follows:

- access to and use of communal open space from between 10:00pm and 7:00am each day is prohibited.
- the maximum number of people permitted to occupy the communal open space on the third floor is 15 people.
- no live or amplified music.

108. Music shall not be audible beyond individual rooms.

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109. Any individual unit air conditioning plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:
- Before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or
 - Before 7.00am or after 10.00pm on any other day.
- Details of any proposed mechanical plant shall be reviewed by a suitably qualified acoustic consultant a report of compliance shall be provided to the principle certifying authority prior to a construction certificate being issued.
110. A report prepared by a suitably qualified and experienced consultant in acoustics shall be submitted to Council **3 months after occupation certificate being issued for the development and from time to time**, which demonstrates that noise and vibration emissions from the development satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, Environmental Protection Authority Noise Control Manual & Industrial Noise Policy, relevant conditions of consent (including any relevant approved acoustic report and recommendations). The assessment and report must include all relevant fixed and operational noise sources.
111. All the items listed in the Plan of Management prepared by ABC Planning Pty Ltd dated October 2019 for 6 Fenton Street, Maroubra shall be implemented at all times.
112. Maximum permanent resident occupancy shall be 19 persons (19 boarders).
113. A notice shall be placed near the entrance to the property in a visible position to the public advising of the boarding house operator's name and after hours contact number.
114. Each occupant shall be furnished with a set of house rules (i.e. the Plan of Management) and that no variation shall be permitted without the further approval of Council.
115. The boarding house operator shall maintain a record of all residents with details of their names, length of stay & number of persons in each room. This information shall be stored for a minimum of 12 months on site and made available to Council Officers upon request.
116. All residents in the boarding house accommodation are to sign a lease or licence agreeing to comply with the Plan of Management (POM) for the boarding house, with the length of the lease to be determined by the management but at least 3 months.
117. The use and operation of the premises shall not give rise to an environmental health or public nuisance.
118. There are to be no emissions or discharges from the premises which give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.
119. The individual rooms, common areas, shared facilities and common areas are to be maintained in a clean and tidy state and individual's rubbish is to be placed in the appropriate receptacles.

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Waste Management

120. Adequate provisions are to be made within the confines of the premises for the storage, collection and disposal of waste and recyclable materials, to the satisfaction of Council, prior to commencing business operations.

The waste storage area must be located within the property and not within any areas used for the preparation or storage of food.

A tap and hose is to be provided within or near the waste storage area and suitable drainage provided so as not to cause a nuisance.

Waste/recyclable bins and containers must not be placed on the footpath (or road), other than for waste collection, in accordance with Council's requirements.

Rainwater Tanks

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

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

Stormwater Detention/Infiltration System

122. The detention area/infiltration system must be regularly cleaned and maintained to ensure it functions as required by the design.

Residential Parking Permits

123. All prospective tenants of the building must be notified that Council will not issue any residential parking permits to occupants/tenants of this development.
124. A notice shall be placed in the foyer/common areas of the building advising tenants/occupiers that they are in a building which does not qualify for on-street resident parking permits.

GENERAL ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other relevant legislation and requirements. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$6,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

- A2 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:

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- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
 - An Accredited Certifier or Council has been appointed as the *Principal Certifying Authority* for the development,
 - Council and the Principal Certifying Authority have been given at least 2 days notice (in writing) prior to commencing any works.
- A3 Council can issue your *Construction Certificate* and be your *Principal Certifying Authority* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.
- A4 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA), Disability (Access to Premises – Buildings) Standards 2010 and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards. You are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.
- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works
- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-
- Install or erect any site fencing, hoardings or site structures
 - Operate a crane or hoist goods or materials over a footpath or road
 - Placement of a waste skip or any other container or article.
- For further information please contact Council on 9093 6971.
- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.
- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:
- the consent of the owners of such adjoining or supported land to trespass or encroach, or
 - an access order under the Access to *Neighbouring Land Act 2000*, or
 - an easement under section 88K of the *Conveyancing Act 1919*, or
 - an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

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- A9 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 any adjoining land.
- Finished ground levels external to the building are to be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground.
- A10 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.
- Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.
- A11 Air conditioning plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:
- before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or
 - before 7.00am or after 10.00pm on any other day.
- A12 The assessment of this development application does not include an assessment of the proposed building work under the Food Act 2003, Food Safety Standards or Building Code of Australia (BCA).
- All new building work must comply with relevant regulatory requirements and Australian Standards and details of compliance are to be provided in the *construction certificate* application.
- A13 The design and construction of the premises must satisfy the requirements of the Food Act 2003, Food Standards Code and AS 4674 (2004). Prior to finalising the design and fit-out for the development and prior to a *construction certificate* being obtained, advice should be obtained from an accredited Food Safety Consultant (or Council's Environmental Health Officer).
- A14 The applicant and operator are also advised to engage the services of a suitably qualified and experienced Acoustic consultant, prior to finalising the design and construction of the development, to ensure that the relevant noise criteria and conditions of consent can be fully satisfied.
- A15 Underground assets (e.g. pipes, cables etc.) may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or

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assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

- A16 The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.
- A17 Further information and details on Council's requirements for trees on development sites can be obtained from the recently adopted Tree Technical Manual, which can be downloaded from Council's website at the following link, <http://www.randwick.nsw.gov.au> - Looking after our environment – Trees – Tree Management Technical Manual; which aims to achieve consistency of approach and compliance with appropriate standards and best practice guidelines.