

# Randwick Local Planning Panel (Public) Meeting

Thursday 22 August 2024



## RANDWICK LOCAL PLANNING PANEL (PUBLIC) MEETING

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held online via Microsoft Teams on Thursday, 22 August 2024 at 1pm

### Acknowledgement of Country

*I would like to acknowledge that we are meeting on the land of the Bidjigal and the Gadigal peoples who occupied the Sydney Coast, being the traditional owners. On behalf of Randwick City Council, I acknowledge and pay my respects to the Elders past and present, and to Aboriginal people in attendance today.*

### Declarations of Pecuniary and Non-Pecuniary Interests

#### Address of RLPP by Councillors and members of the public

*Privacy warning;*

*In respect to Privacy & Personal Information Protection Act, members of the public are advised that the proceedings of this meeting will be recorded.*

### General Reports

Nil

### Development Application Reports

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Meryl Bishop  
**DIRECTOR CITY PLANNING**

## Development Application Report No. D64/24

**Subject:** 3-7 Lexington Place, Maroubra (DA/346/2024)

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### Executive Summary

<b>Proposal:</b>	Change of use to ground level tenancy to enable the provision of a pharmacy with ancillary fit-out works, signage and hours of operation Monday to Friday 9:00am to 7:00pm, Saturday 9:00am to 5:00pm and Sunday 9:00am to 3:00pm.
<b>Ward:</b>	Central Ward
<b>Applicant:</b>	Gary Finn
<b>Owner:</b>	Randwick City Council
<b>Cost of works:</b>	\$35,000.00
<b>Reason for referral:</b>	Council owned land and more than 10 submissions in objection

### Recommendation

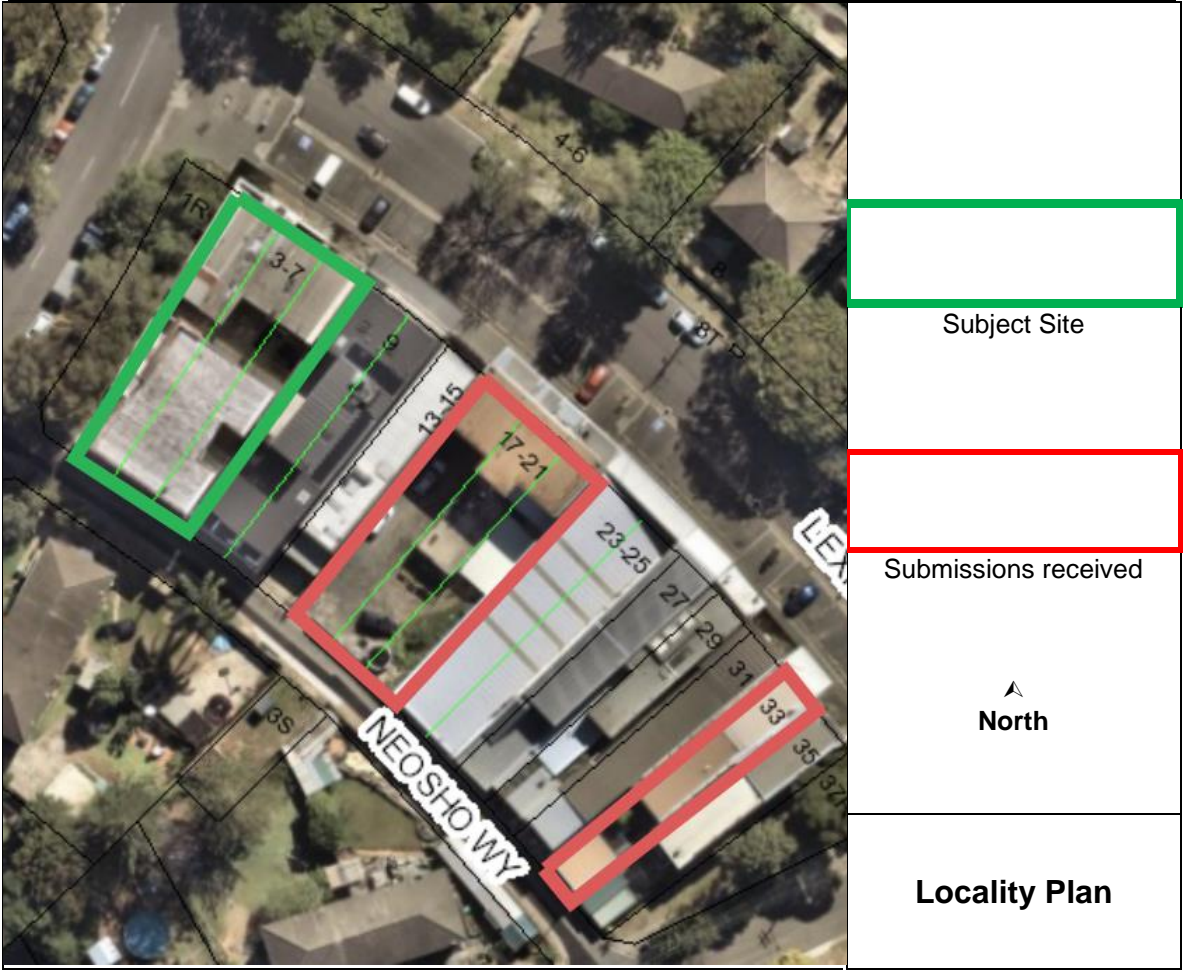
- A. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 346/2024 for change of use to ground level tenancy to enable the provision of a pharmacy with ancillary fit-out works, signage and hours of operation from Monday to Friday 9:00am to 7:00pm, Saturday 9:00am to 5:00pm and Sunday 9:00am to 3:00pm at Nos. 3-7 Lexington Place, Maroubra, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions (commercial) - DA/346/2024 - 3-7 Lexington Place, MAROUBRA NSW 2035 - DEV - Randwick City Council

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the landowner is Council and more than 10 unique submissions by way of objection were received in relation to the subject proposal.

The proposal seeks development consent for change of use to the ground level tenancy to enable the provision of a pharmacy with ancillary fit-out works, signage and hours of operation from Monday to Friday 9:00am to 7:00pm, Saturday 9:00am to 5:00pm and Sunday 9:00am to 3:00pm.

The subject site is located at the northern end of the Lexington Place retail strip, which includes a mix of small-scale convenience retail and community uses that serve the day to day needs of people who live or work in the surrounding area.

The application was publicly notified in accordance with the community consultation requirements under the Randwick Community Engagement Strategy and 12 individual submissions, 20 pro-forma letters and a petition with 258 signatures were received in objection to the proposal.

The public submissions submitted to Council during the notification period object to the proposal on the basis it would have a negative impact on the existing Lexington Pharmacy at 33 Lexington Place. Concerns were raised with the potential risk of the existing pharmacy closing due to insufficient trade to support two viable pharmacies operating at the same time in the retail strip.

Under Section 4.15 of the Environmental Planning and Assessment Act 1979, Council is required to take into consideration the economic impact in the locality. However, the economic competition between individual trade competitors is not a valid planning consideration. It is the overall wider



impact that is taken into consideration, not the effect of any proposal on the economic viability of a direct competitor. In this case, it is not considered that the proposed pharmacy would have a negative economic impact on the wider locality.

The proposal is recommended for approval subject to conditions.

## 2. Site Description and Locality

The subject site, known as 3-7 Lexington Place, Maroubra, is located at the northern end of the Lexington Place retail strip, which comprises a mix of retail and community uses servicing the convenience needs of residents and workers in the immediate surrounds, including but not limited to a bakery, café, hair salon, pharmacy and a community hub. Refer to **Figure 1**.

The site comprises three separate land titles legally described as Lots 547, 548 and 549 in DP 36865. The site has an 18m frontage to Lexington Place, a side boundary depth of 36m to Minneapolis Crescent, a 16m frontage to Neosho Way at the rear and a total area of 606m<sup>2</sup>.

The subject site contains a 3 storey mixed use building including a two-level basement car park and 3 at-grade car spaces accessed from Neosho Way. The upper two levels contain 9 residential units, whilst the ground floor fronting Lexington Place has 2 commercial premises. Refer to **Figure 2**.

The proposed pharmacy will occupy the vacant single fronted commercial tenancy known as Shop 7, which was previously used as a veterinarian and epidemiology business. The existing double fronted commercial tenancy is occupied by a Community Hub (The Hub @ Lexo), which provides a range of housing, counselling, and health services to the local community.

The site is located approximately 300m northwest of the South Maroubra Shopping Village and 1km south of Maroubra Junction.

The adjoining property at 9 Lexington Place contains a 3 storey mixed use development with a café and parking level at the ground floor and a boarding house containing 19 rooms on the upper levels. The locality is characterised by a mix of residential flat buildings and single dwellings.



**Figure 1** – Lexington Place retail strip centre looking south from the front of the site (subject tenancy outlined).

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**Figure 2** – Existing site (subject tenancy outlined)

### 3. Relevant history

On 16 March 1971, Council approved a development application (DA) for the erection of 3 x two storey shops and dwellings (DA/18/1971). The site has since been subject to multiple applications over the years, primarily seeking approval for the use and fit-out of the shops at ground level and various alterations to the apartments above.

On 1 March 2018, Council approved a development application for a veterinarian and epidemiology business within the commercial tenancy the subject of this application and associated fit-out and signage (DA/709/2017). The approved hours of operation were 8:00am to 7:00pm Monday to Friday and 9:00am to 12:00pm Saturday.

### 4. Proposal

The proposal seeks development consent for change of use to the ground level tenancy to enable the provision of a pharmacy including ancillary fit-out works and signage. The proposed works involve:

- New internal shelving and sales counter to facilitate a pharmacy retail service;
- Construction of an entry step ramp complying with AS 1428.1 to facilitate disability access;
- Installation of a new aluminium framed shopfront with an automated sliding door; and
- Installation of an under awning sign and a wall sign (shopfront).

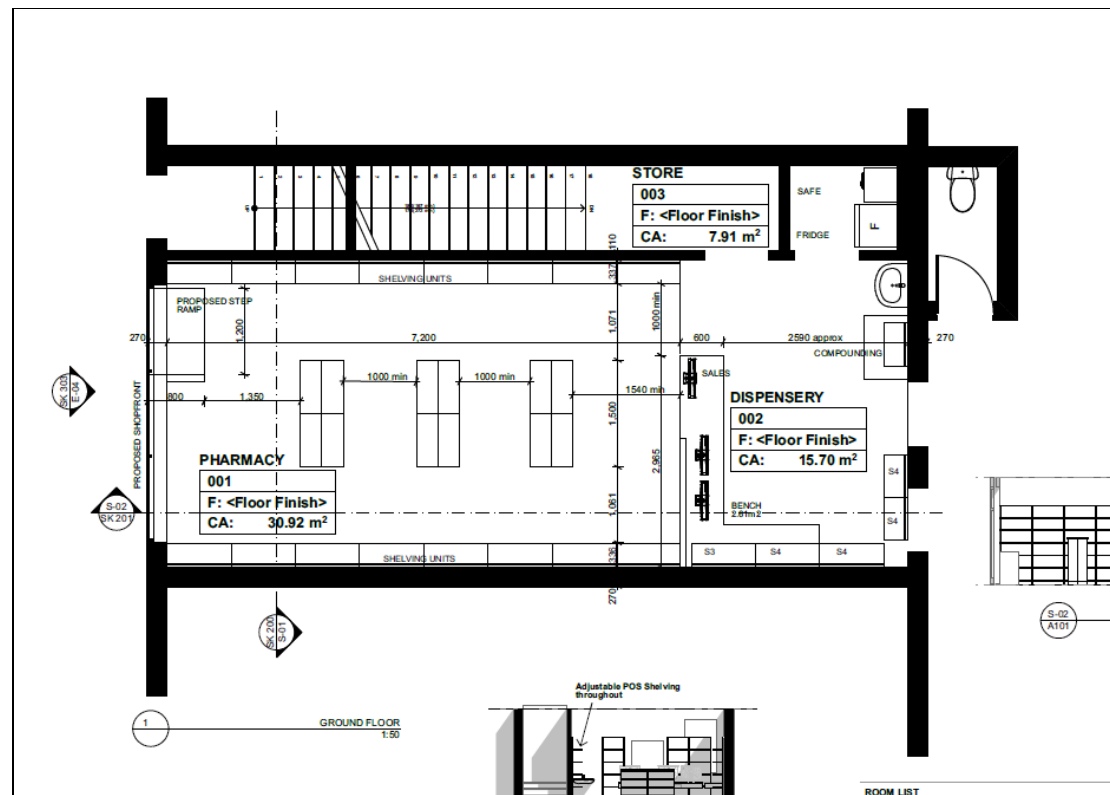
The proposed hours of operation are:

- Monday to Friday – 9:00am to 7:00pm
- Saturday – 9:00am to 5:00pm
- Sunday – 9:00am to 3:00pm

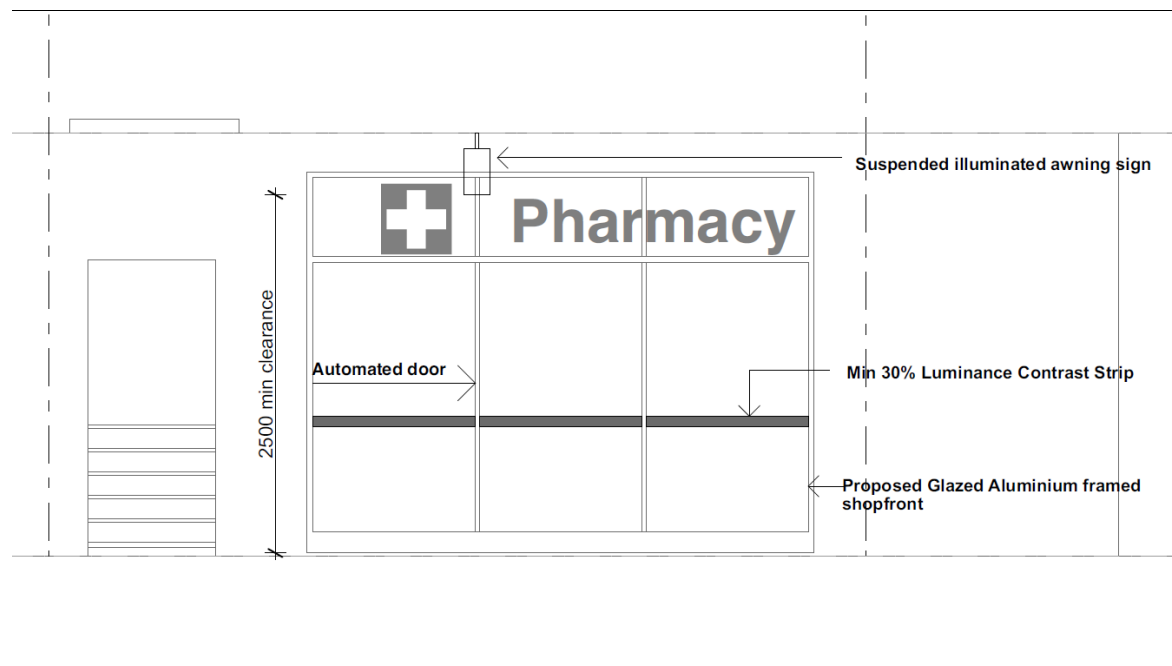
A maximum of three employees will be on the site at any one time.

An existing unisex toilet (indicated on the drawings outside the tenancy) will be available for use by employees. A hand basin is provided within the subject tenancy.

The proposed pharmacy does not generate any special waste requirements.



**Figure 3 – Proposed shop layout**



**Figure 4 – Proposed shopfront with automated door and signage**

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## 5. Notification

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

- 12 individual submissions
- 20 pro-forma letters
- 3 x petitions with total 258 signatures

### Individual Submissions

Address	Issue	Council Comment	Officers
45-47 Mineapolis Crescent	Conflict of interest with people who do business with the existing pharmacy	Whilst the service and support provided by the existing pharmacy to the local community is acknowledged, the competition, or the threat of competition, to existing businesses, is not a relevant planning consideration for Council in its assessment of the application. Refer to the Key Issues section of this report.	
37 New Orleans Crescent	The existing pharmacy is helpful and supports the local community and we don't need change to a second pharmacy		
No address	We already have a great chemist in the centre		
43 New Orleans	The community has been served by a great chemist for many years and introducing another chemist is ludicrous		
No address	The existing shops are slow paced. The existing business has been in operation for 60 years and we don't need another chemist.		
17 Lexington	It will adversely affect the existing business which provides a great service to the community.		
3 Morris Place	The existing pharmacy provides affordable pricing, and it does not need the competition and financial pressure of another pharmacy.		
No address	The locals know the existing staff and need to protect the pharmacy		
No Address	The existing pharmacy provides great service and has good relationship with existing customers		
No address	The existing pharmacy has been operating for sixty years and another one is not required		
No address	The existing pharmacy provides a good service, and the existing retail strip cannot support another pharmacy.		
33 Lexington Place (Lexington Pharmacy)	The existing pharmacy provides good service and care to the local community for over sixty years.		
	It is a quiet retail strip. The proposal will result in the closure of the existing pharmacy business and other businesses in the centre.		



Address	Issue	Council Comment	Officers
	<p>The existing pharmacy previously traded 7 days a week but no longer trades on a weekend due to the closure of a doctor surgery and increased cost of labour hire.</p> <p>The existing pharmacy currently trades Monday to Friday and provides a delivery service 365 days per year.</p> <p>The existing pharmacy is an essential service that is financially marginal and the addition of another pharmacy in the centre is likely to lead to its closure.</p>		
	Inadequate notification of the DA.	The application was notified in accordance with the requirements under the Randwick Community Engagement Strategy.	

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### Pro-forma Letters

Council received 20 pro-forma letters objecting to the proposal on the grounds that the existing pharmacy provides a good level of service to the local community and would be at risk of closing, as there is insufficient trade for two pharmacies to remain viable within the retail strip.

### Petition

Council received a petition containing a total of 258 signatures objecting to the proposal on the grounds that the existing pharmacy would be at risk of closing as there is insufficient trade for two pharmacies to remain viable within the retail strip. Concern was also raised with the lack of proper public notification of the application to the surrounding area.

### Council Officers Comment

The issues identified in the pro-forma letters and the petition have been addressed in the Key Issues section of this report and the above submissions table.

## **6. Relevant Environment Planning Instruments**

### **6.1. SEPP (Industry and Employment) 2021**

#### Chapter 3 Advertising and Signage

The plans submitted with the application show the installation of one under awning sign and one wall sign above the glazing along the shopfront for business identification.

Under Clause 3.6, Council is required to be satisfied that the signage is consistent with the objectives in section 3.1(1)(a) and the assessment criteria in Schedule 5.

The objectives under clause 3.1 seek to ensure the signage:

- i) Is compatible with the desired amenity and visual character of the area, and
- ii) provides effective communication in suitable locations, and
- iii) is of high-quality design and finish

The proposal is consistent with the objectives in that the new signage is consistent with the retail character and signage of other shops within the local centre.

A further assessment against the Schedule 5 criteria is provided below:

Assessment Criteria	Comment
1 – Character of the area	The proposal is consistent with the building identification exhibited within the commercial context of the E1 – Local Centre zone.  Consistent with surrounding theme in terms of type and design.
2 – Special Areas	The proposal would not impact a Special Area.
3 – Views and Vistas	The location of the signage does not result in view impacts.  The signage does not block views to other signs in the shopping strip.
4 – Streetscape, setting or landscape	The scale, proportion and form are appropriate, contributing to the visual interest of the streetscape. The signage relates to the proposed use, without additional clutter. The signs will not extend past the existing external building envelope and make use of the existing signage opportunities.
5 – Site and Building	The proposal is compatible with the scale, proportion and other characteristics of the site.
6 – Associated devices and logos with advertisements and advertising structures	Business name included with the identification sign.
7 – Illumination	The internally illuminated under awning sign is consistent with other signage in the strip. It will be located under the awning and therefore would not impact residences above in terms of light spill. The illumination will cease after the premises closes operations for the day. A condition to this effect is included in the recommended development consent.
8 – Safety	No identified safety impacts from the proposed signs.

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

The site is zoned E1 Local Centre under RLEP 2012, and the proposal is permissible with consent. The proposal is consistent with the specific objectives of the zone in that the proposed activity will serve the pharmaceutical needs of the local community.

The proposal will not result in any change to the existing gross floor area (GFA) or the resultant Floor Space Ratio (FSR) and Building Height development standards under Clauses 4.4 and 4.3.

### Clause 6.22 Development in local centres

- (1) *The objectives of this clause are as follows—*
  - (a) *to ensure the scale and function of development in local centres are appropriate for the location,*
  - (b) *to ensure development in local centres is compatible with the desired future character and amenity of surrounding residential areas.*
- (2) *This clause applies to land in Zone E1 Local Centre.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered—*
  - (a) *the impact of the development on—*
    - (i) *the amenity of surrounding residential areas, and*
    - (ii) *the desired future character of the local centre, and*
  - (b) *whether the development is consistent with the hierarchy of centres.*

Council Officers Comment

The proposed pharmacy will operate generally within standard business hours and no deliveries will occur outside of 7:30am to 5:00pm Monday to Friday. The proposal would not result in any adverse amenity impacts to the nearest residences above the shops in Lexington Place. The proposed development will serve the day to day needs of the local community and is therefore consistent with the desired future character of the local centre.

**7. Development control plans and policies****7.1. Randwick Comprehensive DCP 2013**

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

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

The relevant provisions of the DCP are addressed in **Appendix 1**.

**8. Environmental Assessment**

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

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 1 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant retail character in the Lexington Place local centre.</p>



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Section 4.15 'Matters for Consideration'	Comments
and economic impacts 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 close to local services and public transport and is easily accessed by walking or cycling from surrounding residential areas. The site is adjacent to an on-street unrestricted parking in Lexington Place. The subject tenancy has sufficient area to accommodate the proposed land use. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the E1 zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## 8.1. Discussion of key issues

### Economic Impact

The public submissions received by Council during the notification period object to the proposal on the basis it would have a negative impact on the existing Lexington Pharmacy at 33 Lexington Place. Concerns were raised with the potential risk of the existing pharmacy closing due to insufficient trade to support two viable pharmacies operating at the same time in the retail strip. The operators of the existing pharmacy at 33 Lexington Place advise they have been providing a high level of service and support to the local community for more than sixty years and the introduction of a new pharmacy would result in the closure of their business and other businesses in the retail strip.

Under Section 4.15 of the EP&A Act, Council is required to take into consideration the proposal's economic impact in the locality. However, the economic competition between individual trade competitors is not a valid planning consideration. It is the overall wider impact that is taken into consideration, not the effect of any proposal on the economic viability of a direct competitor.

Council therefore does not consider the economic competition between competing businesses in its assessment of the development application as that is a matter to be resolved by market forces, subject to the Consumer and Competition Act 2010 and the Fair Trading Act, not the EP&A Act. If Council were to refuse or limit a proposal for development on the ground of competition with a trade competitor, it could be deemed as anti-competitive conduct under the Consumer and Competition Act 2010. Competition, or the threat of competition, to existing businesses, is not a relevant planning consideration for consent authorities in New South Wales.

The economic impact that a planned development may have on a local community is relevant only if it will result in an overall reduction in the level of facilities and amenities presently enjoyed by that local community. In this case, it is not considered that the proposed pharmacy would have an impact on the wider locality in terms of the hierarchy of retail centres and the level of facilities and amenities available to the local community.

It is noted that the proposed pharmacy is subject to the Pharmacy Location Rules prepared by the Department of Health and Aged Care. The location rules are divided into two general types - relocating an existing pharmacy and establishing a new pharmacy. In this case, the operator is relocating from an existing pharmacy at 178B Marine Parade, Maroubra. The operator of the proposed pharmacy has advised Council that they have received a recommendation for approval from the Australian Community Pharmacy Authority for the relocation of their current pharmacy to the subject premises with a final decision to be made by a delegate of the Department of Health and Aged Care.

## 9. Conclusion

That the application to change the use of the ground level tenancy to enable the provision of a commercial premises (chemist) with ancillary fit-out works, signage and hours of operation from Monday to Friday 9:00am to 7:00pm, Saturday 9:00am to 5:00pm and Sunday 9:00am to 3:00pm be approved (subject to conditions) for the following reasons:

- i. The proposal is consistent with 1.3 Objects of Act under the Environmental Planning and Assessment Act 1979, as it will promote the orderly and economic use and development of land.
- ii. The proposal is consistent with the relevant objectives contained within the Randwick Local Environmental Plan 2012 and the relevant requirements of the Randwick Development Control Plan 2013.
- iii. The proposal is consistent with the specific objectives of the E1 Local Centre zone contained within the Randwick Local Environmental Plan 2012 in that it will provide a retail use that serves the needs of people who live in, work in or visit the area.
- iv. The proposal is compatible with the desired future character of the local centre because it will provide a small scale retail use to service the needs of residents in the surrounding area.
- v. The proposed development will make a positive contribution to the local centre by maintaining an active street front at footpath level.

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**Appendix 1: DCP Compliance Table****Section B6: Recycling and Waste Management**

DCP Clause	Control	Proposal	Compliance
4.0	<b>Ongoing Operation</b>		
	<p>Provide suitable and sufficient waste storage facilities for all development, in accordance with Council's Guideline.</p> <p>Identify in any required Waste Management Plan:</p> <ul style="list-style-type: none"> <li>a) estimated volume of general waste, recyclables, garden waste and bulky waste likely to be generated on the premise;</li> <li>b) required type, size and number of bins and space for storage of bins and bulky waste; and</li> <li>d) details of on-going management arrangements, including responsibility for cleaning, transfer of bins between storage facilities and collection points and maintenance of the storage facilities.</li> </ul> <p>Illustrate on the DA plans/drawings:</p> <ul style="list-style-type: none"> <li>a) storage space and layout for bins;</li> <li>b) storage room for bulky waste;</li> <li>c) waste collection point(s) for the site;</li> <li>d) path of access for users and collection vehicles; and</li> <li>e) layout and dimensions required to accommodate collection vehicles when on-site collection is required.</li> </ul> <p>Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street where possible.</p> <p>Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.</p> <p>Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.</p> <p>Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step free and unobstructed access to the collection point(s).</p> <p>Provide sufficient storage space within each dwelling/unit to hold a</p>	<p>The application is accompanied by a Waste Management Plan.</p> <p>The on-going waste generated by the proposed pharmacy including paper, cardboard and plastic will be stored in small bins and transferred to a central waste area within the confines of the premises for the storage, collection and disposal of waste and recyclable materials in accordance with Council's requirements.</p> <p>The proposed pharmacy will not generate any special waste.</p>	Yes

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DCP Clause	Control	Proposal	Compliance
	<p>single day's waste and to enable source separation.</p> <p>Bin enclosures/rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply.</p> <p>For mixed use development, provide separate waste storage facilities for residential and commercial uses.</p> <p>Consult with Council and the NSW EPA with regards to any proposed storage and collection of special wastes (e.g. medical and household hazardous chemical wastes).</p>		

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**Section B7 Table: Transport, Traffic, Parking and Access**

DCP Clause	Controls	Proposal	Compliance
<b>3.2</b>	<b>Vehicle Parking Rates</b>		
	<p>i) Development must comply with the vehicle parking rates as detailed in Table 1 Vehicle Parking Rates. Any excess provisions over and above the parking rates will be included in GFA calculations.</p>	<p>The subject tenancy has a Gross Floor Area (GFA) of approximately 54.5m<sup>2</sup>. The parking demand generated by the proposed retail pharmacy use is 1 space per 40m<sup>2</sup> GFA. The proposal will therefore generate a demand for one car space on the site.</p> <p>No car parking space will be made available to the proposed pharmacy.</p> <p>The variation to the parking requirement is acceptable on the basis that the previous business use approved by Council did not require on-site parking.</p> <p>The proposed use will not result in any additional floor area or a significant increase in the intensity of use compared to the previously approved veterinarian and epidemiology business.</p> <p>Council will generally only require that</p>	Yes

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DCP Clause	Controls	Proposal	Compliance
		<p>additional parking be provided to cater for the additional demands arising from increases in floor space or a significant change in use and intensity.</p> <p>In any event, there are unrestricted public parking is currently available to shoppers along the front of the Lexington Place retail strip.</p> <p>The proposed change of use will not generate any significant additional parking demand beyond the previously approved use of the site.</p>	

#### Section D6 Neighbourhood Centres – General Controls

DCP Clause	Controls	Proposal	Compliance
<b>3.1</b>	<b>Facades</b>		
	<p>v) Design shopfronts, including entries and windows, to reinforce any prevalent character in the centre.</p> <p>vi) All street frontage windows at ground level are to have clear glazing. Large glazed shopfronts should be avoided, with window configurations broken into discrete sections to ensure visual interest.</p> <p>vii) All facade elements must be contained within the site boundaries.</p>	<p>The proposed shopfront will be replaced with a new aluminium framed glazed shopfront with an automatic sliding door.</p>	Yes
<b>3.6</b>	<b>Signage</b>		
	<p>i) The location, size and design of signage must integrate with the architectural detail of the building and act as a unifying element to the neighbourhood centre.</p> <p>ii) Signage must not:</p> <ul style="list-style-type: none"> <li>• obscure important architectural features;</li> <li>• dominate the architecture of buildings;</li> <li>• protrude from, or stand proud of, the awnings;</li> <li>• project above any part of the</li> </ul>	<p>The proposed signage is suitably integrated and consistent with the commercial character of the local centre.</p> <p>All proposed signage is related to the business premises.</p> <p>No architectural elements will be obscured by the proposed signage.</p>	Yes

DCP Clause	Controls	Proposal	Compliance
	<p>building to which it is attached; • cover a large portion of the building façade.</p> <p>iii) Avoid fin signs, signage on canvas blinds, signage on roller shutters and projecting wall signs and large elevated solid panel business and building name signs including those fixed on parapets or roofs.</p> <p>iv) Ensure that signs provide clear identification of premises for residents, visitors and customers.</p> <p>v) All premises must display a street number. The height of these numbers should be legible but not a dominating feature, and no less than 300mm presented in a clear readable font.</p> <p>vi) Signage must relate to the business being carried out on the property.</p> <p>vii) Early building names (on parapets, pediments, etc) should be preserved wherever possible.</p> <p>viii) Any signage structure or sign must have regard to the impact on residential occupants in terms of illumination and visual impact.</p>		
<b>5.2</b>	<b>Acoustic and Visual privacy</b>		
	<p>iv) Operating hours must be submitted with the DA. Should the development require deliveries and/or operation of machinery outside of standard hours (7.30am to 5pm, Monday to Friday), an acoustic report must accompany the DA. The acoustic report must be prepared by a suitably qualified acoustic consultant.</p>	<p>The proposed hours of operation are Monday to Friday – 9:00am to 7:00pm, Saturday – 9:00am to 5:00pm and Sunday – 9:00am to 3:00pm.</p> <p>The proposed hours of operation are generally within standard business hours.</p> <p>No deliveries will occur outside of 7:30am to 5:00pm Monday to Friday. A condition to this effect is included in the recommended development consent.</p>	Yes

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DCP Clause	Controls	Proposal	Compliance
		<p>The proposed hours of operation are similar to the approved veterinarian business which traded Monday to Friday - 8:00am to 7:00pm and Saturday - 9.00am to 12 noon.</p> <p>The proposed retail use is relatively low impact and therefore will not result in any adverse noise disturbance to the surrounding area.</p>	

## F2 Outdoor Advertising and Signage

DCP Clause	Controls	Proposal	Compliance
<b>2</b>	<b>General Design and Siting</b>		
	<p>i) Signage should recognise the legitimate needs for directional advice, business identification and promotion.</p> <p>ii) Signage must complement and be compatible with the development on which it is situated and with adjoining development.</p> <p>iii) Signage should not obscure architecturally decorative details or features of buildings or dominate building facades. It should be placed on the undecorated wall surfaces or designed sign panels provided.</p> <p>iv) Entire building facades and /or walls must not be painted or covered with cladding or other material to act as a large billboard type.</p> <p>v) Where a building or site contains multiple tenancies or uses, a coordinated approach for all signs is required.</p> <p>vi) Signage shall be displayed in English but may include a translation in another language.</p> <p>vii) Signage erected or displayed on identified heritage buildings or within heritage conservation areas must not detract from the architectural character and heritage significance of such buildings or areas.</p>	<p>The proposed signage will assist in business identification.</p> <p>The signage is generally consistent with other signage in the area and does not obscure any significant architectural or features of the building.</p> <p>The proposed signage is consistent with the use of the business and does not occupy an unnecessary area of the building façade.</p> <p>The signage will be in English.</p> <p>No flashing or animated signage is proposed.</p>	Yes



DCP Clause	Controls	Proposal	Compliance
	<p>viii) Outdoor advertising attached to vehicles or trailers which are parked for advertising purposes will not be permitted.</p> <p>ix) Signage must not be flashing or animated. Note: Flashing or animated signs include mechanical moving signs, moving LED signs, video/television screens, projected laser advertising and other flashing, intermittently illuminated or sequenced lighting signs.</p>		
<b>3.2</b>	<b>Business Zones</b>		
	<p>i) The size and shape of any signage must relate to the size of the building or space to which it is to be attached to or placed on. Larger building facades are capable of accommodating larger signs without detracting from the appearance of the building.</p> <p>ii) Signage must not dominate or obscure a building or its architectural features. Advertising should highlight and reinforce architectural details.</p> <p>iii) Roof signs and advertising structures must not project above the parapet of the building or that part of the building to which they are attached (including signs and bunting mounted on plant rooms or other roof structures).</p> <p>iv) Avoid fin signs, projecting wall signs and above awning signs (sitting on the awning).</p> <p>v) The visual amenity and value of streetscapes should be protected through careful consideration of proposals for flush wall signage.</p> <p>vi) On any building listed as a Heritage Item or situated in a Heritage Conservation Area outdoor advertising (projecting and flush) must not be located above awning level.</p> <p>vii) Upper level signs are best located at major focal points of a building only, to advertise arcades, plazas, etc...and to provide as corporate identity for developments which contain a range of businesses.</p>	<p>The proposed signage relates directly to the business. The signage is compatible with other signs in the area and is below the awning and therefore it will not visually dominate the architectural features of the building.</p> <p>1 x under awning sign is proposed 2.5m above the footpath. A condition requiring a minimum 2.6m clearance above the footpath level is included in the recommended development consent.</p>	Yes

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DCP Clause	Controls	Proposal	Compliance
	<p>viii) Outdoor advertising on or attached to buildings must align and relate to the architectural design lines on a building façade or, in the absence of architectural detail or decoration, relate to the design lines of adjacent buildings.</p> <p>ix) Limit under awning to one per shop or for larger premises one per 6 metres of shop frontage.</p> <p>x) Under awning signs must be at least 2.6 metres above footpath level.</p> <p>xi) Pole or pylon signs must not exceed the height of adjoining or adjacent buildings, or 6 metres, whichever is the lower.</p>		

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**Responsible officer:** Thomas Mithen, Environmental Planner

**File Reference:** DA/346/2024

## Development Consent Conditions (Commercial)



<b>Folder / DA No:</b>	DA/346/2024
<b>Property:</b>	3-7 Lexington Place, MAROUBRA NSW 2035
<b>Proposal:</b>	Change of use to ground level tenancy to enable the provision of a commercial premises (chemist) with ancillary fitout works, signage and hours of operation from Monday to Friday 9am to 7pm, Saturday, Sunday and Public Holidays from 9am to 5pm.
<b>Recommendation:</b>	Approval

### GENERAL CONDITIONS

#### Condition

1. **Approved plans and documentation**

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

<i><b>Plan</b></i>	<i><b>Drawn by</b></i>	<i><b>Dated</b></i>	<i><b>Received by Council</b></i>
A101 Ground Floor	Sydney Access Consultants	15 April 2024	3 June 2024
A000 Shopfront Elevation	Sydney Access Consultants	15 April 2024	3 June 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.

### BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

#### Condition

2. **Consent Requirements**

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

Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.

3. **Building Code of Australia**

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In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 69 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).

Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.

Condition Reason: Prescribed condition under section 69 of the *Environmental Planning and Assessment Regulation 2021*.

4.
- Building Code of Australia**

Access and facilities for people with disabilities must be provided to new building work in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010 and relevant Australian Standards, to the satisfaction of the Registered Certifier for the development and details are to be included in the construction certificate for the development.

Condition Reason: To ensure safe and easy access to the premises for people with a disability.

5.
- Street Awnings**

The under-awning sign must be a minimum of 2.6m above the existing footpath level.

Condition Reason: To ensure that street awnings are constructed in accordance with required standards.

BEFORE BUILDING WORK COMMENCES

Condition

6.
- Building Certification & Associated Requirements**

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

a)

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

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

b)

a Registered (Building) Certifier must be appointed as the *Principal Certifier* for the development to carry out the necessary building inspections and to issue an occupation certificate; and

c)

a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the Principal Certifier and Council must be notified accordingly (in writing); and

d)

the principal contractor must be advised of the required critical stage

inspections and other inspections to be carried out, as specified by the Principal Certifier; and

- e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.

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

7. **Public Liability**

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

Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.

## DURING BUILDING WORK

### Condition

8. **Site Signage**

It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:

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

The sign must be—

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

This section does not apply in relation to—

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

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

9. **Restriction on Working Hours**

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> <li>• Monday to Friday - 7.00am to 5.00pm</li> <li>• Saturday - 8.00am to 5.00pm</li> <li>• Sunday &amp; public holidays - No</li> </ul>

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	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"> <li>Monday to Friday - 8.00am to 3.00pm</li> <li>(maximum)</li> <li>Saturday - No work permitted</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> <li>Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted</li> </ul>

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

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

10. **Noise & Vibration**

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the *Construction Noise & Vibration Management Plan*, prepared for the development and as specified in the conditions of consent.

Condition Reason: To protect the amenity of the neighbourhood during construction.

11. **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.

- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.

*If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.*

- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- j) 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.

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

## 12. Complaints Register

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

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

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

Condition reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.



13. **Building Encroachments**

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

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

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**BEFORE ISSUE OF AN OCCUPATION CERTIFICATE**


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## Condition

14. **Occupation Certificate Requirements**

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

Condition reason: Statutory requirement. To ensure the site is authorised for occupation.

15. **Waste Management**

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

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

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

Condition Reason: To ensure that sufficient waste provisions are provided for both the construction and operational requirements of the site.

16. **Waste Management**

Any liquid trade waste materials are to be disposed of in accordance with the requirements of the Sydney Water, Trade Waste Department (i.e. via a grease trap) and details of compliance are to be submitted to the Certifier prior to the commencement of any works.

Condition Reason: To ensure that sufficient waste provisions are provided for both the construction and operational requirements of the site.

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**OCCUPATION AND ONGOING USE**


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## Condition

17. **Operational Hours of Retail Premises**

The hours of the operation of the business are restricted to the following:-

- Monday through to Friday inclusive, from: 9:00am to 5:00pm; and
- Saturday from: 9:00am to 5:00pm

- Sunday from: 9:00am to 3:00pm

Condition Reason: To ensure that the approved use is operated within the scope of the proposed development, to ensure safety and security and protect the amenity of surrounding areas.

18. **Environmental Amenity**

There are to be no emissions or discharges from the premises which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and *Regulations*.

Condition Reason: To ensure that noise from site does not adverse impact upon the amenity of the locality.

19. **Under Awning Sign**

The under awning sign shall only be internally illuminated during the approved hours of operation (refer to Condition 18 of this consent).

Condition Reason: To protect the amenity of the surrounding area and residents.

20. **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.

21. **Deliveries**

Deliveries to the premises are not to occur outside of 7:30am to 5:00pm Monday to Friday.

Condition Reason: To protect the amenity of the surrounding area and residents.



## Development Application Report No. D65/24

**Subject:** 68 Beach Street, Coogee (DA/923/2023)

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### Executive Summary

<b>Proposal:</b>	Demolition of existing structures and construction of a four storey residential flat building comprising 6 apartments, a basement carpark and ancillary landscaping works.
<b>Ward:</b>	North Ward
<b>Applicant:</b>	The Trustee for Beach Street Parseh Unit Trust
<b>Owner:</b>	The Trustee for Beach Street Parseh Unit Trust
<b>Cost of works:</b>	\$3,871,286.00
<b>Reason for referral:</b>	More than 10 unique submissions by way of objection were received.

### 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/923/2023 for demolition of existing structures and construction of a four storey residential flat building comprising 6 apartments, a basement carpark and ancillary landscaping work, at No. 68 Beach Street, Coogee, for the following reasons:

1. The proposed development is of an excessive height, bulk, and scale 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.
2. 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.
3. The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of RLEP 2012. The Applicant has failed to provide a written request made under clause 4.6 of RLEP 2012 to justify the contravention to the development standard.
4. The proposed development does not comply with the non-discretionary development standard for deep soil area pursuant to section 18(2)(d) of the Housing SEPP. The Applicant has failed to provide a written request made under clause 4.6 of RLEP 2012 to justify the contravention to the development standard.
5. The proposed development does not comply with the non-discretionary development standard for solar access pursuant to section 18(2)(e) of the Housing SEPP. The Applicant has failed to provide a written request made under clause 4.6 of RLEP 2012 to justify the contravention to the development standard.
6. The proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone in that it is not compatible with the desired future character of the locality and significantly exceeds the level of built form anticipated for the subject site. The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form.
7. The applicant has failed to provide sufficient information to demonstrate that the requirements of section 21 of the Housing SEPP, relating to the requirements for the management of the affordable housing component.

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8. The proposed development will result in unreasonable residential amenity impacts upon neighbouring properties with regard to overshadowing, visual privacy, visual bulk, and view loss.
9. Pursuant to Part 3D-1 of the ADG and Part C2, Section 2.3 of RDCP 2013, the proposal fails to provide sufficient communal open space.
10. Pursuant to Part 3F-1 of the ADG and Part C2, Section 5.3 of RDCP 2013, the proposal fails to provide suitable building separation distances and/or privacy screening measures to ensure visual privacy.
11. Pursuant to Part 4A of the ADG and Part C2, Section 5.1 of RDCP 2013, the proposal fails to provide sufficient solar access to proposed dwellings and to neighbouring properties.
12. Pursuant to Part 4B of the ADG and Part C2, Section 5.2 of RDCP 2013, the proposal fails to provide suitable natural ventilation.
13. Pursuant to Part 4D of the ADG, the fourth bedroom to Unit 6 does not meet the minimum 3m dimensions for bedrooms.
14. Pursuant to Part 4E of the ADG, the balconies to Unit 2, Unit 4, and Unit 5 fails to comply with the minimum 2.4m depth requirement.
15. Pursuant to Part C2, Section 3.4 of RDCP 2013, the proposal fails to comply with the minimum front and side setback requirements.
16. Pursuant to Part C2, Section 4.4 of RDCP 2013, the proposal fails to comply with the maximum 8m external wall height requirement.
17. Pursuant to Part C2, Section 4.5 of RDCP 2013, the pedestrian entry is not suitable and is not clearly distinguishable from the vehicular access.
18. Pursuant to Part C2, Section 5.5 of RDCP 2013, the proposal results in unreasonable view loss to neighbouring properties.
19. The proposal fails to protect the amenity of future residents in relation to natural ventilation, overshadowing, visual privacy, pedestrian safety, private open space, and communal open space.
20. A full and robust assessment of the proposal cannot be completed as the applicant has failed to provide sufficient information.
21. 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.
22. 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 more than 10 unique submissions by way of objection were received.

The proposal seeks development consent for demolition of existing structures and construction of a four (4) storey residential flat building comprising six (6) apartments, a basement carpark, and ancillary landscaping works.

The key issues associated with the proposal relate to non-compliance with the development standards for building height, FSR, deep soil area, and solar access. The key issues also relate to adverse impacts to neighbouring properties relative to overshadowing, view loss, visual bulk, and visual privacy.

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. 2024/209782).

The proposed development results in a variation to the development standard for building height and results in several non-compliances with the applicable planning controls within the Apartment Design Guide (ADG) and Section C2 of Randwick Development Control Plan (RDCP) 2013. The proposed development is considered to result in adverse impacts to neighbouring properties and is inconsistent with the scale of surrounding development and the prevailing streetscape character.

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 is known as 68 Beach Street, Coogee and is legally described as Lot 11 in DP 84481. The site has an area of 634.6m<sup>2</sup>, is rectangular in shape, and has a 13.82m frontage to Beach Street to the east. The site slopes by approximately 8m from the rear (west) to the front (east) of the site.

As shown in Figure 1, the site is currently occupied by a two (2) storey dwelling house and a rear carport which is accessed via a right of way to Beach Lane. The site is not listed as a heritage item and is not located within a heritage conservation area.

To the south of the site, at No. 70 Beach Street, is a two (2) storey dwelling (refer Figure 2). This site sits considerably lower than the subject site. Further to the south, at Nos. 72 and 72A Beach Street, is a pair of two (2) storey semi-detached dwellings (refer Figure 2).

To the north of the site, at No. 66 Beach Street, is a three (3) storey residential flat building comprising three (3) units (refer Figure 3).

Although Beach Street slopes downwards to the north, buildings further to the north of the subject site are positioned high on their respective sites, some with retaining walls and garages forward of the building line.

Development to the east of the site, on the opposite side of Beach Street, comprises dwellings of one (1) to two (2) storeys in height (refer Figure 4).

Development to the west (rear) of the site, at Nos. 115 and 117 Arden Street, comprises a pair of one (1) and two (2) storey semi-detached dwellings. To the north-west, at No. 111-113 Arden Street, is a three (3) storey residential flat building and to the south-west, at No. 119-127 Arden Street, is a four (4) storey residential flat building.



**Figure 1:** Existing dwelling at subject site, viewed from Beach St (Source: Council officer)





**Figure 2:** Dwelling at No. 70 Beach St (right) and semi-detached dwellings at Nos. 72 and 72A (left), viewed from Beach St (Source: Council officer)



**Figure 3:** Residential flat building at 66 Beach St, viewed from Beach St (Source: Council officer)



**Figure 4:** Dwellings at No. 71 Beach St (right) and No. 69 Beach St (left), viewed from Beach St (Source: Council officer)

### 3. Relevant history

DA/707/2018 – approved by Randwick Local Planning Panel on 31 October 2019 for demolition of existing structures, construction of 3 storey residential flat building containing 5 dwellings, semi-basement parking for 9 vehicles including use of car stacker, landscaping and associated works.

DA/707/2018/A – approved by Land and Environment Court on 27 April 2021 for s4.55(2) modification of approved development to delete condition 2(a) and 2(c) to reinstate height of building and size of balcony and modify condition 1 with updated drawings.

DA/353/2021 – refused by Land and Environment Court on 04 July 2022 for amending DA to DA/707/2018 including changes to the internal levels of the approved development to insert an additional level for two additional units resulting in a total of 7 x 3 bedroom units and car parking reconfiguration to accommodate 11 car spaces.

### 4. Proposal

The proposal seeks development consent for demolition of existing structures and construction of a part four (4) and part five (5) storey residential flat building comprising six (6) apartments, a basement carpark, and ancillary landscaping works.

Specifically, as shown in Figures 5-8, the proposal comprises:

- Basement – 11 x car parking spaces, 1 x motorcycle space, 4 x bicycle spaces, waste room, water/gas meter, and fire booster.
- Ground floor – 6 x storage cages, bulky waste room, services, 1 x three (3) bedroom unit.
- First floor – 2 x three (3) bedroom units.
- Second floor – 2 x three (3) bedroom units.
- Third floor – 1 x four (4) bedroom unit.



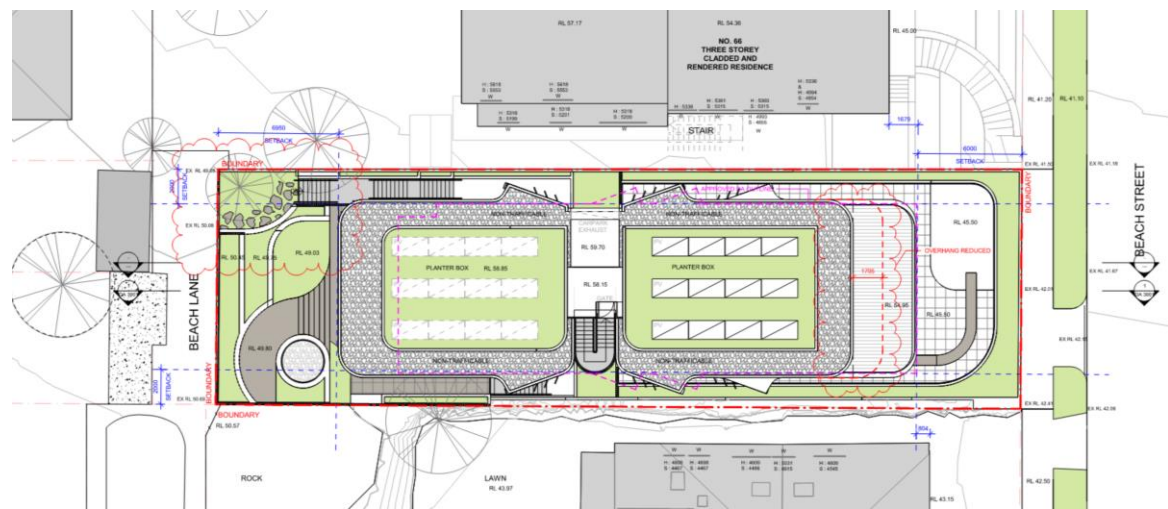


Figure 5: Proposed site plan (Source: Orosi Architecture)



Figure 6: Proposed east (street) elevation plan (Source: Orosi Architecture)

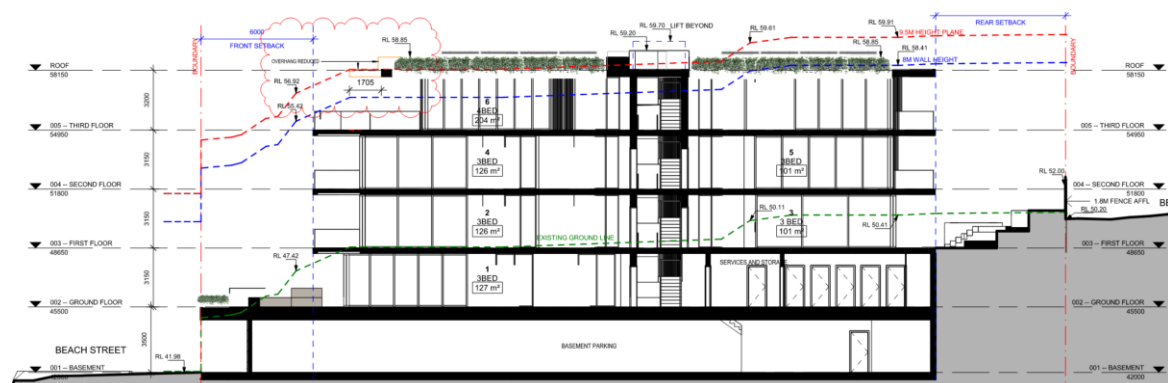


Figure 7: Proposed section plan (Source: Orosi Architecture)

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Figure 8: Proposed photomontage (Source: Orosi Architecture)

Request for Information

On 19 February 2024, Council requested additional information from the Applicant relating to building height, floor space ratio, affordable housing, landscaped open space, setbacks, overshadowing, visual privacy, view sharing, landscaping, geotechnical report, and heritage.

Amended documentation was submitted by the Applicant on 15 March 2024.

**5. Notification**

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

- Unknown address x 2
- 3/111 Arden Street, Coogee
- 115 Arden Street, Coogee
- Units 1-3, 66 Beach Street, Coogee
- 70 Beach Street, Coogee
- 72 Beach Street, Coogee
- 74 Beach Street, Coogee
- 79 Beach Street, Coogee
- 4/138 Beach Street, Coogee
- 13A Kitchener Street, Maroubra

Issue	Comment
Heritage concerns	Agreed – recommendation for refusal
Amenity impacts to neighbouring properties	Agreed – recommendation for refusal
Compatibility with character of streetscape	Agreed – recommendation for refusal
Overdevelopment of the site	Agreed – recommendation for refusal

Issue	Comment
Overshadowing impacts	Agreed – recommendation for refusal
Non-compliant building height	Agreed – recommendation for refusal
Non-compliant wall height	Agreed – recommendation for refusal
Non-compliant setbacks	Agreed – recommendation for refusal
Non-compliant deep soil and landscaped areas	Agreed – recommendation for refusal
Non-compliant communal open space	Agreed – recommendation for refusal
Traffic and car parking concerns	Agreed – recommendation for refusal
Excessive bulk and scale	Agreed – recommendation for refusal
Incorrect existing ground line	Agreed – recommendation for refusal
Tree removal concerns	Agreed – recommendation for refusal
Inaccurate documentation	Agreed – recommendation for refusal
Visual privacy impacts	Agreed – recommendation for refusal
Concerns regarding legitimacy of affordable housing component	Agreed – recommendation for refusal
Excavated sandstone should be re-used	Agreed – recommendation for refusal
View loss impacts	Agreed – recommendation for refusal
Social and economic impacts	Agreed – recommendation for refusal
Construction and vibration impacts	Agreed – recommendation for refusal
Site suitability	Agreed – recommendation for refusal
Geotechnical concerns during excavation	Agreed – recommendation for refusal
Excessive excavation	Agreed – recommendation for refusal
Excessive FSR and inconsistency with objectives of FSR development standard	Agreed – recommendation for refusal
Proposal exceeds approved building envelope	Agreed – recommendation for refusal
Non-compliance with SEPP 65 design principles	Agreed – recommendation for refusal

### 5.1. Renotification

In accordance with Council's Community Engagement Strategy, renotification of the amended plans was not required in this instance as the amendments have a lesser or the same effect as the originally notified application.

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the SEPP (Sustainable Buildings) 2022.

### 6.2. SEPP (Housing) 2021

#### Chapter 2 – Affordable housing

State Environmental Planning Policy Amendment (Housing) 2023 commenced on 14 December 2023 and made several amendments to the Housing SEPP.

However, pursuant to Schedule 7A, section 8(1) of the Housing SEPP, the amendments to Chapter 2 do not apply to a development application to made on or before 14 December 2023. Noting that the subject development application was lodged on 09 November 2023, the now-repealed provisions of Chapter 2 (version dated 26 September 2023 to 09 November 2023) are applicable.

#### *Section 16 – Development to which Division applies*

Pursuant to section 16 of the Housing SEPP, Chapter 2, Division 1 applies if the following criteria are met:

- (a) *the development is permitted with consent under another environmental planning instrument, and*
- (b) *at least 20% of the gross floor area of the building resulting from the development will be used for the purposes of affordable housing, and*
- (c) *for development on land in the Greater Sydney region, Newcastle region or Wollongong region—all or part of the development is within an accessible area, and*

The proposal development, being for a residential flat building, is permitted with consent under RLEP 2012.

The Applicant contends that at least 20% of the gross floor area (GFA) of the building will be used for the purpose of affordable housing. However, as noted below, the subject application is not accompanied by a statement confirming if the development will be managed by a registered community housing provider. In this regard, Council is not satisfied that the criteria at section 16(1)(b) is met.

With regard to section 16(1)(c), the subject site is in the Greater Sydney region and located within 400m walking distance to a bus stop used by a regular bus service, within the meaning of the Passenger Transport Act 1990, that has at least 1 bus per hour servicing the bus stop between 6am and 9pm each day from Monday to Friday, and 8am and 6pm on each Saturday and Sunday.

#### *Section 17 – Floor space ratio*

Section 17 of the Housing SEPP allows development to exceed the maximum floor space ratio (FSR) permitted under RLEP 2012 by a bonus amount calculated on a pro-rata basis of the amount of GFA nominated to be used for affordable housing.

The Applicant contends that 405m<sup>2</sup> (51%) of the proposed GFA will be used for affordable housing. On this basis, pursuant to section 17(1)(a)(i), the proposal seeks to benefit from an FSR bonus of 0.5:1, equating to a total maximum FSR of 1.25:1.

#### *Section 18 – Non-discretionary development standards*

An assessment of the proposal against the non-discretionary development standards prescribed by section 18 of the Housing SEPP is provided in the below table.

<b>Non-discretionary standard</b>	<b>Proposal</b>	<b>Compliance</b>
<i>2(a) minimum site area of 450m<sup>2</sup></i>	634.6m <sup>2</sup>	Yes
<i>2(c) if paragraph (b) does not apply—at least 30% of the site area is landscaped area</i>	Unable to assess as landscape plans are unclear	Unable to assess
<i>2(d) a deep soil zone on at least 15% of the site area, where— (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site</i>	14.86% (94.28m <sup>2</sup> ) with dimensions >3m	No
<i>2(e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter</i>	The submitted eye of the sun diagrams demonstrate that the west facing apartments only achieve solar access to living areas between 2pm and 3pm. The east-facing apartments also appear to only achieve 2hrs to living areas between 9am and 11am due to the design of the privacy screens.	No



Non-discretionary standard	Proposal	Compliance
<p><i>(g) if paragraph (f) does not apply—</i></p> <p><i>(i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, or</i></p> <p><i>(ii) for each dwelling containing 2 bedrooms—at least 1 parking space, or</i></p> <p><i>(iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces</i></p>	<p>Required = 9</p> <p>Proposed = 11 (9 x resident spaces plus 2 x visitor spaces)</p>	Yes
<p><i>(h) for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment</i></p>	<p>Required = 90m<sup>2</sup> (3 bed), 112m<sup>2</sup> (4 bed)</p> <p>Proposed (min) = 101m<sup>2</sup> (3 bed), 203m<sup>2</sup> (4 bed)</p>	Yes

The application is not accompanied by a Clause 4.6 Statement to vary the non-discretionary development standards for deep soil area and solar access. Additionally, there is insufficient information to determine if the non-discretionary development standard for landscaped area has been achieved.

#### *Section 19 – Design requirements*

Pursuant to section 19(3) of the Housing SEPP, development consent must not be granted under Chapter 2, Division 1 unless the consent authority has considered whether the design of the residential development is compatible with the desirable elements of the character of the local area, or for precincts undergoing transition, the desired future character of the precinct.

The proposed four (4) to five (5) storey built form is not compatible with the streetscape and built form character of the locality. The desired future character of an area is established by the relevant planning controls. The proposed development is not considered compatible with the desired future character envisaged by the applicable planning controls, as evidenced by non-compliances with RLEP 2012, RDCP 2013, and the ADG, and associated impacts to neighbouring properties.

#### *Section 21 – Affordable housing*

Pursuant to section 21 of the Housing SEPP, consent must not be granted under Chapter 2, Division 1 unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued:

- (a) the affordable housing component of the residential development will be used for affordable housing, and*
- (b) the affordable housing component will be managed by a registered community housing provider.*

The 'affordable housing component' means the dwellings used for the purposes of affordable housing in accordance with section 16(1)(b) of the Housing SEPP.

Additionally, pursuant to section 26(1)(a) of the *Environmental Planning and Assessment Regulations 2021*, the development application must specify the name of the registered community housing provider:

#### **26 Information about affordable housing development**

- (1) A development application for development to which State Environmental Planning Policy (Housing) 2021, Chapter 2, Part 2, Division 1, 2 or 5 applies must specify the name of the registered community housing provider who will manage—*

- (a) for development to which Division 1 applies—the affordable housing component, or
- (b) for development to which Division 2 applies—the boarding house, or
- (c) for development to which Division 5 applies—the dwellings used for affordable housing.

The application is not accompanied by a statement confirming that the affordable housing component of the development will be managed by a registered community housing provider.

Noting the above, Council is not satisfied that the criteria at section 21 is met.

Chapter 4 – Design of residential apartment development

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.

Pursuant to Schedule 7A, section 8(2A) of the Housing SEPP, Chapter 4 applies to any development application, including those made on or before 14 December 2023.

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 and makes the following recommendations:

- *An increased setback of the upper level apartment and canopy is recommended to reduce the bulk as viewed from the street. The screening should be extended to the portion of balustrade facing North / South to improve privacy.*
- *A revised landscape package is required to confirm consistency with architectural proposal and compliance with deep soil requirements.*
- *It is recommended that an affordable housing provider reviews the proposal to justify the affordable allocation, particularly the penthouse level.*
- *If the applicant is seeking the affordable housing FSR bonus, a redesign of living areas and / or introduction of skylights is required to achieve compliance with solar access.*
- *Screening should be applied to full height bathroom windows.*
- *Given the site's proximity to the beach, and the promoted 'walkable' lifestyle of this development, the pedestrian entry and arrival experience needs to be reconsidered to address safety and amenity concerns.*

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 = Nil	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).	N/A	N/A						
3E-1									
	Deep soil zones are to meet the following requirements: 3m dimension, 7% site area	Proposed = 94.28m <sup>2</sup> (14.86%), dimensions >3m	Yes						
3F-1	Visual Privacy								
	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</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></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	<p>The proposed window setbacks are as follows:</p> <ul style="list-style-type: none"><li>• North: 2m</li><li>• South: 2m</li><li>• West (rear): 6.95m</li></ul>	No
Building Height	Habitable Rooms and Balconies	Non-habitable rooms							
Up to 12m (4 storeys)	6m	3m							
3J-1	Bicycle and Car Parking								
	<p>For development in the following locations:</p> <ul style="list-style-type: none"><li>• on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</li><li>• on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li></ul> <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking</p>	N/A	N/A						

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Clause	Design Criteria	Proposal	Compliance
	requirement prescribed by the relevant council, whichever is less.		
<b>Part 4: Designing the Building</b>			
<b>4A</b>	<b>Solar and Daylight Access</b>		
	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.	<p>The submitted eye of the sun diagrams demonstrate that the west facing apartments only achieve solar access to living areas between 2pm and 3pm.</p> <p>The east-facing apartments also appear to only achieve 2hrs to living areas between 9am and 11am due to the design of the privacy screens.</p>	No
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	No apartments will receive no sunlight.	Yes
<b>4B</b>	<b>Natural Ventilation</b>		
	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	<p>A window schedule has not been submitted to confirm natural ventilation.</p> <p>The only clearly visible naturally ventilated windows are the ensuite and bathroom windows at the rear of the building on the north side (Units 3, 5 and 6). The only operable ventilation points appear to be the balcony doors which do not provide for cross ventilation.</p>	Unable to assess
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Depth of Unit 6 exceeds 18m (from glass line)	No
<b>4C</b>	<b>Ceiling Heights</b>		
	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> <li>Habitable Rooms – 2.7m</li> <li>Non-habitable – 2.4m</li> <li>Attic spaces – 1.8m at edge with min 30 degree ceiling slope</li> <li>Mixed use areas – 3.3m for ground and first floor</li> </ul> <p>These minimums do not preclude higher ceilings if desired.</p>	Proposed = 2.7m	Yes
<b>4D</b>	<b>Apartment Size and Layout</b>		
	Apartments are required to have the following minimum internal areas:	<p>3 bed (min): 101m<sup>2</sup></p> <p>4 bed (min): 203m<sup>2</sup></p>	Yes

Clause	Design Criteria	Proposal	Compliance															
	<ul style="list-style-type: none"><li>• Studio - 35m<sup>2</sup></li><li>• 1 bedroom - 50m<sup>2</sup></li><li>• 2 bedroom - 70m<sup>2</sup></li><li>• 3 bedroom - 90m<sup>2</sup></li></ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m<sup>2</sup> each.</p>																	
	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.	Complies	Yes															
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	Complies	Yes															
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space.	The fourth bedroom to Unit 6 does not meet the minimum 3m dimensions.	No															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul>	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																	
	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4 m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom</td><td>8 m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom</td><td>10 m<sup>2</sup></td><td>2m</td></tr><tr><td>3 bedroom</td><td>12 m<sup>2</sup></td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum area	Minimum depth	Studio	4 m <sup>2</sup>	-	1 bedroom	8 m <sup>2</sup>	2m	2 bedroom	10 m <sup>2</sup>	2m	3 bedroom	12 m <sup>2</sup>	2.4m	The balconies comply with the minimum area (12m <sup>2</sup> ) however fail to comply with the minimum depth dimension (2.4m).	No
Dwelling type	Minimum area	Minimum depth																
Studio	4 m <sup>2</sup>	-																
1 bedroom	8 m <sup>2</sup>	2m																
2 bedroom	10 m <sup>2</sup>	2m																
3 bedroom	12 m <sup>2</sup>	2.4m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a	Complies	Yes															

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Clause	Design Criteria	Proposal	Compliance
	balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.		
<b>4F</b>	<b>Common Circulation and Spaces</b>		
	The maximum number of apartments off a circulation core on a single level is eight.	Proposed = max. 2 units	Yes
<b>4G</b>	<b>Storage</b>		
	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> <li>• Studio apartments - 4m<sup>3</sup></li> <li>• 1 bedroom apartments - 6m<sup>3</sup></li> <li>• 2 bedroom apartments - 8m<sup>3</sup></li> <li>• 3+ bedroom apartments - 10m<sup>3</sup></li> </ul> <p>At least 50% of the required storage is to be located within the apartment.</p>	A storage schedule has not been submitted.	Unable to assess

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: Complies.

- (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: Complies.

- (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: Complies.

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

Chapter 2 of the Biodiversity and Conservation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW.

Refer to discussion by Council's Landscape Officer at Appendix 1 of this report.

### 6.4. 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. Clause 4.6 of the SEPP requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Noting that the site has historically been used for residential purposes, the possibility of contamination is considered unlikely, and the site is considered suitable pursuant to Chapter 4 of the Resilience and Hazards SEPP.

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



The site is zoned R3 Medium Density Residential under Randwick Local Environmental Plan 2012 and the proposal, being for a residential flat building, is permissible with consent.

The proposal is inconsistent with the specific objectives of the zone in that the proposed activity and built form will result in a development that is inconsistent with the desired future character of the locality and streetscape and would result in adverse amenity impacts to neighbouring properties.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.3: Building height (max)	9.5m	10.22m (as per Clause 4.6 – refer Key Issues)	No
CI 4.4: Floor space ratio (max)	1.25:1 (0.75:1 LEP + 0.5:1 SEPP)	1.4:1 (refer Key Issues)	No

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

The non-compliance with the height of buildings development standard is discussed in Section 7 of this report below.

#### 6.5.2. Clause 5.10 - Heritage conservation

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

The subject site is not listed as a heritage item and is not located within a heritage conservation area. However, the site is in proximity to several heritage items:

- No. 69 Beach St – “Warimoo”, Bungalow style house (No. I54)
- No. 75 Beach St – “San Antonio”, Federation house (No. I55)
- No. 109 Arden St – Spanish Mission residential flat building (No. I42)
- No. 370 Alison Rd – “Ocean View”, Edwardian mansion (No. I38)

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

## 7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.3: Building height (max)	9.5m	10.2m	0.72m (as per Clause 4.6 – refer Key Issues)	7.6%

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 (CI 4.3)

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

#### 1. Has the applicant's written request 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 in this report, 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 proposal is not considered to respond appropriately to the constraints of the site. The proposal results in overshadowing, view loss, visual bulk, and visual privacy impacts to neighbouring properties. The height of the proposed built form is not an appropriate response to the site and cannot be attributed only to the irregular topography of the site.

The submitted Clause 4.6 Statement contains numerous inaccurate statements including:

- That the exceedance relates solely to the trafficable roof area, solar panels, roof top planters and lift over run, when in fact part of the walls of the Level 3 unit are also above the height limit;
- That the exceedance is limited to the front portion of the roof level, when it also exceeds in the central portion;
- That the exceedance will not be readily discernible from the streetscape when the montage provided with the application clearly demonstrates that it will be, and that it will not be discernible from the private domain when it is clear that it will be discernible from at least 66 and 70 Beach Street;
- That there has been a view loss assessment undertaken, when the Statement itself states that the author has not visited any of the sites from which views are "assessed";
- That 66 Beach Street has a sandstone retaining wall and garage and is located above a garage on Beach Street, when the garage is off Beach Lane and it has a brick wall to Beach Street;

- That the Beach Street Elevation in Figures 3 and 4 of the request demonstrates a height exceedance of 66 Beach Street, when that diagram provides no evidence over which parts of the streetscape the 9.5m height control line is drawn;
- That the building height blanket diagram represents the height exceedance when Council's calculations indicate this is incorrect (refer discussion at Key Issues section of this report);
- That to lower the building at the front would result in a stepped form for the internal apartment design;
- That the proposal has a height, bulk and scale that is generally consistent with that envisaged by Council's controls, when the proposal is inconsistent with the building height LEP control, the Housing SEPP FSR control, the DCP side setback controls, and the prevailing built form of the contemporary buildings to the north.

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:

*"There are a number of environmental planning grounds specific to the site and the height non-compliance which justify contravening the development standard in this instance. As mentioned, the exceedance is a function of sloping topography. The variation also represents consistency in the context and good design. It maintains environmental amenity, is consistent with the existing and future desired character of the locality. There are also some consequences for enforcing strict compliance with the development standard. These will be discussed below.*

### **Compatibility with Context**

*The proposal is permissible in the R3 Medium Density Residential zone, is consistent with the zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in Wehbe. The non-compliance relates solely to the front and centre portion of the non-trafficable roof area, which used for solar panels, landscaped planters and a lift overrun. It will not be readily discernible from the public or private domain as it is recessed from the building height compliant eave's edge.*

*The proposal increased building stock in a medium-density residential environment and is of a similar scale to the area's existing and desired high-quality developments in the streetscape. It is noted that several examples of buildings in the vicinity have a building height exceedance, including Nos. 66 and 54 Beach Street (see Figure 4). The elevation to Beach Street will enhance the site's relationship with the evolving character and has been designed to create visual interest. The incorporation of a variety of materials and landscaping on the site and building will provide further visual and amenity benefits.*

*In Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097, Commissioner O'Neill states at [42], inter alia:*

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).*

*This report demonstrates the proposed residential flat building will be compatible with the nearby developments. As noted, three and four storey residential flat buildings are not uncommon in the streetscape. The areas of contravention for the additional height will not be easily discernible from Beach Street and therefore will not impact the streetscape amenity or existing characteristics of the area.*

### **Good Design and Environment Amenity**

*Our assessment has demonstrated the area of non-compliance will not result in view loss from neighbouring properties. Further, assessment of the shadow impact from the area of non-compliance determined that the additional shadowing caused by the height variation is limited to a minor area of Beach Lane at 8:00 am, with no impact to neighbouring properties. As the height variation is an integral part of well-designed residential flat building which stands to significantly improve future occupants' amenity, we consider the proposal is in the public interest. The proposal also provides three affordable housing units. This will contribute to the provision of affordable housing in the R3 Zone.*

*To achieve a fully compliant building height would require additional excavation and limit vertical circulation for future occupants and impact internal accessibility in the built form. Removing the solar panels and roof planting area would negatively impact to achieve the sustainability targets of the relevant water and energy reducing targets. Furthermore, the design integrity of the residential flat building would be compromised, as the proposed layout would change at each floor. The proposed design is considered a well-designed outcome, with no impact to the amenity of adjoining properties as a result of the section of non-compliance. The proposed building envelope is a preferred design solution.*

*Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).*

### **Orderly and Economic Use of Land/Provision of Affordable Housing**

*The proposal will facilitate the replacement of a single dwelling house with a residential flat building which is permissible in the R3 Medium Density Zone. It will also provide three additional affordable apartments in the locality. In our opinion, the proposal will be consistent with Clauses 1.3(c) and 1.3(d) of the Environmental Planning and Assessment Act 1979 which state:*

- (c) to promote the orderly and economic use and development of land*
- (d) to promote the delivery and maintenance of affordable housing*

*The proposed development will promote the orderly and economic use and development of the land through the provision of high-quality housing, including three affordable apartments, in a desirable location with appropriate accessibility. There is a clear need for additional affordable housing in the locality, and the proposal will be surrounded by similar compatible uses.*

*The proposal will otherwise not prejudice any land uses that provide facilities and serves to meet the day to day needs of residents in the zone or wider locality. The development will give rise to positive social, economic and community outcomes by providing high-quality housing, including affordable housing, in a desirable location."*

Assessing officer's comment: As discussed in this report, Council does not concur with the reasons stated in the applicant's written request. The proposal results in overshadowing, view loss, visual bulk, and visual privacy impacts to neighbouring properties. Additionally, the proposed four (4) to five (5) storey built form is inconsistent with the scale of surrounding development and the prevailing streetscape character.

The desired future character of the locality and the intensity of development anticipated for the site is established by the current planning controls. The reasons provided by the applicant are not considered sufficient environmental planning ground to justify the contravention of the



building height development standard, particularly when coupled with several other non-compliances and associated impacts to neighbouring properties.

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

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 Randwick Comprehensive DCP 2013. Refer to Appendix 3.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is inconsistent with the dominant character in the locality and would result in adverse amenity impacts to neighbouring properties.



Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(c) – The suitability of the site for the development	The site has insufficient area to accommodate the proposed land use and associated structures. Therefore, the site is 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 is inconsistent with the specific objectives of the zone in that the proposed activity and built form will result in a development that is inconsistent with the desired future character of the locality and streetscape and would result in adverse amenity impacts to neighbouring properties. Accordingly, the proposal is not considered to be in the public interest.

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## 9.1. Discussion of key issues

### Building Height

The submitted Clause 4.6 Statement has incorrectly calculated the maximum exceedance of the building height standard as being 0.72m.

The height of the photovoltaic cells is in addition to the rooftop planter, although their height is not clear from the submitted plans. It also appears that there is a balustrade around a timber deck on the roof which has not been included in the building height calculations.

The submitted survey shows an existing ground level near the front of the planters at RL 47.71. The planters are at RL 58.85, providing a height of 11.14m (an exceedance of 1.64m or 17.3% variation). The survey shows a height in the north-east corner of the non-trafficable area at RL 47.88 and the non-trafficable area is at RL 58.15. This provides a maximum height of 10.27m, being an exceedance of 0.77m or 8.1% variation. These calculations do not include the additional height of the rooftop balustrade and the PV cells.

### Floor Space Ratio

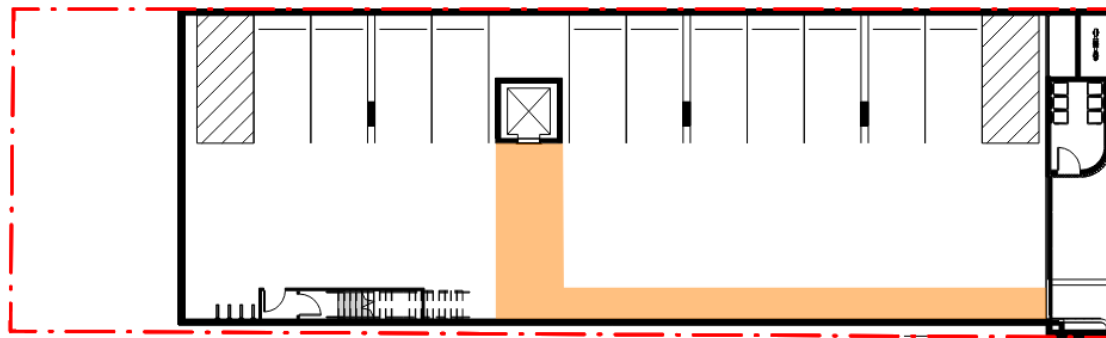
Section 17 of the Housing SEPP allows development to exceed the maximum FSR permitted under RLEP 2012 by a bonus amount calculated on a pro-rata basis of the amount of GFA nominated to be used for affordable housing.

The submitted plans indicate that 405m<sup>2</sup> (51%) of the proposed GFA will be used for affordable housing. On this basis, pursuant to section 17(1)(a)(i), the proposal seeks to benefit from an FSR bonus of 0.5:1, equating to a total maximum FSR of 1.25:1.

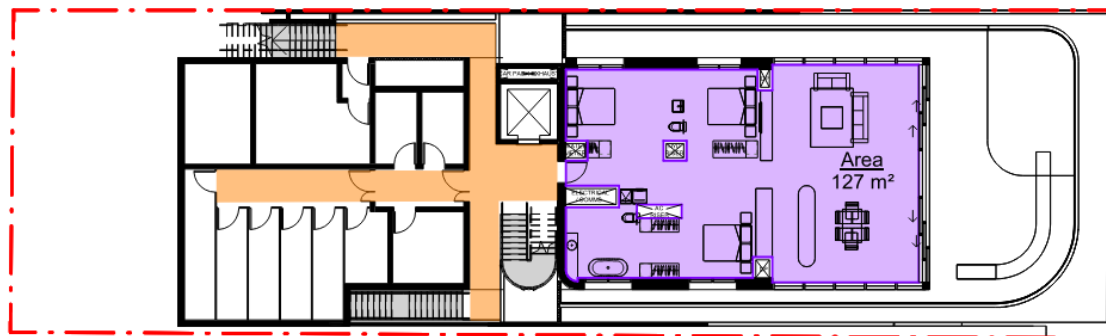
The submitted documentation has incorrectly calculated the GFA (and resultant FSR) of the proposed development, as follows (refer Figure 9):

- The GFA plan does not include the lobby and corridors at ground floor level as GFA. This part of the site is defined as a basement under RLEP 2012 as the floor level of the storey above is less than 1m above existing ground.
- The GFA plan does not include the pedestrian access at basement level as GFA. The only pedestrian access to the building from Beach Street is via a pedestrian access within the basement level which leads to the lift. This is not excluded as it does not constitute storage, vehicular access, loading areas, garbage, services, or car parking.

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1 001 -- BASEMENT  
1 : 200



7 002 -- GROUND FLOOR  
1 : 200

**Figure 9:** Markup of GFA plans – additional areas shaded orange (*Source: Orosi Architecture*)

Based on Council's calculations, the proposed development has a total GFA of approximately 883m<sup>2</sup> and a resultant FSR of 1.4:1, which fails to comply with the 1.25:1 development standard.

The application is not accompanied by a Clause 4.6 Statement to vary the standard.

As detailed in this report, Council is not satisfied that the relevant requirements of the Housing SEPP are met. Additionally, Council is not satisfied that the proposal achieves the objectives of the FSR development standard, as follows:

- The size and scale of the development is not compatible with the desired future character of the locality.
- The proposed units do not achieve sufficient solar access, and as such, the proposal does not respond to environmental and energy needs.
- The development results in adversely impacts on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and view loss.

#### Affordable Housing

Section 17 of the Housing SEPP allows development to exceed the maximum floor space ratio (FSR) permitted under RLEP 2012 by a bonus amount calculated on a pro-rata basis of the amount of GFA nominated to be used for affordable housing.

The submitted plans indicate that 405m<sup>2</sup> (51%) of the proposed GFA will be used for affordable housing. On this basis, pursuant to section 17(1)(a)(i), the proposal seeks to benefit from an FSR bonus of 0.5:1, equating to a total maximum FSR of 1.25:1.

However, pursuant to section 21 of the Housing SEPP, consent must not be granted under Chapter 2, Division 1 unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued:

- (a) *the affordable housing component of the residential development will be used for affordable housing, and*
- (b) *the affordable housing component will be managed by a registered community housing provider.*

The 'affordable housing component' means the dwellings used for the purposes of affordable housing in accordance with section 16(1)(b) of the Housing SEPP.

Pursuant to section 26(1)(a) of the *Environmental Planning and Assessment Regulations 2021*, the development application must specify the name of the registered community housing provider:

**26 Information about affordable housing development**

*(1) A development application for development to which State Environmental Planning Policy (Housing) 2021, Chapter 2, Part 2, Division 1, 2 or 5 applies must specify the name of the registered community housing provider who will manage—*

- (a) for development to which Division 1 applies—the affordable housing component, or*
- (b) for development to which Division 2 applies—the boarding house, or*
- (c) for development to which Division 5 applies—the dwellings used for affordable housing.*

The subject application is not accompanied by a statement confirming if the development will be managed by a registered community housing provider. In this regard, Council is not satisfied that the criteria at section 21 is met.

Additionally, the allocation of the top floor penthouse apartment as affordable housing is questionable. No justification has been provided for the allocation of affordable housing.

**Bulk and Scale**

The proposed four (4) to five (5) storey building results in excessive visual bulk and is not compatible with the streetscape and built form character of the locality.

The proposal, which comprises a solid street wall to Beach Street, results in adverse visual bulk impacts to neighbouring properties and the surrounding public domain. This is supported by the following comments from Council's Design Excellence Advisory Panel:

- *Justification of the upper setback based on an average of adjoining sites is acceptable given the varying context. Zero setback to garage is also in keeping with neighbouring developments, however encourage the use of cascading species above to soften the appearance of the street frontage.*
- *The proposed height breach needs further justification. Further analysis of rooftop planting depth and solar panels is required to clarify extent of height breach.*
- *Further setback of the upper level mass is encouraged to reduce the impact of bulk as viewed from the street, which is exacerbated by the sloping topography.*

The desired future character of an area is established by the relevant planning controls. The proposed development is not considered compatible with the desired future character envisaged by the applicable planning controls, as evidenced by several non-compliances with RLEP 2012, RDCP 2013, and the ADG, and associated impacts to neighbouring properties.

**View Sharing**

Part C2, Section 5.5 of RDCP 2013 requires view sharing to be considered where there is a potential for view loss impacts to ensure the equitable distribution of views between new development, neighbouring properties, and the public domain.

The objectives for view sharing pursuant to RDCP 2013 are as follows:

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

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the Planning Principle for view sharing established by *Tenacity Consulting v Warringah* [2004] NSWLEC 140 which establishes a four (4) step assessment of view sharing.

### 1. The assessment of the views affected

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

- 3/111 Arden Street – partially obstructed views of sky
- 9/111 Arden Street – partially obstructed views of sky
- 117 Arden Street – views of ocean and horizon
- 370 Alison Road – views of district, ocean, horizon, and land-water interface
- 66 Beach Street – views of ocean, horizon, Coogee headland (land-water interface), and Gordons Bay

### 2. From what part of the property are views obtained?

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

- 3/111 Arden Street – views are obtained from a courtyard
- 9/111 Arden Street – views are obtained from a balcony
- 117 Arden Street – views are obtained from a balcony
- 370 Alison Road – views are obtained from a balcony
- 66 Beach Street – views are obtained from a balcony

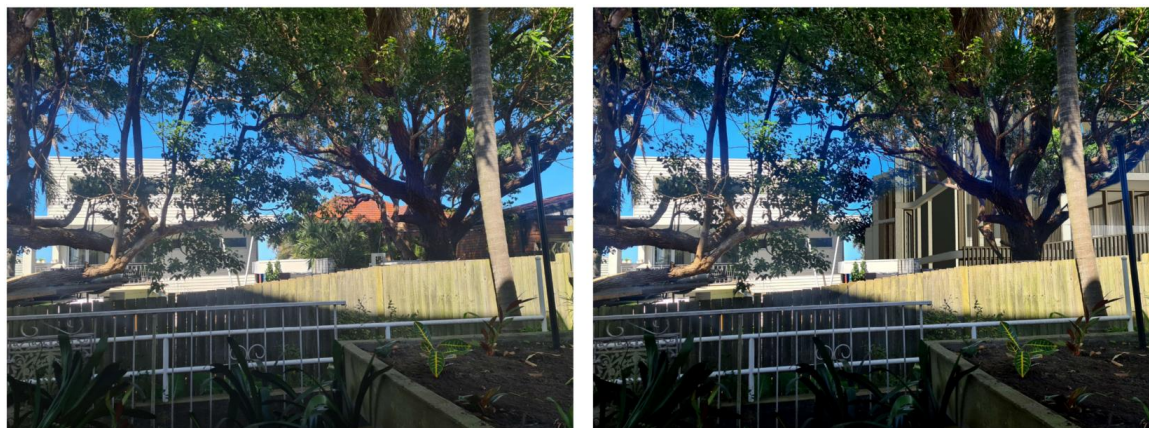
### 3. What is the extent of the impact?

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

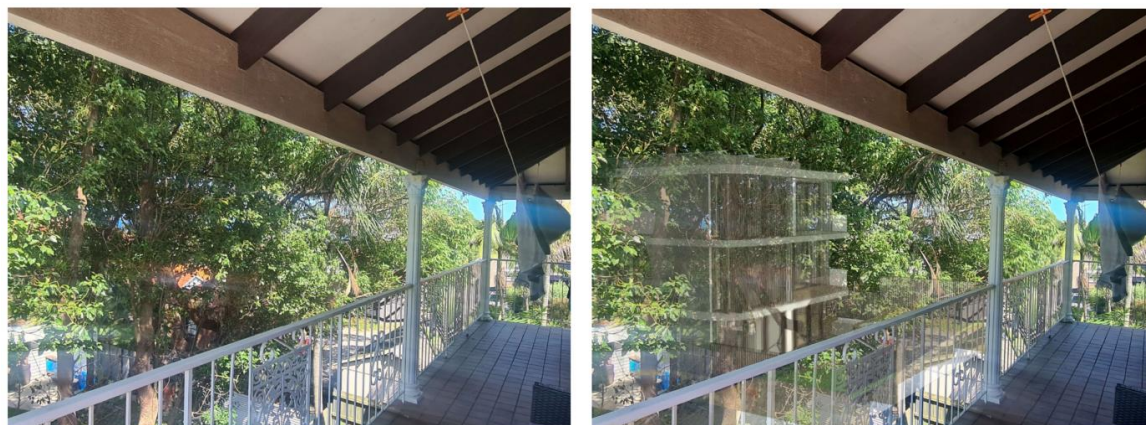
- 3/111 Arden Street – as shown in Figure 10, the proposal is likely to result in a minor loss of sky views. These views are partially obstructed by existing vegetation.
- 9/111 Arden Street – as shown in Figure 11, the proposal is likely to result in a minor loss of sky views. These views are partially obstructed by existing vegetation.



- 117 Arden Street – as shown in Figure 12, the proposal is likely to result in a minor loss of views of the ocean and horizon.
- 370 Alison Road – as shown in Figure 13, the proposal is likely to result in a minor loss of district views. Views of the ocean, horizon, and land-water interface will be retained.
- 66 Beach Street – as shown in Figure 14, the proposal is likely to result in a severe loss of views of the Coogee headland (land-water interface) and Gordons Bay. Views of the ocean and horizon will be retained.



**Figure 10:** Existing and proposed view from 3/111 Arden St courtyard (Source: Orosi Architecture)



**Figure 11:** Existing and proposed view from 9/111 Arden St balcony (Source: Orosi Architecture)



**Figure 12:** Existing and proposed view from 117 Arden St balcony (Source: Orosi Architecture)

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**Figure 13:** Existing and proposed view from 370 Alison Rd balcony (Source: Orosi Architecture)



**Figure 14:** Existing and proposed view from 66 Beach St balcony (Source: Orosi Architecture)

#### 4. What is the reasonableness of the proposal that is causing the impact?

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

The Court poses two (2) questions in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at paragraphs 23-33. The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether a more skillful design could provide the same development potential whilst reducing the impact on views.

The following comments are made with regard to the reasonableness of the proposal:

- The proposal will have a minor impact on views obtained from 3/111 Arden Street, 9/111 Arden Street, 117 Arden Street, and 370 Alison Road. The proposal will have a severe loss of views from 66 Beach Street.
- It is acknowledged that the property at No. 66 Beach Street adjoins the side boundary of the subject site and views to Coogee headland (land-water interface) and Gordons Bay are obtained across a side boundary. However, a more skillful design (i.e. increased front setback at upper levels to align with the property at No. 66 Beach Street) is reasonable and could reduce view impacts without compromising the intent of the redevelopment of the site.



- The proposal presents as a four (4) to five (5) storey building and does not comply with the 9.5m building height development standard. The proposal does not reflect the desired future character of the locality, which comprises one (1) to four (4) storey (or equivalent) development.
- The bulk and scale of the proposed built form is excessive and is inconsistent with the character of the streetscape and surrounding development. The proposal fails to comply with several key built form controls, including building height, external wall height, and setbacks.
- The proposal seeks to benefit from an FSR bonus of 0.5:1 based on the allocation of affordable housing. However, as detailed in this report, Council is not satisfied that the relevant requirements of the Housing SEPP are met.
- The submitted view analysis has not been prepared in accordance with the Land and Environment Court's Policy: *Use of Photomontages and Visualisation Tools* (dated 17 May 2024). Additionally, the application is not supported by a comprehensive written assessment of the proposal with regard to the Planning Principle for view sharing established by *Tenacity Consulting v Warringah [2004] NSWLEC 140*
- Compliance with relevant LEP and DCP controls could provide for improved view sharing outcomes to neighbouring properties.
- It is considered that a more skillful design could reduce view impacts without compromising the intent of the redevelopment of the site.

In conclusion, the proposal does not satisfy the aims and objectives for view sharing pursuant to Part C1, Section 5.6 of RDCP 2013 and the case law established by *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

#### Visual Privacy

Part 3F-1 of the ADG requires separation between windows and balconies to ensure visual privacy is achieved. The development is subject to a side and rear setback control of 6m for habitable rooms and balconies and 3m for non-habitable rooms.

The proposed development has a minimum setback of 2m to the side boundaries, which does not comply with the numeric ADG requirement.

Further, Part C2, Section 5.3 of RDCP 2013 seeks to ensure a high level of amenity by providing for reasonable level of visual privacy for dwellings and neighbouring properties. Windows and balconies of habitable rooms are to be located to minimise overlooking of windows or glassed doors in adjoining dwellings.

The proposed north-facing bathroom/ensuite windows are likely to result in overlooking to/from the neighbouring property at No. 66 Beach Street. The proposed full height opaque glass windows are not acceptable and should be treated with additional screening or solid portions.

The proposed front and rear balconies are not screened to the sides, and as such, will result in overlooking of the adjacent properties at Nos. 66 and 70 Beach Street. Additionally, concern is raised regarding overlooking from the rear balconies to the properties on the opposite side of Beach Lane (Nos. 115 and 117 Arden Street).

The proposal has not been designed to relate to the relevant planning controls for the site and results in adverse visual privacy impacts to neighbouring properties. For the reasons outlined above, the proposal is unacceptable and should be refused.

### Solar Access and Overshadowing

Part 4A of the ADG stipulates that living rooms and private open spaces of at least 70% of apartments should receive two (2) hours of direct sunlight between 9am and 3pm at mid-winter. A maximum of 15% of apartments are permitted to receive no direct sunlight.

Additionally, Part C2, Section 5.1 of RDCP 2013 stipulates that for neighbouring development, three (3) hours of solar access must be provided to the living areas and at least 50% of the landscaped areas between 8am and 4pm at mid-winter.

The submitted eye of the sun diagrams demonstrate that the proposed west-facing apartments only achieve one (1) hour of solar access to living areas between 2pm and 3pm, midwinter. The proposed east-facing apartments also appear to only achieve two (2) hours of direct sunlight to living areas between 9am and 11am (midwinter) due to the design of the privacy screens.

Additionally, the proposal will result in unreasonable overshadowing of the adjacent property at No. 70 Beach Street, including overshadowing to existing skylights and to the rear private open space area.

The proposal does not uphold the following objectives of Part C2, Section 5.1 of RDCP 2013, which seek to:

- To ensure the design, orientation and siting of development maximises solar access to the living areas of dwellings and open spaces and is encouraged to all other areas of the development.
- To ensure development retains reasonable levels of solar access to the neighbouring properties and the public domain.
- To provide adequate ambient lighting and minimise the need for artificial lighting during daylight hours.

In view of the excessive level of built form proposed, including a variation to the maximum building height development standard and reliance on bonus FSR under the Housing SEPP, the resultant overshadowing is unreasonable.

### ADG Compliance

The proposed development fails to comply with several requirements of the ADG, including:

- Communal open space (3D-1) – no communal open space is provided.
- Visual privacy (3F-1) – the proposed side setbacks fall short of the 3m requirement for non-habitable rooms and 6m requirement for habitable rooms. Less than 2m setbacks are provided notwithstanding windows being opposite habitable rooms on both sides. Adequate privacy screening has not been afforded to the side elevations or balconies.
- Bicycle and car parking (3J) – the basement carpark does not include any charging units for vehicles or e-bikes and does not include a clearly identified and visible waiting area near the lift/stairs. Additionally, there is no natural ventilation provided to the carpark.
- Solar and daylight access (4A) – the submitted eye of the sun diagrams demonstrate that the proposed west-facing apartments only achieve solar access to living areas between 2pm and 3pm (midwinter). The proposed east-facing apartments also appear to only achieve two (2) hours of direct sunlight to living areas between 9am and 11am due to the design of the privacy screens. Additionally, the proposal significantly reduces solar access to neighbouring properties and no increase in building separation is provided.
- Natural ventilation (4B) – the depth of Unit 6 exceeds 18m, measured glass line to glass line. The only clearly visible naturally ventilated windows are the ensuite and bathroom

windows at the rear of the building on the north side (Units 3, 5 and 6). The only operable ventilation points appear to be the balcony doors which do not provide for cross ventilation.

- Apartment size and layout (4D) – the fourth bedroom to Unit 6 does not meet the minimum 3m dimensions for bedrooms.
- Private open space and balconies (4E) – the proposed balconies comply with the minimum area (12m<sup>2</sup>) however the balconies to Units 2, 4, and 5 fails to comply with the minimum depth dimension (2.4m), when measuring the trafficable part of the balcony.
- Storage (4G) – a storage schedule is not provided to demonstrate that the design criteria is relating to storage is met.
- Apartment mix (4K) – the proposal comprises 5 x three (3) bedroom apartments and 1 x four (4) bedroom apartment. The allocation of a top floor penthouse apartment (with 4 x bedrooms and 4 x bathrooms and ocean views) as affordable housing is questionable. No justification has been provided for the allocation of affordable housing.
- Façade Design (4M-1) – the stacked glazed balconies to Beach Street fail to provide suitable visual interest.
- Roof Design (4N-1) – the overhanging roof and excessive front balcony to Unit 6 fail to respond to the streetscape context.
- Landscaping (4O-1) – insufficient information has been provided to demonstrate how the planters at ground floor level and roof level will be maintained.
- Planting on Structures (4P) – insufficient information has been provided in relating to the height and soil depths of the planters at ground floor level and roof level.

#### Building Entry

The proposed design fails to include a recognisable and identifiable building entry from Beach Street, with pedestrian access being obtained only by walking down the driveway to the basement garage. In this regard, the proposal fails to achieve the following controls, objectives, and design guidance of RDCP 2013 and the ADG:

- Part C2, Section 4.5 of RDCP 2013 which requires clearly identifiable and safe pedestrian entries which are separate and clearly distinguishable from vehicular access.
- Objective 3B-1 of the ADG and its design guidance for direct access from the street.
- Objective 3G-1 of the ADG and its design guidance for building entries and pedestrian access that connects to addresses the public domain.
- Objective 3G-2 of the ADG and its design guidance for access, entries and pathways to be accessible and easy to identify.
- Objective 3J-3 of the ADG and its design guidance that a clearly defined and visible lobby or waiting area is to be provided to lifts and stairs in the car park. The proposal requires residents to wait for the lift in the area which is required for car maneuvering.
- Objective 4F-2 of the ADG and its design guidance that common circulation spaces promote safety and provide for social interaction between residents.

#### DCP Compliance

The proposed development fails to comply with several requirements of the DCP, including:

- Deep soil area (2.2.2) – the proposal provides 14.8% of the site as deep soil area, which falls short of the minimum 25% requirement.
- Communal open space (2.3.2) – no communal open space is provided.
- Front setback (3.4.1) – a nil setback is provided to the at-grade garage and a 6m setback is provided above. The front setback at the upper levels is inconsistent with the DCP requirements. The floor plate should be setback/recessed at upper levels to correspond with the front building alignment of adjoining properties and to allow for improved solar access, visual privacy, and view sharing opportunities. The upper level should also be setback to reduce the visual bulk and scale of the built form, as viewed from the street. Additionally, further articulation should be incorporated as a part of the front street wall to provide visual relief and additional landscaping at the public domain level.
- Side setback (3.4.2) – the proposed 0.7m setback (to angled box windows) fails to comply with the minimum 2m requirement. The windows constitute floor area, are not minor protruding architectural elements, and contribute to the visual bulk of the built form.
- External wall height (4.4) – the proposed 10.27m external wall height exceeds the minimum 8m requirement.

#### Residential Amenity

As demonstrated in this report, the proposal fails to protect the amenity of future residents in relation to natural ventilation, overshadowing, visual privacy, pedestrian safety, private open space, and communal open space.

Units 1 and 3 are generally located below existing ground level and so require substantial retaining walls to retain the neighbouring land. This significantly reduces possible light and ventilation into these units.

#### Insufficient Information

A full and robust assessment of the proposal cannot be completed as the applicant has failed to provide sufficient information, including:

- The Clause 4.6 Statement in relation to the building height exceedance under RLEP 2012 does not meet the requirements of the clause and includes multiple inaccuracies.
- The 9.5m building height and 8m external wall height planes appear to be inaccurately shown on the submitted elevations and sections.
- The height of the PV cells is not shown on the plans so the actual height exceedance and height of the building cannot accurately be determined.
- The submitted Landscape Plan indicates that there is a balustrading around a timber deck at roof level. This height of the balustrading is not identified and must be included in establishing the maximum height exceedance.
- A Clause 4.6 Statement has not been provided to justify non-compliance with the FSR development standard (under RLEP 2012) and the non-discretionary development standards for deep soil and solar access (under Housing SEPP).
- Side setbacks have not been identified on the floor plans to the window edges, the side walls, or the basement.
- The purple lines on the submitted plans purporting to illustrate the approved DA outline appear to show the approved plans from DA/707/2018, without including the conditioned amendments and without including the amended conditions in DA/707/2018A.

- Dimensions of balconies, wall lengths, windows, storage areas, setbacks and the like are not shown on the submitted plans and are required for consideration against the ADG.
- A window schedule and storage schedule have not been provided.
- Electrical charging for vehicles (and e-bikes) are not shown on the basement floor plan.
- It is unclear how access will be provided to the water/gas meter at basement level and it is unclear how ventilation will be provided to the waste room.
- The submitted solar access plan (DA5011) is incorrect as it references times between 8am to 4pm. The relevant requirement of the Housing SEPP refers to solar access between 9am to 3pm midwinter.
- It is unclear which neighbouring buildings are being shown on the submitted elevational shadow diagrams (DA4041, DA4042, DA4043) as the labelling appears to be incorrect.
- There is inconsistency between the overshadowing shown on the submitted shadow diagrams (in plan form), view from sun diagrams, and elevational shadow diagrams.
- The submitted BASIX certificate indicates that there is a covered spa of 5000L which is not shown in the submitted plans.
- The submitted landscaped area calculation plans are incorrect and have not been calculated in accordance with the Housing SEPP definition.
- Further details are required to illustrate the offset of the excavation to the SRZ and TPZ of Tree T2 to calculate TPZ encroachment to ensure safe retention.
- It is unclear how access to the planters at ground floor level and rooftop level will be accessed for maintenance purposes.

### Public Interest

The development application should be refused because approval of the proposed development is not in the public interest having regard to the above matters and the objections raised in the public submissions.

The development application was notified as detailed at Section 5 of this report. The development application should be refused having regard to the matters raised in submissions that have been received by Council to the extent that these submissions are consistent with the key issues set out above, including building height, visual bulk and scale, overshadowing, view loss, privacy impacts, incompatibility with the character of surrounding development and the streetscape, and non-compliance with the ADG, RLEP 2012, and RDCP 2013.

The proposed development is likely to lead to an undesirable precedent being set for future development in the locality. The proposal is therefore not in the public interest.

## **10. Conclusion**

That the application for demolition of existing structures and construction of a four storey residential flat building comprising 6 apartments, a basement carpark and ancillary landscaping work, at No. 68 Beach Street, Coogee, be refused for the following reasons:

1. The proposed development is of an excessive height, bulk, and scale 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.
2. 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.

3. The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of RLEP 2012. The Applicant has failed to provide a written request made under clause 4.6 of RLEP 2012 to justify the contravention to the development standard.
4. The proposed development does not comply with the non-discretionary development standard for deep soil area pursuant to section 18(2)(d) of the Housing SEPP. The Applicant has failed to provide a written request made under clause 4.6 of RLEP 2012 to justify the contravention to the development standard.
5. The proposed development does not comply with the non-discretionary development standard for solar access pursuant to section 18(2)(e) of the Housing SEPP. The Applicant has failed to provide a written request made under clause 4.6 of RLEP 2012 to justify the contravention to the development standard.
6. The proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone in that it is not compatible with the desired future character of the locality and significantly exceeds the level of built form anticipated for the subject site. The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form.
7. The applicant has failed to provide sufficient information to demonstrate that the requirements of section 21 of the Housing SEPP have not been met, relating to the management of the affordable housing component.
8. The proposed development will result in unreasonable residential amenity impacts upon neighbouring properties with regard to overshadowing, visual privacy, visual bulk, and view loss.
9. Pursuant to Part 3D-1 of the ADG and Part C2, Section 2.3 of RDCP 2013, the proposal fails to provide sufficient communal open space.
10. Pursuant to Part 3F-1 of the ADG and Part C2, Section 5.3 of RDCP 2013, the proposal fails to provide suitable building separation distances and/or privacy screening measures to ensure visual privacy.
11. Pursuant to Part 4A of the ADG and Part C2, Section 5.1 of RDCP 2013, the proposal fails to provide sufficient solar access to proposed dwellings and to neighbouring properties.
12. Pursuant to Part 4B of the ADG and Part C2, Section 5.2 of RDCP 2013, the proposal fails to provide suitable natural ventilation.
13. Pursuant to Part 4D of the ADG, the fourth bedroom to Unit 6 does not meet the minimum 3m dimensions for bedrooms.
14. Pursuant to Part 4E of the ADG, the balconies to Unit 2, Unit 4, and Unit 5 fails to comply with the minimum 2.4m depth requirement.
15. Pursuant to Part C2, Section 3.4 of RDCP 2013, the proposal fails to comply with the minimum front and side setback requirements.
16. Pursuant to Part C2, Section 4.4 of RDCP 2013, the proposal fails to comply with the maximum 8m external wall height requirement.
17. Pursuant to Part C2, Section 4.5 of RDCP 2013, the pedestrian entry is not suitable and is not clearly distinguishable from the vehicular access.
18. Pursuant to Part C2, Section 5.5 of RDCP 2013, the proposal results in unreasonable view loss to neighbouring properties.

19. The proposal fails to protect the amenity of future residents in relation to natural ventilation, overshadowing, visual privacy, pedestrian safety, private open space, and communal open space.
20. A full and robust assessment of the proposal cannot be completed as the applicant has failed to provide sufficient information.
21. 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.
22. 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.

D65/24

## Appendix 1: Referrals

### 1. Heritage Planner

#### Controls

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

#### Comments

The existing building is not listed as a heritage item and is not located within a heritage conservation area. There was no demolition report or heritage impact statement submitted with the application.

A site inspection of the site and its interiors was carried out in December 2023. It was observed that based on the earlier approved DA (DA/707/2018) most of the original Inter-War features have been demolished and removed.

#### New development and building height

The proposal involves the construction of a new four storey residential flat building with lower ground car parking and vehicle access and four levels above. The SEE state that the proposal has a maximum building height of 10. which exceeds the maximum building height control of 9.5m by 0.7m. Concern is raised that the maximum 9.5m maximum building height plane depicted on the Sections Plan (Drawing No. DA3001) is based on a corresponding interpolated Existing Ground Line that is lacking in detail and evidence of its validity and accuracy, particularly, when compared to the depiction of existing ground level shown in the previously approved development proposal under DA/707/2018.

The concerns arising from the accuracy of the maximum building height plane in Drawing No. DA 3001 would give rise to potential view loss impacts to adjoining/surrounding properties in particular to the heritage items at No. 370 Alison Road comprising a two storey brick and timber residence with continuous verandahs to three sides with extensive views of the ocean hence its name "Ocean View" which is featured in mosaic tiling to the entry where there is an arch flanked by two brick piers. Accordingly, views of the ocean form an important part of the setting and visual catchment and corridor of the heritage item at No 370 Alison Road. In this regard, the proposal has not provided any view loss analysis in relation to the heritage item at No. 370 Alison Road. It is considered appropriate that a view loss analysis be undertaken from the living areas and associated verandahs of this heritage item to determine the impact on the setting and visual catchment/corridor particularly given the lack of detail in support of the depicted existing natural ground line and its corresponding maximum building height plane in Drawing No. DA 3001.

#### Recommendation

It is requested that development application (DA/923/2023) be accompanied and supplemented by a view loss impact analysis to determine the impact of the proposed development on the ocean view currently available to the heritage item at No. 370 Alison Road, Coogee.

It is also requested that details of the inclusion and retention of the sandstone wall along the southern boundary of the subject property be provided for further consideration and assessment by Council's heritage planner.

### 2. Development Engineer

#### General Comments

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

#### Drainage Comments

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

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

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

**Flooding Comments (not impacted)**

The site lies within the catchment for the Council commissioned and adopted Waveley Flood Study'. The study does not predict the site will be impacted by flooding for all storm events up to and including the 1% AEP (1 in 100yr) storm event and the property has not been tagged as a "flood control lot".

*No flood controls are therefore applicable and there are no objections to the proposal from a flooding perspective.*

**Parking Comments**

### Under Part B7 of DCP

*Parking Requirements for the future development have been assessed as per the following applicable parking rates specified in Part B7 of Randwick Council's Development Control Plan 2013.*

- 1.5 spaces per 3 bedroom unit
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

$$\begin{aligned} \text{Parking required under DCP} &= (6 \times 1.5) + 6/4 \text{ (visitor)} \\ &= 10.33 \end{aligned}$$

*Parking proposed* = 11 spaces (complies)

### Motorbike Parking

*Motorbike Parking is to be provided at 5% of the vehicle parking requirement.*

*Motorbike Parking Required* =  $0.05 \times 11$   
= 0.55

*Motorbike Parking proposed* = 1 (complies)

### *Bicycle Parking*

*For Flats/multi dwelling bicycle parking to be provided at 1 space per 2 units plus 1 visitor space per 10 units.*

$$\begin{aligned} \text{Bicycle Parking Required} &= 6/2 + 6/10 \\ &= 3.6 \end{aligned}$$

*Bicycle Parking proposed* = 4 (complies)

### Carpark Layout

*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 Australian Standard 2890.1:2004.*

### Geotechnical Comments

### Excavation

*Although not directly affecting Council's Assets or Development Engineering's conditions, the assessing officer is advised that the geotech report does not address or make recommendations in relation to the retention, stability and monitoring of the sandstone cliff face along the southern side boundary during construction.*

Development Engineering would recommend the most stringent of health & building conditions in this regard.

#### Groundwater

The geotech report investigation did not find that any groundwater was present although they noted that seepage flows would likely occur at the soil/rock interface following rainfall events.

Conditions relating to the management of seepage flows have been included in this report.

#### **Undergrounding of site feed power lines**

At the ordinary Council meeting on the 27<sup>th</sup> May 2014 it was resolved that;

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

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

#### **Waste Management Comments**

*Waste Management plan has not been approved as part of this development consent. The applicant is required to submit to Council and have approved by Council's Director Planning, a Waste Management Plan (WMP) detailing waste and recycling storage and disposal for the development site.*

*The plan shall detail the type and quantity of waste to be generated by the development; demolition waste; construction waste; materials to be re-used or recycled; facilities/procedures for the storage, collection recycling & disposal of waste and show how the on-going management of waste for the units will operate.*

#### **Comments on the number of Waste Bins**

*Appendix 3 in Part B6 of Council's DCP specifies a waste bin requirement rate for residential flat buildings houses of 1 x 240L bin per 2 units for normal garbage and 1 x 240L bin per 2 units for recycling.*

*i.e. Garbage/recycling Bins Required = Number of units/2 (rounded up to nearest whole number))*

*There are no specific requirements for green waste in Part B6 of the DCP however since March of 2021 Council has introduced a Garden Organic Food organic (FOGO) collection service. As some landscape areas are also proposed it is recommended that a minimum of 2 x 240L bins also be provided for FOGO.*

*Total Number of BINS required                      = 3 (normal) + 3 (recycling) + 2 (FOGO)  
   = 8 x 240L BINS*

#### **Right Of Access Comments**

*It has been confirmed by title search on 7/02/2023 that the subject property has access rights to the right of carriageway at the rear of the site. Therefore, no objections to the proposed rear access gate.*

#### **Alignment Level Comments**

*Alignment Levels have been calculated to ensure a maximum grade of 10% is not exceeded across the Council verge. This will require footpath levels in the vicinity of the new crossing to be lowered by approximately 100mm. As a result council footpath grades south of the new crossing will increase to approximately 9% (currently abt 5.8%) which is acceptable for the short distance to the neighbouring crossing.*

### **3. Landscape Officer**



- Arborist Report states that approval already exists to remove large, rear central tree (T1), but DA/707/18 has no CC in Pathway so may have lapsed?, and DA/353/21 was refused/dismissed by the Court;
- Regardless, for this proposal I would still have to **allow removal of T1** given the extent/footprint and an ability to re-design around it;
- Landscape package shows **removal of T2 – there is no reason to support this – not accepted, they need to re-design all parts of the proposal to comply;**
- **T2 in the northwest site corner must remain**, as per all previous correspondence;
- Basement now encroaches closer than what I've seen previously at 6950mm from the rear boundary;
- **I need to know the exact offset from the centre of its trunk to calculate TPZ encroachment and ensure its safe retention;**
- I'm concerned about terracing/changes to existing ground levels around the northwest site corner, near T1, as the First Floor & Elevation Plans appear to show alterations to existing grades. This needs to be kept to an absolute minimum over the northern half of the rear yard = no retaining walls, continuous strip footings etc, appears these components also need to be re-designed;
- Landscape Plans don't show exactly what is being planted where – I require additional details/information so I can actually understand what is being proposed – what will go where.

#### 4. Design Excellence Advisory Panel

##### **Context and Neighbourhood Character**

Justification of the upper setback based on an average of adjoining sites is acceptable given the varying context. Zero setback to garage is also in keeping with neighbouring developments, however encourage the use of cascading species above to soften the appearance of the street frontage.

##### **Built Form and Scale**

The proposed height breach needs further justification. Further analysis of rooftop planting depth and solar panels is required to clarify extent of height breach.

Further setback of the upper level mass is encouraged to reduce the impact of bulk as viewed from the street, which is exacerbated by the sloping topography.

##### **Density**

Additional FSR sought via the In-fill Affordable Housing SEPP is only justifiable if minimum requirements are met (refer to Amenity and Landscape sections for comments regarding solar access and deep soil).

##### **Sustainability**

The use of rooftop solar panels within the planter box is encouraged to reduce the heat island effect. Coordination with landscape architect of appropriate low maintenance species and adequate depth of planting is required to be demonstrated to enable success.

##### **Landscape**

Further coordination is required with landscape architect to provide clarity around proposal. The rooftop should be for maintenance access only given there would be further height breaches if additional balustrading was required. Refer to previous notes regarding planter design integrated with solar panels.

The extent of hardscape demonstrated in the 'deep soil' areas needs to be clarified. The use of timber decking in a multi-residential setting with affordable housing does not appear fit for purpose. The design of the timber planter retaining walls needs to be justified by a suitably qualified engineer given the extreme topography and potential for overland flow.

##### **Amenity**

The eye of the sun diagrams provided demonstrate there is non-compliant solar access under both the ADG and Housing SEPP (which requires minimum 3hrs between 9am-3pm). The 2x West facing apartments (both of which are nominated as affordable) only achieve solar access to

living areas between 2-3pm. The East facing apartments also appear to only achieve 2hrs to living areas between 9-11am due to the design of the privacy screens.

Privacy concerns are still not adequately addressed, particularly the full height bathroom / ensuite windows to the North. Additional screening or solid portions are encouraged over full height opaque glass.

The extent of glass balustrade and proposed terrace to the upper level apartment also does not address privacy concerns which is apparent in the neighbouring view study of No. 66 Beach Street. Further screening to the Northern / Southern facing balustrade is encouraged at this level.

It is unclear how maintenance personnel would access the water / gas / electrical meters within apartments on each level. It is recommended the common areas (lobbies) are redesigned to enable this to occur, or justification provided by a suitably qualified engineer if access is not required at each level.

### **Safety**

The pedestrian arrival experience from Beach Street has not been considered, with safety concerns around lift access crossing via the carpark. It appears the booster/meters could be switched with the current pedestrian entry to enable residents to enter safely behind the parking with a dedicated lift lobby. This could also potentially connect through to the stair access from Beach Lane.

### **Housing Diversity and Social Interaction**

It is recommended that the affordable apartments are also LHA silver livable (currently the market apartments are nominated as livable) to address the needs of universal design in affordable housing.

The allocation of the top floor penthouse as affordable is questionable, 2x smaller apartments would be more appropriate.

### **Aesthetics**

The use of curved glass to the balustrade should be retained, and not substituted for a faceted system to maintain the integrity of the overall form.

Appropriate detailing of the slab edges is required to avoid staining to the white render (falls, drip edges etc).

Confirmation of structural input is required to ensure the expansive North facing glazing is achievable. This elevation would likely change should the ~10m span require additional columns.

### **SUMMARY AND RECOMMENDATIONS**

- An increased setback of the upper level apartment and canopy is recommended to reduce the bulk as viewed from the street. The screening should be extended to the portion of balustrade facing North / South to improve privacy.
- A revised landscape package is required to confirm consistency with architectural proposal and compliance with deep soil requirements.
- It is recommended that an affordable housing provider reviews the proposal to justify the affordable allocation, particularly the penthouse level.
- If the applicant is seeking the affordable housing FSR bonus, a redesign of living areas and / or introduction of skylights is required to achieve compliance with solar access.
- Screening should be applied to full height bathroom windows.
- Given the site's proximity to the beach, and the promoted 'walkable' lifestyle of this development, the pedestrian entry and arrival experience needs to be reconsidered to address safety and amenity concerns.

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

gsa planning

### RANDWICK LOCAL ENVIRONMENTAL PLAN (LEP) 2012 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

**APPLICANT'S NAME:** OROSI Pty Ltd

**SITE ADDRESS:** No. 68 Beach Street, Coogee

**PROPOSAL:** Proposed Demolition of the Existing Dwelling and Associated Structures and Construction of a New Residential Flat Building (including In-fill Affordable Housing)

1.

(i) **Name of the applicable planning instrument which specifies the development standard:**

Randwick Local Environmental Plan (LEP) 2012

(ii) **The land is zoned:**

R3 Medium Density Residential Zone. The objectives of the R3 zone are as stated:

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

(iii) **The number of the relevant clause therein:**

Clause 4.3 – Height of Buildings which is stated as follows:

- (1) The objectives of this clause are as follows—
- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,
- (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
- (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) Despite subclause (2), the maximum height of a dwelling house or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

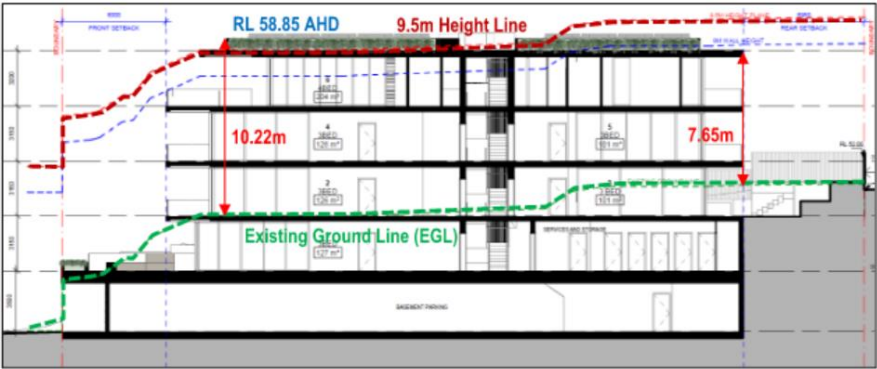
2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height of Buildings Map which indicates a maximum 9.5m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposed part three and part four storey residential flat building above a basement has a building height that ranges from 7.65 metres to a maximum of 10.22 metres (see **Figure 1**). The maximum height is measured from the roof planter at RL 58.85 AHD to the existing ground level immediately below. The proposal will predominantly comply with the 9.5m building height standard, with the exception occurring to the front portion of the roof level. The exceedance is minor in nature and relates solely to the non-trafficable roof area with associated solar panels, roof top planters and lift overrun (see **Figure 2** on the following page).

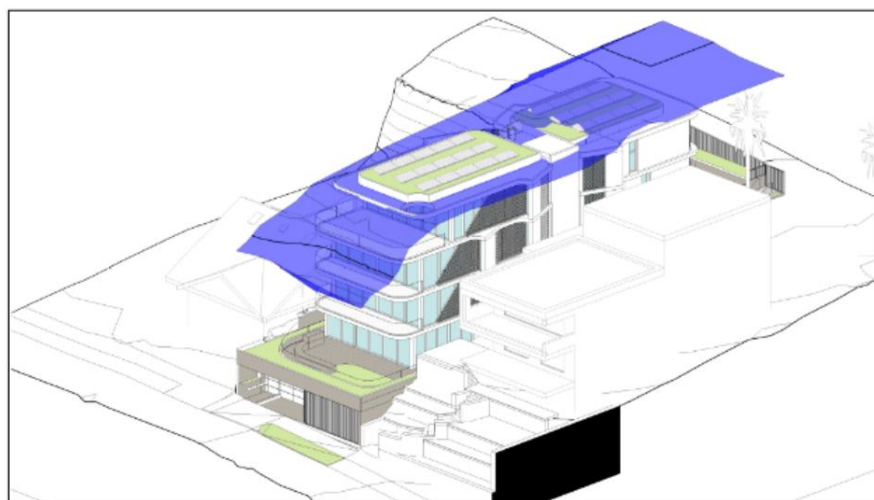


Source: OROSI

Figure 1: Proposed Building Height

The proposed built form mostly complies with the building height and fully complies with the FSR development standard under State Environmental Planning Policy (Housing) 2021 (SEPP Housing). The majority of the height breach is a function of the topography. Due to the sloping topography of the site, the ground level and the building height vary across the site (dropping from the rear to the street frontage), and the front portion of the proposed roof level does not comply with the building height standard. However, the rear portion of the roof level is located well below the 9.5m height line. Overall, the proposed residential flat building responds well to the streetscape and will enhance the amenity of the future occupants. The breach is minor in nature and not readily visible from the public domain of Beach Street.





Source: OROSI

**Figure 2: Building Height Blanket Diagram****4. Consistency with Objectives of Clause 4.6**

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

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

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. It is our opinion that the proposed building height is appropriate given the minor visual and amenity impact of the limited area of variation.

The proposed height breach is mainly front portion of the roof level, mainly due to the sloping topography. The area of height non-compliance at the roof level will not readily discernible from the streetscape as it further recessed from the roof edges, and it allows for a well-designed contemporary medium density housing development to contribute to the evolving character of Beach Street. Importantly, the majority of the non-compliant area relates to solar panels and landscaping planters which will provide positive contribution to meet sustainability targets of reduction in greenhouse gas emissions.



The proposed height non-compliance will provide a better planning outcome for the development by providing consistent internal floor levels and equitable access between floor levels with the proposed lift. If strict compliance with the height standard was enforced and the roof was lowered, it would require lowering of the building at the front, where the non-compliant element is not readily visible from the street, resulting in stepped building form which would have implications for accessible internal apartment design.

Accordingly, in our opinion, the proposed area of additional height results in a better planning outcome than the alternative design options mentioned above which ensure strict compliance.

## 5. Justification of Variation to Development Standard

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

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

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

### 5.1 Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

#### **Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;**

Despite the proposed development's non-compliance with the applicable height development standard, the proposal achieves the desired medium density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the height standard are explained below.

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

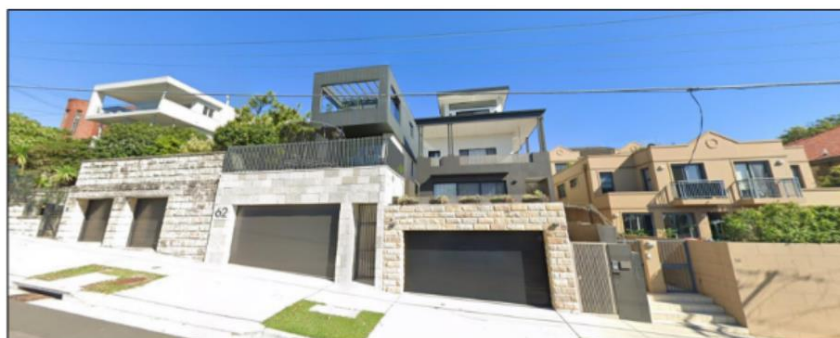
'Desired future character' is not defined in the LEP. The meaning of 'desired future character' is derived from the text and context of the provisions of the LEP in which it is used and the other provisions of the LEP that form the urban character and built form of the area. The relevant clauses in the LEP which relate to urban character and built form are:

- a) The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b) The zone objectives (Clause 2.3);
- c) The land use table (at the end of Part 2); and
- d) The development standards in Part 4:
  - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 9.5m; and
  - ii. Clause 4.4 Floor Space Ratio and Floor Space Ratio Map which prescribes a maximum FSR of 0.75:1.

The R3 Medium Density Residential zoning permits a wide range of uses and built form on the site, which promotes the eclectic desired future character. The permissible uses are:

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Group homes; Home businesses; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (outdoor); **Residential flat buildings**; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shops; Tank-based aquaculture*

The proposal will contribute to the eclectic mix of permissible uses in the R3 zone. The proposal is also compatible with the envelope of nearby developments recently approved and constructed, especially adjacent buildings to the north at Nos. 58 to 66 Beach Street (see **Photograph 1**).



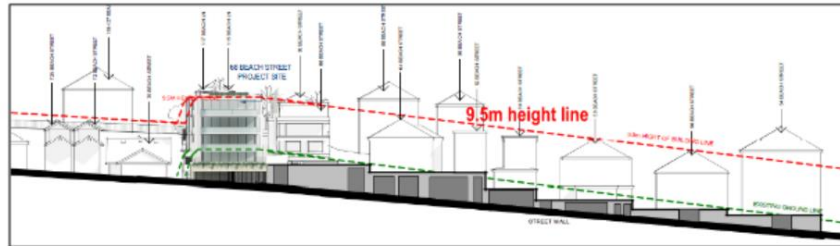
**Photograph 1:** Nos. 58 to 66 Beach Street, as viewed from Beach Street (Source: Google Maps)

In other words, the height and envelope is consistent with these buildings and compatible with the area's desired future character as per the Court judgement of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In this judgement, Clay AC notes at [69]:

*The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. Those buildings exceed the height and floor space ratio controls. As the Applicant pointed out in submissions, this is not a case where there is an adjacent development approved and constructed many years ago which sits as an anomaly in the street. The developments under construction represent the recently expressed attitude of the Respondent to the controls and what is desired in this part of Cross Street.*

This approach was confirmed in the appeal of this case by Preston CJ that the desired future character should be informed by the nearby and future development and not limited by the development

standards. The existing buildings to the north of the subject site present as three to four storey built form with more contemporary street appearance. It appears that some of the existing buildings breach the 9.5m height development standard, in particular, the adjoining part three and four storey residential flat building at No. 66 Beach Street (see **Figure 3**). The existing buildings to the south comprise part one and part two storey dwellings with pitched roofs. The proposal will replace the existing aged two storey brick dwelling into a four-storey contemporary residential flat building, which is more consistent with the zone and area's desired, evolving character. The proposed area of non-compliance at the roof level will not be readily visible from the streetscape nor alter this compatibility.



Source: OROSI

**Figure 3: Beach Street Elevation**

Accordingly, in our opinion, the proposed built form is consistent with the evolving desired future character of Beach Street, as within Randwick.

**(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 neither a heritage or contributory item, nor does it directly adjoin any items of heritage significant. The site is located opposite a heritage item located to the north-east at No. 69 Beach Street. The surrounding neighbourhood, including the subject site, is all zoned R3 Medium Density Residential. The R3 zone is characterised by a variety of detached dwellings, multi-unit housing and residential flat buildings. The proposal is unlikely to affect the amenity of the nearby heritage item.

Whilst a portion of the built form at the roof level exceeds the LEP height standard, the principal building form is compliant. The rear and centre portions of the built form are compliant. The extent of non-compliance is limited to the protruding area to accommodate the landscaping planters and solar panels, which is recessed from the eave's edge and is unlikely to be discernible from the public domain and nearby heritage items. The proposed built form is perceived as four storeys above a basement from the front and three storey from the rear which provides an appropriate transition in scale to the adjoining medium density 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.**

In our opinion, given the minimal extent of non-compliance, the proposed variation will not result in unreasonable impacts on adjoining or nearby properties in respect of views, privacy or overshadowing. The location of the non-compliance does not add the visual bulk of the proposed residential flat building and limits its visibility from the public domain and surrounding properties.

The area of building height non-compliance will not affect solar access for neighbouring properties and their private open space, such is the minor extent of non-compliance. As demonstrated by the shadow



diagrams prepared by OROSI (submitted separately), additional shadowing to the adjoining properties, particularly No. 70 Beach Street, has been limited to that of a DCP and LEP compliant building envelope. The only additional shadowing caused by the building height variation occurs to a minor area of Beach Lane at 8:00 am. However, a fully compliant building envelope will result in more overshadowing to the neighbouring properties.

In terms of view loss, it should be noted that we have not had the opportunity to inspect the surrounding properties and our assessment has relied on aerial photography, survey information and an inspection of the subject site. Surrounding buildings are benefit from the east water view to Gordon's Bay. Given the location and topography of the area, development on the eastern side of Beach Street and surrounding development on the western side of Beach Street will not be affected by the proposed building height variation. For the dwellings located on the western side of the subject site, such as Nos. 111-113, 115, 117 Arden Street and 119-127 Arden Street, existing views to the east have already been sheltered by dense and established trees and planters along boundaries. It is noted that the rear portion of the proposed residential flat building is compliant with the building height control and well below the 9.5m maximum building height at the rear. A fully compliant building envelope would result in similar or even worse view impact to these buildings. Thus, the building height variation, which is limited to the front and centre portion of the built form, is unlikely to result in any impact on views from surrounding properties.

Notwithstanding the proposed height non-compliance, compliance with visual and acoustic privacy has been achieved. The proposed building height variation is non-trafficable roof area to accommodate solar panels, landscaped planters and a lift overrun, and does not include any side facing windows above the 9.5m LEP building height line. Thus, it will not result in adverse privacy impact to the neighbouring buildings. In addition, all primary habitable rooms along each of the side boundaries have included privacy screens to maintain visual privacy for residents of adjoining properties. This limits any potential sightlines from the subject site to adjoining properties and their private open space.

In our opinion, the area of non-compliance is not likely to result in significant impacts in terms of view loss, privacy, overshadowing and visual intrusion and satisfies the intent of objective (c).

Accordingly, although the proposal will exceed the height control, this is unlikely to have any significant adverse impacts as the design is generally contained within a compliant building envelope.

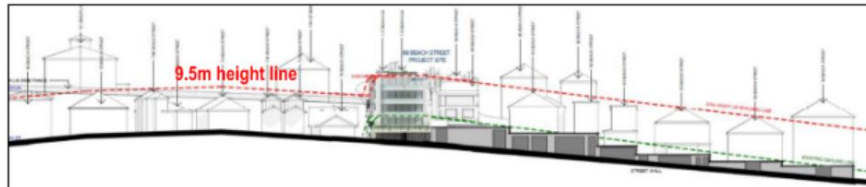
## **5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard**

There are a number of environmental planning grounds specific to the site and the height non-compliance which justify contravening the development standard in this instance. As mentioned, the exceedance is a function of sloping topography. The variation also represents consistency in the context and good design. It maintains environmental amenity, is consistent with the existing and future desired character of the locality. There are also some consequences for enforcing strict compliance with the development standard. These will be discussed below.

### **Compatibility with Context**

The proposal is permissible in the R3 Medium Density Residential zone, is consistent with the zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in *Wehbe*. The non-compliance relates solely to the front and centre portion of the non-trafficable roof area, which is used for solar panels, landscaped planters and a lift overrun. It will not be readily discernible from the public or private domain as it is recessed from the building height compliant eave's edge.

The proposal increased building stock in a medium-density residential environment and is of a similar scale to the area's existing and desired high-quality developments in the streetscape. It is noted that several examples of buildings in the vicinity have a building height exceedance, including Nos. 66 and 54 Beach Street (see **Figure 4**). The elevation to Beach Street will enhance the site's relationship with the evolving character and has been designed to create visual interest. The incorporation of a variety of materials and landscaping on the site and building will provide further visual and amenity benefits.



Source: OROSI

**Figure 4: Beach Street Elevation**

In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42], inter alia:

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).*

This report demonstrates the proposed residential flat building will be compatible with the nearby developments. As noted, three and four storey residential flat buildings are not uncommon in the streetscape. The areas of contravention for the additional height will not be easily discernible from Beach Street and therefore will not impact the streetscape amenity or existing characteristics of the area.

#### Good Design and Environment Amenity

Our assessment has demonstrated the area of non-compliance will not result in view loss from neighbouring properties. Further, assessment of the shadow impact from the area of non-compliance determined that the additional shadowing caused by the height variation is limited to a minor area of Beach Lane at 8:00 am, with no impact to neighbouring properties. As the height variation is an integral part of well-designed residential flat building which stands to significantly improve future occupants' amenity, we consider the proposal is in the public interest. The proposal also provides three affordable housing units. This will contribute to the provision of affordable housing in the R3 Zone.

To achieve a fully compliant building height would require additional excavation and limit vertical circulation for future occupants and impact internal accessibility in the built form. Removing the solar panels and roof planting area would negatively impact to achieve the sustainability targets of the relevant water and energy reducing targets. Furthermore, the design integrity of the residential flat building would be compromised, as the proposed layout would change at each floor. The proposed design is considered a well-designed outcome, with no impact to the amenity of adjoining properties as a result of the section of non-compliance. The proposed building envelope is a preferred design solution.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).



### Orderly and Economic Use of Land/Provision of Affordable Housing

The proposal will facilitate the replacement of a single dwelling house with a residential flat building which is permissible in the R3 Medium Density Zone. It will also provide three additional affordable apartments in the locality. In our opinion, the proposal will be consistent with Clauses 1.3(c) and 1.3(d) of the Environmental Planning and Assessment Act 1979 which state:

- (c) to promote the orderly and economic use and development of land  
(d) to promote the delivery and maintenance of affordable housing

The proposed development will promote the orderly and economic use and development of the land through the provision of high-quality housing, including three affordable apartments, in a desirable location with appropriate accessibility. There is a clear need for additional affordable housing in the locality, and the proposal will be surrounded by similar compatible uses.

The proposal will otherwise not prejudice any land uses that provide facilities and serves to meet the day to day needs of residents in the zone or wider locality. The development will give rise to positive social, economic and community outcomes by providing high-quality housing, including affordable housing, in a desirable location.

### 6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal achieves the objectives of the Height of Building Development Standard, as already demonstrated; and the R3 Medium Density Residential Zone, as discussed below:

- Objective:** To provide for the housing needs of the community within a medium density residential environment.
- Response:** The existing dwelling will be replaced by a new residential flat building with six units. The units are well designed to accommodate the needs of the future residents and contributes positively to housing stock within the medium density residential environment.
- Objective:** To provide a variety of housing types within a medium density residential environment.
- Response:** The proposal is for a residential flat building including 5 x 3BR units and 1 x 4BR unit, which contributes to the variety of housing types in this zone.
- Objective:** To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.
- Response:** The new building presents as part three and part four storeys above a basement car park with the sandstone retaining wall to Beach Street, which is consistent with the existing northern neighbouring properties at Nos. 62, 64 and 66 Beach Street. These developments are all located above garages with sandstone retaining structures. At the

rear, the built form will present three storeys to Beach Lane. The proposal is in an area that is undergoing transition, with dwelling houses in the R3 Medium Density Residential Zone being replaced with medium density development. The proposal will present a well-designed contemporary residential flat building which will be consistent with the existing and emerging bulk and scale of multi storey residential flat buildings. The proposed building height variation will not alter this compatibility.

**Objective:** To protect the amenity of residents.

**Response:** The proposed development will protect neighbour's amenity with respect to solar access, acoustic and visual privacy and views. The proposed variation is also unlikely to result in adverse impacts to the neighbouring properties, which has been discussed in Section 5.1.

**Objective:** To encourage housing affordability.

**Response:** The proposal includes three units to be used for in-fill affordable housing, positively contributing to housing affordability.

From this, we consider the proposal is in the public interest and should be supported.

## 7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the proposed residential flat building without significantly, unreasonably or unacceptably impacting neighbouring properties. The minor section of non-compliance is located to part of the non-trafficable roof area to accommodate solar panels and landscaping planters and will contribute to the well-designed proposal.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape. As noted, the proposal is compatible with other properties on Beach Street, where the existing and emerging character consists of residential flat buildings which are between three and four storeys in height. The proposed

built form and articulated appearance will significantly enhance the consistency of the site when viewed from the public and private domain.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

#### 8. Conclusion

This written request has adequately 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 contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the objectives of the R3 Medium Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

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Table 1: Compliance Matrix				
Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	9.5m	
14	<b>First Precondition to Enlivening the Power</b> – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	<b>1<sup>st</sup> Positive Opinion</b> – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	<b>First Aspect is Clause 4.6(3)(a)</b> – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Tests 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> <li>The objectives of the standard are achieved notwithstanding the non-compliance with the standard.</li> </ul>	YES
23-24	<b>Second Aspect is Clause 4.6(3)(b)</b> – 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 Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> <li>The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus 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.</li> <li>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.</li> </ol>	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> <li>The proposed height facilitates a medium density development consistent with the planning objectives of the area;</li> <li>The proposed non-compliance will have no unreasonable amenity impacts to adjoining properties;</li> <li>The proposed variation is compatible with its context and the desired future character of the locality;</li> <li>The proposed non-compliance relates solely to the non-trafficable roof area used for solar panels and roof plantings, which will enhance future occupants amenity and provide positive contribution to achieve the sustainability targets; and</li> <li>The proposed height has been limited through the careful design of the built form.</li> <li>The proposal promotes the orderly and economic use of land.</li> </ul>	YES
26-27	<b>2<sup>nd</sup> Positive Opinion</b> – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development achieves the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal also achieves the objectives of the R3 Zone.	YES

Clause 4.6 Exceptions to Development Standards – Height of Buildings  
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28-29	<b>Second Precondition to Enlivening the Power</b> – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES
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Clause 4.6 Exceptions to Development Standards – Height of Buildings  
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**Appendix 3: DCP Compliance Table****3.1 Section C2: Medium Density Residential**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
<b>2.</b>	<b>Site Planning</b>		
<b>2.2</b>	<b>Landscaped open space and deep soil area</b>		
<b>2.2.1</b>	<b>Landscaped open space</b>		
	A minimum of 50% of the site area is to be landscaped open space.	Proposed = 53% (337.8m <sup>2</sup> )	Yes
<b>2.2.2</b>	<b>Deep soil area</b>		
	(i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	Proposed = 14.86% (94.28m <sup>2</sup> )	No
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.	Deep soil areas are generally consistent with the DCP requirements.	Yes
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.	The deep soil zone comprises a tree and groundcover planting.	Yes
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.	Deep soil areas are not located on structures or facilities.	Yes
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.	Consistent with adjoining properties, the main deep soil zone is located to the rear.	Yes
<b>2.3</b>	<b>Private and communal open space</b>		
<b>2.3.1</b>	<b>Private open space</b>		
	Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.	Each unit is provided with a private open space area which is directly accessible from the living area.	Yes
	<b>For residential flat buildings:</b> (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling.	Each unit is provided with a private open space area greater than 8m <sup>2</sup> in area and greater than 2m in dimension.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
	(vii) Private open space for apartments has a minimum area of 8m <sup>2</sup> and a minimum dimension of 2m.		
<b>2.3.2</b>	<b>Communal open space</b>		
	Communal open space for residential flat buildings is to be: (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.	Nil communal open space area provided.	No
<b>3.</b>	<b>Building Envelope</b>		
<b>3.4</b>	<b>Setbacks</b>		
<b>3.4.1</b>	<b>Front setback</b>		
	(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries. (ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.	Proposed = Nil setback to basement garage, 6m setback above.  The floor plate should be setback/recessed at upper levels to correspond with adjoining properties.	No
<b>3.4.2</b>	<b>Side setback</b>		
	<b>Residential flat building</b> (i) Comply with the minimum side setback requirements stated below: - Site frontage width between 12m and 14m: 2m (ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to: - Create articulations to the building facades.	The proposed setbacks are as follows: • North: 0.7m-2m • South: 0.7m-2m	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
	<ul style="list-style-type: none"> <li>- Reserve open space areas and provide opportunities for landscaping.</li> <li>- Provide building separation.</li> <li>- Improve visual amenity and outlook from the development and adjoining residences.</li> <li>- Provide visual and acoustic privacy for the development and the adjoining residences.</li> <li>- Ensure solar access and natural ventilation for the development and the adjoining residences.</li> </ul> <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>		
<b>3.4.3</b>	<b>Rear setback</b>		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.	Required = 6.95m Proposed = 6.95m	Yes
<b>4.</b>	<b>Building Design</b>		
<b>4.1</b>	<b>Building façade</b>		
	<p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p> <p>(vi) Conceal building services and pipes within the balcony slabs.</p>	The stacked glazed balconies to Beach Street fail to provide suitable visual interest.	No
<b>4.4</b>	<b>External wall height and ceiling height</b>		
	(i) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.	Proposed = 10.27m	No
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	Proposed = 2.7m	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
<b>4.5</b>	<b>Pedestrian Entry</b>		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	The pedestrian entry path and vehicular driveway are co-located and are not clearly distinguished.	No
<b>4.6</b>	<b>Internal circulation</b>		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> <li>- Providing natural lighting and ventilation where possible.</li> <li>- Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors.</li> <li>- Allowing adequate space for the movement of furniture.</li> <li>- Minimising corridor lengths to give short, clear sightlines.</li> <li>- Avoiding tight corners.</li> <li>- Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor.</li> </ul>	The basement carpark is not provided with a clearly identified and visible waiting area near the lift and stairs. No natural ventilation is provided to the carpark.	No
	(ii) Use multiple access cores to: <ul style="list-style-type: none"> <li>- Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites.</li> <li>- Articulate the building façade.</li> <li>- Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units.</li> </ul>	One (1) lift core is proposed with a maximum of two (2) units off the core at each level.	Yes
<b>4.7</b>	<b>Apartment layout</b>		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> <li>- Providing corner, cross-over, cross-through and double-height maisonette / loft apartments.</li> <li>- Limiting the depth of single aspect apartments to a maximum of 6m.</li> <li>- Providing windows or skylights to kitchen, bathroom and laundry areas where possible.</li> <li>- Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.</li> </ul>	<p>The submitted eye of the sun diagrams demonstrate that the west facing apartments only achieve solar access to living areas between 2pm and 3pm.</p> <p>The east-facing apartments also appear to only achieve 2hrs to living areas between 9am and 11am due to the design of the privacy screens.</p>	No
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	Apartment layouts can provide for flexible use of rooms.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	Each unit is provided with a private open space area (balcony).	Yes
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	Kitchens are not located within main circulation spaces.	Yes
<b>4.8</b>	<b>Balconies</b>		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m <sup>2</sup> and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	Each unit is provided with a private open space area greater than 8m <sup>2</sup> in area and 2m in dimension.	Yes
<b>4.9</b>	<b>Colours, materials and finishes</b>		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: <ul style="list-style-type: none"> <li>- Changes of colours and surface texture</li> <li>- Inclusion of light weight materials to contrast with solid masonry surfaces</li> <li>- The use of natural stones is encouraged.</li> </ul> (v) Avoid the following materials or treatment: <ul style="list-style-type: none"> <li>- Reflective wall cladding, panels and tiles and roof sheeting</li> <li>- High reflective or mirror glass</li> <li>- Large expanses of glass or curtain wall that is not protected by sun shade devices</li> <li>- Large expanses of rendered masonry</li> <li>- Light colours or finishes where they may cause adverse glare or reflectivity impacts</li> </ul> (vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration. (vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.	The selected materials are generally acceptable, however appropriate detailing of the slab edges is required to avoid staining to the white render (falls, drip edges etc).	Generally
<b>4.12</b>	<b>Earthworks Excavation and backfilling</b>		
	(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated	Significant excavation works proposed due to steep topography of subject site.	On merit

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
	<p>that the site gradient is too steep to reasonably construct a building within this extent of site modification.</p> <p>(ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site.</p> <p>(iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.</p>		
<b>5.</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access for proposed development</b>		
	<p>(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.</p> <p>(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.</p> <p>(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.</p>	Refer to discussion at Key Issues section of this report.	No, refer to discussion at Key Issues section of this Report.
	<b>Solar access for surrounding development</b>		
	<p>(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.</p>	Refer to discussion at Key Issues section of this report.	No, refer to discussion at Key Issues section of this Report.
<b>5.2</b>	<b>Natural ventilation and energy efficiency</b>		
	<p>(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.</p>	Refer to discussion at Key Issues section of this report.	No, refer to discussion at Key Issues section of this Report.
<b>5.3</b>	<b>Visual privacy</b>		



DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
	<ul style="list-style-type: none"> <li>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</li> <li>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</li> <li>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</li> <li>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</li> <li>(v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> <li>- Translucent glazing</li> <li>- Fixed timber or metal slats</li> <li>- Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings</li> <li>- Screen planting and planter boxes as a supplementary device for reinforcing privacy protection.</li> </ul> </li> </ul>	Refer to discussion at Key Issues section of this Report.	No, refer to discussion at Key Issues section of this Report.
<b>5.4</b>	<b>Acoustic privacy</b>		
	<ul style="list-style-type: none"> <li>(i) Design the building and layout to minimise transmission of noise between buildings and dwellings.</li> <li>(ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities.</li> <li>(iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> <li>- Double glazing</li> <li>- Operable screened balconies</li> <li>- Walls to courtyards</li> <li>- Sealing of entry doors</li> </ul> </li> </ul>	Complies	Yes
<b>5.5</b>	<b>View sharing</b>		
	<ul style="list-style-type: none"> <li>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</li> <li>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given</li> </ul>	Refer to discussion at Key Issues section of this Report.	No, refer to Key Issues

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
	<p>a priority over those obtained from the bedrooms and non-habitable rooms.</p> <p>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>		
<b>5.6</b>	<b>Safety and security</b>		
	(i) Design buildings and spaces for safe and secure access to and within the development.	The location of the pedestrian entry is concealed from Beach Street and does not provide for safe access to the development. Concern is also raised regarding lift access crossing via the basement car park.	No
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	Complies	Yes
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	Complies	Yes
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	Complies	Yes
	(vi) Resident car parking areas must be equipped with security grilles or doors.	Complies	Yes
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	Capable of complying	Capable of complying
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	Capable of complying	Capable of complying

DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks.	Complies	Yes
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	Capable of complying	Capable of complying
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	Capable of complying	Capable of complying
<b>6. Car Parking and Access</b>			
<b>6.1</b>	<b>Location</b>		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	The basement garage is accessed via Beach Street.	On merit
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	Refer to comments by Council's Development Engineer at Appendix 1.	On merit
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.	The driveway is setback more than 1m from the side boundaries.	Yes
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.	Not applicable.	N/A
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage. (c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. (d) In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.	The car parking garage is located forward of the front façade alignment and is consistent with the location of car parking at nearby properties on western side of Beach Street.	On merit

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
<b>6.2</b>	<b>Configuration</b>		
	(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.	Complies	Yes
	(ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible.	Complies	Yes
	(iv) Provide basement or semi-basement car parking consistent with the following requirements: (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain.	The basement garage is generally acceptable, however insufficient landscaping is provided to suitably soften the streetscape appearance of the garage.	No
<b>7.</b>	<b>Fencing and Ancillary Development</b>		
<b>7.1</b>	<b>Fencing</b>		
	(i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering. (ii) Sandstone fencing must not be rendered and painted. (iii) The following materials must not be used in fences: - Steel post and chain wire	The proposed front street wall comprises sandstone cladding and aluminum screening.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
	<ul style="list-style-type: none"> <li>- Barbed wire or other dangerous materials</li> <li>(iv) Expansive surfaces of blank rendered masonry to street frontages must be avoided.</li> </ul>		
<b>7.6</b>	<b>Storage</b>		
	<ul style="list-style-type: none"> <li>(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling.</li> <li>(ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles.</li> <li>(iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> <li>(a) Studio apartments – 6m<sup>3</sup></li> <li>(b) 1-bedroom apartments – 6m<sup>3</sup></li> <li>(c) 2-bedroom apartments – 8m<sup>3</sup></li> <li>(d) 3 plus bedroom apartments – 10m<sup>3</sup></li> </ul> </li> </ul>	No details provided.	Unable to assess
<b>7.7</b>	<b>Laundry facilities</b>		
	<ul style="list-style-type: none"> <li>(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.</li> <li>(ii) Provide internal laundry for each dwelling unit.</li> </ul>	<p>No details provided.</p> <p>An internal laundry is provided for each unit.</p>	<p>Unable to assess</p> <p>Yes</p>
<b>7.8</b>	<b>Air conditioning units</b>		
	<ul style="list-style-type: none"> <li>(i) Avoid installing within window frames. If installed in balconies, screen by suitable balustrades.</li> <li>(ii) Air conditioning units must not be installed within window frames.</li> </ul>	AC units located within building envelope at ground floor level.	Yes

**Responsible officer:** Julia Warren, Senior Environmental Planning Officer

**File Reference:** DA/923/2023





## Development Application Report No. D66/24

**Subject:** 40 The Avenue, Randwick (DA/225/2024)

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### Executive Summary

<b>Proposal:</b>	Integrated development for alterations and additions of the existing boarding house to enable conversion to a new 10-room hotel accommodation development, including partial demolition of front façade and rear portion of existing building, internal reconfiguration works, the addition of a new two storey rear extension, two-level basement (dining, gym and back of house area) and a detached two storey garage with hotel accommodation above and ancillary landscaping works. (State Heritage Item, Heritage Conservation Area and Variation to FSR).
<b>Ward:</b>	North Ward
<b>Applicant:</b>	PTI Architecture
<b>Owner:</b>	Randwick Accommodation Pty Ltd
<b>Cost of works:</b>	\$3,491,229.00
<b>Reason for referral:</b>	The development involves demolition of a state-listed heritage item; the development contravenes the development standard for floor space ratio by more than 10%; and the development application has received twenty-eight (28) unique submissions.

### 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/225/2024 for alterations and additions of the existing boarding house to enable conversion to a new 10-room hotel accommodation development, including partial demolition of front façade and rear portion of existing building, internal reconfiguration works, the addition of a new two storey rear extension, two-level basement (dining, gym and back of house area) and a detached two storey garage with hotel accommodation above and ancillary landscaping works, at No. 40 The Avenue, Randwick, for the following reasons:

1. The proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone in that it is not compatible with the desired future character of the locality and exceeds the level of built form anticipated for the subject site, the proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form, the development will have adverse impacts on neighbouring dwellings, and does not encourage housing affordability.
2. Pursuant to clause 4.6 of the RLEP 2012, Council is not satisfied that the applicant's written statement has adequately demonstrated a justified variation to the floor space ratio development standard. The statement has not accurately calculated the FSR, has failed to demonstrate that the proposed non-compliance is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standard.
3. Pursuant to clause 5.10 of the RLEP 2012 and B2 of the RDCP 2023, Council is not satisfied that the development has demonstrated compatibility with the heritage significance of the state registered "Avonmore Terrace" heritage item and the St Jude's Heritage Conservation Area.

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4. Pursuant to clause 6.2 of the RLEP 2012, Council is not satisfied that the earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.
5. Pursuant to clauses 6.4 and 6.10 of the RLEP 2012, Council is not satisfied that the development has adequately addressed the drainage and stormwater management issues of the site.
6. Pursuant to section 47 of the *SEPP (Housing) 2021*, Council is not satisfied that the loss of the existing boarding house will not reduce the amount of affordable housing in the area, and insufficient information has been provided to determine whether a monetary contribution is required.
7. Pursuant to section 4.6 of the *SEPP (Resilience and Hazards) 2021*, Council is not satisfied that the site is suitable for the proposed land use, being potentially subject to contamination.
8. Pursuant to section B7 of the RDCP 2013, Council is not satisfied that the proposed hotel adequately addresses the parking and traffic impacts of the development.
9. The proposed development will result in insufficient amenity for future staff members and guests, including a poorly considered layout and amenity for guest rooms and staff areas.
10. The proposed development will result in unreasonable impacts on the amenity of residential neighbours, including adverse impacts in terms of visual bulk, and both visual and acoustic privacy.
11. A full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and a lack of detail in the information submitted with the development application including:
  - a. The application contains a number of inconsistencies and accuracy issues across the supporting documentation package.
  - b. Insufficient information has been submitted outlining how long guests will be permitted to stay at the hotel for, to determine if the proposed development meets the definition of 'hotel'.
  - c. Insufficient information has been submitted outlining the rental rate that each of the existing boarding house rooms have been rented out for over the last 5 years, to determine if the loss of the existing boarding house will result in a reduction of affordable housing in the area.
  - d. Insufficient information has been submitted showing a kitchen plan for the guest servery and any required mechanical ventilation.
  - e. A Plan of Management has been submitted, however, it fails to sufficiently address each of the matters outlined at Part B9 of RDCP 2013, in terms managing staff, guests and visitors on the site to reduce impacts on residents in the locality, the liquor licence and management of potential anti-social behaviour, noise, privacy, traffic and parking arrangements, and deliveries and waste management.
  - f. An Acoustic Report has been submitted, however, the report fails to address noise from the new lift serving the hotel and noise from internal disturbances associated with hotel guest activities, including internal gatherings, events, and late-night guest lounge interactions.
  - g. A Preliminary Site Contamination Investigation (PSI), prepared by a suitable qualified professional, has not been submitted for assessment.
  - h. A detailed BCA Report and a Performance Based Solution report, prepared by a suitable qualified professional, outlining all upgrades works that will be required to

be provided, showing the extent of impact on the heritage fabric has not been submitted for assessment.

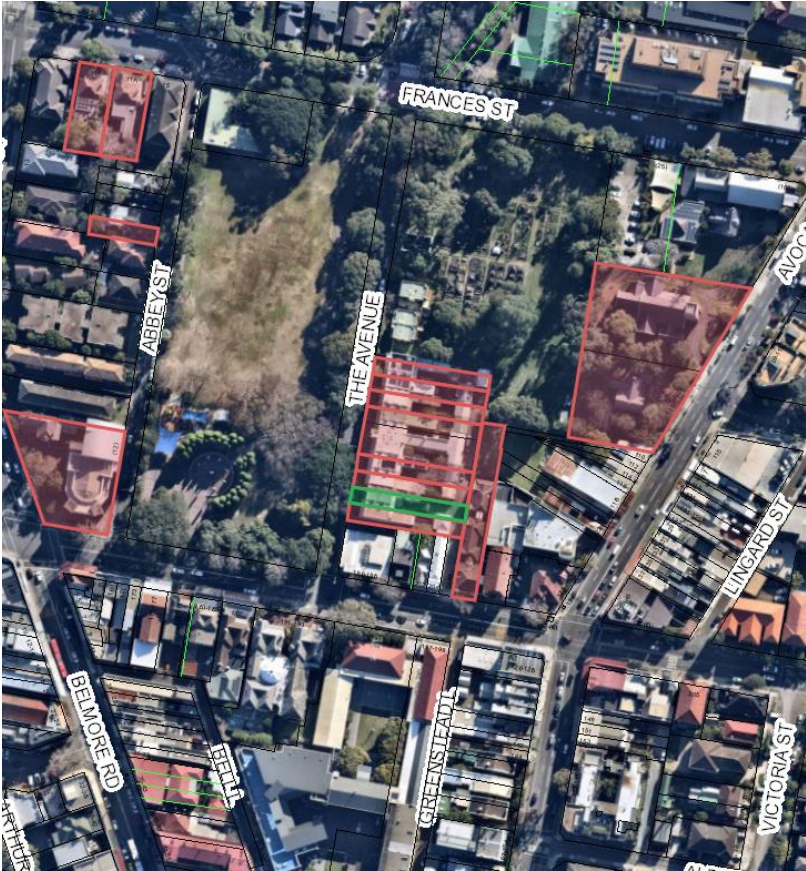
- i. A Traffic and Parking Assessment Report has been submitted, however, the report fails to adequately address parking and traffic considerations.
12. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
  13. 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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	Subject Site
	Submissions received
	North
	Locality Plan

N.B. A total of twenty-eight (28) submissions were received including x4 outside the map above and x6 from groups/consultants engaged by objectors.

1. Executive summary

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

- The development involves partial demolition of a heritage item (State and Local listed);
- The development contravenes the development standard for floor space ratio by more than 10%; and
- The development application has received twenty-eight (28) submissions by way of objection.

The proposal seeks development consent for alterations and additions of the existing heritage listed item to enable conversion to a new 3 storey hotel accommodation development comprising 10 rooms, including partial demolition of front façade and rear portion of existing building, internal reconfiguration works, the addition of a new two storey rear extension, two-level basement (dining, gym and back of house area) and a detached two storey garage with hotel accommodation above and ancillary landscaping works.

The key issues associated with the proposal relate to the impacts on the heritage conservation of the heritage item and heritage conservation area, earthworks, hotel use, amenity of future staff members and guests, amenity of residential neighbours, parking and traffic, and food preparation. The proposed development also lacks sufficient information to make a full and robust assessment including but not limited to the length of guest stays, loss of affordable housing, a sufficient Plan of Management, a sufficient Acoustic Report, a Preliminary Site Contamination Investigation (PSI), a sufficient BCA Report and a Performance Based Solution report, and a sufficient Traffic and Parking Assessment Report.



The proposal is recommended for refusal.

## 2. Site Description and Locality

The site is identified as Lot 2, DP 14466, and No. 40 The Avenue, Randwick NSW 2031. The site is located on the eastern side of The Avenue, between Frances Street to the north and Alison Road to the south.

The site is a rectangular shaped allotment with a 7.365m frontage to The Avenue, a 51.665m northern and southern side boundary, and a total site area of 379.7m<sup>2</sup>. The site rises approximately 1m in an easterly direction from The Avenue frontage to the rear boundary.

Existing on site is a part two/part three storey boarding house within an 1880s terrace building. The subject terrace forms part of a row of terraces being No's 26-42 The Avenue, which forms part of the State Heritage Item 'I454' being "Avonmore Terrace". The main section of the dwelling is accommodated within a subfloor area to a depth of approximately 1m. The rear section of the site is paved with no areas of planting or deep soil zones.

The eastern portion of the site forms part of an easement for right of carriageway (ROW), being a private laneway that process vehicular access to all dwellings in the "Avonmore Terrace" row and No. 206 Alison Road. This laneway provides pedestrian and vehicular access to the rear of the site subject. Only pedestrian access is provided to the western side of the site via the main building entrance.

The terraces that form part of the "Avonmore Terrace", consist of the following building typologies:

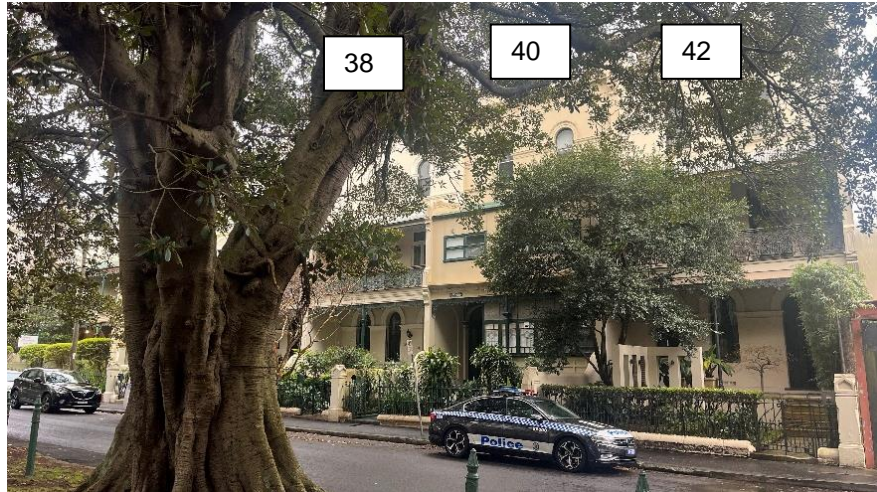
- Dwelling Houses: No's 26, 28, 30, 36, 38, 42.
- Serviced Apartments: No's 32 & 34 (known as 'Avonmore on the Park').

The surrounding area is characterised by mainly residential development, including dwelling houses. Adjoining the site to the north at 38 The Avenue is a dwelling house, to the south at 42 The Avenue is a dwelling house, and to the east at the rear of the site at 206 Alison Road is a mixed use development with x2 shops fronting Alison Road and 12 residential units.

The site is also located within the St Jude's Heritage Conservation Area (HCA) being Item 'C17', which includes building centred on early church and civic buildings, including the St Jude's Church and cemetery, the Randwick Presbyterian Church and adjoining Coogee Boys' Preparatory School, the Council Administration Building, and Randwick Public School. Within the centre of the HCA is Alison Park, which is located to the western side of the subject site and contains trees registered on Council's Significant Tree Register.



**Figure 1:** Photo of the front of the subject site - 40 The Avenue, Randwick (Source: Randwick City Council)



**Figure 2:** Photo of the front of the subject site and adjoining terraces from Alison Park - 40 The Avenue, Randwick (Source: Randwick City Council)



**Figure 3:** Photo of the row of 'Avonmore Terrace' - 40 The Avenue, Randwick (Source: Randwick City Council)





**Figure 4:** Photo of the rear of the site and adjoining northern neighbours on the private laneway - 40 The Avenue, Randwick (Source: Randwick City Council)

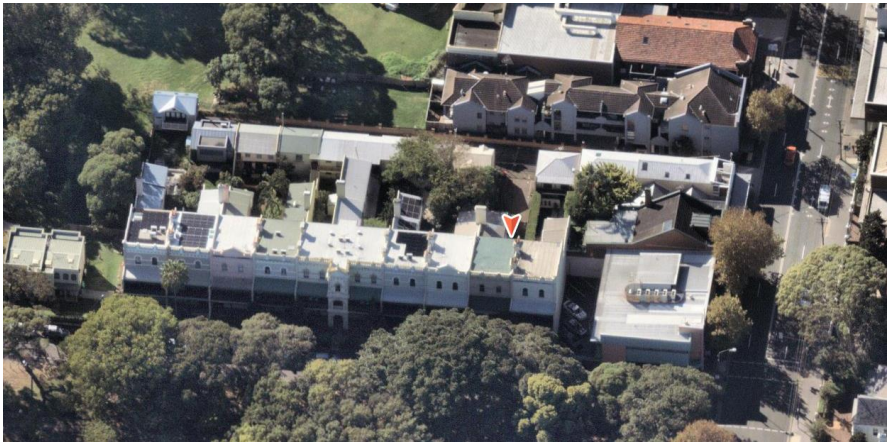


**Figure 5:** Photo of the rear of the site and adjoining southern neighbours on the private laneway - 40 The Avenue, Randwick (Source: Randwick City Council)



**Figure 6:** Photo of the private laneway from Alison Road - 40 The Avenue, Randwick (Source: Randwick City Council)

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**Figure 7:** East oblique view of the subject neighbourhood (April 2024) - 40 The Avenue, Randwick (Source: Nearmap)

**3. Relevant History**

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

Use as a Boarding House

On 18 July 1944, the site is registered as having received approval for a licence for a boarding house and houses let in lodgings as licence number 25. Excerpts from Council's register of licences for boarding houses and houses let for lodgings for the year ending 30 June 1945 are shown in **Figure 8**.

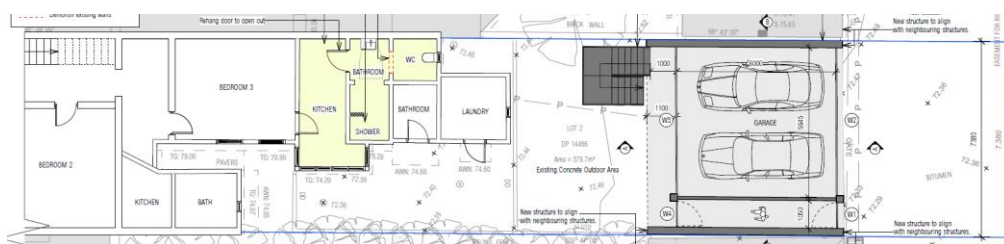
REGISTER OF LICENSES ISSUED FOR <i>Boarding Houses and Houses let in lodgings</i> YEAR ENDING <i>30<sup>th</sup> June</i> 19 <i>45</i>							
NAME	ADDRESS	DATE OF COUNCIL'S APPROVAL	LICENSE NO.	RECEIPT NO.	AMOUNT PAID E	AMOUNT PAID D.	REMARKS
<i>Wright Mrs J. E.</i>	<i>81 Bonaparte St. Rand.</i>	<i>18.7.44</i>	<i>1</i>	<i>14178</i>	<i>1</i>	<i>-</i>	<i>1.1. ✓ 34</i>
<i>Buckley Mrs J. M.</i>	<i>9 Darby Rd. Rand.</i>	<i>-</i>	<i>2</i>	<i>14299</i>	<i>1</i>	<i>-</i>	<i>2. ✓ 106</i>
<i>Bluffe Mrs A. J.</i>	<i>124 Botany St. Rand.</i>	<i>-</i>	<i>24</i>	<i>15702</i>	<i>1</i>	<i>-</i>	<i>24. ✓ 53</i>
<i>Hogan Mrs K.</i>	<i>40 The Avenue, Rand.</i>	<i>-</i>	<i>25</i>	<i>15705</i>	<i>1</i>	<i>-</i>	<i>25. ✓</i>
<i>Grant Stanley</i>	<i>43 Dolphin St. Byee</i>	<i>-</i>	<i>26</i>	<i>15718</i>	<i>1</i>	<i>-</i>	<i>26. ✓</i>

**Figure 8:** Excerpts from Council's Register of boarding house lodgings for year end 30 June 1945 (Source: Randwick City Council)

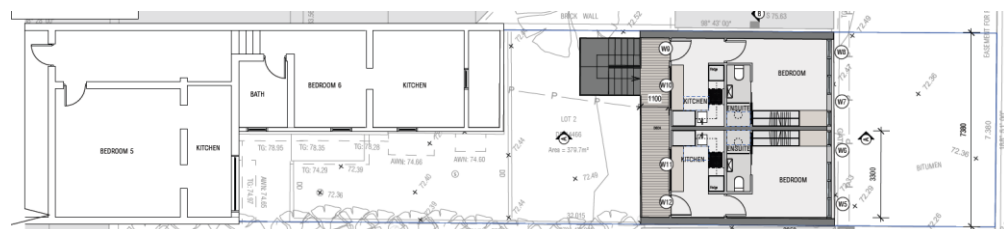
Subsequent historical records from Council's files continue to show the site registered as a boarding house in 1995 and 17 September 2021. Records indicate that in 1996 a licence for shared accommodation was issued, being SAC/510/1996. Given the approval provided to the boarding house in 1944, it is considered that there is an existing consent for the use of the site as a boarding house.

DA/327/2020

Development Application No. DA/327/2020 for Integrated development for alterations and additions to existing boarding house including construction of a double garage with 2 x boarding rooms above at the rear, new service entry, refurbishment of existing boarding room to make accessible and associated works was refused by the RLPP on 25 November 2021. A snippet of the refused plans has been reproduced below:



**Figure 9:** Refused ground floor plan under DA/327/2020 - 40 The Avenue, Randwick (Source: Sarah Blacker Architect and Interior Designer)



**Figure 10:** Refused first floor plan under DA/327/2020 - 40 The Avenue, Randwick (Source: Sarah Blacker Architect and Interior Designer)

The reasons for refusal are outlined below:

1. *The written request pursuant to clause 4.6 of the RLEP 2012 to vary clause 4.4 Floor space ratio has not adequately demonstrated that compliance is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the non-compliance.*
2. *It has not been demonstrated that the existing boarding house use is lawfully approved, and approval of this application would effectively approve the whole building to be used as a boarding house, and there is insufficient detail to determine whether this has acceptable impacts.*
3. *The proposed development is not considered to be minor alterations and additions, and is an intensification of the existing use as it increases the number of boarding rooms from 9 to 11.*
4. *It is unclear from the information whether the existing "boarding house" is able to achieve acceptable amenity, for example it appears room 2 does not have windows, some rooms are not self-contained, there is no provision of a communal room, and there are no provisions for bicycle and motorcycle parking.*
5. *The proposed new rooms would provide poor amenity as they would not have access to a communal room or other facilities expected of a boarding house.*
6. *Furthermore, the GTAs from Heritage NSW require the provision of an internal staircase and it is unclear how this will be achieved without further diminishing the size and amenity of these boarding rooms.*
7. *The provision of privacy screens to address privacy impacts would further reduce the amenity of these new rooms.*
8. *It has not been demonstrated that the built form and materiality of the proposed boarding rooms and garage would be compatible with the existing rear buildings of the terraces that comprise the heritage item.*

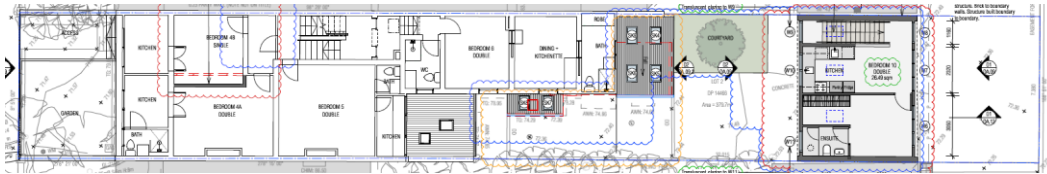
On 23 May 2022, a Class 1 Application was filed with the Land and Environment Court to appeal against the refusal of the subject development application (LEC 2022/48269).

On 07 December 2022, Council and the applicant reached a Section 34 Agreement, and the appeal was upheld. A snippet of the approved plans have been reproduced below:





**Figure 11:** Approved ground floor plan under DA/327/2020 - 40 The Avenue, Randwick (Source: Sarah Blacker Architect and Interior Designer)



**Figure 12:** Approved first floor plan under DA/327/2020 - 40 The Avenue, Randwick (Source: Sarah Blacker Architect and Interior Designer)

Site Visit

On 16 April 2024, Council’s Senior Heritage Planner and the Assessing Officer conducted a site visit of the subject building and site.

Additional Information Request

On 21 June 2024, Council sent formal correspondence to the applicant outlining that the proposed development could not be supported for the following reasons:

- Heritage;
- Hotel use;
- Floor Space Ratio;
- Earthworks;
- Amenity of future occupants and adjoining residential neighbours;
- Parking and traffic;
- Food preparation;
- Landscape planting;
- BCA upgrade works; and
- Lack of information.

The applicant was provided with a 14-day period to withdraw the application. It is noted that the applicant has not withdrawn the application and the assessment of the application has continued proceeded to the recommendation of refusal.

The subject DA was lodged with Council on 26 March 2024.

**4. Proposal**

Council is in receipt of a development application seeking consent for alterations and additions of the existing boarding house to enable conversion to a new 10 room hotel accommodation development, including partial demolition of front façade and rear portion of existing building, internal reconfiguration works, the addition of a new two storey rear extension, two-level basement (dining, gym and back of house area) and a detached two storey garage with hotel accommodation above and ancillary landscaping works.

Specifically, the proposal is seeking to convert the existing 10-room boarding house into a 10-room hotel accommodation with a communal guest areas and services for operation of the hotel (i.e. office, laundry and storage rooms). The hotel is proposed to operate 24-hours, 7-days a week. The hotel will provide 10-rooms that have a maximum capacity of 28 persons, based on the room allocation in Table 1:

Table 1: Bedding Capacity by Room

Room Number	Floor	Room Size (SQM)	Bedding King (K) Sofa (S)	Capacity (Persons)
1	Ground	32	K	2
2	Ground	29	K	2
3	Ground	21	K	2
4	Ground	25	K (Accessible)	2
5	Level 1	35	K + S	4
6	Level1	26	K	2
7	Level1	31	K + S	4
8	Level 2	21	K	2
9	Level 2	35	K + S	4
10	Level 1 East	40	K + S	4
Totals				28

Source: PTI Architects; Horwath HTL

Table 1: Proposed Hotel Capacity - 40 The Avenue, Randwick (Source: Horwath HTL)

The hotel will employ up to 11 staff members, based on the assigned roles in Table 2 below. The hotel will have at least 2 staff members on the premises 24-hours, being the hotel manager and a guest service staff member. Staff amenities are located within the basement 2 level of the site.

Position	Headcount FTE Equivalent
Hotel Manager	1
Guest Services	4
Housekeeping	2
Commis Chef	2
Food & Beverage Attendants	2
Total Employees	11

Source: Horwath HTL

Table 2: Proposed Staffing Numbers - 40 The Avenue, Randwick (Source: Horwath HTL)

The hotel guests will only be able to check-in online, with no front concierge area or room provided within the site. The site includes a guest lounge room as a part of basement 1 level with a maximum patronage of 26 persons, which is available 24-hours with complimentary beverages and snacks, pre-preared meals, as well as a self-service bar. A separate breakfast service will be offered 7-days a week between 7am to 10am. The rear section of the ground floor of the site will have a courtyard area with a maximum patronage of 14 persons that will used between 7am to 10pm, 7-days a week.

The hotel will seek consent for a liquor licence through Liquor and Gaming NSW, via a separate approval following the consideration of the subject application. The applicant has not clarified whether the communal guest areas will be for guests only or open to the general public.

In addition, as a part of the change of use to a hotel, the proposal seeks to carry out the following physical works:

### Demolition

#### *Ground Floor:*

- Demolition of a retaining wall within the front yard area.
- Demolition of the existing kitchen and bathroom to Room 1.
- Demolition of the existing doorway to the existing staircase and adjoining door to the rear section of the boarding house.
- Demolition of the external and internal walls of the kitchen and bathroom to Room 2.
- Demolition of existing internal walls and windows to Room 3, including demolition of the rear section of the building.
- Demolition of the wall section along the southern boundary within the rear yard.

#### *First Floor:*

- Demolition of the existing front balcony enclosure to Rooms 4 & 5.
- Demolition of the internal walls to Rooms 4 & 5.
- Demolition of the kitchen and bathroom to Room 6.
- Demolition of the existing internal walls, doors and windows to the bathroom to Room 7.

#### *Second Floor:*

- Demolition of the internal walls to Rooms 9 & 10.
- Demolition of the internal walls and bricking up of the existing window to Room 8.
- Demolition of the window to the stairwell and external wall.

### Earthworks

- Excavation of the site underneath the existing heritage building and entire rear yard portion of the site (excluding the ROW), to a length of up to 34.7m. Within the rear yard section, excavation is for 2 levels, to a depth of 6.6m.

### Construction

#### *Basement 2 Floor:*

- Addition of a new basement level 2 with the following layout:
  - Hotel back-of-house area.
  - 4x storage areas.
  - Unisex W/C.
  - Laundry.
  - Staff Locker area.
  - Service lift.
  - Staircase access only.

#### *Basement 1 Floor:*

- Addition of a new basement level 1 with the following layout:
  - A new fire staircase that connects to the main internal building staircase above.
  - A corridor below the main dwelling that connects to the main basement 1 guest area with storage and access to the main building lift.
  - Gym.
  - 1x unisex accessible W/C.
  - 1x unisex W/C.
  - Guest lounge area with a servery and seating area.
  - Office for the Hotel Manager.
  - Service lift.
  - Staircase access to the basement 2 level below and rear garage structure adjoining the rear ROW lane.

**Ground Floor:**

- Addition of planting, paving and a fountain within the front yard area.
- Extension of the main staircase within the existing building for an access to the basement level 1 below.
- Addition of a new wheelchair lift for DDA access through the main entrance of the proposed hotel.
- Addition of 3 hotel rooms within the existing terrace building, each with their own bathroom and kitchenette.
- Extension of the rear of the existing building to accommodate Room 4 with a bathroom and kitchenette.
- Addition of a new courtyard within the rear yard area of the site with planters and seating for up to 14 patrons and a skylight to basement 1 level below.
- Addition of a new rear garage structure adjoining the western side of the ROW on the site, which accommodates:
  - Parking for 1x vehicle and 6x bicycles;
  - Garbage bin room;
  - Plant room;
  - Service lift;
  - A separate pedestrian access is provided from the ROW into the building;
  - Staircase access to the basement level 1 below; and
  - Staircase access to Room 10 above.

**First Floor:**

- Addition of 3 hotel rooms within the existing terrace building, each with their own bathroom and kitchenette.
- Conversion of the front terrace within the existing terrace building back to a balcony in accordance with the original heritage detailing.
- Addition of a new storage room within the existing terrace building.
- Lift access to a landing lobby area.
- Addition of Room 10 with a bathroom and kitchenette above the rear garage structure fronting the ROW at the rear of the site.

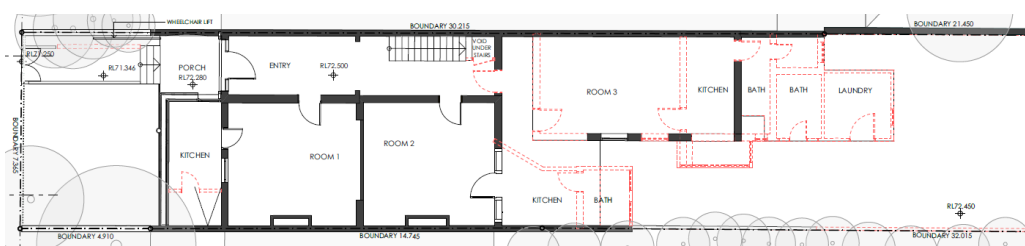
**Second Floor:**

- Addition of 2 hotel rooms within the existing terrace building, each with their own bathroom and kitchenette.
- Lift access to a landing lobby area.

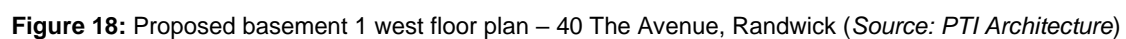
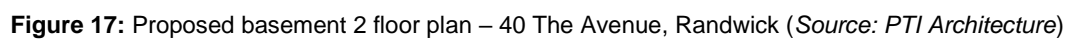
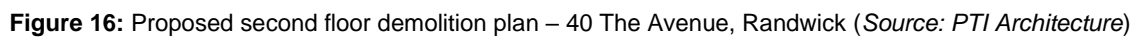
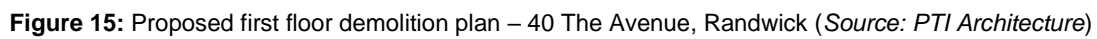
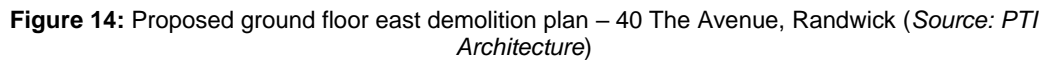
The main terrace building is proposed to be updated with colours and materials in accordance with the submitted elevation plans.

The proposed development lacks detail as to the existing heritage fabric elements of the building and does not detail all proposed external and internal works to heritage fabric. See Council's Heritage assessment in Appendix 1 and the peer review of the Conservation Management Plan (CMP) in Appendix 2 below.

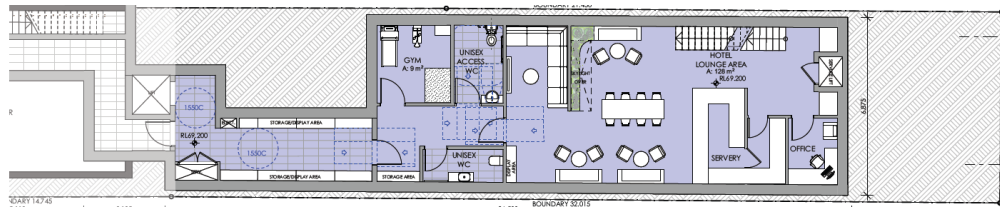
It is noted that signage does not form part of the proposed development.



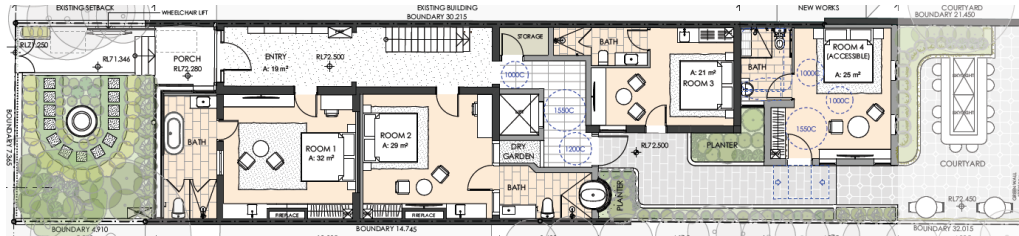
**Figure 13:** Proposed ground floor west demolition plan – 40 The Avenue, Randwick (Source: PTI Architecture)



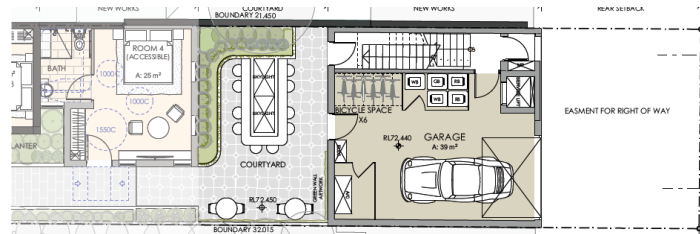




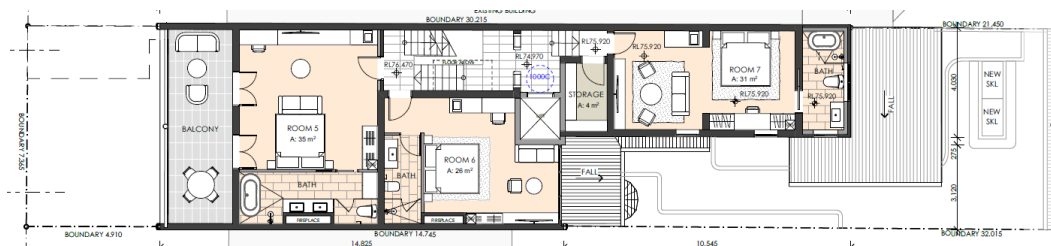
**Figure 19:** Proposed basement 1 east floor plan – 40 The Avenue, Randwick (Source: PTI Architecture)



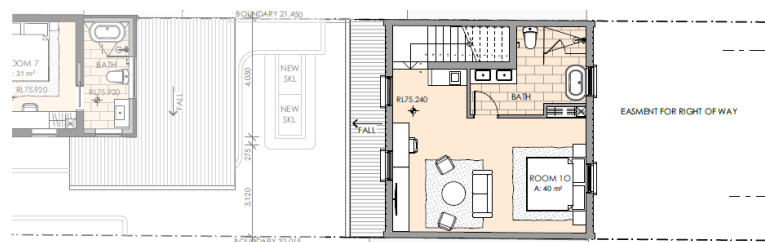
**Figure 20:** Proposed ground floor west plan – 40 The Avenue, Randwick (Source: PTI Architecture)



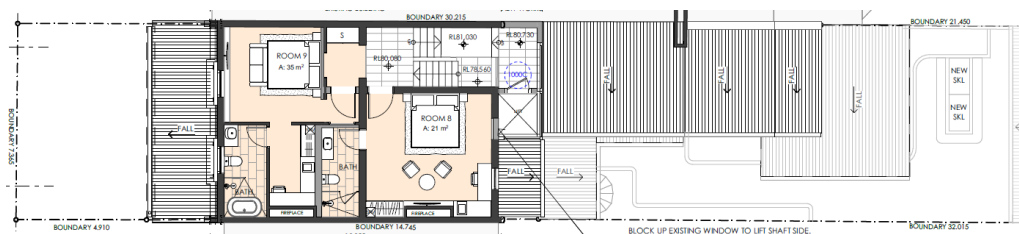
**Figure 21:** Proposed ground floor east plan – 40 The Avenue, Randwick (Source: PTI Architecture)



**Figure 22:** Proposed first floor west plan – 40 The Avenue, Randwick (Source: PTI Architecture)



**Figure 23:** Proposed first floor east plan – 40 The Avenue, Randwick (Source: PTI Architecture)



**Figure 24:** Proposed second floor plan – 40 The Avenue, Randwick (Source: PTI Architecture)

## 5. Notification

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A total of twenty-eight (28) submissions were received as a result of the notification process, objecting to the proposed development from or on behalf of the following properties:

- 2x from 26 The Avenue, Randwick NSW 2031.
- 28 The Avenue, Randwick NSW 2031.
- 30 The Avenue, Randwick NSW 2031.
- 32-34 The Avenue, Randwick NSW 2031.
- 2x from 36 The Avenue, Randwick NSW 2031.
- 38 The Avenue, Randwick NSW 2031.
- 42 The Avenue, Randwick NSW 2031.
- Unit 7/206 Alison Road, Randwick NSW 2031.
- Unit 12/206 Alison Road, Randwick NSW 2031.
- 2x from 11 Frances St, Randwick NSW 2031.
- 11A Frances Street, Randwick NSW 2031.
- 4 Abbey St, Randwick NSW 2031.
- 38 Cook Street, Randwick NSW 2031.
- 1/47-49 Wolseley Rd, Point Piper NSW 2027.
- 71 Ben Boyd Road, Neutral Bay NSW 2089.
- Randwick Precinct Committee.
- Principal of Coogee Boys' Preparatory School, 162-194 Alison Road, Randwick NSW 2031.
- Minister of Randwick Presbyterian Church, 27 Cook St, Randwick NSW 2031.
- Rector of St Jude's Church, 106 Avoca St, Randwick NSW 2031.
- Vital Dental in the Royal Randwick Shopping Centre, Randwick NSW 2031.
- JK Geotechnics providing geotechnical advice on behalf of 11A Frances Street, Randwick NSW 2031.
- Somerville Strata Management for 206 Alison Road, Randwick NSW 2031.
- Heritage Architect from Hector Abrahams Architects.
- Planning Consultant for properties in The Avenue.
- Special Counsel at Hones Lawyers for 38 and 42 The Avenue, Randwick NSW 2031.

The submissions raised concerns with regards to the following which have been paraphrased and summarised below:

Issue	Comment
<p><u>Hotel/Liquor Licence</u></p> <ul style="list-style-type: none"> <li>-The proposed hotel use will increase traffic, food smell, parking, light pollution, noise, and pedestrian movement.</li> <li>-The proposed hotel lacks consideration of the surrounding residential areas which are within close proximity.</li> <li>-A hotel use will change the current accommodation-only land uses to a commercial use. This commercial activity is not appropriate in this building.</li> <li>-The intensification of the use to have up to 40 people coming and going to a single terrace is not acceptable.</li> <li>-The Liquor Licence, kitchen and outdoor dining area will destroy the quiet character of the area.</li> <li>-The application does not specify the type of liquor licence sought.</li> <li>-Concerns regarding anti-social behaviour from liquor consumption. This could spill into Alison Park and The Avenue.</li> <li>-There is nothing restricting the bar functioning as stand-alone servicing unrelated guests to the hotel.</li> <li>-The Plan of Management details are too vague.</li> <li>-The Plan of Management is inconsistent, including regarding the service of alcohol and management of patron behaviour in accordance with RSA.</li> <li>-The Plan of Management lacks detail regarding the impact of 24-hour trading on neighbours, social-economic index,</li> </ul>	<p>Council agrees that the proposed hotel use with a liquor licence will have adverse impacts on the amenity of the locality. Whilst hotels are permitted on the subject site, the proposed hotel application contains inconsistencies across the documentation, lacks detail in the hotel operational documentation, and lacks sufficient detailed consideration of the impact that the development will have on neighbours. Therefore, for these reasons and other reasons outlined throughout the report, it is recommended the application is refused.</p>

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Issue	Comment
<p>how to disperse of anti-social patrons, impact of hospitalisation and deaths, strategies to minimise property damage.</p> <p>-The outdoor terrace will lead to noise, smoking and intoxicated people, which will impact upon the amenity of residential neighbours.</p> <p>-There is insufficient area on the site for a smoking area. The laneway is private and not appropriate for smoking.</p>	
<p><u>Heritage</u></p> <p>-The hotel use is not appropriate in this heritage building.</p> <p>-The construction noise and vibration will impact upon the structural integrity of adjoining heritage terraces.</p> <p>-Basements will have a significant impact on heritage value.</p> <p>-Damage to any terraces will impact the cultural and historical heritage of the buildings.</p> <p>-Both front verandahs must be restored to be open and detailed in accordance with the other terraces. So too should the rear verandah.</p> <p>-The proposal makes no attempt to reverse internal intrusions such as fire doors and spatial divisions.</p>	<p>See Appendix 1 for heritage comments from Council's Heritage Planner and the Heritage Council of NSW's Heritage Planner. It is noted that both officers have recommended the proposal be refused.</p>
<p><u>Earthworks</u></p> <p>-The submitted geotechnical report only did testing to 4m, no testing of groundwater, no testing/consideration of neighbouring terraces including of structural support and footings.</p> <p>-The report lacks specific details of assumed construction methodology. No construction management plan or structural methodology detailing the basement excavation.</p> <p>-The report should have recommended full depth shoring to support the basement excavation. In addition, no advice is provided on how the contiguous poles should be installed.</p> <p>-The report should include groundwater monitoring. There are known groundwater and drainage issues in the block.</p> <p>-The report recommendations relating to contiguous pile walls have not been provided on the engineering plans.</p> <p>-The reports are vague, lack specific recommendations and allow for a high degree of discretion. Council cannot allow such uncertainty, especially of such significant excavation to these state heritage items.</p> <p>-The previous DA Court approval did not include excavation.</p> <p>-The basement levels extend very close to adjoining property boundaries.</p> <p>-Excavation of uncontrolled fill and natural sand poses significant geotechnical risks for adjoining properties. Due to the presence of sand over inferred sandstone bedrock, there is likelihood of damage to the terrace and adjoining terraces and structures.</p> <p>-Proposed basement will impact the integrity of the foundations of the adjoining terraces.</p> <p>-It would set a dangerous precedent as none of the terraces currently have basements.</p>	<p>Council shares concerns raised with the lack of a detailed geotechnical assessment from the applicant, considering the extent of excavation and the context of the site and surrounding properties being state heritage listed items. Council is not satisfied that the impact on these terraces has been adequately considered. This has been reiterated by Council's Heritage Planner. Therefore, for these reasons and other reasons outlined throughout the subject report, the application is recommended for refusal.</p>
<p><u>Floor Space Ratio</u></p> <p>-The ROW cannot be included in the site area to calculate FSR as it cannot be developed on.</p>	<p>Council agrees that the site area for calculating FSR should exclude the</p>

Issue	Comment
<p>-The basement contributes to the scale of development not in keeping with the character of the locality, to both a heritage item and HCA.</p>	<p>ROW. See Clause 4.6 Assessment for consideration of FSR variation, of which is inaccurate and not supported by Council.</p>
<p><u>Deep Soil Zones</u></p> <p>-No deep soil areas provided in the rear due to the basement. Only 1 tree in a planter.</p> <p>-Planters in the rear yard are not sufficient for the need for deep soil landscaping.</p>	<p>Council agrees that there is a lack of deep soil areas within the rear section of the site, due in part to the expansive excavation. This lack of deep soil area is not supported as areas of deep soil permeability would provide for sufficient planting that reduce stormwater runoff and transfer to adjoining properties.</p>
<p><u>Traffic/Parking</u></p> <p>-The current boarding house generates little traffic. The hotel traffic use will be much greater than the current boarding house.</p> <p>-The existing parking is constraint due to the schools, churches, Council offices and restaurants nearby.</p> <p>-The Royal Randwick shopping centre does not allow overnight parking.</p> <p>-The impact on local parking would be significant. The lack of parking provided for both staff and guests. Along with, inadequate assessment to justify a reduction in Council required parking spaces.</p> <p>-The laneway will be used for high traffic associated with the hotel (guest vehicles, pick-up/drop off/services/ staff). Lack of consideration for the intensification of use of the laneway.</p> <p>-No parking survey has been conducted of available off-street parking.</p> <p>-Increases in traffic congestion, impact upon pedestrian safety</p>	<p>Council agrees that the proposed development does not adequately address the traffic and parking implications of the development. See both Key Issues for a detailed assessment and comments from Council's Development Engineer in Appendix 1. Therefore, for these reasons and other reasons outlined throughout the report, it is recommended the application is refused.</p>
<p><u>Deliveries and Waste Collection</u></p> <p>-The additional waste from the hotel use cannot be managed in the private laneway.</p> <p>-Additional laneway impacts from increased deliveries and waste collection for bar and food service.</p> <p>-Bins should be collected from Alison Road, not the laneway.</p>	<p>Council agrees that the proposed development lacks detail as to how to adequately manage additional deliveries and waste collection in the private laneway to mitigate impacts on adjoining neighbours. This forms part of the recommended refusal reasoning.</p>
<p><u>Drainage</u></p> <p>-The current private laneway does not drain properly with stormwater pooling. The laneway is subsiding due to subterranean water.</p> <p>-The private laneway needs to be upgraded to manage stormwater flow.</p> <p>-The excessive excavation will lead to further drainage impacts on the site and neighbours.</p>	<p>Noted, regarding the existing drainage issues. Council is not currently satisfied that the proposed development in a sensitive heritage area has adequately addressed drainage concerns. This forms part of the recommended refusal reasoning.</p>
<p><u>Visual Privacy</u></p> <p>-New level 2 windows will cause overlooking impacts.</p> <p>-Insufficient separation between rear structure and 206 Alison Road. Overlooking impacts, only 7m separation.</p> <p>-The courtyard will directly overlook into adjoining properties.</p>	<p>Council notes that overlooking impacts from the proposed development would be similar from the proposed courtyard to what is existing. However, Council agrees that the new windows to the main dwelling</p>

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Issue	Comment
	and the windows to the rear garage structure will result in adverse overlooking impacts. This forms part of the recommended refusal reasoning.
<u>Acoustic Privacy</u> -The noise assessment fails to consider all noise sources including air-conditioning units, lifts, hotel room televisions, the courtyard and basement lounge. -Impacts on sleep disturbance with anti-social behaviour from alcohol service from both the courtyard and basement bar area. -No consideration of delivery or waste collection noise.	Council agrees that the acoustic assessment lacks details of several noise-inducing elements of the development. See Key Issues for a detailed consideration and comments from Council's Environmental Health Officer in Appendix 1 of the report. This forms part of the recommended refusal reasoning.
<u>Construction Impacts</u> -The construction noise and vibration will impact upon the amenity of neighbours, especially excavation impacts to neighbouring amenity. -Concerned access to the laneway will be closed, impact services and deliveries to neighbours. Both pedestrian and vehicle access impacted. -Issues with large machinery in the laneway that is required for deep excavation works.	Whilst Council acknowledges that some impacts to neighbours is expected from the proposed development, Council agrees that the applicant has failed to demonstrate how they will mitigate such impacts. This includes a lack of detail on the continued management and use of the private laneway.
<u>Party Walls</u> -Lack of owner's consent in relation to works to, and below, common part walls. -Council needs to consider excavation impacts on party walls, regardless of if there is an easement or not.	Council notes that consent has not been provided from the adjoining neighbours in relation to works along common boundary walls. That being said, in this instance, it is responsibility of the applicant to manage these matters outside of the Council assessment process for any changes to easements through neighbour consultation and registration with Land Registry Services.
<u>Viability of Current Boarding House</u> -The previous DA consent in 2022 did not mention that the existing boarding house is not viable. -The previous DA consent in 2022 argued the importance of boarding houses as important affordable housing. -An independent valuation expert is required by Council to verify the applicant's valuation report.	Council is satisfied with the submitted valuation report and that the existing boarding house is not viable. That being said, Council is not satisfied that the proposal will not result in a loss of affordable housing, and notes that the applicant has provided insufficient information in relation to the rental history of each boarding house room. See details in the Housing SEPP section of this report.
<u>Inconsistencies in Application</u> -The building and structural plans are unclear as to the extent of the works. -There is inconsistency in number of staff members across documents.	Council agrees that there are inconsistencies with the documentation, including but not limited to, the accuracy of the existing floor plans, differences in staff/patron numbers and hours of operation in the SEE and PoM. The proposed development also lacks the

Issue	Comment
	significant detail required in relation to the heritage fabric works and the works required in accordance with the upgrading of the building under the BCA. This forms part of the recommended refusal reasoning.

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## 6. Relevant Environment Planning Instruments

### 6.1. State Environmental Planning Policies

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

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

The aims of Chapter 2 are:

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

The proposed development does not involve the removal of vegetation within the site. However, several trees are located within Alison Road that are registered on Council's Significant Tree Register. Should the DA have been recommended for approval, sufficient conditions of consent would have been imposed to protect any trees from any construction impacts. Therefore, pursuant to Chapter 2 of the SEPP, Council is satisfied that the proposed development achieves the aims of the chapter.

#### 6.1.2. SEPP (Housing) 2021

SEPP Housing 2021 seeks to deliver more affordable and diverse forms of housing, including co-living housing and independent living units. Chapter 2, Part 3 of the Housing SEPP applies to existing affordable housing in the form of low-rental boarding house. Consideration of this Part is required to determine whether the proposal will result in a reduction in affordable rental housing, and subsequently whether a monetary contribution might be considered to substitute any loss.

The subject site is currently occupied by a ten (10) room boarding house.

The Housing SEPP defines a low-rental residential building as follows:

***low-rental residential building*** means a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that –

- (a) is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or*
- (b) was used as a residential flat building containing a low-rental dwelling or as a boarding house, but the use has been changed unlawfully to another use, - or*
- (c) is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.*

The subject building is a lawful boarding house that is currently operating as such. Therefore, Council can confirm the subject building is defined as a low-rental residential building'.

The relevant period is defined as “the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.

Clause 46 notes that this part applies to a low-rental residential building in the Eastern Harbour City. Council confirms that the subject site is located within the Eastern Harbour City.

Clause 47 relates to development for the purpose of changing the use of the building to another use, in relation to a building to which this Part applies, is permitted with development consent. In accordance with clause 47(1), Council confirms that the proposal seeks the change of use from the existing boarding house to a hotel.

In accordance with clause 47(2), the consent authority must take into account the *Guidelines for the Retention of Existing Affordable Rental Housing (The Guide)*, published by the Department in October 2009 and several considerations in determining whether to grant development consent. The following considerations are detailed below with comments from Council:

- (a) *whether the development will reduce the amount of affordable housing in the area,*

Assessing officer's comment:

The applicant has failed to provide Council with documentation outlining the rental rate that each boarding house room has been rented out for over the last 5 years. Without this information, Council cannot take into account whether the proposed change of use of the existing boarding house into a hotel will reduce the amount of affordable housing in the area.

- (b) *whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation,*

Assessing officer's comment:

In accordance with clause 47(3), sufficient comparable accommodation is conclusively taken not to be available if, for the 3 months occurring immediately before the development application is lodged, the average vacancy rate in private rental accommodation for Sydney, as published monthly by the Real Estate Institute of New South Wales, is less than 3%.

The average vacancy rate in private rental accommodation for Sydney, as published monthly by the Real Estate Institute of New South Wales, was 1.2% in March 2024 (when the DA was lodged) and 1.7% in June 2024. Therefore, Council can confirm that there is currently not enough available sufficient comparable accommodation to satisfy the demand for accommodation.

- (c) *whether the development is likely to result in adverse social and economic effects on the general community,*

Assessing officer's comment:

In accordance with The Guide, where the vacancy rate for Sydney is less than 3%, a development proposing a loss of such accommodation is likely to cause adverse social and economic effects on the general community. As noted above, Council cannot confirm whether the development will reduce the amount of affordable housing in the area.

However, the vacancy rate in Sydney for June 2024 is 1.7%, Council is concerned that the loss of the existing boarding house may result in adverse social and economic effects on the general community. Without information as to whether the boarding house rooms are affordable or not, Council cannot make a full and robust assessment of this consideration.

- (d) *whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation,*

Assessing officer's comment:

The applicant has not provided any details to whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation.

- (e) *the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area,*

Assessing officer's comment:

Council can confirm from data from the NSW Government's Local Government Housing Kit that:

- The percentage of very low income affordable rental stock is 2%, in comparison to Greater Sydney which is 5%.
- The percentage of low income affordable rental stock is 9%, in comparison to Greater Sydney which is 24%.

Based on this, Council is concerned that the loss of this existing boarding house will adversely contribute to a cumulative loss of affordable housing in the local government area, which is already significantly less than the average of Greater Sydney.

- (f) *whether the building is structurally sound, including—*  
 (i) *the extent to which the building complies with relevant fire safety requirements, and*  
 (ii) *the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements,*

Assessing officer's comment:

Council can confirm that the existing building is structurally sound and has a current Annual Fire Safety Statement (AFSS), Council Ref No. ESS/113/2000. The current statement is valid until 31/05/2024.

- (g) *whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development,*

Assessing officer's comment:

The Guide contains the following explanation:

*"A balanced assessment of the other criteria of clause 50(2) will commonly find that the development satisfies some criteria and not others, with varying degrees of acceptable and adverse impacts. Where it is clear that the overall impact is major and adverse and cannot be adequately mitigated, serious consideration should be given to refusal – or at least negotiating a modification of the proposal to make its impact acceptable.*

*In other cases, the imposition of an affordable housing condition may be an appropriate way to enable the development to proceed while mitigating its impact.*

...

*Where boarding house DAs that would result in loss of accommodation were approved, this was generally on the grounds that the boarding house was not financially viable. In the absence of a legislated contributions scheme, considerations of fairness and equity made it difficult to determine an appropriate basis for calculating a contribution for a non-viable boarding house.*

*This has now been addressed in the contributions scheme set out in the SEPP. The scheme provides a sliding scale formula which reduces the contribution payable as financial viability reduces. This is based on the principle that the operation of a financially non-viable boarding house would have involved some degree of financial subsidy by the owner and the reduced contribution is a notional recognition of that subsidy.*

As noted above, the applicant has failed to provide Council with documentation outlining the rental rate that each boarding house room has been rented out for over the last 5 years. Without this information, Council cannot take into account whether the proposed change of

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use of the existing boarding house into a hotel will reduce the amount of affordable housing in the area.

That being said, based on the other matters of consideration above, Council can confirm that:

- There is currently not enough available sufficient comparable accommodation to satisfy the demand for the accommodation.
- That the loss of the boarding house may result in adverse social and economic effects on the general community.
- That the applicant has failed to detail whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation.
- That the loss of the existing boarding house will contribute to a cumulative loss of affordable housing in the local government area.
- That the existing building is structurally sound and has been upgraded to adequately comply with relevant fire safety requirements.

Therefore, Council is concerned that the loss of the existing boarding house would have an impact on affordable housing in the area, and that a monetary contribution would be required from the applicant to potentially account for this loss.

As noted below, Council does accept that the existing boarding house is not viable, based on the submitted Valuation Assessment by a suitably qualified valuer. Therefore, Council accepts that in this instance, the loss of the existing boarding house is warranted, rather than requiring its retention. However, that does not mean that Council cannot impose a condition for a monetary contribution to account for the loss of affordable housing. The Guide contains the following excerpt, in relation to the imposition of a monetary contribution.

*“The contribution rate is further reduced when applied to boarding houses assessed as being not financially viable. It is reasonable to obtain a contribution towards replacement of lost boarding rooms even if their continued operation is not financially viable, because they still play a valuable role in providing low rental accommodation that will need to be met should they cease operating. But reduction of the contribution rate is reasonable to reflect the implicit subsidy that would have been paid by the owner in operating the non-viable boarding house.”*

Based on this, Council may be in a position to impose a monetary contribution for the loss of the existing boarding house. However, without rental data of the last 5 years for each of the ten boarding house rooms, Council is unable to make this determination.

(h) for a boarding house—the financial viability of the continued use of the boarding house.

Assessing officer’s comment:

Council is satisfied with the submitted Valuation Assessment and can confirm that the subject boarding house is not viable, in accordance with clause 47(3) and the definition of rental yield.

Conclusion

In accordance with clause 47(2) of the Housing SEPP, Council is unable to consider whether the proposed change of use of the existing boarding house into a hotel will reduce the amount of affordable housing in the area, as the applicant has failed to provide Council with documentation outlining the rental rate that each boarding house room has been rented out for over the last 5 years. Therefore, Council cannot confirm that this clause has been satisfied. As such, it is recommended that the proposed development be refused.

6.1.3. SEPP (Resilience and Hazards) 2021

Chapter 4 ‘Remediation of land’



Chapter 4 of SEPP (Resilience and Hazards) 2021 applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land. Clause 4.6 of SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Council's Environmental Health team has identified that the subject site may constitute contaminated land or land that must be subject to a site audit statement. Council has requested that a *Preliminary Site Contamination Investigation* (PSI) be undertaken by a suitably qualified environmental consultant to prior to the determination of the application.

The applicant has failed to provide a PSI as part of the development application. Therefore, Council's position is that it is unclear if the site will be suitable for the proposed development, which may pose risk of contamination. Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, Council is not satisfied that the land is considered to be suitable for the proposed land use.

Therefore, abovementioned reason and other reasons outlined throughout the report, it is recommended the application is refused.

#### 6.1.4. SEPP (Sustainable Buildings) 2022

A BASIX certificate has not been submitted. In accordance with the *Environmental Planning and Assessment Regulation 2021*, a BASIX building has the following definition:

**BASIX building** means a building that contains at least 1 dwelling, but does not include the following—

- (a) hotel or motel accommodation,
- (b) a boarding house, hostel or co-living housing that—
  - (i) accommodates more than 12 residents, or
  - (ii) has a gross floor area exceeding 300 square metres.

Therefore, a BASIX Certificate is not required in accordance with *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022.

## 6.2. Randwick Local Environmental Plan 2012 (RLEP 2012)

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 updated RLEP 2012 (Amendment No. 9) are applicable to the proposed development, and the proposal shall be assessed against the updated RLEP 2012.

The site is zoned Residential R3 Medium Density under Randwick Local Environmental Plan 2012. The proposal seeks consent for a 'hotel', which has the following definition in the RLEP:

**hotel or motel accommodation** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

*but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.*

Council is not satisfied that the proposed development is defined as a hotel or motel accommodation, as it is not clear under the PoM how long guests will be permitted to stay at the hotel. Therefore, it is currently unclear if the proposal provides a temporary or short-term accommodation arrangement.

Based on the submitted architectural plans, the proposal seeks to provide 10 rooms, all of which are self-contained (noting that each room includes separate kitchen and bathroom facilities) within

the hotel. The proposal includes a lounge and servery area within the basement 1 level that will serve alcohol (subject to a separate liquor licence), and meals to guests, either in the basement lounge area, ground floor courtyard or individually to each room. It is unclear in the PoM if the hotel will serve meals to the general public. It is noted that the hotel does not provide facilities for the parking of guests' vehicles.

Council is satisfied that the development is not defined as other type of tourist and visitor accommodation, including the following:

- **backpackers' accommodation** – the building does not provide shared facilities (i.e. bathrooms, kitchen or laundries) and does not provide accommodation on a bed or dormitory-style basis (rather than by room).
- **boarding house** – the building does not provide shared facilities (i.e. bathrooms, kitchen or laundries), and is not a form of affordable housing.
- **bed and breakfast accommodation** – the building is not an existing dwelling occupied by permanent residents of the dwelling.
- **farm stay accommodation** – the building is not on a commercial farm.

However, it is unclear if the proposed development can be classified as a 'serviced apartment', which has the following definition in the RLEP:

***serviced apartment** means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.*

The proposed development is in a building that provide self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by a manager of the building who will be on-site 24 hours per day (in accordance with the PoM). The PoM does not indicate the length of time that guests can stay at the premises.

Therefore, the applicant has not demonstrated that the development more closely meets the definition of 'hotel' as opposed to 'serviced apartments', with the main difference being the temporary or short-term nature of the length of visitor or guest stays. Council cannot be sure that the proposed development best fits the 'hotel' use. Further information is required, of which the applicant has failed to provide as a part of an amended plan of management.

In terms of the proposed 'hotel' use, Council is concerned that the proposed development will have a detrimental impact upon the amenity of the locality. See Key Issues for a detailed consideration of the hotel use and impacts it will have on the locality.

Overall, Council is not satisfied that the proposed hotel development is consistent with the specific objectives of the zone in that whilst the proposed activity and built form will provide for a variety of housing types (being tourist and visitor accommodation as permitted in the zone), the development does not contribute to the desired future character of the area, does not protect the amenity of residents, and does not encourage housing affordability. For these reasons, the proposed development is recommended for refusal.

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

Description	Standard	Proposed	Compliance (Yes/No/NA)
Clause 4.3: Height of Building (Maximum)	12m	11.685m  N.B. as per the LEP definition, building height is measured from the existing ground level.	Yes, complies

Description	Standard	Proposed	Compliance (Yes/No/NA)
Clause 4.4: Floor Space Ratio (Maximum)	0.9:1  Site area = 334.1m <sup>2</sup> Maximum GFA = 300.7m <sup>2</sup>  See Clause 4.5 consideration below regarding land which is prohibited for development.	1.56:1 (or 468m <sup>2</sup> )  N.B. as per the LEP definition of GFA, includes all basement areas (except storage) and additional area in the garage not used for parking facilities.	No, see Clause 4.6 Assessment below.

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#### 6.2.1. Clause 4.5 – Calculation of Floor Space Ratio and Site Area

The subject site has an area of 379.7m<sup>2</sup> and the maximum FSR is 0.9:1 (in accordance with clause 4.4(2) of RLEP 2012). However, as per Clause 4.5(4), land on which the proposed development is prohibited must be excluded from the site area.

The rear portion of the site is burdened as an easement for right of carriageway (ROW) for vehicular access and parking to dwellings that form part of the Avonmore Terraces at No's 26-42 The Avenue, Randwick. The ROW is prohibited for development.

For the purpose of calculating FSR, the area of the rear ROW is excluded from the total site area. The inclusion of the ROW in the site area calculation serves only to facilitate greater GFA, noting that it otherwise provides no function in terms of providing for a better built form outcome.

Noting the above, the site area for calculating FSR is taken to be 334.1m<sup>2</sup> and the maximum permissible GFA is 300.7m<sup>2</sup>.

Based on Council's calculations, the proposed development has a GFA of 468m<sup>2</sup>, which results in a non-compliant FSR of 1.56:1. This figure has been calculated in accordance with the LEP definition of GFA to include the area of storage at lower ground floor level within the garage as and exclude the area of storage underneath the lower ground floor staircase and storage room adjoining the gym.

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

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

#### 6.2.3. Clause 5.10 - Heritage conservation

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

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

The site forms part of the State Heritage Item 'I454' being "Avonmore Terrace" and is located within The St Jude's Heritage Conservation Area.

Council is not satisfied that the proposed development will conserve and positively impact upon the heritage significance of the heritage item and heritage conservation area. See detailed comments from Council's Heritage Planner and the Heritage Council of NSW's Heritage Planner below in Appendix 1. Furthermore, Council's Heritage Planner has conducted a peer review of the CMP, which concluded that it is not considered to be an adequate heritage management document for the study site. See Appendix 2 for further details.

Therefore, for the abovementioned reason and the other reasons outlined throughout the report, it is recommended the application is refused.

#### 6.2.4. *Clause 6.2 – Earthworks*

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

The development fails to satisfy clause 6.2 for the reasons outlined in the Key Issues section of this report. In relation to the matters of consideration under clause 6.2(3), Council includes the following remarks:

- Council is concerned that the proposed earthworks will impact drainage patterns and soil stability in the locality of the development, especially considering the lack of detail regarding the impact on the state heritage listed terraces.
- Council is concerned that the proposed earthworks will impact on the likely future use or redevelopment of the land in that the earthworks could impact upon the stability of the site and adjoining terraces.
- Council is concerned that the proposed earthworks will impact upon the amenity of adjoining properties including the general operation and management of the hotel, including noise, patron management and anti-social behaviour.
- Council is concerned that the applicant has not adequately considered the impact of the development on the water table.
- Council is concerned that the applicant has not adequately provided details as to how the excessive excavation works are to be carried out and ways to avoid, minimise and mitigate impacts of the development.
- Council is concerned that the applicant has failed to provide a preliminary site investigation report regarding potential land contamination on the site.

Therefore, for these reasons and other reasons outlined throughout the report, it is recommended the application is refused.

#### 6.2.5. *Clause 6.4 – Stormwater management*

Clause 6.4 requires the consent authority to be satisfied that the development in residential zones is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water; including, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water; avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact; and incorporates, if practicable, water sensitive design principles.

Council is not satisfied that the proposed development has adequately address stormwater management, which is required in this instance prior to the determination of the development. The applicant has failed to provide adequate details of the drainage management on the site and in the locality.

Therefore, for these reasons and other reasons outlined throughout the report, it is recommended the application is refused.

#### 6.2.6. *Clause 6.10 – Essential services*

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

Council is not satisfied that the proposed development will provide sufficient essential services, specifically stormwater drainage, as noted above. Therefore, for this reason and other reasons outlined throughout the report, it is recommended the application is refused.

## 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	Existing	Proposed	Proposed Variation	Proposed Variation (%)
Cl 4.4: Floor space ratio (max)	0.9:1  Site area = 334.1m <sup>2</sup>  Maximum GFA = 300.7m <sup>2</sup>	1:1 (348m <sup>2</sup> )	1.56:1 (or 468m <sup>2</sup> )  N.b. as per the LEP definition of GFA, includes all basement areas (except storage) and additional area in the garage not used for parking facilities.	0.66:1 (167.3m <sup>2</sup> )	73%

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

Council notes that the applicant's written justification failed to correctly calculate both the site area and gross floor area required to inform the floor space ratio, in accordance with clause 4.5 of the RLEP 2012. The applicant has calculated the site area as 379.7m<sup>2</sup> and FSR as 1.1:1 (i.e. a GFA of 419m<sup>2</sup>), representing a 22.6% (77.27m<sup>2</sup>) variation with the 0.9:1 FSR development standard.

However, the rear ROW is prohibited for development. Therefore, Council has calculated the site area for calculating FSR as 334.1m<sup>2</sup> and a proposed FSR of 1.56:1 (or 468m<sup>2</sup>). This results in a non-compliant FSR of 1.56:1, representing a 73% (167.3m<sup>2</sup>) variation with the 0.9:1 FSR development standard.

Therefore, it is noted that the applicant's clause 4.6 assessment is inaccurate and invalid. A revised clause 4.6 assessment has not been provided by the applicant to address these inaccuracies in the calculation. Therefore, for this reason, in addition to the reasons of the detailed assessment below, Council cannot support the applicant's written request.

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 seeks to demonstrate that this objective is satisfied by noting that the proposal is appropriate in the character of the terraces and local context, which seeks a similar building envelope as that approved under DA/327/2020 with any additional floor area beyond that previously approved being located in the basement levels. The applicant notes that the rear structure is consistent with the predominate character of the laneway, similar to the building envelope previously approved under DA/327/2020.

Assessing officer's comment:

Council is not satisfied that the size and scale of the development is compatible with the desired future character of the locality. The development retains the enclosed first floor verandahs at both of the front and rear of the main dwelling (of which Council's Heritage Planner does not support) as well as provide a lift access and ground floor extension not in keeping with the other terraces. Furthermore, basement areas are not characteristic of the terraces in the block and is therefore not in keeping with the desired future character of the locality, noting the potential impacts to the subject heritage item and adjoining protected properties.

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

The applicant's written justification seeks to demonstrate that this objective is satisfied by noting that the buildings are sufficiently recessed and articulated to minimise bulk and scale of the non-compliance; that the proposal achieves the appropriate thermal comfort, energy saving and water saving measures in accordance with the Section J Report prepared by Partners Energy; and that the design has a high level of internal amenity, which includes a skylight to the guest communal area on Basement 1.

Assessing officer's comment:

Council is not satisfied that the proposed buildings are well articulated, especially in relation to the retention of the enclosed verandahs to the main dwelling, which if restored to its original condition, would be better articulated.

In terms of environmental and energy needs, Council is concerned that the development relies too heavily on mechanical ventilation and lighting of the site, in particular the x2 basement levels and the ground floor rooms that lack sufficient solar access.

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

The applicant's written justification seeks to demonstrate that this objective is satisfied by noting that the development is a positive heritage outcome for the item in the HCA, based on the HIS prepared by Sarah Blacker.

Assessing officer's comment:

Both Council's Heritage Planner the Heritage Council of NSW's Heritage Planner are not satisfied that the development is compatible with the scale and character of both the state listed heritage item and the St Jude's HCA. See detailed comments in Appendix 1 of this report detailing these reasons.

- (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 seeks to demonstrate that this objective is satisfied by noting that the development will not create unreasonable environmental amenity impacts in terms of visual bulk, overshadowing, loss of views, loss of privacy or loss of visual amenity as follows:

- *Overshadowing:* The proposal results in minimal additional overshadowing at 8am and 12pm beyond that approved under DA/327/2020.
- *Views:* The proposal has been designed so as to not have an unreasonable impact on views from the public domain or surrounding properties.
- *Privacy:* The proposal has been designed and sited to ensure adequate visual and acoustic privacy between the subject development and the adjoining properties, including the layout, openings, screening, fencing and planting.

Assessing officer's comment:

Council is not satisfied of the visual bulk and privacy implications of the development on the nearby neighbours. The proposed buildings exceed the existing neighbouring structures in terms of scale and size, which impact upon visual bulk.

In terms of privacy, Council is not satisfied that the visual privacy of adjoining residential neighbours has been sufficiently protected, and the acoustic assessment lacks a detailed assessment of all noise-inducing elements of the development, including but not limited to, the lift and basement 1 guest lounge area.

Conclusion

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

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

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

- *The proposal adopts a similar building envelope as that approved under DA/327/2020. It is noted that the development approved under DA/327/2020 has an FSR of 1:1, which is greater than that proposed under this DA.*
- *The proposed additional floor area, beyond that previously approved, is provided in the proposed basement levels. The proposed additional floor area will therefore not be visible from the streetscape or surrounding properties and will not increase the bulk and scale beyond that approved under DA/327/2020.*
- *Despite the FSR non-compliance, the proposal complies with the building height development standard for the site.*
- *Despite the FSR variation, the proposal results in a positive heritage outcome for the state heritage listed item on the site and is compatible with the scale and character of surrounding heritage items in the St Jude's heritage conservation area. Refer to the Heritage Impact Statement prepared by Sarah Blacker submitted with this application.*
- *A reduction of the proposed FSR would provide for an indiscernible benefit to the streetscape and would reduce the amenity of the building.*

- *The subject site is surrounded by 3-storey terraces with rear lane garages with studios above along The Avenue (No. 26 to No. 42 The Avenue) and a 3-storey residential flat building opposite the subject site to the east (No.206B Alison Road). It is noted that the boutique hotel to the north of the subject site at No.s 32-34 The Avenue has an FSR of 1.045:1 (DA/150/2011). Despite the FSR non-compliance, the proposal will sit comfortably in the character of the local area.*
- *The rear of the subject site is currently vacant and represents an anomaly along the shared right-of way at the rear of the site which predominantly consists of rear lane garages with studio above. Refer to the photos in Section 3 of this SEE. The proposed FSR and infill nature of the built form is considered to be consistent with predominant character of laneway development. The proposed rear lane single garage with studio above has a similar building envelope to that previously approved under DA/327/2020.*
- *Exceedance of the FSR control will not create additional building bulk that results in unreasonable environmental amenity impacts as follows:*
  - *The proposed FSR breach will not result in the loss of views from surrounding development.*
  - *The proposed breach in FSR will not result in unreasonable overshadowing of adjoining properties. The proposal complies with the DCP solar access controls.*
  - *The proposal will provide a development which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.*
- *The proposal is consistent with the R3 Medium Density Residential zone objectives and the FSR objectives.*

Assessing officer's comment: Council is not satisfied that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

Council disagrees that the proposed development does not have an adverse impact on the streetscape character, integrity of the heritage item and HCA, sufficient amenity for occupants and protects the amenity of neighbours. Council also contests that the proposed development has a similar envelope to that of the approved DA/327/2020.

The additional floor space to the main dwelling is not in scale to development within the Avonmore Terraces, being mainly Room 4 on the ground floor and the lift addition at the second floor. This will have visual bulk and privacy impacts on adjoining neighbours.

The rear garage structure exceeds the building depth of the adjoining structures, creating additional visual bulk and privacy impacts to the adjoining properties and impacts upon the consistency of the rear lane structures.

The basement floor levels do not provide sufficient amenity to the habitable rooms for future guests and staff of the hotel. The basement levels rely upon mechanical ventilation and lighting, except for a small skylight in the rear courtyard that will provide limited solar access.

These conclusions have been reiterated by both Council's Heritage Planner and the DEAP. See Appendix 1 for their detailed comments.

## 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 should not be granted for development that contravenes the FSR development standard. Therefore, it is recommended that the proposed development be refused.

## 8. Development control plans and policies

### 8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in Appendix 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 discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 4.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is not consistent with the dominant character in the locality.</p> <p>The proposal will result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site is located in close proximity to local services and public transport. However, the proposed hotel will have an adverse impact on the heritage conservation of the existing building and will adversely impact upon the amenity of the streetscape and neighbouring dwellings.</p> <p>Therefore, the site is considered not suitable for the proposed 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 'Matters for Consideration'	Comments
Section 4.15(1)(e) – The public interest	The proposal fails to promote the objectives of the zone and not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

## 9.1. Discussion of Key Issues

### Heritage

The proposal seeks consent for change of use to a state listed heritage item. The submitted application, including the Conservation Management Plan and the Heritage Impact Statement have been considered by both the Heritage Council of NSW and Council's Heritage Planner.

Both Officers have concluded that the submitted application cannot be supported. See detailed comments from both officers in Appendix 1, who do not support the proposed development. Council notes the significant level of amendments required to most of the documentation would essentially form an entirely new DA.

Council is also concerned that the proposed development lacks sufficient detail in relation to the upgrade works required for a change of use under the BCA, and the impact that will have on the heritage fabric of the existing building. See comments from Council's Building Compliance Officer in the Appendix 1.

Therefore, it is recommended that the application be refused.

### Earthworks

Council is not satisfied that the proposed development has adequately considered the extensive excavation impacts at the DA stage to support the proposed development. The proposal seeks to excavate below the existing dwelling as well as the entire rear yard for the level 1 basement with hotel lounge area, gym and a further level 2 basement at the rear of the site for back of house hotel uses. The maximum depth of the excavation is 6.6m and is only setback from the side boundaries by 250mm.

The provided Geotechnical Report prepared by Crozier Geotechnical Consultants (No. 2023-228, dated February 2024) contains several assumptions and further testing/investigations that are required in order to confirm that the excavation works will be satisfactory at the CC stage. Some of these issues include a testing depth to 2.65m only, potential groundwater, vibration impacts, support of adjoining properties, risk of movement on sandstone base layers, and as to the best ways to protect the site and adjoining state heritage items. Furthermore, the report lacks any detailed consideration of how the development will protect and support adjoining terraces. This has also been reiterated by Council's Heritage Officer and the DEAP. See Appendix 1 for further details.

Council is concerned regarding the extent of excavation in a sensitive heritage area. The proposed development has failed to adequately demonstrate the need for rooms within the basement area, mainly the guest lounge and gym areas. These are not required elements of a hotel development. In addition, the basement areas do not provide sufficient amenity of guests and staff in a subterranean space, which mostly relies upon mechanical ventilation and lighting.

Council's Environmental Health Officer has also raised site contamination as a potential issue, with a preliminary site investigation (or PSI) required prior to the determination of this application. The applicant has failed to provide a PSI for consideration.

Finally, the proposed development does not provide any deep soil areas within the rear section of the site, due in part to the expansive excavation. This is not supported as areas of deep soil permeable area will provide areas for sufficient planting that reduce stormwater runoff and permeability.

Therefore, based on these considerations, Council is not currently satisfied that the level of earthworks is supportable. Accordingly, the proposal is recommended for refusal.

#### Hotel Use

Council is concerned regarding the amenity impacts of the proposed hotel use and whether it is appropriate in a mainly residential area due to amenity impacts on the wider residential block (as outlined below). The currently proposed hotel will have a detrimental impact on the amenity of the adjoining neighbours and lack sufficient amenity for future guests.

As noted above, whilst rooms in hotels can comprise 'self-contained suites', it is unclear from the PoM that the accommodation will be 'temporary or short-term'. Should Council have supported the DA, a detailed clarification on the use and distinguishment from a 'serviced apartment' use would be required to be submitted by the applicant. Furthermore, no front of house or concierge service provided as all checking-in is done online, as well as no guest services counter provided for information for guests. Council expects that there is still a concierge area for a hotel, regardless of online check-ins.

Furthermore, the PoM outlines the following:

*"Guest Lounge is to be available to hotel guests 24 hours per day with complimentary beverages and snacks available. A self-service honour bar is to be available to hotel guests with access restricted to person 18 years or older."*

Council is concerned how this element will be adequately managed and comply with the relevant requirements under the Liquor Act 2007 and relevant Regulations. Firstly, the applicant has failed to provide details of what type of liquor licence they intend to apply for. Furthermore, it is currently unclear whether or not the guest lounge will be accessible by guests only or by the general public as well. Should the lounge be open to the general public, Council is concerned about the further amenity impacts this will have on the locality in terms of noise, traffic, and the management of potential anti-social behaviour.

In terms of amenity impacts, an inadequate acoustic assessment has been conducted by the applicant. This has been confirmed by Council's Environmental Health Officer who has received the acoustic report prepared by Acoustic Logic report (No. 202313381 date 14/03/2024) that does not include the following considerations including noise from the new lift serving the hotel and noise from internal disturbances from hotel guest activities, including internal gatherings, events, and late-night guest lounge interactions. See further details in Appendix 1 from Council's Environmental Health Officer.

Furthermore, the submitted Traffic and Parking Assessment Report prepared by Consulting Engineers (Ref. 23231, date 15/03/2024) fails to include details as to how drop-off services for guests will be managed as the front of the building is reserved for 'police only' parking. Council is concerned that taxis and other ride share services would double-park in the street and block traffic along The Avenue.

Therefore, based on these considerations, Council is not currently satisfied that the proposed hotel use is appropriate in the context of the site. Therefore, it is recommended that the application is refused.

#### Amenity of Future Staff Members and Guests

As noted above, Council is not satisfied that the proposed development has adequately considered the amenity impact that the proposed hotel will have on the amenity of future staff members and guests. Council has several concerns, of which have been detailed below:

- The proposed development seeks consent for a 24-hour, 7-day operation. It is unclear of the impact this will have on the amenity of adjoining residential neighbours in terms of noise from check-ins and general operation. This includes the use of the guest lounge and room

service which is proposed for 24-hour operation and a liquor license. A revision of the 24-hour service is required to ameliorate the impacts on adjoining residential dwellings.

In addition, the guest entry and circulation route on the ground floor is poor and needs further consideration in terms of operational use and comfort.

- The proposed office for the Hotel Manager is located within the basement level without any natural light or ventilation. Council is concerned that that this habitable space is not conducive to an acceptable workspace and office for an employee who will be on premises 24-hours, 7-days a week.
- The proposed lift does not provide equitable access to the rooms on level 1 and 2, which are inaccessible directly from the lift. It is unclear what purpose the lift serves, other than cleaning and laundry services for the room changeover.
- The proposed hotel only includes one room, Room 4, which has been designed to be accessible. Council is not satisfied that sufficient measures have been put in place to adequately address access in the hotel. Considering that the proposal seeks consent for a change of use and considerable upgrade works, Council would require that most, if not all rooms, are DDA accessible.
- The proposed development lacks sufficient communal indoor space on the ground floor. The only indoor common area is located on the basement level, which has poor amenity in terms of natural light or ventilation. Council is concerned that that this habitable space is not conducive to an acceptable communal space for future patrons who are proposed to use this 24-hours, 7-days a week. In accordance with the DEAP comments, there is an opportunity to convert the front rooms into a communal indoor space with a concierge service. Furthermore, see Appendix 1 for comments from the DEAP regarding this matter.
- The proposal includes a pedestrian access from the rear lane that is only provided via a separate entrance that requires you to walk through the garage. Based on the PoM, it is unclear whether this is an accessway for staff and/or guests. This would not be appropriate for guest access.
- The proposal includes Room 10, which has located above the rear detached structure to the ROW. Council is concerned that access to this room is only provided internally through the garage. This access needs further attention and consideration.
- In terms of visual and acoustic privacy, Council is concerned that Rooms 2, 3 and 4 have poor privacy due to the location of the circulation core. This is reiterated by the DEAP. See Appendix 1 for comments from the DEAP regarding this matter.
- In terms of solar access, Council is concerned that Rooms 1, 2 and 3 have poor light access, insufficient with general planning considerations for direct sunlight requirements. Whilst it is noted that 3-hours of direct sunlight between 9am-3pm is required for residential dwellings in both the Council DCP and ADG and that strict compliance for every room to achieve this in a hotel is not required, there is lack of reasonable solar access to a number of these ground floor rooms, of which Council does not support noting the extent of stays has not been nominated by the applicant. Furthermore, see Appendix 1 for comments from the DEAP regarding this matter.

Therefore, based on these considerations, Council is not currently satisfied that the proposed development adequately provides sufficient amenity for future guests and appropriate conditions for staff members. Therefore, it is recommended that the application is refused.

#### Amenity of Residential Neighbours

As noted above, Council is not satisfied that the proposed development has adequately considered the amenity impact that the proposed hotel will have on the amenity of residential neighbours. Council has several concerns, of which have been detailed below:

D66/24

- In terms of visual bulk, Council is concerned that the additional floor space being sought to the rear of the main dwelling and the rear secondary building to the ROW will adversely impact upon the amenity of the adjoining neighbours. See Clause 4.6 Assessment for consideration of the additional floor space and visual bulk impacts.
- In terms of visual privacy, Council is concerned that the western façade windows to Room 10 will cause visual privacy impacts on both adjoining neighbours. Overlooking impacts from this Room have not been adequately addressed. In addition, the windows to the rear garage structure will overlooking adjoining units at No. 206 Alison Road without any consideration of their visual privacy.
- In terms of acoustic privacy, the proposal seeks consent for an outdoor courtyard area to the ground floor at the rear of the main building. The SEE notes that the “landscaped rear courtyard is to be furnished with outdoor seating and tables with a seating capacity of up to 14 patrons”. The PoM notes that the patron capacity of the courtyard is 16 patrons, which is inconsistent with the SEE. In addition, the submitted acoustic report prepared by Acoustic Logic report (No. 202313381 date 14/03/2024) recommends conditions that the outdoor courtyard shall only be used between 7:00am to 10:00pm, and not be used for parties, “such that normal vocal levels would be expected as opposed to raised voices.” However, these comments on operational use are not included in the PoM.

The proposal also seeks consent for a basement guest lounge area. As noted above, the submitted acoustic report fails to provide any assessment against noise from this basement area, which is operational 24-hours and has a proposed capacity of 26 patrons.

Considering that the site will seek a liquor licence from Liquor and Gaming NSW for both the ground floor courtyard and basement guest lounge area, Council is concerned that inconsistencies with the documentation make it unclear what is being sought for consent and whether the proposed development adequately addresses residential amenity. Council is concerned regarding noise and anti-social behaviour in a mainly residential block.

Furthermore, as noted above, further acoustic assessment is required in relation to impacts from the lift, plant equipment, mechanical extraction, patron noise, amplified music, and deliveries. See further details in Appendix 1 from Council's Environmental Health Officer. Therefore, the proposed development lacks the detailed consideration of acoustic impacts, which Council is concerned that the applicant has failed to adequately address.

Therefore, based on these considerations, Council is not currently satisfied that the proposed development adequately provides sufficient amenity for residential neighbours. Therefore, it is recommended that the application is refused.

#### Parking and Traffic

Council is concerned that the proposed development has not adequately addressed the parking and traffic impacts of the development on the locality. As noted by Council's Development Engineering, it is considered the application is likely to lead to additional impacts on the surrounding availability of on-street parking, which is already experiencing significant parking pressures due to the presence of two schools, Council offices and nearby restaurants.

The applicant has submitted a Traffic and Parking Assessment Report prepared by Consulting Engineers (Ref. 23231, date 15/03/2024). Council raises a number of issues with the report.

Firstly, Council does not agree with the report that the existing boarding house on the site operates similarly to a hotel. See Development Engineering comments below which note the parking rates for boarding houses and hotels are different. Secondly, the report states there will be 2 staff however the PoM refers to up to 11 staff. Additional staff on the site and their parking has not been adequately considered and provided for in the assessment. There will also be an increase in guest numbers to a maximum of 28 guests, which exceeds the existing capacity within the boarding house, which is currently 10 residents.

Thirdly, as noted above, Traffic and Parking Assessment Report also fails to include details as to how drop-off services for guests will be managed.

Finally, within the PoM, it notes the following regarding parking provisions for visitors:

*“There are no guest parking facilities on site. Paid street parking is subject to time limits. There are paid public car parking facilities in the Royal Randwick shopping centre, a 4-minute walk from the Proposed Hotel.”*

Council notes that there is no paid street parking within the vicinity, that the area is subject to a Residential Parking Scheme, of which a permit to park would not be granted by Council. In addition, the ‘Carpark Conditions of Entry’ of the Royal Randwick Shopping Centre note that the following condition:

*8. Overnight parking is not permitted including the use of the car park outside of trading hours unless authorised to do so.*

Therefore, Council is not satisfied that the applicant has adequately considered the traffic and parking impacts of the development on the locality. See further details regarding parking rates by Council’s Development Engineer in Appendix 1 of this report. Therefore, it is recommended that the application is refused.

### Food Preparation

Council is concerned that the proposed development has not adequately addressed food preparation requirements. As noted in the PoM, the proposal includes the following:

*“The Proposed Hotel is to operate year-round with onsite staff 24 hours per day under the supervision of a Hotel Manager. It is envisaged the Guest Lounge is to offer breakfast 7 days per week, also available to be served to the guest rooms. The proposed breakfast service hours of ... 7am to 10am.*

*The guest lounge area to offer breakfast 7-days per week, also available to be served to the guest rooms. Pre-prepared meals are to be available to guests 24 hours per day, 7 days per week. The Guest Lounge is to be available to hotel guests 24 hours per day with complimentary beverages and snacks available. A self-service honour bar is to be available to hotel guests with access restricted to person 18 years or older.”*

A review of the plans for the development does not include a kitchen for such activity. A servery is noted in the guest lounge area but there is no proposal for a kitchen. Furthermore, the PoM includes in the staff section a total of x2 Commis Chefs and x2 food/beverage attendants. Without a kitchen, it is unclear what role x4 staff for food service will be doing if all meals are pre-prepared. Council is concerned that there are inconsistencies with what is noted in terms of food service and the role of the x4 staff for a food service.

See further comments in Appendix 1 from Council’s Environment Health below.

Therefore, Council is not satisfied that the applicant has adequately considered the food preparation measures of the proposed development and provided information to address operational inconsistencies. Therefore, it is recommended that the application is refused.

### Housing and Productivity Contribution

In accordance with *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*, a Housing and Productivity Contribution (HPC) applies in the Greater Sydney, Illawarra Shoalhaven, Lower Hunter and Central Coast regions. Contributions collected help to deliver essential state infrastructure such as schools, hospitals, major roads, public transport infrastructure and regional open space. The contribution applies to development applications for new residential, commercial and industrial development (including complying development and state significant development) lodged on and after 1 October 2023.



Clause 16(2)(c) outlines that GFA for commercial buildings in the case of a change of use of an existing building to a commercial building, that the gross floor area of the building that will be changed to use as a commercial building.

The existing building is a boarding house, which is a type residential accommodation. The proposed change of use is a hotel, which is a commercial building use. Therefore, the application is subject to the HPC for all GFA of the building. The development application submission lodged by the applicant concludes that the HPC is not applicable, which is incorrect. Council is not satisfied that the applicant's lodgement has been lodged correctly in accordance with the EP&A Act and Regs.

Should the development application have been supported, Council would have imposed the HPC for the entire GFA of the hotel, at the rate set out in the relevant Order.

## 10. Conclusion

That the application for an integrated development for alterations and additions of the existing boarding house to enable conversion to a new 10-room hotel accommodation development, including partial demolition of front façade and rear portion of existing building, internal reconfiguration works, the addition of a new two storey rear extension, two-level basement (dining, gym and back of house area) and a detached two storey garage with hotel accommodation above and ancillary landscaping works be refused for the following reasons:

- The proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone in that it is not compatible with the desired future character of the locality and exceeds the level of built form anticipated for the subject site, the proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form, the development will have adverse impacts on neighbouring dwellings, and does not encourage housing affordability.
- Pursuant to clause 4.6 of the RLEP 2012, Council is not satisfied that the applicant's written statement has adequately demonstrated a justified variation to the floor space ratio development standard. The statement has not accurately calculated the FSR, has failed to demonstrate that the proposed non-compliance is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standard.
- Pursuant to clause 5.10 of the RLEP 2012 and B2 of the RDCP 2023, Council is not satisfied that the development has demonstrated compatibility with the heritage significance of the state registered "Avonmore Terrace" heritage item and the St Jude's Heritage Conservation Area.
- Pursuant to clause 6.2 of the RLEP 2012, Council is not satisfied that the earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.
- Pursuant to clauses 6.4 and 6.10 of the RLEP 2012, Council is not satisfied that the development has adequately addressed the drainage and stormwater management issues of the site.
- Pursuant to section 47 of the *SEPP (Housing) 2021*, Council is not satisfied that the loss of the existing boarding house will not reduce the amount of affordable housing in the area, and insufficient information has been provided to determine whether a monetary contribution is required.
- Pursuant to section 4.6 of the *SEPP (Resilience and Hazards) 2021*, Council is not satisfied that the site is suitable for the proposed land use, being potentially subject to contamination.
- Pursuant to section B7 of the RDCP 2013, Council is not satisfied that the proposed hotel adequately addresses the parking and traffic impacts of the development.

- The proposed development will result in insufficient amenity for future staff members and guests, including a poorly considered layout and amenity for guest rooms and staff areas.
- The proposed development will result in unreasonable impacts on the amenity of residential neighbours, including adverse impacts in terms of visual bulk, and both visual and acoustic privacy.
- A full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and a lack of detail in the information submitted with the development application including:
  - The application contains a number of inconsistencies and accuracy issues across the supporting documentation package.
  - Insufficient information has been submitted outlining how long guests will be permitted to stay at the hotel for, to determine if the proposed development meets the definition of 'hotel'.
  - Insufficient information has been submitted outlining the rental rate that each of the existing boarding house rooms have been rented out for over the last 5 years, to determine if the loss of the existing boarding house will result in a reduction of affordable housing in the area.
  - Insufficient information has been submitted showing a kitchen plan for the guest servery and any required mechanical ventilation.
  - A Plan of Management has been submitted, however, it fails to sufficiently address each of the matters outlined at Part B9 of RDCP 2013, in terms managing staff, guests and visitors on the site to reduce impacts on residents in the locality, the liquor licence and management of potential anti-social behaviour, noise, privacy, traffic and parking arrangements, and deliveries and waste management.
  - An Acoustic Report has been submitted, however, the report fails to address noise from the new lift serving the hotel and noise from internal disturbances associated with hotel guest activities, including internal gatherings, events, and late-night guest lounge interactions.
  - A Preliminary Site Contamination Investigation (PSI), prepared by a suitable qualified professional, has not been submitted for assessment.
  - A detailed BCA Report and a Performance Based Solution report, prepared by a suitable qualified professional, outlining all upgrades works that will be required to be provided, showing the extent of impact on the heritage fabric has not been submitted for assessment.
  - A Traffic and Parking Assessment Report has been submitted, however, the report fails to adequately address parking and traffic considerations.
- 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.
- 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. Heritage Council of NSW

The Heritage Council of NSW has confirmed that the proposed development is unsatisfactory and provided the following comments:

*“As delegate of the Heritage Council of NSW (the Heritage Council), I have considered the above integrated development application. In accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, I will not grant approval of the above described integrated development application for the following reasons:*

- 1) Avonmore Terrace (SHR no. 00565) is a place of State heritage significance that is protected on the State Heritage Register for its aesthetic values. The proposed changes to the significant layout, the loss and concealment of significant fabric, the addition of an unsympathetic new building element to the rear of level 2 and the risk of structural damage to this building and the neighbouring buildings in the SHR listed terrace row will have a detrimental impact on its aesthetic values.*
- 2) It is not possible to mitigate or minimise these impacts through conditions of approval.*
- 3) On balance, the proposal will have a negative conservation outcome and the application will result in a permanent detrimental impact to the overall significance of the SHR item.*
- 4) It is recommended the proponent consult with Heritage NSW before the submission of any future or amended application.*

*Advisory note: Any future applications must be sensitively designed to maintain the significant layout and fabric of this building. The restoration of the façade to a level consistent with the rest of the row is strongly encouraged. Finding a use that optimises the adaptive re-use opportunities while minimising heritage impacts and the level of change is also strongly encouraged.”*

### 1.2. Design Excellence Advisory Panel (DEAP)

The DEAP has confirmed that the proposed development is unsatisfactory and provided the following comments:

#### **“PANEL COMMENTS**

#### **1. Context and Neighbourhood Character**

- *No. 40 is part of a magnificent Victorian terrace row. The subject terrace is the outlier in that it is the least restored, with infilled front & rear balconies, intrusive paving to front garden, altered front door, rear accretions, and extensive services to each boarding house room. This DA is an opportunity to restore the terrace, which except for the upstairs front balcony, has not to date been taken up.*
- *The proposed use as a luxury hotel, though a regrettable loss of affordable housing, seems an appropriate use considering the location and the architecture, but only if heritage fabric is respected and celebrated – this has not yet been demonstrated.*

#### **2. Built Form and Scale**

- *The new rear Garage with Bedroom over completes the building pattern of the row; care should be taken to match No. 38’s garage roof profile and to neatly flash against No 42’s garage.*
- *Rear building forms to the main terrace volume appear to be ill-resolved in respect to the rest of the row; the rear wall of the existing two-storey brick wing should be exposed to match No. 38, by removing the lightweight Bathroom to Room 7.*

#### **3. Density**

- The extra FSR proposed is supported in regards to the new Garage with Bedroom over, as this echoes the rest of the row and has negligible amenity impact. However, the proposed new basements are problematic for both the amenity of guests and staff in an underground space, and for the construction process, especially in regards to the front rooms' floors and footings as well as the need to underpin this terrace and neighbours' heritage fabric.

*Note: Neighbours are barely shown in the plans, and the location of the basement is not shown on the Ground Floor Plan, making assessment difficult.*

#### **4. Sustainability**

- This was not discussed at the meeting, but the Panel notes that a proposal which entails less excavation with less alteration to existing fabric would be more sustainable.

#### **5. Landscape**

- The absence of deep soil in the rear courtyard, due to the basement design, restricts planting.

#### **6. Amenity**

- The lack of public space for guests apart from in the Basement was discussed, and it was considered that use of one or two of the ground rooms as public space was desirable, would better celebrate the heritage building, and could resolve the awkward guest entry and circulation route on the Ground Floor.
- Ground Floor rooms 1,2 and 3 have poor daylighting, while Ground Floor rooms 2, 3 and 4 have poor privacy due to the circulation route.
- Noise from guests especially in the rear courtyard will need to be managed for the sake of neighbours.

#### **7. Safety**

- The BCA report accompanying the DA cites many non-compliances, some of which (eg paths of exit) require re-design that should have been resolved at this DA stage.

#### **8. Housing Diversity and Social Interaction**

- See Amenity point 1 above.

#### **9. Aesthetics**

- The insertion of a lift is problematic as it removes significant fabric, adds an alien form and glazing to the rear façade, and provides only partial access to the upper floors as it serves stair landings and not floors. If baggage handling is required, consider a smaller internal service lift for bags only. A smaller platform lift connecting ground floor to basement would likely be required for universal access to public areas; provided that accessible rooms are situated on the ground floor, there would be no need for a lift to service the two upper levels.
- Heritage: The nexus between buildability and the impact on heritage fabric has not been shown. Both the CMP and the HIS fail to identify significant fabric, including interiors, while there is no sense of what the original house was and how it related to the whole row. The insertion of basements, fire sprinklers, fire-rated walls, stairs, lift, and openings; mechanical ventilation; floor wastes and sewer stacks all have the potential to have a highly damaging impact to heritage fabric, and needs to be carefully managed.
- Timber door and window frames should be used in lieu of metal.

### **SUMMARY AND RECOMMENDATIONS**

The Panel is supportive in principle of introducing diversity of use in this location, but recommends revisions to the design and additional detail be provided by the applicant to address the issues discussed above, specifically:

- Provide more rigorous heritage documentation and design responses.
- Remove all filled-in verandahs and balconies at Ground Floor and Level 1.
- Remove the front Bathroom to Room 1 to restore the façade to match neighbours, and consider inserting reversible compact ensuites to all bedrooms, perhaps with a step up to accommodate plumbing.
- Remove the passenger lift, or restrict it to serving Basement and Ground Floor only if public spaces remain in the Basement.
- Reduce the Basement footprint away from the front rooms and the neighbours' heritage fabric, and allow deep soil for a small tree in the courtyard above.
- Improve amenity to Bedrooms.
- Engage a fire engineer experienced in heritage work to help resolve the various BCA issues."

### 1.3. Sydney Water

Sydney Water has confirmed that the proposed development is satisfactory and provided conditions of consent should Council have been in a position to support the proposed development application.

### 1.4. NSW Police

Council referred the proposed development application to NSW Police, on both 19 April 2024 and 03 June 2024. Subsequently, no submission was received by NSW Police.

## 2. Internal Referral Comments:

### 2.1. Heritage Planning

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

#### "Assessment"

*We offer the following non-exhaustive advice following review and consideration of the heritage management documents and architectural plans provided by the applicant for the development application:*

- *The Heritage Impact Statement provided (Sarah Blacker Architect, March 2024) inadequately demonstrates/assesses the impact of the proposal on the heritage qualities, significant fabric and detailing and on the character of the Heritage Conservation Area and setting and views of items in the vicinity of the site:*
  - *The description of the proposed development and the scope of work under-represents the extent of demolition and alterations to the layout and significant fabric and detailing both internally and externally.*
  - *Notwithstanding limitations on access into all hostel rooms, there is insufficient photographic documentation of the individual areas proposed to be affected by the works. While it is recognised that a selection of photos were included in the Conservation Management Plan (CMP), these should have been included in the HIS as documentary evidence of existing form and fabric. The omission of photographic evidence does not enable a fair assessment of the merit of the proposal or assessments made in its favour.*
  - *The HIS fails to address the controls for Heritage Items and Heritage Conservation Areas in Part B2 of the Randwick DCP. The site is located outside of any of the DCP's commercial centres so the exemption in Section 2 Development controls (p.12) 'This section does not apply to land located within the commercial centres and Prince Henry masterplan site.' does not apply in this case. The applicable controls are in Section 2.1 – 2.14 inclusive; in this respect the HIS has failed to adequately demonstrate how the proposal respects the heritage values of the heritage item (individually and as part of a group) and that of the HCA.*



- For an item on the State Heritage Register, the HIS would have benefitted from also addressing, or referring to, the broader 'model questions' applicable to the development from Section 4 of NSW Environment & Heritage's 2023 Guidelines for preparing a statement of heritage impact. This would have demonstrated an understanding of the range of aspects of the place that had the potential to be adversely impacted by the proposed development and demonstrate an additional level of due diligence in respect to that assessment of heritage impact.
- The HIS does not address or assess how the proposed development achieves or complies with the conservation guidelines stated in the sites' Feb 2024 Conservation Management Plan. While it is alarming that the CMP guidelines were written contemporaneously by the same author of the Heritage Impact Statement, these still have not been intentionally addressed in the table format as recommended in the Guidelines for preparing a statement of heritage impact. The adequacy of the CMP as a heritage management document for the site will be addressed separately.
- The HIS fails to adequately consider and address the impact of the alterations and additions on the legibility and consistency of the total terrace row, which consists the State Heritage Register item. Though it is apparent that the study site has been subjected to detracting alterations and accretions over time, including the change of use to a hostel, the comparison to other terraces in the row undertaken on Page 15 of the HIS shows that there are many significant elements such as layout and detailing that are intact or which could be readily remediated by the removal of accretions, and the restoration and or reconstruction of the site back to a more sympathetic state. That a place contains detracting works already is not a reason to justify further alteration of the place away from its original/early form and out of step with its terrace row mates.
- The HIS fails to adequately consider or provide supporting documentation to consider the potential impact of large-scale excavations required for the underground section of the proposal, and how impact on the terrace and rear wing would be mitigated during the works.
- The HIS contains significant deficiencies at the assessment of the heritage significance of the site against the NSW significance assessment criteria, including but not limited to, a lack of community consultation to rule out significance under Criterion D (social) and inadequate comparative research to establish rarity value for Criterion F (rarity). It is noted that the assessment of significance is different between the CMP and the HIS, despite being authored almost simultaneously.
- The Historic Archaeological Assessment, while inclusive of a decently researched historic context to inform the archaeological potential assessment, does not sufficiently consider historic water supply and sewerage surveys (see Metro Water Sewerage & Drainage Board Detail Series and similar), or the presence of other possible backyard utilities like wells or privy's, especially at the rear lane.

*With regard to the proposed plans:*

- Delete the ground floor accretion at the SE corner containing a kitchen and bath. Do not replace with any addition to restore the corner to its original state and to give the rear wing appropriate space.
- The addition of a lift to the rear of the terrace is not supported as it adversely impacts significant form, legibility of original layout, removes original fabric and obstructs views to and from the rear of the terrace;
  - The proposal requires the removal of original windows: CMP window 18 and the covering of CMP Window 19 on Level 2;
  - The lift well is requiring the removal of large sections of the original ground floor rear wing walls, and 1st floor rooms, which will significantly diminish the legibility of the original layout;
  - It does not comply with Part B2 Section 2.12 Access and Mobility which requires that modifications to facilitate access and/or adaptable dwelling and universal housing provision does not adversely affect the heritage fabric of the heritage item.
- The proposed works to Room 5 sees the loss of the appreciation of the grand proportions, and significant detailing of what is the original master bedroom of the terrace. The creation of a bathroom inside this room and around its chimney breast and fireplace is inappropriate

and unsympathetic. • Layout of proposed Room 6 on Level 1 sees the addition of the infilled balcony to the interior floor space; the proposal does not seek to achieve the restoration of the balcony to its original state as observed in its row mates. The appreciation of its fireplace as a significant element is diminished by having a wall affixed to it to house a bathroom. No consideration or mitigation of adverse impact on significant fabric and detailing is evident in this design response.

- Reconfiguration works for proposed Room 9 on Level 2 similarly disregard the importance of the original layout and fireplaces; with one of the rooms cut up into two ensuites and a kitchen area. The fireplace/chimney breast in new Room 9 would be built around and have cabinetry affixed to it.
- New rooms 5, 6 and 9 are examples that demonstrate that the alterations proposed to enable the use of the place as a hotel is not conducive to the conservation and appreciation of the heritage significance and significant fabric and detailing of a State Heritage Item.
- Delete construction of proposed Room 4 at the ground floor rear which dominates the significant structure of the original rear wing.
- At the rear wing generally:
  - Remove detracting lightweight accretions at GF and Level 1, including Kitchen window annex, WC, bath, bath and laundry to be removed to allow appreciation of the form of the brick rear wing.
  - If any additions are to be proposed in its place it should extend no further than the rear (E) building line of the bay window at No. 38. • It should not extend past the current S building line of the rear wing, and would benefit from being set in from that line to demarcate that it is from a different development phase.
  - It would be acceptable to have a skillion or 'flat' roof in order to allow views to and appreciation of the original form of the two storey brick rear wing.
- The exterior materials finishes and colours schedule proposed is inappropriate and unsympathetic in context. Modifications to future designs should include:
  - Delete the tray-style Colorbond roofing from use on any roof on the terrace and rear wing. It is an inappropriate profile for the primary and other significant elevations and does not attempt to reconstruct original detailing. The front bullnose verandah roof should be of a traditional corrugation profile and colour, matching the neighbours in the row.
  - Delete aluminium windows and doorframes in the terrace or brick rear wing. Frames are to be timber only.
  - Delete primary wall colour of Mason Grey, which is too dark and does not seek to harmonise with the palette of exterior colours observed in the terrace row; which is now tending toward soft, lighter tones of stones, whites, greys, and various pastel shades rather than bolder, contemporary contrasts.
  - Delete Dulux Monument from the verandah fascia; to match light wall colour, not contrast or highlight.
  - Delete Terrain Colorbond guttering/cladding etc; match colour of the corrugated iron verandah roofing at terrace and rear wing and garage.
- Garage to be recessive in texture, detailing and colours, and seek to harmonise/with the other laneway garages of the row.

### Conclusions

From analysis and consideration of the plans and the heritage management documentation provided it is concluded that the proposed development does not sufficiently respect the heritage significance of the place including its significant layout, fabric and detailing. It is of an unacceptable level of adverse heritage impact.

It is clear that the objective of the design has been to maximise the commercial potential of the place, but this will come at the expense of the item; both as an individual terrace and as part of the row.

The proposed development does not achieve the objectives of the Randwick LEP Part 5.10 chiefly 1 (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,

### Recommendations

The proposal should be **refused**.

*If the applicant will persist in applying for alt/adds for the use of the place as a hostel and or hotel, a serious and thoughtful re-design, and a thorough demonstration of best-practice heritage impact assessment and documentation is required before the merit of the proposal can be comprehensively assessed by Council and Heritage NSW."*

Council's Heritage Planner has also conducted a peer review of the Conservation Management Plan (CMP). See Appendix 2 for a copy of the peer review of the CMP below.

## 2.2. Building Compliance

Council's Building Compliance Officer has confirmed that the proposed development is unsatisfactory and provided the following comments:

*"As the proposed development involves work to a state heritage building which will require heritage fabric of the building to be retained as close to its original form, there may be an issue that works will be unable to meet the DTS provisions in the BCA. It is currently unclear from the plans and documentation what elements of the building are heritage fabric and if any works are proposed to any fabric element which require alterations/upgrades in order to satisfy BCA compliance. Where possible, Council will require the retention of as much heritage fabric in order to retain the significance of this building.*

*Therefore, a detailed amended BCA Report and a Performance Based Solution report outlining **all upgrades works that will be required to be provided**, showing the extent of impact on the heritage fabric. Any proposed performance based solutions will need to be developed to satisfy the performance requirements in the BCA and Council's Heritage Planner prior to determination of the development application."*

## 2.3. Environmental Health

Council's Environmental Health Officer has confirmed that the proposed development is unsatisfactory and provided the following comments:

### "Contaminated Land Considerations:

*The statement of Environmental Effects advises;*

*"The site appears to have been in residential use since its original subdivision. There is no evidence of any potentially contaminating uses occurring. It can be concluded beyond reasonable doubt that there is no likelihood of contamination on this site. No further consideration is therefore required under Chapter 4 Section 4.6(1) (a), (b), and (c) of SEPP (Resilience and Hazards) 2021".*

*A review of Council records for the premises indicates that the subject site has been used as a residential premises since the subdivision since 1927. Land contamination guidelines recommend for planning assessment authorities to consider other potential sources from nearby or neighbouring properties, or in nearby groundwater, and whether that contamination needs to be considered in the assessment and decision-making process. As such, a review of land uses for surrounding neighbouring properties indicate that some uses such dry cleaners operating from premises for a long period of time which maybe a potential source for land and groundwater contamination.*

<b>Subject premises</b>	<b>Use of premises</b>	<b>Distance to proposed excavated site area</b>	<b>Possibility of land/groundwater contamination</b>
110 Avoca Street	Dry Cleaners and laundromat uses since 1968	Adjacent to site- 43 Metres	yes
139 Avoca Steet	Dry Cleaners	88 Metres	yes

*Although the subject site is of residential use and has been for the entirety of its current development and the potential risk for contamination at the site is potentially low, however as the development proposes excavation works, it is considered that A Preliminary Site Contamination Investigation should be undertaken by a suitably qualified environmental consultant to prior to the determination of the application.*

*This investigation should look at the possibility of contamination at the site from offsite neighbouring sources and should confirm whether further investigation (including soil and groundwater sampling) should be undertaken.*

*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.*

**Food Premises Requirements:**

*The proposal outlines that pre-prepared meals are to be available to guests 24 hours per day, 7 days per week. The Guest Lounge is to be available to hotel guests 24 hours per day with complimentary beverages and snacks available. A self-service honour bar is to be available to hotel guests with access restricted to person 18 years or older.*

*A review of the plans for the development do not include a kitchen for such activity. A servery is noted in the guest lounge area but there is no proposal for a kitchen. It is important to assess the functionality of the hotel with or without a kitchen and in this regard, the applicant is to clarify whether a kitchen will be installed and if so, provide a plan of the kitchen. Should mechanical ventilation systems be required, they should be included in the application plans accordingly.*

**Acoustic Impacts:**

*An acoustic report has been prepared and submitted to Council with this application. (Prepared by Acoustic Logic report no 202313381 date 14/03/2024.*

*The acoustic report submitted to Council alongside this application has been reviewed, confirming a need for further information to comprehensively assess all acoustic impacts on both internal and external receivers. The following considerations were found to be absent from the assessment:*

- 1. Evaluation of noise and vibration implications arising from the installation of the new lift serving the hotel, encompassing both internal and external areas. This analysis is crucial to understanding potential disruptions to guests, staff, and adjoining neighbouring residents.*
- 2. Examination of internal noise disturbances from hotel guest activities, including internal gatherings, events, and late-night guest lounge interactions. Assessing the noise generated by these activities is imperative to confirm there will be no disturbances to adjoining residential properties.*
- 3. Assessment of noise emanating from internal amplified music within communal areas like the guest lounge, with particular attention to potential impacts on both internal hotel occupants and neighbouring residents sharing adjoining walls. Implementation of appropriate mitigation strategies, such as soundproofing or noise restrictions, may be warranted to mitigate excessive noise transmission.*
- 4. Consideration of noise generated by early-morning deliveries to the hotel, to identify the potential disruption to hotel guests and nearby residents. Evaluating the noise levels associated with delivery activities and implementing measures to minimise noise, such as scheduling deliveries during less sensitive hours may help mitigate these impacts.*

*It is recommended that additional information is needed to address these acoustic concerns.*

**Recommendation:**

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

**Land Contamination**



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 the 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 including potential nearby sources of land and groundwater contamination 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.*

#### Food Safety:

2. *The applicant is to confirm as to whether a kitchen will be installed within the hotel to service the hotel. If a kitchen is proposed, a hotel floor plan and a kitchen layout plan is to be provided to Council. The plans should include details of any mechanical ventilation ducting to be installed (internally and externally) to service the kitchen and should be submitted prior to the determination of the application.*

#### Acoustic Impacts

3. *The acoustic consultant is to review the assessment undertaken for the proposed development and is to provide further acoustic impact information in the form of an assessment that includes the following considerations;*
  - *Assess the noise and vibration impacts arising from the installation of the new lift serving the hotel. This assessment must consider noise emanating into the neighbouring residents via internal structures.*
  - *Assess the potential for noise emissions from any proposed commercial grade air conditioning plant and equipment systems to be installed at the premises.*
  - *If a mechanical extraction system and ducting is to be installed for the kitchen, location details are to be confirmed and an acoustic assessment of such equipment must be undertaken accordingly, prior to the determination of the development application.*
  - *Assess internal noise impacts resulting from various hotel guest activities, such as internal gatherings, events, and late-night interactions. This assessment must consider noise emanating into the neighbouring residential premises via the adjoining walls.*
  - *Consider the noise impacts generated by internal amplified music within communal areas, and its potential impacts on internal hotel occupants and neighbouring residents at 38 and 42 The Avenue. This assessment must consider noise emanating into the neighbouring residents via internal structures and nothing that the guest lounge bar (with proposed liquor licence) will be in operation 24 hours per day 7 days per week.*
  - *Consideration of noise associated with early-morning deliveries to the hotel and its potential disruption to both hotel guests and nearby residents. Advise if such activities should be restricted to reduce impacts to neighbouring properties."*

## **2.4. Development Engineer**

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



**“Parking Issues****Existing situation Boarding House**

The submitted plans indicate there are 9 rooms within the existing boarding house. Under Council’s DCP this would generate parking a demand of 1.8 (say 2) spaces. There does not appear to be any formalised off-street parking currently provided on the site however an examination of past aerial photography indicates that the rear yard has typically accommodated 1-2 vehicles. The existing development therefore generally complies with the DCP parking requirements.

**Proposed 10 room hotel**

The proposed development will comprise of a 10 room hotel with the SEE indicating on page 23 that a combination of permanent and casual staff is to employed representing an equivalent full time staff of 11 employees.

Part B7 of Randwick Council’s DCP specifies parking to be provided for hotels at the rate of;

- 1 space per 4 units and 1 space per 2 staff

Application of this rate would result in a parking requirement of

Parking required             $= 10/4 + 11/2 = 2.5 + 5.5$   
     $= 8 \text{ spaces}$

The submitted plans indicate only 1 staff space is to be provided on the site resulting in a **significant shortfall of 7 spaces (88%)**. This is grossly excessive and is not supported.

The proximity of Randwick Town Centre and alternative forms of transport is acknowledged however the large shortfall represents too great a departure from the DCP requirements.

It is noted the Traffic and Parking Assessment have based their parking requirements on staff numbers of only 2 employees and so have significantly underestimated the amount of staff parking required when compared to the staff numbers presented in the SEE. The Traffic Impact Report needs to address this inconsistency.

It is considered the application is likely to lead to additional impacts on the surrounding availability of on-street parking which is already experiencing significant parking pressures due to the presence of two schools, Council offices and nearby restaurants.”

Appendix 2: Peer Review of the applicant’s Conservation Management Plan (CMP)

Heritage Referral Response

From:	Elizabeth Gorman (BA, MA, M.ICOMOS), Associate Director, Sue Rosen Associates
Date:	12 June 2024
DA number:	DA 225/2024
Address:	40 The Avenue, Randwick NSW 2031
Description:	Peer Review of the February 2024 Conservation Management Plan provided as a heritage management document for the study site

Heritage category	Property status
Heritage Item?	'Avonmore Terrace' State Heritage Register Item #00565 and Randwick LEP #I454
In vicinity of <b>Heritage Item</b> or Heritage Conservation Area?	St Jude's Anglican Church, Cemetery, Rectory, Vergers Residence SHR #00012
In a Heritage Conservation Area?	St Jude's Heritage Conservation Area

Purpose & Methodology

We have undertaken a peer review of the Conservation Management Plan (CMP) produced for 40 The Avenue Randwick (Sarah Blacker Architect + Interior Designer, February 2024). The purpose of this review was to determine the adequacy of the CMP as a heritage management document for the site, which is part of an item on the State Heritage Register (SHR).

We have used the NSW History Council’s *Conservation Management Plan Assessment Checklist* (Sept 2003) as the vehicle for this review. Its slightly out of date now that guidelines for CMPs have been somewhat streamlined but the prompts do provide a relatively standardized ‘framework’ for CMPs; to ensure completeness in its investigations, assessments, and conservation policy development.

The checklist is appended. The following comments/feedback from our peer review summarise and highlight core issues that require the greatest attention, but they should be read in concert.

Peer Review

- The SHR item of *Avonmore Terrace* consists of 26-42 The Avenue, Randwick. It is a row of three storey terraces, with 4 terraces to each side of a larger central terrace residence. The CMP has been written to address No. 40 only; we recognise that as the row is privately owned by various parties that it is unlikely to be able to produce a CMP that addresses the item in its entirety. However, the part that the study site has to the play in maintaining its relationship to, and consistency with, the rest of the entire row should be a fundamental focus of the CMP. It should be viewed through this lens and not considered in isolation, since the curtilage is all 9 allotments, and is what the Statement of Significance encompasses.  
  
There is no survey, analysis, comparison or the like was undertaken of the terrace row as a whole to show the relative integrities of the place as a development. No photos of the terraces comprising the rest of the item.
- The CMP has been written almost contemporaneously by the same author as the Heritage Impact Statement produced in support of a proposed hotel development at the study site. Despite best intentions, unconscious bias could create a conflict of interest where conservation policies are written to benefit the future development. Best practice would have been for an independent consultant to write the CMP without knowledge of the detail of the planned proposal.

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- Delete 8.4.4.3. Allow for the removal of the existing bathroom and kitchen fit-outs and refit of these spaces.
- All verandahs at the site should be restored to their original state. This means that kitchens and bathrooms that occupy these spaces should be removed.
- 8.4.5 Adaptation of significant fabric
  - 8.4.5.1 Why 1940? And as established with the front verandah, there are 'historic' adaptations that are intrusive.
  - Alter: 8.4.5.2. *Fabric introduced post 1940, may be altered or removed.* This should be changed to say that there is greater opportunity for change in previously altered or added areas, subject to an assessment of heritage impact.
- 8.4.6 Additions, building works...
  - Figure 23: Areas for potential change should include the ground floor accretion at the rear of Bedroom 2.
  - The ground floor brick section of the rear wing should be marked as "Areas that have been modified that can be altered but not remove extant original fabric:
  - 8.4.6.3 Painting. This should include ordering paint scrapings to establish the original colour schemes in the first instance.
  - 8.4.6.7.1 External Lighting. Should be consistent with the rest of the row and not seek to compete or 'outshine' the central Avonmore terrace.

### Conclusions & Recommendations

As it stands, the CMP is not considered to be an adequate heritage management document for the study site. It requires significant changes which should include, at the first instance, consultation with and appropriate actioning of all feedback from, Heritage NSW who are an approving authority for the site.

The CMP should have input from a multidisciplinary team including a historian, architectural historian, archaeologist and landscape/views expert.

The historian should produce a more detailed development and occupation / land use historical context for the entire row, with a section reserved for a detailed account of the study site.

The physical fabric inspection/survey, comparison of terrace layouts, establishment of development sequence, grading of significant fabric etc should be undertaken by an architectural historian who can identify and understands the trends in terrace design, detailing, materials, and construction techniques applicable to this Victorian Italianate terrace.

The comparative research and analysis section to be more thoughtfully and thoroughly approached, so that rarity value and significance under other criterions can be more fully understood.

The significance assessment should be undertaken by someone who understands what each of the NSW heritage significance criterions mean, and how to assess significance under each.

The CMP has been written based on fair number assumptions and suppositions - not a satisfactory and expert understanding of the place gained from comprehensive research, thorough and systematic inspection and analysis. The understanding of the place needs to include both the study site AND its row mates; this is crucial given that this document is intended to become a heritage management document that will be used to guide the conservation and future use and alterations at the site, which is one of nine terraces making up the state significant heritage item.

Once a revision has been produced, Randwick Council should consult with Heritage NSW on the matter, and if needed, commission an independent peer review of the document to determine if it is acceptable as a heritage management document for the site going forward.

**CMP Assessment Checklist follows.**

**Conservation Management Plan Assessment Checklist**

The following tables have been taken from the NSW History Council's *Conservation Management Plan Assessment Checklist* (Sept 2003) as a vehicle for this review.

As stated in the 2003 *CMP Assessment Checklist*, the purpose of the checklist is to:

1. Ensure consistent reviewing practise of CMPs by different reviewers,
2. Provide measurable prompts for reviewers,
3. Allow the review process to be transparent and accountable,
4. Facilitate the preparation of CMPs in a manner consistent with Heritage Council policies and approaches,
5. Encourage CMP authors to review their own work before submitting it for Heritage Council review and endorsement.

While CMPs are no longer endorsed and the process for producing CMPs has been somewhat streamlined per updated guidelines (2023), the prompts in the checklist provide a relatively standardized 'framework' for CMPs; to ensure completeness in its investigations, assessments, and conservation policy development.

It should be noted that:

1. The aim of a review is not to get a 'tick' or 'yes' against every prompt,
2. Every prompt should be considered for its relevance to the character and significance of the item subject to the CMP, and
3. Not every prompt will be relevant to every CMP.

There are some checklist sections and individual prompts that either don't, or are not thought to, apply to the site. These are marked with an N/A in the list below, or sections omitted (i.e. moveable heritage and interpretation)

Reviewer comments are beside various checklist items – however, the absence of a comment does not necessarily mean that the item does not require attention. Each list item should be reviewed by the authors of the CMP to ensure the document is completed satisfactorily.

**The checklist comments should be read in concert with the review comments in the letter above.**

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MATTERS BEING ADDRESSED	Y/N?	COMMENTS: Editorial issues	COMMENTS: Content issues
<b>2. INVESTIGATION OF SIGNIFICANCE</b>			
<b>2A History</b>			
2A.1 Have the <i>historical context(s)</i> been identified and researched?	N	The History should be an illustrated narrative with a development chronology or similar at the end as a summary	The history does not go into the level of detail required for a SHR item. The context should be based on at least a basic understanding of the land titles records for the place – which it does not. The history provided in the Archaeological Assessment was better researched and written by a historian; demonstrating the need for multi-disciplinary input to the various parts of the CMP.
2A.2 Has the pre-contact, contact and/or post-contact <i>Aboriginal history</i> of the item and its curtilage been investigated?	N		Not in any meaningful way – but not immediately pertinent.
2A.3 Has a <i>thematic approach</i> to historical analysis using the NSW and/or Australian historical themes been used, with relevant local historical themes developed?	N		
2A.4 If a <i>non-thematic</i> approach has been used, does it still enable the contribution of the item to NSW's history to be understood?	Y		But in a superficial way only
2A.5 Can the development of the item <i>over time</i> be clearly understood?	N		There is a huge gap from 1915 onward where there is really no definitive evidence provided for the development/occupation/ownership/use of the property, or of the surrounding terraces
2A.6 Has the ability of the item to <i>demonstrate</i> the relevant historical themes been identified?	Y	Tabulated against the NSW themes	

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MATTERS BEING ADDRESSED	Y/N?	COMMENTS: Editorial issues	COMMENTS: Content issues
2A.7 Are appropriate primary and secondary <i>documentary resources</i> used?	Y		There are more available as evidence by the archaeological report, and would have benefitted from getting the Water Board plans for the terraces. Should GIPA the historic BA and DA files.
2A.8 Are <i>historical images/maps/plans/drawings</i> adequate and well referenced?	N	Referencing could be much better, relies on hyperlinks which can change or break. The format should include the archive it was sourced from, followed by (preferably) an MLA style citation. It should also include the series/call/image number so the original can be located, as well as the hyper link and when that was accessed on the web.	
2A.9 Are all <i>text-based, oral and physical sources</i> referenced properly?	N	Missing multiple references for information written in the chronology; such as the sale of the church land (1868) and where they reviewed and what rates books entries they are referring to etc.	A properly footnoted and referenced primary-source focused history to be provided for this level of significance.
2A.10 <i>General comments</i> on history:		Use historical aerials to demonstrate development of the site over time and relationship to surrounding context. Did not go into sufficient depth required for a CMP. Was not written and presented in a format that promoted an easy and thorough understanding of the development of the place including no definitive information on the 20 <sup>th</sup> century phase of the place. More primary sources required. Should be written by a historian as a commitment to multi-disciplinary expert collaboration. The footnoting and referencing is not complete or consistent.	

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MATTERS BEING ADDRESSED	Y/N?	COMMENTS: Editorial issues	COMMENTS: Content issues
<b>2B. Fabric</b>			
2B.1 Has the fabric been <i>investigated</i> ?	Y		But only in the one terrace. Non invasive inspection, and also not every room.
2B.2 Has the fabric been adequately <i>identified</i> (eg materials, repairs, alterations, additions, contents, views, spaces, plant/animal species, manufactured/pre- fab elements, timber species, brick types, etc)	N		The descriptions are very general in nature and do not convey confidence that there is sufficient understanding by the author of the age/development phase of various parts of the site. Should have GIPA'd Randwick Council for historic BA and DA files to identify alt/ads.
2B.3 Has the fabric been usefully <i>analysed</i> ? (eg phases, ages, styles, techniques (vernacular, trade, etc), design, artisanship, etc?)	N		Uses words like 'assumed' in relation to identified original layout/fabric. No supporting evidence of the analysis of the floorplans of surrounding terraces to support assertions, or demonstrate reasoning.
2B.4 Have <i>architects/designers</i> and <i>builders/makers</i> been identified with a degree of certainty?	N		
2B.5 Have <i>contents/movable</i> elements been investigated and their provenance identified?	N		
2B.6 Has <i>archaeological fabric</i> been investigated and some degree of potential established?	Y		But not exhaustively. Could be more thorough in looking at Water Board etc plans
2B.7 Has the <i>method</i> used for the fabric investigation (eg non- intrusive observation) been identified, and is it acceptable?	Y		But not thoroughly. Did not inspect all rooms.
2B.8 Have <i>clear/scale/measured drawings</i> been provided?	Y		

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2B.9 Do any elements or areas need <i>further analysis</i> ?	Y		Needs survey/inspection/grading of the significant fabric in each room/ area including landscape.
2B.10. <i>General comments</i> on fabric investigations		Further investigation required to identify extant evidence of development phases in the floorplan, identification of significant fabric, form, layout, detailing, and appropriate significance grading to inform opportunities and constraints and the conservation policy.	

MATTERS BEING ADDRESSED	Y/N?	COMMENTS: Editorial issues	COMMENTS: Content issues
<b>3. Contributory matters (matters that, if addressed, should be integrated throughout the document)</b>			
3.1 Has <i>natural</i> heritage potential been identified and investigated?	N		Not applicable
3.2. Has the Heritage Council's <i>policy on natural heritage</i> been acknowledged or used?	N		Not applicable
3.3 Has <i>Aboriginal</i> heritage potential been identified and investigated?	Y		Ahims search
3.4 Have the relevant* <i>Aboriginal</i> group or groups, and/or individual knowledge holders, associated with the place been identified and consulted?	N/A		
3.5 Has heritage potential for any <i>ethnic or cultural</i> community been considered?	N		
3.6 Have any Aboriginal, or other earlier, <i>place name(s)</i> associated with the place been identified and investigated?	N		
3.7 Has the relationship between the item and its broader <i>landscape</i> setting been identified and investigated?	N		Views to and from the park. The relationship of the park, its contribution to the experience of living at the terraces should be given more consideration.
3.8 <i>Archaeological</i> potential of the site been identified and investigated?	Y		Archaeological assessment report – still could be more thorough.

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3.9 Are there any <i>other</i> relevant issues and have they been addressed? (eg industrial archaeology, <b>gardens and plantings</b> , particular materials, social values, maritime issues, public accessibility, ruinisation)	N		Would benefit from investigations into the front gardens and their traditional layout
3.10 <i>General comments</i> on 'contributory matters' <small>(ie any statements or issues raised)</small>		No landscape, curtilage or views research or analysis to inform conservation policy in that respect. An adequate archaeological potential assessment, but still underwhelmed by non-consideration of historic water and sewer connections, potential for wells, septic tanks etc in rear yard.	

MATTERS BEING ADDRESSED	Y/N?	COMMENTS: Editorial issues	COMMENTS: Content issues
<b>4. ASSESSMENT OF SIGNIFICANCE</b>			
4.1 Is there sufficient information and analysis to enable the significance to be assessed?	N	<i>Content issues</i> It should be integrated throughout the document	Still much more comprehensive research and consultation to establish social, associative, rarity and representativeness
4.2 Is there a single, concise <i>statement of significance</i> that clearly addresses the question of 'why is this item significant'?	Y		Per the SHR inventory sheet
4.3 Is the statement of significance supported by the research?	Y		In a basic fashion only
4.4. Has the statement of significance been prepared with <i>input from all authors</i> of the Plan?	N	Only a single author of a single discipline	
4.5 Are there <i>sub-statements</i> of significance for each of the relevant SHR criteria? – a State significant item must meet one or more of these criteria under s.4A(3) of the <i>Heritage Act</i> and in accordance with the gazetted criteria of 23 April 1999 to be considered of state significance.	Y		None contained in the SHR listing

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4.5.1 <i>an item is important in the course or pattern of NSW's cultural or natural history</i>	Y	<i>It has been said that these may be one of the finest examples of extant Italianate terraces in Randwick, and potentially Sydney.</i>  Just an assertion, and this should be under aesthetic and or representative	
4.5.2 <i>an item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history</i>	Y	Inconsistency in statement that Margaret Walsh lived in a neighbouring terrace when historic context said she moved into terrace 2 (study site) and named it <i>Eturia</i> ?  <b>Reaches threshold for associative.</b>	Has Associative significance with John Walsh, but doubly – for the study site, Mrs Margaret Walsh moved in there following John's death.  More research required to understand Sir David Storey's (MP) association with the place, and people like Francis Foy at other terraces. Also helps understand the representative significance and look at the class of society living at the terraces.
4.5.3 <i>an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW</i>	Y	<i>The terraces are also aesthetically pleasing.</i>  Delete this type of statement, which is subjective and unqualified.  Ditto: <i>Despite the features being associated with a style and not necessarily completely unique</i>  How do you qualify/support this assertion?	The comparative research and analysis needs to be much more thorough to underpin comments in this section. Much broader search and better examples to be found such as Potts Point / Darlinghurst  Do the work to establish this, don't just make these types of statements:  <i>The terraces are highly significant locally however, the fact they may also be fine examples in the context of Sydney terraces extends their significance beyond the immediate locality.</i>  The scale and siting of these terraces have landmark qualities.

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4.5.4 an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons	Y	Refer to the <i>Assessing Heritage significance</i> guidelines.	The author does not understand how to assess social significance which requires community consultation to identify current community groups who value the place. St Jude's should be consulted. The local historical society is a usual suspect to follow up. The NSW National Trust also likely to be an interested party.  Author has confused this section with the associative, and put John Walsh association here.  Likely to meet criteria following appropriate consultation.
4.5.5 an item has potential to yield information that will contribute to an understanding of NSW's natural or cultural history	Y		
4.5.6 an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history	Y		It is thought to be rare, but much better comparative analysis is needed here to establish rarity
4.5.7 an item is important in demonstrating the principal characteristics of a class of NSW's • cultural or natural places; or • cultural or natural environments	Y		More comparative to better flesh out the representativeness.
4.6 Has a comparative analysis been undertaken with the basis for the comparison made clear, and the comparators clearly identified?	?		Much more comprehensive and wider ranging comparative to be undertaken
4.7 Does the comparative analysis identify state/regional/local levels of significance?	Y	This is addressed, but not because of a comparative analysis	

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4.8 Has a <i>hierarchy</i> of significance been identified for the elements of the item?	Y	Only of built elements, non-exhaustively and in a quite generic fashion.	
4.9 If a <i>complex</i> site, has the significance of the site as a whole been assessed as well as the significance of its constituent elements?	N		The terrace row could be considered a 'complex' site since it has 8 other parts owned by different parties.
4.10. Has the <i>interaction</i> of natural and cultural heritage values with Aboriginal heritage values been assessed in the statement of significance?	N		
4.11. Has <i>natural</i> heritage significance been addressed in the statement of significance?	N		
4.12. Has <i>Aboriginal</i> heritage significance been addressed in the statement of significance?	N		
4.13. Has heritage significance to any <i>ethnic</i> or <i>cultural</i> community been addressed in the statement of significance?	N		
4.14 Has <i>archaeological</i> significance been addressed in the statement of significance?	N		
4.15 Has the significance of any <i>contents</i> or <i>movables</i> been addressed in the statement of significance, either individually or as contributory elements?	N		Unknown if there are any at the site.
4.16 Has an appropriate <i>curtilage</i> been established based on the statement of significance? (if appropriate)	Y		The curtilage is the 9 lots consisting the Avonmore terrace development

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4.17 Has this curtilage been clearly <i>defined</i> by map or diagram?	Y		
4.18 Has the listed (or proposed to be listed) curtilage been clearly distinguished from the broader <i>setting</i> ?	Y		
4.19. Has the significance of the place as a contributory element to a broader <i>landscape</i> been assessed?	N	The landmark status of the terraces could be much better articulated	
4.20 <i>General comments</i> on the assessments			

MATTERS BEING ADDRESSED	Y/N?	COMMENTS: Editorial issues	COMMENTS: Content issues
<b>5. OPPORTUNITIES &amp; CONSTRAINTS</b>			
5.1 Are opportunities and constraints identified?	Y		Constraints should include maintaining the consistency of the terrace row, as the significance of the place depends on all 9 of the terraces. This is not considered in any meaningful way.
5.2 Do they appear to cover the <i>range</i> (statutory/non-statutory listings, owners requirements, continuing/re-use options etc)?	Y		
5.3 Is the item listed on the SHR, an REP, LEP or other <i>statutory list</i> ?	Y		
5.4 Has the impact of any other <i>legislative or policy</i> requirements been identified (such as SEPPs or BCA)?	Y		
5.5 Is the item listed on the National Trust Register, RAIA List of 20C Buildings, IEA Engineering Heritage Register or other	Y		

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<i>community list</i> ?			
5.6. Have any requirements of the <i>owner/manager/trustee/custodian</i> been clearly identified?	N	The list of compatible uses show that the commercial multi-tenant options are preferred	
5.7. Have any proposals for <i>future uses</i> and changes been identified?	Y		
5.8 Have the requirements of any relevant <i>local council, State agency, Aboriginal Land Council</i> or other statutory body or community organisation* been identified during the preparation of the Plan?	Y		
5.9. Have the requirements of relevant individual <i>knowledge holders</i> been identified during the preparation of the plan?	N		
5.10 Are the requirements for any <i>archaeological permits</i> and approvals clearly identified?	Y		
5.11. If the CMP is for an item which includes <i>Aboriginal</i> heritage values, does it address issues of cultural confidentiality, community protocols, site access and other relevant matters?	N/A		
5.12 <i>General comments</i> on constraints & opportunities		Vaguely makes reference to <i>consideration of the Terrace wholistically within its context and the primary HCA towards the front of the site</i> . The constraint of consistency with the terrace row and the conservation of its landmark contribution to the HCA needs to be fully developed. Review this section to make sure that current and future users really understand the implications and responsibilities they have as a custodian of the site, including reporting, expert consultants, appointing heritage supervisors and excavation directors, expert heritage tradespeople etc.	

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MATTERS BEING ADDRESSED	Y/N?	COMMENTS: Editorial issues	COMMENTS: Content issues
<b>6. CONSERVATION POLICIES</b>			
6.1 Does the plan include a conservation policy or guidelines section?	Y		
6.2 Are the policies clearly <i>derived from the statement of significance and investigation sections</i> ?	N		
6.3 Do the policies take account of the identified Constraints & Opportunities?	N		
6.4 Are the policies presented in a <i>useful manner</i> (i.e. are they in plain English, with a logical layout and a coherent numbering or other identification system), supported by relevant graphic and illustrative materials?	Y		
6.5 Do the policies providing for future work on the item (including within its curtilage) provide <i>clear guidance for assessing proposals for change</i> (or preservation) to the item or its elements?	?		Not entirely. See letter for comments.
6.6 Is there evidence of a <i>predetermined outcome</i> (eg demolition, subdivision or a particular development proposal; or regular maintenance, change of ownership, etc)?	Y	Use for boarding house or boutique hotel	
6.7 Do the policies specifically identify conservation works and/or new development that is to be <i>exempted</i> from further Heritage Act approvals under <i>Standard Exemption No. 6</i> ?** Prompt 6.7 - This matter must be	N	The link to the new Standard exemptions is put under Opportunities and Constraints. It is better to leave this as is than list things that may be excluded by Heritage NSW in the future.	

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specifically addressed and clearly identified in order to obtain any exemptions from approvals under s57 of the Act through endorsement of the CMP.			
6.8 Do the conservation policies provide for the <i>conservation</i> of the elements of the item identified as being <i>significant</i> ?	Y		
6.9 If the policies provide for change to significant elements, do they also provide for <i>mitigation</i> measures?	N	Mitigative measures could be further defined.	
6.10 Do the policies identify a <i>potential for further development</i> , and if so, where and how could it occur?	Y		See comments in letter regarding this.
6.11 Do the policies for new development provide guidance on <i>new design and physical characteristics</i> that are appropriate to the item's significance?	N		
6.12 Should any of the policies for new development be excluded from endorsement, and <i>remain subject to approvals under s60</i> of the Heritage Act? – if yes, why?*** ** Prompt 6.12 – It may be appropriate to exclude certain identified policies from an endorsement where there is a justifiable concern that the level of detail in the policy is such that it may be understood as a <i>de-facto</i> development application that should be properly considered through an application made under section 60 of the Act. If a reviewer recommends such an exclusion, this must be clearly justified in the covering report.	N/A	CMPs no longer endorsed by Heritage NSW.	

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6.13 Is there a <i>schedule of conservation works</i> for the short, medium and long terms?	N		
6.14 Are there policies for works to meet the <i>minimum standards of maintenance</i> and repair identified (if relevant - for purposes of s.118 Regulation)?	N	Only a recommendation that a maintenance plan is formulated.	
6.15 Is there any policy proposal to vary the existing listed curtilage boundaries?	N		
6.16. Is there a distinction between policies within the <i>listed curtilage area</i> , and policies for the <i>unlisted setting</i> ?	N/A	It doesn't go into this much detail	
6.17. Do the policies provide for any <i>changes in existing statutory listings or planning instruments</i> ? – if so, do they provide guidance on how this can be achieved?	N		
6.18. Has the potential for reinstating an <i>Aboriginal place name</i> , or other <i>earlier place name</i> , been considered, and/or has the appropriateness of using a <i>dual-name</i> for the place been considered?	N		
6.19 Is there a policy statement to prompt <i>future reviews</i> of the CMP?	Y		
6.20 Is there a policy/guideline about the <i>public accessibility</i> of the CMP?	Y		
6.21. Does the Plan include inventory sheets for elements of the item – if so, are the policies in the sheets consistent with those for the whole item?	Y	SHR inventory sheet for Avonmore Terrace	
6.22 <i>General comments</i> on conservation policies	See Letter for comments. [End of checklist]		

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MATTERS BEING ADDRESSED	Y/N?	COMMENTS: Editorial issues	COMMENTS: Content issues
<b>2. INVESTIGATION OF SIGNIFICANCE</b>			
<b>2A History</b>			
2A.1 Have the <i>historical context(s)</i> been identified and researched?	N	The History should be an illustrated narrative with a development chronology or similar at the end as a summary	The history does not go into the level of detail required for a SHR item. The context should be based on at least a basic understanding of the land titles records for the place – which it does not. The history provided in the Archaeological Assessment was better researched and written by a historian; demonstrating the need for multi-disciplinary input to the various parts of the CMP.
2A.2 Has the pre-contact, contact and/or post-contact <i>Aboriginal history</i> of the item and its curtilage been investigated?	N		Not in any meaningful way – but not immediately pertinent.
2A.3 Has a <i>thematic approach</i> to historical analysis using the NSW and/or Australian historical themes been used, with relevant local historical themes developed?	N		
2A.4 If a <i>non-thematic</i> approach has been used, does it still enable the contribution of the item to NSW's history to be understood?	Y		But in a superficial way only
2A.5 Can the development of the item <i>over time</i> be clearly understood?	N		There is a huge gap from 1915 onward where there is really no definitive evidence provided for the development/occupation/ownership/use of the property, or of the surrounding terraces
2A.6 Has the ability of the item to <i>demonstrate</i> the relevant historical themes been identified?	Y	Tabulated against the NSW themes	

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**Appendix 3: Applicant's written request seeking to justify the contravention of the FSR development standard**

*Statement of Environmental Effects*

*40 The Avenue, Randwick*

**APPENDIX 1**

CLAUSE 4.6 TO CLAUSE 4.4 OF RANDWICK LEP 2012

EXCEPTIONS TO DEVELOPMENT STANDARDS – FLOOR SPACE RATIO VARIATION

*Integrated development for alterations and additions to the state heritage listed terrace for use as a hotel*

**40 The Avenue, Randwick**

PREPARED BY

ABC PLANNING PTY LTD

March 2023

**RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 variation request has been prepared to accompany the development application for integrated development for alterations and additions to the state heritage listed terrace for use as a hotel at No. 40 The Avenue, Randwick.

Clause 4.6 of the Randwick LEP 2012 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

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

**Clause 4.6 Exceptions to development standards**

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

### Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4 of the Randwick LEP 2012 and the associated FSR map below.

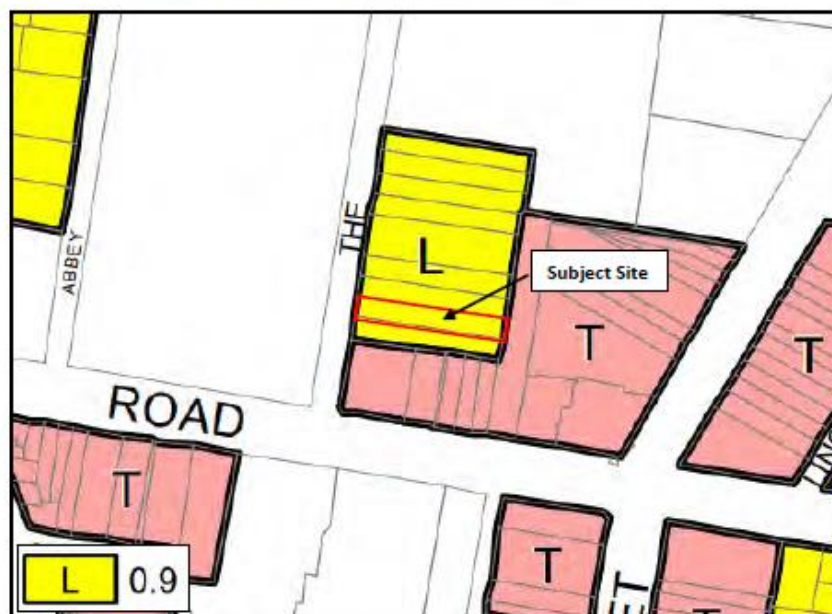


Figure 33: Floor Space Ratio Map

Clause 4.4 of Randwick LEP 2012 prescribes a maximum FSR control of 0.9:1 (GFA: 341.73m<sup>2</sup>) for development on the site.

The proposal results in a FSR of FSR of 1.1:1 (GFA: 419m<sup>2</sup>), representing a 22.6% (77.27m<sup>2</sup>) variation to the FSR Development Standard.

### Justification for Contravention of the Development Standard

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

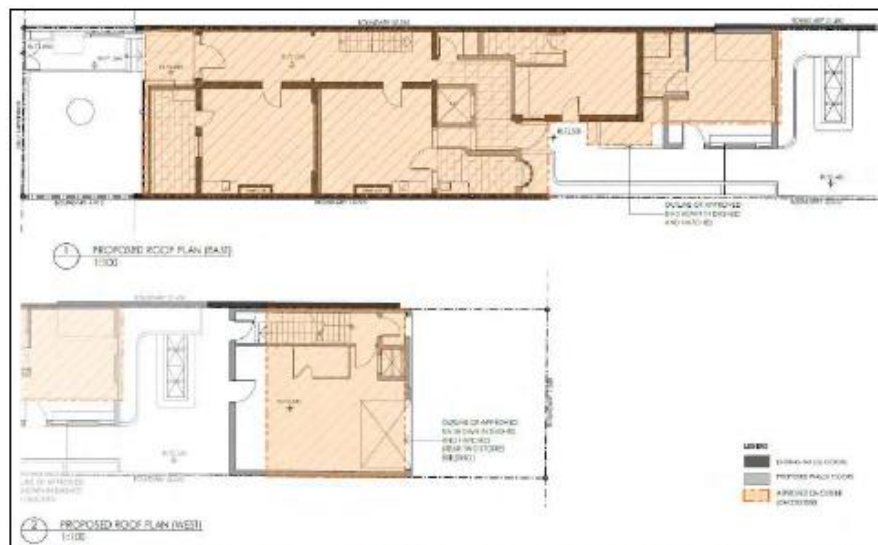
*4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

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

- Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is compatible with the character for the locality.
- The proposal adopts a similar building envelope as that approved under DA/327/2020. It is noted that the development approved under DA/327/2020 has an FSR of 1:1, which is greater than that proposed under this DA. Refer to the extract of the Roof Plan



below demonstrating the footprint of the DA approved under DA/327/2020 and the footprint of the proposed DA.



**Figure 34: Extract of the approved and proposed Roof Plan demonstrating that the proposed building bulk and scale is similar to that approved under DA/327/2020**

- The proposed additional floor area, beyond that previously approved, is provided in the proposed basement levels. The proposed additional floor area will therefore not be visible from the streetscape or surrounding properties and will not increase the bulk and scale beyond that approved under DA/327/2020.
- The Standard definition of GFA includes 'habitable' rooms in a basement. The GFA calculation for the proposal does not include the non-habitable areas in the basement levels. This approach is consistent with the decision in *Connoisseur Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1181 (*Connoisseur Investments*) that only habitable spaces in the basement contribute to GFA.
- Despite the FSR non-compliance, the proposal complies with the building height development standard for the site.
- Each level of the proposal is recessed from the level below and the external facades are articulated and indented to minimise the perceived bulk and scale of the FSR non-compliance.
- The subject site is surrounded by 3-storey terraces with rear lane garages with studios above along The Avenue (No. 26 to No. 42 The Avenue) and a 3-storey residential flat building opposite the subject site to the east (No.206B Alison Road). It is noted that the boutique hotel to the north of the subject site at No.s 32-34 The Avenue has an FSR of 1.045:1 (DA/150/2011). Despite the FSR non-compliance, the proposal will sit comfortably in the character of the local area.
- The rear of the subject site is currently vacant and represents an anomaly along the shared right-of way at the rear of the site which predominantly consists of rear lane garages with studio above. Refer to the photos in Section 3 of this SEE. The proposed



FSR and infill nature of the built form is considered to be consistent with predominant character of laneway development. The proposed rear lane single garage with studio above has a similar building envelope to that previously approved under DA/327/2020.

- Despite the FSR variation, the proposal results in a positive heritage outcome for the state heritage listed item on the site and is compatible with the scale and character of surrounding heritage items in the St Jude's heritage conservation area. Refer to the Heritage Impact Statement prepared by Sarah Blacker submitted with this application.
- A reduction of the proposed FSR would provide for an indiscernible benefit to the streetscape and would reduce the amenity of the building.
- The additional FSR allows for the provision of 10 x high-quality hotel rooms in a well serviced location in close proximity to bus stops, light rail and services. Each serviced apartment has an ensuite, kitchenette, sitting area, solar access, ventilation, pleasant outlook and of a generous room size. A skylight to the guest common area on the Basement 1 to allow for natural light to penetrate this area. Planters are provided on Basement 1 and the Ground Floor, as well as a garden area at the front of the site and a landscaped courtyard at the rear of the site. The proposed landscaping will soften the built form and contribute to the amenity of the site.
- Exceedance of the FSR control will not create unreasonable environmental amenity impacts in terms of visual bulk, overshadowing, loss of views, loss of privacy or loss of visual amenity as follows:
  - As demonstrated in the Shadow Diagrams and 3D Solar Access Diagrams submitted with this application, the proposal results in minimal additional overshadowing at 8am and 12pm beyond that approved under DA/327/2020.
  - The proposed development has been designed so as to not have an unreasonable impact on views from the public domain or surrounding properties.
  - The proposed works have been designed and sited to ensure adequate visual and acoustic privacy between the subject development and the adjoining properties. The proposal has considered the location of the works on the site, the internal layout and the building materials used. The buildings adjoining the subject site to the north and south have blank walls facing the subject site. The openings of the proposed development are orientated to the front and rear; there are no side openings. Windows have been appropriately sited and designed to minimise any potential overlooking. Screening will be provided to the openings on the Level 1 to ensure that there are no adverse or unreasonable visual or acoustic privacy impacts to neighbouring properties. The rear courtyard will be screened by fencing and landscaping to minimise potential acoustic privacy concerns.
- Despite the non-compliance with the FSR control, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the floor space ratio standard in the LEP	
Objectives	Assessment
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	<p>The proposed building height and bulk is of an appropriate form and scale and is compatible with the character for the locality.</p> <p>The proposal adopts a similar building envelope as that approved under DA/327/2020. It is noted that the development approved under DA/327/2020 has an FSR</p>

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	<p>of 1:1, which is greater than that proposed under this DA.</p> <p>The proposed additional floor area, beyond that previously approved, is provided in the proposed basement levels. The proposed additional floor area will therefore not be visible from the streetscape or surrounding properties and will not increase the bulk and scale beyond that approved under DA/327/2020.</p> <p>Despite the FSR non-compliance, the proposal complies the building height development standard for the site.</p> <p>The subject site is surrounded by 3-storey terraces with rear lane garages with studios above along The Avenue (No. 26 to No. 42 The Avenue) and a 3-storey residential flat building opposite the subject site to the east (No.206B Alison Road). It is noted that the boutique hotel to the north of the subject site at No.s 32-34 The Avenue has an FSR of 1.045:1 (DA/150/2011). Despite the FSR non-compliance, the proposal will sit comfortably in the character of the local area.</p> <p>The rear of the subject site is currently vacant and represents an anomaly along the shared right-of way at the rear of the site which predominantly consists of rear lane garages with studio above. Refer to the photos in Section 3 of this SEE. The proposed FSR and infill nature of the built form is considered to be consistent with predominant character of laneway development. The proposed rear lane single garage with studio above has a similar building envelope to that previously approved under DA/327/2020.</p>
<i>(b) to ensure that buildings are well articulated and respond to environmental and energy needs,</i>	<p>Each level of the proposal is recessed from the level below and the external facades are articulated and indented to minimise the perceived bulk and scale of the FSR non-compliance.</p> <p>The proposal is accompanied by a Section J Report prepared by Partners Energy which achieves the appropriate thermal comfort, energy saving and water saving measures.</p> <p>The proposed development has been designed to have a high level of internal amenity which reduces the reliance on artificial heating, cooling and lighting sources, whilst water saving devices will also be installed which also minimising water consumption. It is noted that the development includes a skylight to the guest common area on the Basement 1 to allow for natural light to penetrate this area.</p>
<i>(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</i>	<p>Despite the FSR variation, the proposal results in a positive heritage outcome for the state heritage listed item on the site and is compatible with the scale and character of surrounding heritage items in the St Jude's heritage conservation area. Refer to the Heritage Impact Statement prepared by Sarah Blacker submitted with this application.</p>

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<p>(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.</p>	<p>Exceedance of the FSR control will not create unreasonable environmental amenity impacts in terms of visual bulk, overshadowing, loss of views, loss of privacy or loss of visual amenity as follows:</p> <p><u>Overshadowing:</u> As demonstrated in the Shadow Diagrams and 3D Solar Access Diagrams submitted with this application, the proposal results in minimal additional overshadowing at 8am and 12pm beyond that approved under DA/327/2020.</p> <p><u>Views:</u> The proposed development has been designed so as to not have an unreasonable impact on views from the public domain or surrounding properties.</p> <p><u>Privacy:</u> The proposed works have been designed and sited to ensure adequate visual and acoustic privacy between the subject development and the adjoining properties. The proposal has considered the location of the works on the site, the internal layout and the building materials used. The buildings adjoining the subject site to the north and south have blank walls facing the subject site. The openings of the proposed development are orientated to the front and rear; there are no side openings. Windows have been appropriately sited and designed to minimise any potential overlooking. Screening will be provided to the openings on the Level 1 to ensure that there are no adverse or unreasonable visual or acoustic privacy impacts to neighbouring properties. The rear courtyard will be screened by fencing and landscaping to minimise potential acoustic privacy concerns.</p>
Consistency with the objectives of the R3 Medium Density Residential zone	
Objectives	Assessment
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> <li>To provide a variety of housing types within a medium density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.</li> <li>To protect the amenity of residents.</li> <li>To encourage housing affordability.</li> <li>To enable small-scale business uses in existing commercial buildings.</li> </ul>	<p>The site is zoned R3 Medium Density Residential under the provisions of Randwick LEP 2012.</p> <p>The proposed FSR variation does not raise any inconsistency with the ability of the proposal to achieve the objectives of the R3 Medium Density Residential zone.</p> <p>The proposal is consistent with the objectives of the R3 zone as follows:</p> <ul style="list-style-type: none"> <li>Despite the FSR variation, the proposal will not unreasonably impact on the amenity of adjoining properties in terms of overshadowing, privacy and views.</li> <li>The proposal will not inhibit other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>The proposal retains the original heritage fabric of the front of the building and reinstates the original balcony, which will contribute to the streetscape and character of the heritage conservation area.</li> </ul>

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	Therefore, it is considered that the proposed development satisfies the zone objectives, notwithstanding the FSR variation.
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Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance.

4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard

**Assessment:** There are sufficient environmental planning grounds which demonstrate that the proposed FSR can be achieved without adverse impacts for the following reasons:

- The proposal adopts a similar building envelope as that approved under DA/327/2020. It is noted that the development approved under DA/327/2020 has an FSR of 1:1, which is greater than that proposed under this DA.
- The proposed additional floor area, beyond that previously approved, is provided in the proposed basement levels. The proposed additional floor area will therefore not be visible from the streetscape or surrounding properties and will not increase the bulk and scale beyond that approved under DA/327/2020.
- Despite the FSR non-compliance, the proposal complies with the building height development standard for the site.
- Despite the FSR variation, the proposal results in a positive heritage outcome for the state heritage listed item on the site and is compatible with the scale and character of surrounding heritage items in the St Jude's heritage conservation area. Refer to the Heritage Impact Statement prepared by Sarah Blacker submitted with this application.
- Exceedance of the FSR control will not create additional building bulk that results in unreasonable environmental amenity impacts as follows:
  - The proposed FSR breach will not result in the loss of views from surrounding development.
  - The proposed breach in FSR will not result in unreasonable overshadowing of adjoining properties. The proposal complies with the DCP solar access controls.
  - The proposal will provide a development which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.
- The proposal is consistent with the R3 Medium Density Residential zone objectives and the FSR objectives.
- The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

On the above basis, it is considered that there are sufficient environmental grounds to permit the FSR variation in this instance.

**Other Matters for Consideration**

4.6(4)(a)(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

**Assessment:** Based on the above, the written request adequately addresses the matters referred to above by Clause 4.6(3).



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*4.6(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

**Assessment:** The above assessment demonstrates that the proposed development satisfies the objectives of the FSR standard and the R3 Medium Density Residential zone.

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

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

*4.6(4)(b) the concurrence of the Director-General has been obtained.*

**Assessment:** Concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 5 May 2020 attached to the Planning Circular PS 20-002.

*4.6(5) In deciding whether to grant concurrence, the Director-General must consider:  
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

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

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

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

*4.6(5)(b) the public benefit of maintaining the development standard*

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

*4.6(5)(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

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

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



*Statement of Environmental Effects*

*40 The Avenue, Randwick*

### **Conclusion**

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 40 The Avenue, Randwick and is requested to be looked upon favourably by the consent authority.

D66/24

## **Appendix 4: DCP Compliance Table**

### **3.1 Section B2: Heritage**

Council is not satisfied that the proposed development meets the heritage objectives and controls in accordance with Section B2 of the DCP. See a detailed assessment by Council's Heritage Planning and the Heritage Council of NSW's Heritage Planner in Appendix 1 of the report above.

### **3.2 Section B5: Preservation of Trees and Vegetation**

Council is satisfied that the proposed development meets the preservation of trees and vegetation requirements in accordance with Section B5 of the DCP, subject to conditions to protect the trees located in Alison Park that are included in Council's Significant Tree Register.

### **3.4 Section B7: Transport, Traffic, Parking and Access**

Council is not satisfied that the proposed development meets the parking and traffic requirements in accordance with Section B7 of the DCP. See a detailed assessment in the Discussion of Key Issues section of the report and by Council's Development Engineer in Appendix 1 of the report above.

### **3.5 Section B8: Water Management**

Council is not satisfied that the proposed development meets the water management requirements in accordance with Section B8 of the DCP. The proposed development lacks sufficient detail to manage stormwater and drainage issues on the site.

### **3.6 Section B9: Plan of Management**

Council is not satisfied that the submitted Plan of Management adequately addresses the operation of the proposed hotel including but not limited to managing staff, guests and visitors on the site to reduce impacts on residents in the locality, the liquor licence and management of potential anti-social behaviour, noise, privacy, traffic and parking arrangements, deliveries and waste management.

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**Responsible officer:** William Joannides, Environmental Planning Officer

**File Reference:** DA/225/2024