

# Randwick Local Planning Panel (Electronic) Meeting

Thursday 10 October 2024



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

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting  
will be held online via Microsoft Team on  
Thursday, 10 October 2024 at 1pm

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

#### **Development Application Reports**

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Meryl Bishop  
**DIRECTOR CITY PLANNING**

## Development Application Report No. D76/24

**Subject:** 99 Fairsky Street, South Coogee (DA/555/2024)

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### Executive Summary

<b>Proposal:</b>	Alterations and additions to existing dwelling house including front extension of Bedroom 2 (first floor), rear extension of basement, installation of new skylights, deck extension, construction of a new rear pergola, outdoor BBQ area and in-ground swimming pool with outdoor shower, and re-location of rainwater tank (Variation to Floor Space Ratio development standard).
<b>Ward:</b>	Central Ward
<b>Applicant:</b>	Rosemary Estephan
<b>Owner:</b>	Jennifer Upton
<b>Cost of works:</b>	\$220,000.00
<b>Reason for referral:</b>	The development contravenes the development standard for Maximum Floor Space Ratio by more than 10%.

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the Floor Space Ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/555/2024 for alterations and additions to existing semi-detached dwelling including variation to floor space ratio control, at No. 99 Fairsky Street, South Coogee, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions - DA/555/2024 - 99 Fairsky Street, South Coogee

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1. Executive summary

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

The proposal seeks development consent for alterations and additions to an existing semi-detached dwelling including the construction of an in-ground pool.

The key issues associated with the proposal relate to the floor space ratio (FSR) given that it proposes an FSR of 0.83:1 in an R1 General Residential zone with a maximum limit of 0.7:1 as per the Randwick Local Environmental Plan 2012.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is known as 99 Fairsky Street, South Coogee and is legally described as Lot 111 in DP1160306. The site area is 272m<sup>2</sup> and has a 9.894m frontage to Fairsky Street to the West. The site contains a 3 storey, 4 bed semi-detached dwelling with a garage, rear patio and landscaped gardens (see Figures 1-8).

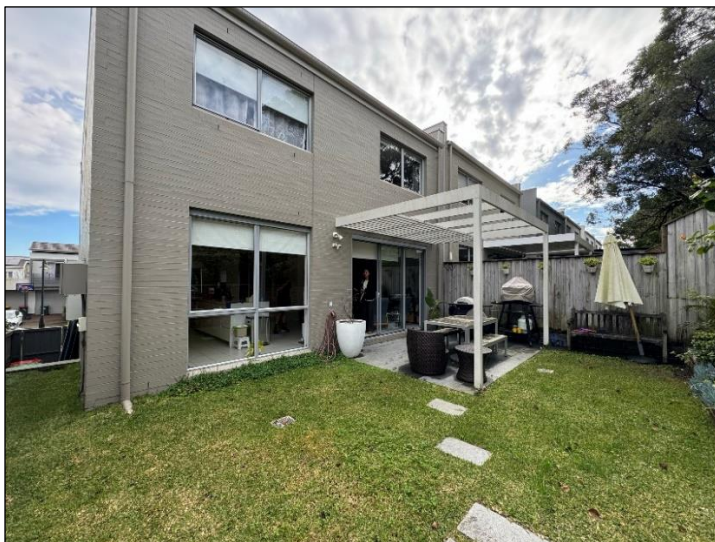
The site slopes approximately 5.27m from 66.05m at the rear of the site to 60.77m at the frontage.

The surrounding area also consists of semi-detached dwellings, which were constructed under various stages following subdivision and, the broader area consists of detached dwellings and a public school.





**Figure 1** – Rear yard from existing patio showing existing retaining wall and garden where proposed pool is to be built (Source: Council's Assessment Officer).



**Figure 2** – Rear yard looking towards the rear of the semi-detached dwelling where proposed deck and pergola extension is to occur (Source: Council's Assessment Officer).



**Figure 3** – Current stair case configuration where wall is proposed to be changed into a balustrade (Source: Council's Assessment Officer).

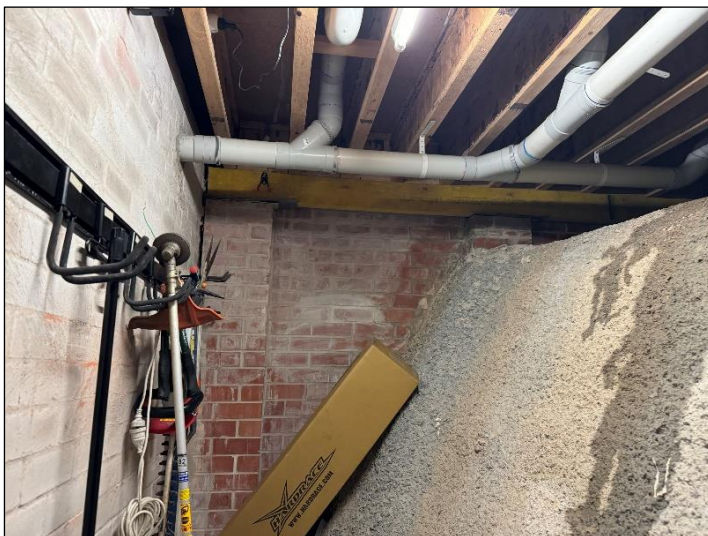
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**Figure 4** – Location of proposed skylight in upper level bathroom (Source: Council's Assessment Officer).



**Figure 5** – Location of Bedroom 2 on first floor where proposed extension of bedroom to take place (Source: Council's Assessment Officer).



**Figure 6** – Current basement where proposed extension with second laundry is to be constructed. The basement is currently restricted by a large rock which requires excavation (Source: Council's Assessment Officer).





**Figure 7** – Frontage of 99 Fairsky Street (Source: Council’s Assessment Officer).



**Figure 8** – Fairsky Street looking North from subject site (Source: Council’s Assessment Officer).

**3. Relevant history**

The current semi-detached dwelling was approved within a large subdivision development application which sought development consent for torrens title subdivision including the construction of 28 dwellings and residential lots as Stage 4 of a 5 Stage development at 88-102 Moverly Road, South Coogee. This development application was deemed for action at the Ordinary Council Meeting on 21 September 2010.

Details of this development application is listed below.

Lodgment Date	Development Application	Description	Status
1/06/2010	DA/407/2010	Construction of 28 new dwelling houses with associated landscape treatment within each allotment, utility service installation, and Torrens title subdivision to create 28 residential allotments &	Approved 9/11/2010

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		landscape design treatment associated with the public domain stage 4	
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4. Proposal

The proposal seeks development consent for alterations and additions to the semi-detached dwelling (see Figures 9-12) including the following works:

Basement

- Extension of garage area through excavation of current basement located under the ground floor to the rear of the existing garage.
- Construction of a second laundry.

Ground floor

- Demolition of non load bearing wall and installation of wooden batten balustrades to stairwell.

First Floor

- Extention of Bed 2 to align with existing lintel with new window.

Roof

- 1x skylight over Bed 2 extention
- 1x skylight over existing bathroom
- 1x skylight over existing ensuite
- 2x skylights over stairwell

External

- Extention of existing patio and pergola.
- Construction of an in-ground swimming pool and reconfiguration of retaining walls.
- Construction of an outdoor shower.
- Installation of a BBQ area.
- Relocation of rainwater tank and A/C unit.

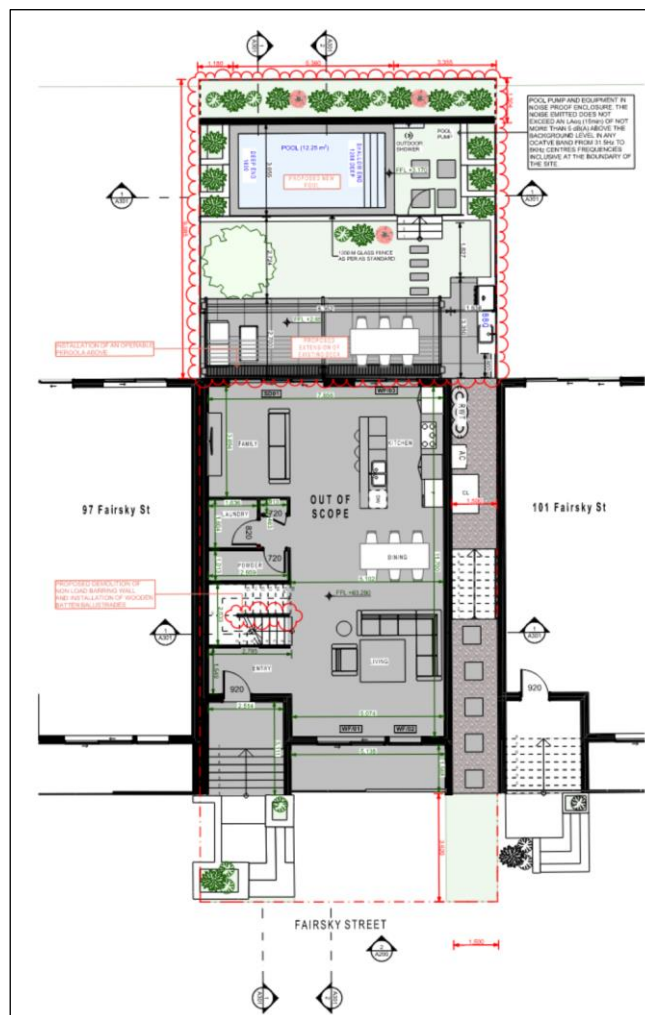
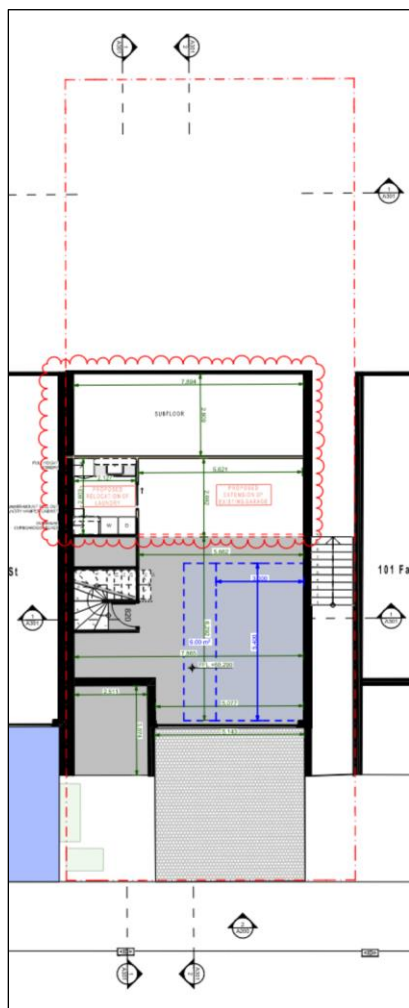


Figure 9 – Proposed basement plan from Applicant’s submitted architectural plans.

Figure 10 – Proposed ground floor plan from Applicant’s submitted architectural plans.

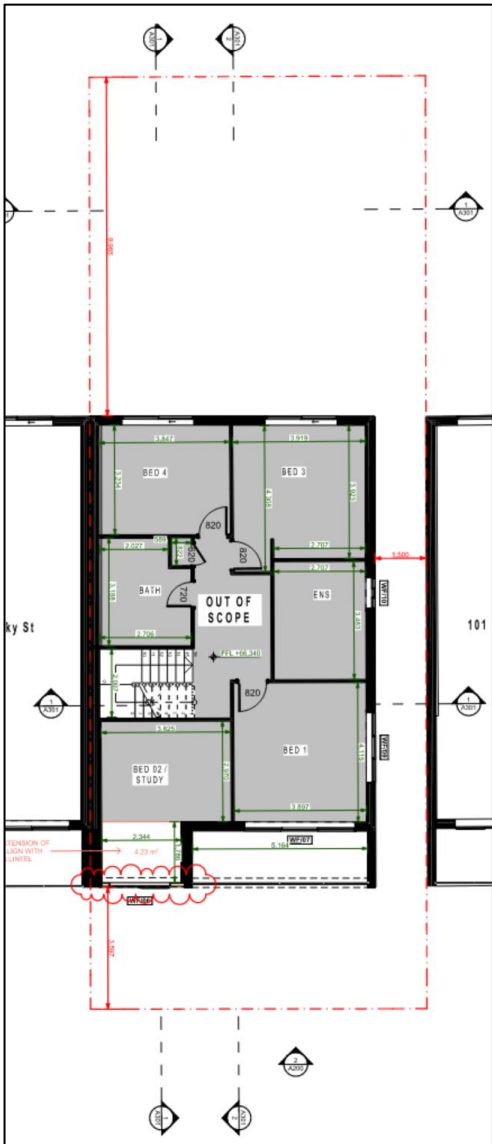


Figure 11 – Proposed first floor plan from Applicant’s submitted architectural plans.

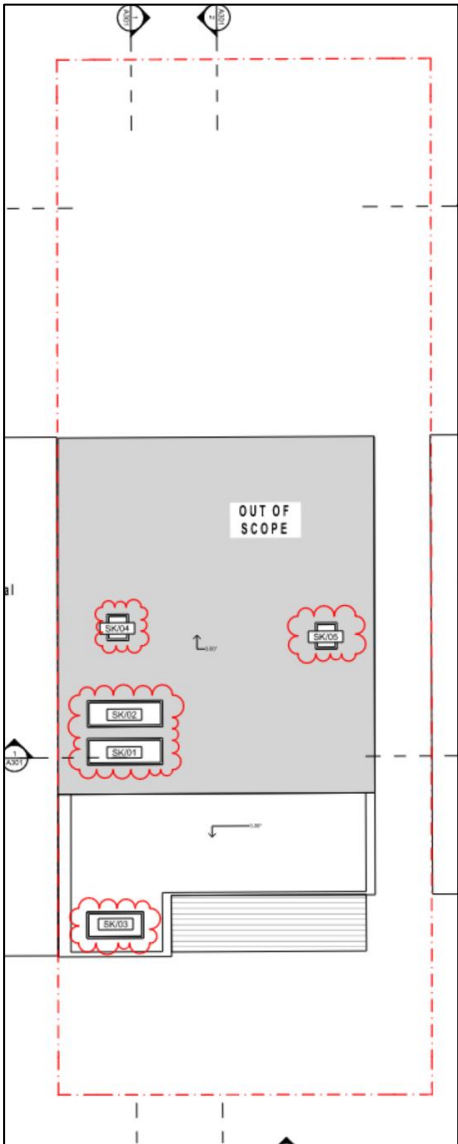


Figure 12– Proposed roof plan from Applicant’s submitted architectural plans.

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022. The submitted BASIX Certificate includes a BASIX materials index which calculates the embodied emissions and

therefore the consent authority can be satisfied the embodied emissions attributable to the development have been quantified.

## 6.2. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development involves the removal of vegetation within the site. The proposed removal is permitted without development consent on the basis that the clearing is ancillary to the proposal and the affected vegetation does not trigger a separate permit, and is not a heritage item nor within a heritage conservation area. As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

## 6.3. SEPP (Resilience and Hazards) 2021

### Chapter 4 - Remediation of Land

The provisions of Chapter 4 of the Resilience and Hazards SEPP require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The subject site has previously been used for the purposes of residential accommodation since approval in 2010 and no change is proposed to this use. The nature and location of the proposed development are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

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

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

The site is zoned R1 – General Residential under Randwick Local Environmental Plan 2012 and the proposal, being alterations and additions to an existing semi-detached dwelling is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community and protect the amenity of residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.7:1 (190.40sqm)	0.81:1 (220.32sqm)	No (11% variation)
Cl 4.3: Building height (max)	13m	Existing dwelling height = 9.58m  No proposed change to building height.	Yes



CI 4.1: Lot Size (min)	275sqm	No proposed change to lot size.	N/A
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#### 6.4.1. Clause 4.6 - Exceptions to development standards

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

### 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 Development	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.7:1 (190.40sqm)	0.72:1 (196.27sqm)	0.81:1 (220.32sqm)	31.1 m <sup>2</sup>	11%

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 2.

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

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

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

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that *the development will incorporate traditional configuration of dwellings that define the character of Connells Point established neighbourhoods. That is, the development maintains a dwelling that face the street with landscaped deep soil areas to the front and rear of the site and peripheries. There are no encroachments within the front setback area. Garages are not proposed within the front setback.*

*The small addition at upper level respects the architectural character of the pair of semi-detached dwellings as a coherent entity. The design of the alterations and additions are based on a detailed site and contextual analysis. The small addition at upper level respects the existing architectural expression and symmetry between the pair of semi-detached dwellings. The small addition at upper level is proposed to be constructed to the common boundary with the adjoining dwelling. The selection of materials used for alterations and additions is appropriate for the existing dwelling and semi-detached pair.*

*It is considered that the development is not inconsistent with the adjoining buildings as described in the planning principle Project Venture Developments v Pittwater Council [2005] NSWLEC 191.*

*The principle notes front and rear setbacks are an important element of urban character and determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way. It is our view that the front setbacks are generally compatible with the locality. The front (and side and rear) setback sought is considered to be appropriate in this instance as it will not disrupt any established building line within the immediate locality but maintains sufficient opportunity for a front garden. In the most common sense, the Commissioner provides that most people "experience the urban environment without applying the kind of analysis described above" and simply moving around a city is enough for a person to respond to their surroundings and that if simply taking a walk in this neighbourhood there is little chance that this development would be seen "out of context" and not inconsistent with adjoining buildings.*

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

*The Applicant's written justification demonstrates that this objective is satisfied by noting that the alterations and additions propose a small change at upper level for the extension of the bedroom. The alterations and additions appear as further articulated and less bulky than the existing development. The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land or flood affected. The site is not identified as having any other environmental constraints. The development complies with the relevant energy requirements required by SEPP (BASIX) 2022.*

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

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

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

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

*The Applicant's written justification demonstrates that this objective is satisfied by noting that it is considered that the development is not inconsistent with the adjoining buildings as described in the planning principle Project Venture Developments v Pittwater Council [2005] NSWLEC 191 which discussed bulk and scale in the urban environment.*

*No change is proposed to windows to habitable rooms at upper level to the side or rear elevations. North-facing living area windows of the development and adjoining development will receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. Private open space of the development adjoining development will receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The development generally maintains the form of the existing dwelling on the site and does not affect views to or from the site.*

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Assessing officer's comment: In conclusion, the Applicant's written request has adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case. The objectives under Clause 4.4 have been achieved and the minor increase to gross floor area and floor space ratio (comprising 4.23sqm) would not result in an excessive and bulky built form that is not compatible nor consistent with existing buildings within the vicinity or in the streetscape.

**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 term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument – Principal Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wider as exemplified by the court decisions in this area.*

*The objects of the Act are as follows—*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

- *The Environmental aspects and impacts of the proposal are outlined and addressed within this Statement. The proposed development will have no detrimental impact on natural or other resources, with a Planning Use that complements the site and area and existing infrastructure.*
- *The development is orderly and rational, being consistent with the applicable Randwick City Council planning controls in the R1 General Residential Zone.*
- *The development maintains housing and the site is located in a residential area.*
- *There are no threatened species or the like in the area to be developed. The development will not have an environmental impact in relation to noise or air emissions.*
- *The site will be landscaped as part of the development.*
- *The site is not a heritage item or within proximity to a heritage item or located within a heritage conservation area.*
- *The proposal shows care and consideration for the existing and desired character of housing in the area. This ensures the amenity of the local area is reasonably protected.*
- *The proposal will utilise high quality building materials and finishes. It will be designed to meet BCA criteria and access considerations to ensure appropriate protection to the health and safety of occupants.*

- *The process has allowed consideration of both State and Local Government environment.*
- *This application will be exposed to public comment in the usual manner, as outlined in the Development Control Plan.*

### Ecologically Sustainable Development

*Ecologically Sustainable Development (ESD) is a key object of the Environmental Planning & Assessment Act, 1979. The definition, consideration and conceptualisation of ESD was well explained by Justice Preston in Telstra Corporation Limited v Hornsby Shire Council [2006] NSWLEC 133.*

*This included the “basic formulation” of “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”:*

*Six Principles can be considered and applied:*

- 1. Sustainable use - the aim of exploiting natural resources in a manner which is “sustainable” or “prudent” or “rational” or “wise” or “appropriate”*
- 2. Effective integration of economic and environmental considerations in the decision making process*
- 3. The precautionary principle (referred to in 6(2)(a) of the Protection of the Environment Administration Act)*
- 4. Inter-generational equity - the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations*
- 5. Conservation of biological diversity and ecological integrity should be a fundamental consideration; and*
- 6. Internalisation of environmental costs into decision-making for economic and other development plans, programs and projects likely to affect the environment.*

*The proposal is consistent with the principles of ESD as it does not exploit natural resources, it has been based soundly on economic and environmental considerations, the likely environmental impacts of the proposal are well understood and predictable, it doesn’t deplete, does not unreasonably affect biological diversity or ecological integrity, and it provides an enduring asset for future generations.*

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

## **Conclusion**

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

## **8. Development control plans and policies**

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

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a



development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the Applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

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

The relevant provisions of the DCP are addressed in Appendix 3.

## 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received following the notification period.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.



### **9.1. Discussion of key issues**

No key issues were identified which required further discussion under this section.

### **10. Conclusion**

That the application for alterations and additions to an existing semi-detached dwelling including variation to floor space ratio control be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R1 zone in that the proposal will provide for the housing needs of the community.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

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## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Development Engineer

##### General Comments

The Planning Officer has raised the concern of excavation/extension of the basement garage level into what is thought to be a rock shelf. Development Engineering has reviewed the plans and has included a seepage draining/waterproofing requirement/condition in an attempt to address this matter.

##### Landscape Comments

There are no existing trees, covered by Part B5 (Preservation of Trees and Vegetation) in Council's DCP 2013, that will be affected by this proposal.

**Assessing Officer comments:** Noted. Conditions imposed by the Development Engineer shall be imposed should consent be granted.

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

ARN: 300 016 077 755

**Request to vary a development standard**

Aug-24

**SITE:** 99 Fairsky Street, South Coogee**PROPOSAL:** Alterations and Additions to an existing dwelling**RE:** 4.6 Variation to Clause 4.4 Floor space ratio

The Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP) and other environmental planning instruments set out development standards that must be met before a consent authority, such as a local council, can grant development consent to a development application (DA). Clause 4.6 of the Standard Instrument LEP allows consent authorities to grant consent to development that contravenes one or more development standards.

Clause 4.6 provides flexibility in the application of development standards. However, confusion around the application of clause 4.6 has contributed to delays, cost burdens and litigation for applicants and councils.

In response, the Department of Planning & Environment have amended clause 4.6 – and similar provisions in non-standard local environmental plans (LEPs) and state environmental planning policies (SEPPs) – to simplify requirements and to make the clause easier to interpret.

They have also made changes to reporting requirements for councils and the approach that the Department of Planning and Environment will take to monitoring and auditing variations decisions. This is to ensure there is appropriate probity, accountability and transparency to maintain confidence in the planning system.

This letter supports a written request to vary the development standard prescribed in the **Randwick Local Environmental Plan 2012** applying to the proposed **Alterations and Additions to an existing dwelling at 99 Fairsky Street, South Coogee**.

This submission should be read in conjunction with the Statement of Environmental Effects, architectural plans and other consultant's reports.

## 4.6 Exceptions to Development Standards

### 4.6 Exceptions to development standards

*(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.*

This request is for the contravention of clause **4.4 Floor space ratio** imposed by **Randwick Local Environmental Plan 2012**. Clause **4.4 Floor space ratio** is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

This report serves as a written request from the applicant. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is as outlined in this report. This report also outlines the environmental planning grounds to justify contravening the development standard.

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

Noted.

*(5) (Repealed).*

Noted.

*(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Not proposed.

*(7) (Repealed).*

Noted.

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

*(a) a development standard for complying development,*

*(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

*(c) clause 5.4,*

*(caa) clause 5.5,*

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

Not proposed.

This variation request has been prepared based on the requirements of the "Guide to Varying Development Standards" prepared by the NSW Department of Planning & Environment, November 2023.

## Site and proposed development

### 1. Describe the site.

The site is situated between the extents of Fairsky Street (west), Jacaranda Place (north), Moverly Road (east) and Fairsky Street (south).

### Neighbourhood Scale & Streetscape

The area boasts a mix of buildings and architectural styles, contributing to its visual diversity. The subdivision patterns encompass various residential properties, offering housing options tailored to different preferences. The topography of the area includes varying elevations and views, enhancing the natural characteristics of the surroundings. Indigenous vegetation and well-maintained landscapes further contribute to the visual appeal, creating an inviting and aesthetically pleasing urban environment.

### Site Scale

Lot 111 DP 1160306 (99 Fairsky Street, South Coogee) is a fairly regular shaped allotment with a total area of 272m<sup>2</sup> and a 9.894m frontage to Fairsky Street. The site has a gradient from the rear to the front of the site. The proposed site currently contains a single attached dwelling house.

The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land or flood affected. The site is not identified as having any other environmental constraints.

### 2. Describe the proposed development.

The development proposes Alterations and Additions to an existing dwelling consisting of:

#### Basement floor:

- Extension of existing garage
- Extension to include proposed relocation of laundry
- Retention of stairs to upper floors and under entry stair storage

#### Ground floor:

- Retention of the existing internal layout of the dwelling to include:
  - Entry
  - Living room with Balcony
  - Combined Kitchen, Dining and Family room with rear deck
  - Laundry & Powder room
  - Stairs to lower and upper floors
- Demolition of non load bearing wall and installation of wooden batten balustrades to stairwell
- Extension of existing rear deck
- Pergola installation above existing rear deck

- Construction of a new swimming pool with outdoor shower
- Relocation of rainwater tank and installation of BBQ area

#### 1st Floor:

- Retention of the existing internal layout of the dwelling to include:
  - Beds 1 & 4
  - Bed 3 with Ensuite
  - Bath
  - Hallway and stairs to lower floors
- Extension of Bed 2/Study to align with existing lintel with new window

#### Roof:

- New skylights:
  - 1 x over new extension in Bed 2/Study
  - 1 x over the existing bathroom
  - 1 x over the existing ensuite
  - 2 x over the stairwell

### 3. What is the environmental planning instrument/s you are seeking to vary?

The name of the environmental planning instrument that applies to the land is **Randwick Local Environmental Plan 2012**.

### 4. What is the site's zoning?

The zoning of the land is R1 General Residential

### 5. Identify the development standard to be varied.

The development standard being varied is:

#### 4.4 Floor space ratio

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

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

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



The maximum FSR permitted for the site is 0.7:1 (190.4sqm). The development has an existing FSR of 0.72:1 (197sqm) and the development proposes an increase to the GFA of 24.5sqm resulting in an FSR of 0.81:1 (221.5sqm).

**6. Identify the type of development standard.**

Numerical development standards use numbers to specify requirements (often minimum or maximum requirements) for measuring components of a site and/or development. Examples are minimum lot size requirements or building height limits.

Non-numerical development standards generally contain criteria or matters that need to be satisfied. These standards are typically found in the local provisions of a LEP and vary between LEPs.

The standard is a numeric standard.

**7. What is the numeric value of the development standard in the environmental planning instrument?**

The maximum FSR permitted for the site is 0.7:1 (190.4sqm). The development proposes a non-compliant FSR of 0.81:1 (221.5sqm) which exceeds the FSR permitted by RLEP2012 and hence the reason for this variation.

**8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?**

The proposal exceeds the maximum FSR development standard by 24.5sqm, which is a percentage variation of 9%.

**9. Visual representation of the proposed variation (if relevant)**

Refer to architectural plans prepared by Sh.Studio by Shorehouse Projects for a visual representation of the proposed development. There is no specific visual representation of the variation to the GFA.



## Justification for the proposed variation

### 10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

With respect to clause 4.6(3)(a), the common ways to establish whether compliance with the development standard is unreasonable or unnecessary is known as the '5-part test' or the 'Wehbe test' (from the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The test can be summarised as follows:

Compliance with the development standard is unreasonable or unnecessary if the:

1. *objectives of the development standard are achieved notwithstanding the non-compliance*
2. *underlying objective or purpose is not relevant to the development*
3. *underlying objective or purpose would be defeated or thwarted if compliance was required*
4. *development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
5. *zoning of the land on which the development is proposed was unreasonable or inappropriate.*

In this regard, this written request establishes and adequately addresses the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary because pursuant to the ways outlined in *Wehbe*, the objectives of the development standard achieved notwithstanding the non-compliance.

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

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

The development proposes alterations and additions to the existing dwelling on the site. The area boasts a mix of buildings and architectural styles, contributing to its visual diversity. The subdivision patterns encompass various residential properties, offering housing options tailored to different preferences. The topography of the area includes varying elevations and views, enhancing the natural characteristics of the surroundings. Indigenous vegetation and well-maintained landscapes further contribute to the visual appeal, creating an inviting and aesthetically pleasing urban environment.

Lot 111 DP 1160306 (99 Fairsky Street, South Coogee) is a fairly regular shaped allotment with a total area of 272m<sup>2</sup> and a 9.894m frontage to Fairsky Street. The site has a gradient from the rear to the front of the site. The proposed site currently contains a single attached dwelling house.

The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land or flood affected. The site is not identified as having any other environmental constraints.

The development maintains a traditional configuration of dwellings that define the character of the South Coogee Fairsky Street neighbourhood. That is, the development maintains a dwelling that faces the street with landscaped deep soil areas to the front and rear of the site and peripheries. There are no encroachments within the front setback area. Garages are not proposed within the front setback.

The maximum FSR permitted for the site is 0.7:1 (190.4sqm). The development has an existing FSR of 0.72:1 (197sqm) and the development proposes an increase to the GFA of 24.5sqm resulting in an FSR of 0.81:1 (221.5sqm).

The existing FSR was previously permitted in a version of the FSR development standard that was repealed 01 September 2023 that read as follows:

#### *4.4 Floor space ratio*

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

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

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

*(2A) Despite subclause (2), the maximum floor space ratio for a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential is not to exceed—*

- (a) if the lot is more than 300 square metres but not more than 450 square metres—0.75:1, or*
- (b) if the lot is more than 450 square metres but not more than 600 square metres—0.65:1, or*
- (c) if the lot is more than 600 square metres—0.6:1.*

*(2B) Despite subclause (2), there is no maximum floor space ratio for a dwelling house or semi-detached dwelling on a lot that has an area of 300 square metres or less.*

The site has an area of less than 300 square metres and the development is a semi-detached dwelling, thereby not requiring compliance with the FSR development standard.

The development has an existing FSR of 0.72:1 (197sqm) and the development proposes an increase to the GFA of 24.5sqm resulting in an FSR of 0.81:1 (221.5sqm).

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

The development will incorporate traditional configuration of dwellings that define the character of Connells Point established neighbourhoods. That is, the development maintains a dwelling that face the street with landscaped deep soil areas to the front and rear of the site and peripheries. There are no encroachments within the front setback area. Garages are not proposed within the front setback.

The small addition at upper level respects the architectural character of the pair of semi-detached dwellings as a coherent entity. The design of the alterations and additions are based on a detailed site and contextual analysis. The small addition at upper level respects the existing architectural expression and symmetry between the pair of semi-detached dwellings. The small addition at upper level is proposed to be constructed to the common boundary with the adjoining dwelling. The selection of materials used for alterations and additions is appropriate for the existing dwelling and semi-detached pair.

It is considered that the development is not inconsistent with the adjoining buildings as described in the planning principle Project Venture Developments v Pittwater Council [2005] NSWLEC 191.

The principle notes front and rear setbacks are an important element of urban character and determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way. It is our view that the front setbacks are generally compatible with the locality. The front (and side and rear) setback sought is considered to be appropriate in this instance as it will not disrupt any established building line within the immediate locality but maintains sufficient opportunity for a front garden. In the most common sense, the Commissioner provides that most people "experience the urban environment without applying the kind of analysis described above" and simply moving around a city is enough for a person to respond to their surroundings and that if simply taking a walk in this neighbourhood there is little chance that this development would be seen "out of context" and not inconsistent with adjoining buildings.

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

The alterations and additions propose a small change at upper level for the extension of the bedroom. The alterations and additions appear as further articulated and less bulky than the existing development. The site is not identified as a heritage item,



adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land or flood affected. The site is not identified as having any other environmental constraints. The development complies with the relevant energy requirements required by SEPP (BASIX) 2022.

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

The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area.

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

It is considered that the development is not inconsistent with the adjoining buildings as described in the planning principle Project Venture Developments v Pittwater Council [2005] NSWLEC 191 which discussed bulk and scale in the urban environment.

No change is proposed to windows to habitable rooms at upper level to the side or rear elevations. North-facing living area windows of the development and adjoining development will receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. Private open space of the development adjoining development will receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The development generally maintains the form of the existing dwelling on the site and does not affect views to or from the site.

#### **11. Are there sufficient environmental planning grounds to justify contravening the development standard?**

The term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument – Principal Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide<sup>8</sup> as exemplified by the court decisions in this area.

The objects of the Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*



- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

- The Environmental aspects and impacts of the proposal are outlined and addressed within this Statement. The proposed development will have no detrimental impact on natural or other resources, with a Planning Use that complements the site and area and existing infrastructure.
- The development is orderly and rational, being consistent with the applicable Randwick City Council planning controls in the R1 General Residential Zone.
- The development maintains housing and the site is located in a residential area.
- There are no threatened species or the like in the area to be developed. The development will not have an environmental impact in relation to noise or air emissions. The site will be landscaped as part of the development.
- The site is not a heritage item or within proximity to a heritage item or located within a heritage conservation area.
- The proposal shows care and consideration for the existing and desired character of housing in the area. This ensures the amenity of the local area is reasonably protected.
- The proposal will utilise high quality building materials and finishes. It will be designed to meet BCA criteria and access considerations to ensure appropriate protection to the health and safety of occupants.
- The process has allowed consideration of both State and Local Government environment.
- This application will be exposed to public comment in the usual manner, as outlined in the Development Control Plan.

#### **Ecologically Sustainable Development**

Ecologically Sustainable Development (ESD) is a key object of the Environmental Planning & Assessment Act, 1979. The definition, consideration and conceptualisation of ESD was well explained by Justice Preston in *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133.

This included the "basic formulation" of "development that meets the needs of the present without compromising the ability of future generations to meet their own needs":

Six Principles can be considered and applied:



1. *Sustainable use - the aim of exploiting natural resources in a manner which is "sustainable" or "prudent" or "rational" or "wise" or "appropriate"*
2. *Effective integration of economic and environmental considerations in the decision making process*
3. *The precautionary principle (referred to in 6(2)(a) of the Protection of the Environment Administration Act)*
4. *Inter-generational equity - the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations*
5. *Conservation of biological diversity and ecological integrity should be a fundamental consideration; and*
6. *Internalisation of environmental costs into decision-making for economic and other development plans, programmes and projects likely to affect the environment.*

The proposal is consistent with the principles of ESD as it does not exploit natural resources, it has been based soundly on economic and environmental considerations, the likely environmental impacts of the proposal are well understood and predictable, it doesn't deplete, does not unreasonably affect biological diversity or ecological integrity, and it provides an enduring asset for future generations.

## **12. Is there any other relevant information relating to justifying a variation of the development standard?**

Lot 111 DP 1160306 (99 Fairsky Street, South Coogee) is a fairly regular shaped allotment with a total area of 272m<sup>2</sup> and a 9.894m frontage to Fairsky Street. The site has a gradient from the rear to the front of the site. The proposed site currently contains a single attached dwelling house.

The development proposes a **Alterations and Additions to an existing dwelling**.

The site is suitable for the development being compatible with the objectives of the zone. The development is compatible with the locality and the site attributes are conducive to development.

The proposed development is permissible with consent and complies with the objectives of the zone by providing a variety of housing types to satisfy the needs of the community, that ensures amenity for both the occupants and the surrounding neighbours, that is compatible with the density of the area.

The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land or flood affected. The site is not identified as having any other environmental constraints.





The proposed development is consistent with the existing and future development in the locality. The development has access from a public road and Council's utility services are available to the site. The site is considered to be suitable for development. The proposed development is within the public interest.

### **Conclusion**

The proposed development has been designed in a way that it addresses the site abilities and constraints whilst satisfactorily demonstrating compliance with the Environmental Planning and Assessment Act 1979 (EPA&A 1979) and Council's local planning instruments and guidelines.

Accordingly, this 4.6 Exceptions to Development Standards is submitted in the belief that it deserves council's favourable consideration.

## Appendix 3: DCP Compliance Table

### 3.1 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	<b>Classification</b>	Zoning = R1	Yes, alterations and addition to semi-detached dwelling permissible with consent.
<b>2</b>	<b>Site planning</b>	Site = 272sqm	
<b>2.1</b>	<b>Minimum lot size</b>		
	<b>Minimum lot size LEP 2012 = 275sqm</b>	No proposed change.	Yes
<b>2.2</b>	<b>Lot frontage</b>		
	<b>Dwellings &amp; semi-detached</b>		
	Dwellings R2 = 24m parent lot, 12m per dwelling R3 = 18m parent lot, 9m per dwelling Semi-detached R2 & R3 = 15m parent lot, 7.5m per dwelling	No proposed change.	Yes
<b>2.4</b>	<b>Site coverage</b>		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	No proposed change.	Yes
<b>2.5</b>	<b>Deep soil permeable surfaces</b>		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached dwellings: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	Required = 30%  Proposed = 43.5sqm / 16%  17.7% of front setback area deep soil.	No, however the numerical control (for deep soil permeable surfaces) is not triggered due to site coverage not increasing by >10%.
<b>2.6</b>	<b>Landscaping and tree canopy cover</b>		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	17.7% of front setback area deep soil.  No large trees are proposed. Small shrubs proposed within front and rear setback.	No, however the numerical control (for canopy tree cover) is not triggered due to site coverage not increasing by >10%.
	<b>Dual occupancies and semi-detached dwellings</b>		
	Calculated on the overall site area and must be evenly distributed between the pair of dwellings.	Noted. Small shrubs in front setback but no large tree.	
	The front setback must contain at least one (1) tree per dwelling.		

DCP Clause	Controls	Proposal	Compliance
<b>2.7</b>	<b>Private open space (POS)</b>		
	<b>Dwelling &amp; Semi-Detached POS</b>		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	5m x 5m required.  Proposed = 9x5m level POS	<b>Yes</b>
<b>3</b>	<b>Building envelope</b>		
<b>3.1</b>	<b>Floor space ratio LEP 2012 = 0.7:1</b>	Proposed = 0.81:1	<b>No, see Clause 4.6 Variation for further details.</b>
<b>3.2</b>	<b>Building height</b>		
	<b>Building height LEP 2012 = 13m</b>	No proposed change.	<b>Yes</b>
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: <ul style="list-style-type: none"> <li>- Topography</li> <li>- Site orientation</li> <li>- Lot configuration</li> <li>- Flooding</li> <li>- Lot dimensions</li> <li>- Impacts on visual amenity, solar access, privacy and views of adjoining properties.</li> </ul>	All floor to ceiling heights are compliant with the national construction code.  The development maintains a 2 storey plus basement presentation to the street.	<b>Yes</b>
<b>3.3</b>	<b>Setbacks</b>		
<b>3.3.1</b>	<b>Front setbacks</b>		
	i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> <li>- 900mm for allotments with primary frontage width of less than 7m</li> <li>- 1500mm for all other sites</li> <li>- Should align with setbacks of adjoining dwellings</li> </ul> ii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.	No proposed change to front setback.  Proposed pool is within rear yard and not the front setback area.	<b>Yes</b>
<b>3.3.2</b>	<b>Side setbacks</b>	No proposed change.	<b>Yes</b>

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D76/24

DCP Clause	Controls	Proposal	Compliance																								
	<table border="1"> <thead> <tr> <th colspan="4">Minimum side setbacks</th></tr> <tr> <th>Existing primary frontage width</th><th>Building heights 0m to 4.5m</th><th>Building heights &gt;4.5m to 7m</th><th>Building heights &gt;7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height – 7m)</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td><math>0.9m + \frac{\text{building height} - 4.5m}{4}</math></td><td><math>1.5m + 2 \times (\text{building height} - 7m)</math></td></tr> <tr> <td>12m and above</td><td>1.2m</td><td><math>1.2m + \frac{\text{building height} - 4.5m}{4}</math></td><td><math>1.8m + 2 \times (\text{building height} - 7m)</math></td></tr> </tbody> </table>	Minimum side setbacks				Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m	Less than 6m	Merit assessment			6m to less than 9m	0.9m	0.9m	0.9m + (building height – 7m)	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$		
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<b>3.3.3</b>	<p><b>Rear setbacks</b></p> <ul style="list-style-type: none"> <li>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</li> <li>ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> <li>- Existing predominant rear setback line</li> <li>- Reasonable view sharing (public and private)</li> <li>- Protect the privacy and solar access</li> </ul> </li> <li>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</li> <li>iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> <li>- Compatibility</li> <li>- POS dimensions comply</li> <li>- minimise solar access, privacy and view sharing impacts</li> </ul> </li> </ul> <p><i>*Definition: predominant rear setback is the average of adjacent dwellings on either side and is determined separately for each storey.</i></p> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings.</p>	No proposed change.	<b>Yes</b>																								
<b>4</b>	<b>Building design</b>																										
<b>4.1</b>	<b>General</b>																										
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> <li>• articulated to enhance streetscape</li> <li>• stepping building on sloping site,</li> <li>• no side elevation greater than 12m</li> <li>• encourage innovative design</li> <li>• balconies appropriately sized</li> <li>• Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension).</li> </ul>	<p>All bedrooms meet the minimum required size.</p> <p>The dwelling will remain articulated to the streetscape and complement the other half of the semi-detached dwelling.</p>	<b>Yes</b>																								
<b>4.3</b>	<b>Alterations and additions to semi-detached and dual occupancy (attached) dwellings</b>																										
	<ul style="list-style-type: none"> <li>i) Respect and enhance architectural character of pair, including symmetry</li> <li>ii) Setback upper addition from street (to rear) with substantial portion of existing front intact</li> <li>iii) Locate upper addition behind apex of hipped</li> </ul>	<p>The semi-detached dwelling will remain almost identical as existing to streetscape. The small change to the first level bedroom</p>	<b>Yes</b>																								

DCP Clause	Controls	Proposal	Compliance
	roofed houses iv) Setback upper addition from gable end 100% of the height increase and retain any existing gable features and chimneys v) Low profile roof form that is visually secondary to existing vi) Avoid exposure of existing blank party walls vii) Materials enhance character of the pair	will provide further articulation and compliment the other semi-detached neighbour.	
<b>4.4</b>	<b>Roof terraces and balconies</b>		
	i) Locate on stepped buildings only (not on uppermost or main roof) ii) Where provided, roof terraces must: <ul style="list-style-type: none"> <li>Prevent overlooking</li> <li>Size minimised</li> <li>Secondary POS – no kitchens, BBQs or the like</li> <li>Maintain view sharing, minimise structures and roof top elements</li> <li>Be uncovered and comply with maximum height</li> </ul> iii) Locate above garages on sloping sites (where garage is on low side)  <i>*Note: Existing roof terraces in locality that do not comply with the above controls should not be utilised as precedent in seeking variations to the controls outlined in this section. This is to ensure that the objectives of low density residential development are met.</i>	No proposed change to balconies.	<b>Yes</b>
<b>4.6</b>	<b>Colours, Materials and Finishes</b>		
	i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone	Materials and finishes will remain consistent with the existing dwelling which is suitable for use. They will be durable and non-reflective.	<b>Yes</b>
<b>4.7</b>	<b>Earthworks</b>		
	i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping)	The basement will be excavated lower than 1m, but no fill is proposed.  Excavation is proposed to the boundary adjoining to the neighbouring semi-detached dwelling. The basement will not be habitable space.	<b>Yes</b>

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DCP Clause	Controls	Proposal	Compliance
	vii) cut and fill for POS is terraced <i>where site has significant slope</i> : viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas.	Retaining walls are proposed in rear yard.	
<b>5</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access to proposed development:</b>		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	No proposed change to resident solar access. Min sunlight controls are met.	<b>Yes</b>
	<b>Solar access to neighbouring development:</b>		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> <li>Degree of meeting the FSR, height, setbacks and site coverage controls.</li> <li>Orientation of the subject and adjoining allotments and subdivision pattern of the urban block.</li> <li>Topography of the subject and adjoining allotments.</li> <li>Location and level of the windows in question.</li> <li>Shadows cast by existing buildings on the neighbouring allotments.</li> </ul>	No proposed change to neighbouring solar access. More than 3 hours of sunlight to external and internal areas maintained.	<b>Yes</b>
<b>5.2</b>	<b>Energy Efficiency and Natural Ventilation</b>		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> <li>Skylights (ventilated)</li> <li>Clerestory windows</li> <li>Fanlights above doorways</li> <li>Highlight windows in internal partition walls</li> </ul> ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries	New skylights are proposed for additional sunlight. All habitable rooms have windows which open to the outside and the internal living room as direct access to the outside via large opening doors. Natural light and/or ventilation are provided throughout the dwelling.	<b>Yes</b>



DCP Clause	Controls	Proposal	Compliance
	iii) Living rooms contain windows and doors opening to outdoor areas <i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i>		
<b>5.3</b>	<b>Visual Privacy</b>		
	<b>Windows</b>		
	i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: <ul style="list-style-type: none"> <li>- windows are offset or staggered</li> <li>- minimum 1600mm window sills</li> <li>- Install fixed and translucent glazing up to 1600mm minimum.</li> <li>- Install fixed privacy screens to windows.</li> <li>- Creating a recessed courtyard (minimum 3m x 2m).</li> </ul> ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	All existing windows to remain besides the first-floor bedroom extension which includes a new window. This window does not create any privacy concerns nor does it have direct views into habitable rooms/ private open space of neighbouring dwellings. .	<b>Yes</b>
	<b>Balcony</b>		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	No proposed change to front facing balconies.	<b>Yes</b>
<b>5.4</b>	<b>Acoustic Privacy</b>		
	i) Noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> <li>- Locate noise-generating areas and quiet areas adjacent to each other.</li> <li>- Locate less sensitive areas adjacent to the party wall to serve as noise buffer.</li> </ul>	The proposed in-ground pool and entertaining area is located within the rear yard which has the ability to generate noise and is not located adjacent to any bedrooms windows of adjacent dwellings.	<b>Yes</b>
<b>5.5</b>	<b>Safety and Security</b>		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	No proposed change. Dwelling front entry to remain at front of site visible from street. There is ample casual surveillance.	<b>Yes</b>
<b>5.6</b>	<b>View Sharing</b>		

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> <li>i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.</li> <li>ii) Retaining existing views from the living areas are a priority over low use rooms</li> <li>iii) Retaining views for the public domain takes priority over views for the private properties</li> <li>iv) Fence design and plant selection must minimise obstruction of views</li> <li>v) Adopt a balanced approach to privacy protection and view sharing</li> <li>vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.</li> </ul>	No views will be lost as a result of the development proposal.	Yes
<b>6</b>	<b>Car Parking and Access</b>		
<b>6.1</b>	<b>Location of Parking Facilities:</b>		
	<b>All dwellings</b>		
	<ul style="list-style-type: none"> <li>i) Maximum 1 vehicular access</li> <li>ii) Locate off rear lanes, or secondary street frontages where available.</li> <li>iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling.</li> <li>iv) Single width garage/carport if frontage &lt;12m; Double width if: <ul style="list-style-type: none"> <li>- Frontage &gt;12m; and</li> <li>- Consistent with pattern in the street; and</li> <li>- Landscaping provided in the front yard.</li> </ul> </li> <li>v) Tandem parking may be considered</li> <li>vi) Avoid long driveways (impermeable surfaces)</li> </ul>	No proposed change to parking facilities. Single car garage spot available behind front and tandem parking available on hardstand.	Yes
<b>6.3</b>	<b>Setbacks of Parking Facilities</b>		
	<ul style="list-style-type: none"> <li>i) Garages and carports comply with Sub-Section 3.3 Setbacks.</li> <li>ii) 1m rear lane setback</li> <li>iii) Nil side setback where: <ul style="list-style-type: none"> <li>- Nil side setback on adjoining property;</li> <li>- Streetscape compatibility;</li> <li>- Safe for drivers and pedestrians;</li> <li>- Amalgamated driveway crossing.</li> </ul> </li> </ul>	No proposed change to car parking facilities.	Yes
<b>6.4</b>	<b>Driveway Configuration</b>		
	Maximum driveway width: <ul style="list-style-type: none"> <li>- Single driveway – 3m</li> <li>- Double driveway – 5m</li> </ul> Must taper driveway width at street boundary and at property boundary	No proposed change to driveway.	Yes
<b>6.5</b>	<b>Garage Configuration</b>		
	<ul style="list-style-type: none"> <li>i) Recessed behind front of dwelling</li> <li>ii) Maximum garage width (door and piers or columns): <ul style="list-style-type: none"> <li>- Single garage – 3m</li> <li>- Double garage – 6m</li> </ul> </li> <li>iii) Min. 5.4m length of garage</li> <li>iv) Max. 2.6m wall height and 3m building height (for pitched roof) for detached garages</li> </ul>	Garage / basement to be extended under current ground floor of dwelling. Garage meets minimum dimensions for single car as existing.	Yes

DCP Clause	Controls	Proposal	Compliance
	v) Recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) Minimum clearance 2.2m (AS2890.1)		
<b>6.7</b>	<b>Hardstand Car Space Configuration</b>		
	i) Permeable materials in between concrete wheel strips. ii) 2.4m x 5.4m minimum dimensions	No proposed change to hardstand.	<b>Yes</b>
<b>7</b>	<b>Fencing and Ancillary Development</b>		
<b>7.1</b>	<b>General - Fencing</b>		
	i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	No proposed change to any boundary fence.	<b>Yes</b>
<b>7.2</b>	<b>Front Fencing</b>		
	i) 1200mm max. (solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) Light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.	No proposed change to any boundary fence.	<b>Yes</b>
<b>7.3</b>	<b>Side and rear fencing</b>		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	No proposed change to any boundary fence.	<b>Yes</b>

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DCP Clause	Controls	Proposal	Compliance
<b>7.5</b>	<b>Swimming pools and Spas</b>		
	<ul style="list-style-type: none"> <li>i) Locate behind the front building line</li> <li>ii) Minimise damage to existing tree root systems on subject and adjoining sites.</li> <li>iii) Locate to minimise noise impacts on the adjoining dwellings.</li> <li>i) Pool and coping level related to site topography (max 1m over lower side of site).</li> <li>ii) Where pool coping height is above natural ground level, pool to be located to avoid pool boundary fencing exceeding 2.2m from existing ground level from adjoining properties.</li> <li>iii) Where above natural ground and has potential to create privacy impacts, appropriate screening or planting along full length of pool to be provided. Planting to comply with legislation for non-climbable zones.</li> <li>iv) Incorporate screening or planting for privacy as above, unless need to retain view corridors.</li> <li>v) Position decking to minimise privacy impacts.</li> <li>vi) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.</li> </ul>	<p>The pool is proposed within the rear yard behind the front building line.</p> <p>It is situated away from neighbouring bedroom windows to reduce potential noise transmission. Pool and coping level suitable for site. There will be no visual impacts due to the sites topography and fencing. Decking provided close to pool and away from rear and side boundaries. Pool pump to be enclosed to reduce noise transmission.</p>	<b>Yes</b>
<b>7.6</b>	<b>Air conditioning equipment</b>		
	<ul style="list-style-type: none"> <li>i) Minimise visibility from street.</li> <li>ii) Avoid locating on the street or laneway elevation of buildings.</li> <li>iii) Screen roof mounted A/C from view by parapet walls, or within the roof form.</li> <li>iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.</li> </ul>	<p>Air conditioning to be located next to dwelling on side setback. This will not be visible from street and located as far away as possible from neighbouring dwelling and bedrooms to minimise noise transmission.</p>	<b>Yes</b>
<b>7.8</b>	<b>Clothes Drying Facilities</b>		
	<ul style="list-style-type: none"> <li>i) Located behind the front alignment and not be prominently visible from the street</li> </ul>	<p>Clothes drying facility to remain at rear of property.</p>	<b>Yes</b>
<b>7.9</b>	<b>Utility Connections</b>		
	<p>If power pole is within 15m of site (on same side of street), Applicant must meet full cost for Ausgrid to relocate.</p>	<p>N/A for site. Development Engineer assessed.</p>	<b>N/A</b>

**Responsible officer:** Charlotte Asbridge, Student Environmental Planning Officer

**File Reference:** DA/555/2024

## Development Consent Conditions (Dwellings and Dual Occupancies)



D76/24

<b>Folder /DA No:</b>	DA/555/2024
<b>Property:</b>	99 Fairsky Street, SOUTH COOGEE NSW 2034
<b>Proposal:</b>	Alterations and additions to existing dwelling house including front extension of Bedroom 2 (first floor), rear extension of basement, installation of new skylights, deck extension, construction of a new rear pergola, outdoor BBQ area and in-ground swimming pool with outdoor shower, and re-location of rainwater tank (Variation to Floor Space Ratio development standard).
<b>Recommendation:</b>	Approval

### Development Consent Conditions

#### GENERAL CONDITIONS

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Site Plan	RME	4/09/2024	4 September 2024
Floor Plans (Basement & Ground Floor)	RME	4/09/2024	4 September 2024
Floor Plans (First Floor & Roof)	RME	4/09/2024	4 September 2024
Sections	RME	4/09/2024	4 September 2024
Elevations	RME	4/09/2024	4 September 2024
Swimming Pool Details	RME	4/09/2024	4 September 2024
Window Schedule	RME	4/09/2024	4 September 2024

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
A1751635	14 June 2024	1 July 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.

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BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
2.	<p><b>Consent Requirements</b></p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
3.	<p><b>External Colours, Materials &amp; Finishes</b></p> <p>The colours, materials and finishes of the external surfaces are to be compatible with the existing building and adjacent development to maintain the integrity and amenity of the building and the streetscape.</p> <p>External materials, finishes and colours of the building are required to match, as closely as possible, the existing building and any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare.</p> <p>Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by The Certifier prior to issuing a construction certificate for the development.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
4.	<p><b>Section 7.12 Development Contributions</b></p> <p>In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$220,000.00 the following applicable monetary levy must be paid to Council: \$2,000.00</p> <p>The levy must be paid in <b>cash, bank cheque</b> or by <b>credit card</b> prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone <b>9093 6000</b> or <b>1300 722 542</b> for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> <p><b>IDC = ODC x CP2/CP1</b></p> <p>Where:</p> <p><b>IDC</b> = the indexed development cost</p> <p><b>ODC</b> = the original development cost determined by the Council</p> <p><b>CP2</b> = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment</p> <p><b>CP1</b> = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at <a href="http://www.randwick.nsw.gov.au">www.randwick.nsw.gov.au</a>.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p>
5.	<p><b>Sydney Water</b></p> <p>All building, plumbing and drainage work must be carried out in accordance with the</p>



	Condition
	<p>requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> <li>• Building plan approvals</li> <li>• Connection and disconnection approvals</li> <li>• Diagrams</li> <li>• Trade waste approvals</li> <li>• Pressure information</li> <li>• Water meter installations</li> <li>• Pressure boosting and pump approvals</li> <li>• Change to an existing service or asset, e.g. relocating or moving an asset.</li> </ul> <p>Sydney Water's Tap in™ online service is available at:  <a href="https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm">https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</a></p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
6.	<p><b>Building Code of Australia</b></p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
7.	<p><b>Structural Adequacy</b></p> <p>Certificate of Adequacy supplied by a professional engineer shall be submitted to the Certifier (and the Council, if the Council is not the Certifier), certifying the structural adequacy of the existing structure to support the extension of the garage/ basement space below the ground floor.</p> <p>Condition Reason: To ensure the structural integrity of the building is maintained.</p>
8.	<p><b>BASIX Requirements</b></p> <p>In accordance with section 4.17(11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 75 of the <i>Environmental Planning and Assessment Regulation 2021</i>, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may</p>

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	Condition
	necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.
	Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.
9.	<p><b>Stormwater Drainage</b></p> <p>Surface water/stormwater (from the redeveloped portion of the site) must be drained and discharged to the street gutter in front of the site to the satisfaction of the Certifier and details of the proposed stormwater drainage system are to be included in the construction certificate details for the development.</p> <p>Condition Reason: To control and manage stormwater run-off.</p>
10.	<p><b>Excavation Earthworks and Support of Adjoining Land</b></p> <p>Details of proposed excavations and support of the adjoining land and buildings are to be prepared and be included in the construction certificate, to the satisfaction of the appointed Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported.</p>
11.	<p><b>Excavation, Earthworks and Support of Adjoining Land</b></p> <p>A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details the methods of support for any buildings located on the adjoining land, to the satisfaction of the Principal Certifier:</p> <ul style="list-style-type: none"> <li>• when undertaking excavation or building work within the zone of influence of the footings of a dwelling or other building that is located on the adjoining land;</li> <li>• when undertaking demolition work to a wall of a dwelling or other substantial structure that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);</li> <li>• when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land; and</li> <li>• as otherwise may be required by the Certifier for the development.</li> </ul> <p>The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported.</p>
12.	<p><b>Building Code of Australia – Swimming Pools</b></p> <p>Swimming Pools and Spa Pools are to be designed and installed in accordance with the requirements of the <i>Building Code of Australia</i> and be provided with a child-resistant barrier in accordance with the <i>Swimming Pools Act 1992</i>; the <i>Swimming Pools Regulation 2018</i> and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools.</p> <p>Details of compliance are to be provided in the Construction Certificate.</p> <p>Temporary pool safety fencing is also required to be provided to swimming pools pending the completion of all building work and swimming pools must not be filled until a fencing inspection has been carried out and approved by the Principal Certifier.</p> <p><i>Note: This development consent does not approve the design and location of swimming/spa pool safety barriers. Swimming/spa pool safety barriers are required to comply with the Swimming Pools Act 1992, Swimming Pools Regulation 2018 and</i></p>

	Condition
	<p><i>relevant Standards. Details of compliance are required to be included in the Construction Certificate, to the satisfaction of the appointed Certifier for the development.</i></p> <p>Condition Reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area.</p>
13.	<p><b>Swimming Pool Safety</b></p> <p>Swimming pools are to be designed, installed and operated in accordance with the following general requirements:</p> <ul style="list-style-type: none"> <li>• Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation.</li> <li>• Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed with a building to minimise noise emissions or result in a noise nuisance.</li> <li>• Water recirculation and filtrations systems are required to comply with AS 1926.3 (2010) Swimming Pool Safety – Water Recirculation and Filtration Systems.</li> <li>• Paving and ground surfaces adjacent to swimming pools are to be graded and so as to ensure that any pool overflow water is drained away from buildings and adjoining premises, so as not to result in a nuisance or damage to premises.</li> </ul> <p>Condition Reason: To minimise the impact of the pool on adjoining properties and to ensure the safety of the pool/spa area.</p>
14.	<p><b>Site Seepage</b></p> <p>The development must comply with the following requirements to ensure the adequate management of site seepage and sub-soil drainage:</p> <ol style="list-style-type: none"> <li>a) Seepage/ground water and subsoil drainage (from planter boxes etc) <b><u>must not</u></b> be collected &amp; discharged directly or indirectly to Council's street gutter.</li> <li>b) Adequate provision is to be made for the ground water to drain around the basement garage level (to ensure the basement will not dam or slow the movement of the ground water through the development site).</li> <li>c) Any new walls of the extended basement garage should be suitably waterproofed or a suitable drainage system installed to restrict the entry of any seepage water into the extended basement garage level.</li> <li>d) Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to be fully managed within the site, without causing a nuisance to any premises and <b><u>ensuring that it does not drain or discharge (directly or indirectly) to the street gutter.</u></b></li> </ol> <p>Details of any new proposed stormwater drainage system including any methods of waterproofing of the extended basement garage level should be prepared or approved by a suitably qualified and experienced Professional Engineer to the satisfaction of the Certifying Authority.</p> <p>Condition Reason: To ensure the basement level extension does not result in insufficient ground water drainage.</p>
15.	<p><b>Geotechnical Report</b></p> <p>A report prepared by an appropriately qualified Geotechnical Engineer certifying that the existing rock formations and substrate on the site is capable of:</p>

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Condition	
	<div><div>a) withstanding the proposed loads to be imposed;</div><div>b) withstanding the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;</div><div>c) providing protection and support of adjoining properties; and</div><div>d) the provision of appropriate subsoil drainage during and upon completion of construction works</div></div>
<p>must be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate.</p> <p>Recommendations made in the certified report must be complied with at all times.</p> <p>Building plans and specifications submitted for approval with any construction certificate application must comply with (a), (b), (c) and (d) above and the certified report, including any recommendations made in the said certified report.</p> <p>The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.</p> <p>Condition Reason: To ensure the structural integrity of the subject site and associated building, and any adjoining sites during the excavation process.</p>	

BEFORE BUILDING WORK COMMENCES	
Condition	
16.	<div><div><b>Building Certification &amp; Associated Requirements</b></div><div>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</div><div><div>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</div><div>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.</div><div>b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</div><div>c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</div><div>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</div><div>e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</div></div></div>
<p>Condition Reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition</p>	

Condition	
	or excavation.
17.	<p><b>Home Building Act 1989</b></p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 &amp; 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition Reason: Prescribed condition under section 69 &amp; 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>.</p>
18.	<p><b>Dilapidation Reports</b></p> <p>A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a Professional Engineer, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site, and any other property or public land which may be affected by the works, to the satisfaction of the <i>Principal Certifier</i> for the development.</p> <p>The dilapidation report must be submitted to the Principal Certifier, Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).</p> <p>Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>
19.	<p><b>Construction Noise &amp; Vibration Management Plan</b></p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise &amp; Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
20.	<p><b>Public Utilities</b></p> <p>A <i>Public Utility Impact Assessment</i> must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.</p> <p>The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements</p>



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Condition

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are provided to the certifier and adhered to.

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DURING BUILDING WORK

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Condition

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21.

**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.

22.

**Restriction on Working Hours**

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

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

*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.

	Condition
23.	<p><b>Public Safety &amp; Site Management</b></p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ul style="list-style-type: none"> <li>a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.</li> <li>b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.</li> <li>c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.</li> <li>d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ul> <p>Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.</p> <p><i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i></p> <ul style="list-style-type: none"> <li>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.</li> <li>i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.</li> <li>j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</li> <li>k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public</li> </ul>

	Condition
	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.
24.	<b>Building Encroachments</b> 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.
25.	<b>Excavation Works – Geotechnical Report</b> Any excavation must be undertaken in accordance with any recommendations and methodologies outlined in the approved Geotechnical Report (refer to Condition 15).  Condition Reason: To ensure the structural integrity of the subject site and associated building, and any adjoining sites during the excavation process.

#### BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
26.	<b>Occupation Certificate Requirements</b> An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> .  Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.
27.	<b>BASIX Requirements</b> In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> , a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.  Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.  Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.
28.	<b>Council's Infrastructure, Vehicular Crossings and Street Verge</b> All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements: <ul style="list-style-type: none"> <li>(a) All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors.</li> </ul>

	Condition
	<p>(b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a <i>Pre-paid Works Application Form</i>, prior to issuing an occupation certificate, together with payment of the relevant fees.</p> <p>(c) If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee.</p> <p>(d) The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing.</p> <p>Condition Reason: To ensure rectification of any damage to public infrastructure and that works are completed in accordance with Council's requirements with Council's approval.</p>
29.	<p><b>Swimming Pool Safety</b> Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the <i>Swimming Pools Act 1992</i>; the <i>Swimming Pools Regulation 2018</i> and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).</p> <p>Condition Reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area prior to use.</p>
30.	<p><b>Swimming Pool Safety</b> A 'warning notice' must be installed in a prominent position in the immediate vicinity of a Swimming Pool [or Spa Pool], in accordance with the provisions of the <i>Swimming Pools Regulation 2018</i>, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.</p> <p>Condition Reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area prior to use.</p>
31.	<p><b>Swimming Pool Safety</b> The owner of the premises must 'register' their Swimming Pool [or Spa Pool] on the NSW Swimming Pool Register, in accordance with the <i>Swimming Pools Act 1992</i>. The Swimming Pool Register is administered by the NSW Government and registration on the Swimming Pool Register may be made on-line via their website <a href="http://www.swimmingpoolregister.nsw.gov.au">www.swimmingpoolregister.nsw.gov.au</a>.</p> <p>Registration must be made prior to the issue of an Occupation Certificate for the pool and a copy of the NSW Swimming Pool Certificate of Registration must be forwarded to the Principal Certifier and Council accordingly.</p> <p>Condition Reason: To ensure registration of the swimming pool/spa in accordance with relevant legislation.</p>

## OCCUPATION AND ONGOING USE

	Condition
32.	<p><b>Use of Premises</b> The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.</p>

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Condition	
Condition Reason: To ensure the development is used for its intended purpose.	
33.	<p><b>External Lighting</b></p> <p>External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
34.	<p><b>Plant &amp; Equipment</b></p> <p>Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>

## DEMOLITION WORK

### BEFORE DEMOLITION WORK COMMENCES

Condition	
35.	<p><b>Demolition Work Plan</b></p> <p>A demolition work plan must be developed and be implemented for any demolition works in accordance with AS2601 (2001)- Demolition of Structures.</p> <p>The demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601 Demolition of Structures and Randwick City Council's Asbestos Policy.</p> <p>The demolition work plan must include details of the demolition, removal, storage and disposal of any hazardous materials (including materials containing asbestos).</p> <p>A copy of the demolition work plan must be provided to the Principal Certifier and Council. A copy shall also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.</p>

### DURING DEMOLITION WORK

Condition	
36.	<p><b>Demolition Work</b></p> <p>Any demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard - AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a demolition work plan, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> <li>• A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m<sup>2</sup> of bonded asbestos (i.e. fibro),</li> <li>• Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations</li> <li>• A sign must be provided to the site/building stating "Danger Asbestos"</li> </ul>



Condition
<p>Removal In Progress",</p> <ul style="list-style-type: none"><li>• Council is to be given at least two days written notice of demolition works involving materials containing asbestos,</li><li>• Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,</li><li>• A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works.</li></ul>

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

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



## Development Application Report No. D77/24

**Subject:** 7/18 Bona Vista Avenue, Maroubra (DA/739/2024)

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### Executive Summary

<b>Proposal:</b>	Alterations and additions to existing residential apartment (Unit 7) within a residential flat building including internal changes to re-locate kitchen/dining to living room and replacement of windows/brickwork to provide sliding doors to existing balcony
<b>Ward:</b>	Central Ward
<b>Applicant:</b>	Group Architects Pty Ltd
<b>Owner:</b>	M Grey
<b>Cost of works:</b>	\$186,557.90
<b>Reason for referral:</b>	The development contravenes the Height of Buildings Development Standard by more than 10%

### Recommendation

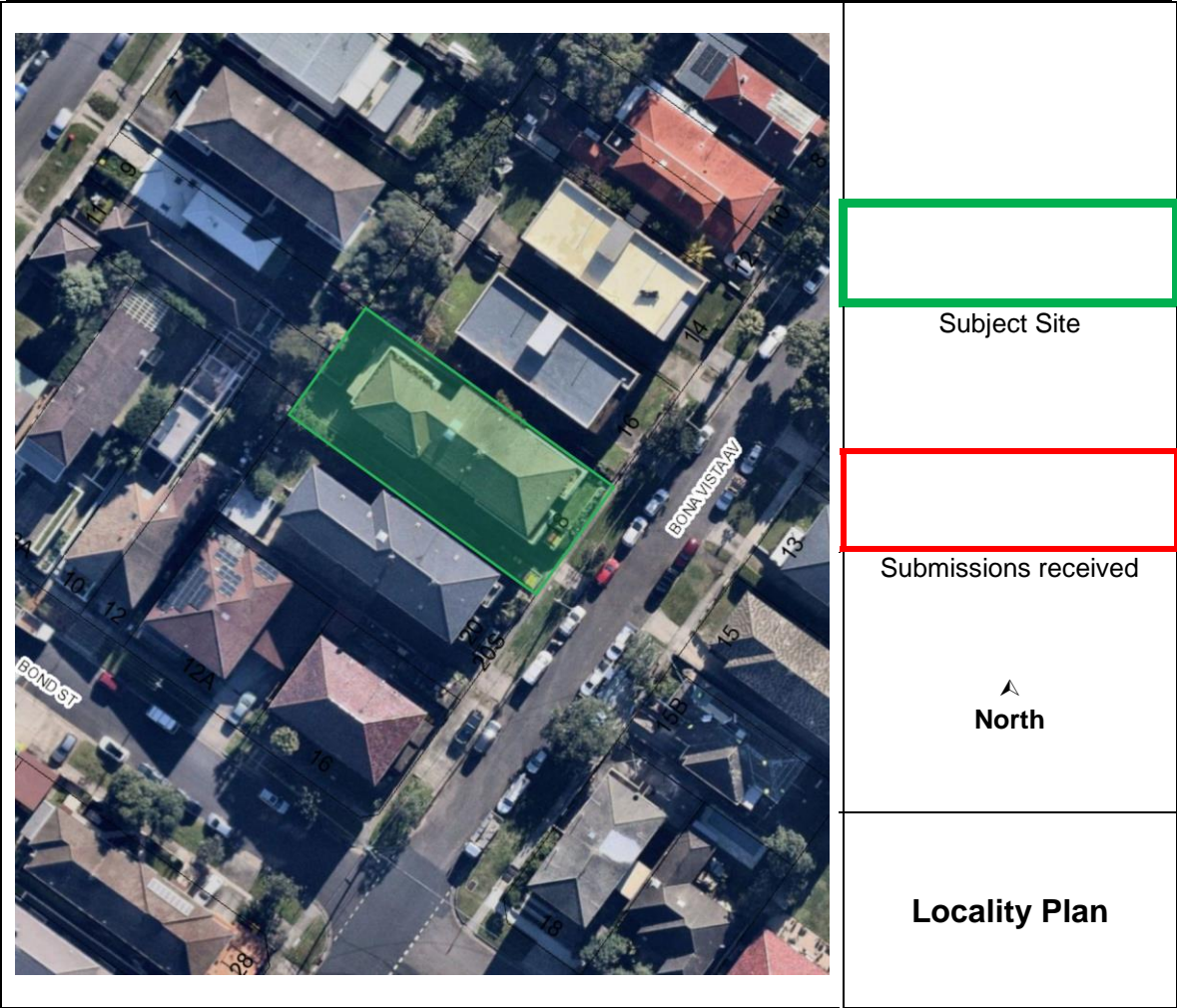
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of buildings development standard in Clause 4.3 of Randwick Local Environmental Plan 2012.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/739/2024 for alterations and additions to Unit 7, at No. 18 Bona Vista Avenue, Maroubra, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/739/2024 - 7/18 Bona Vista Avenue, Maroubra NSW 2035 - DEV - Group Architects Pty Ltd

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1. Executive summary

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

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

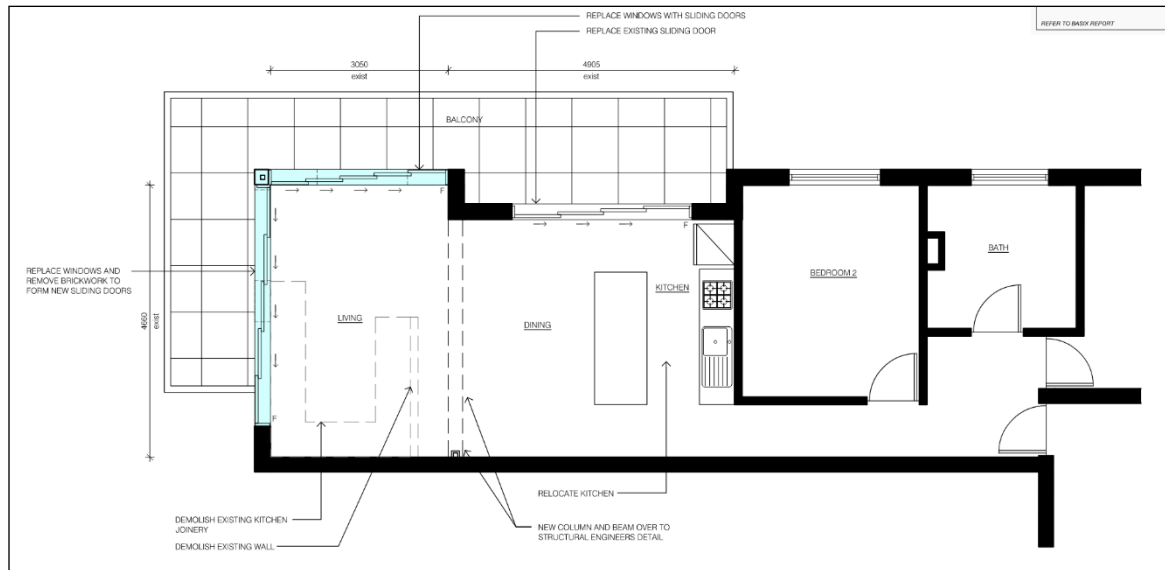
The application seeks development consent for alterations and additions to Unit 7 within an existing residential flat building at the subject site. In detail the application seeks to:

- Demolish the walls and windows in the southeast and west of the unit and replace them with sliding window doors;
- Demolish the existing kitchen joinery and wall;
- Swap the location of the existing living room and kitchen; and
- Construct a new column and beam between dining and living area.

The key issues associated with the proposal relates to the existing residential flat building which measures 14.25 metres in height, being 4.75 metres above the maximum height limit of 9.5 metres. The proposed works relate to the unit at the third floor, occurring between 9.25m and 11.475 metres. Accordingly, the applicant has submitted a Clause 4.6 Variation request.

The application is recommended for approval.

**Figures 1 to 3** below display the proposed works.



**Figure 1: Proposed Floor Plan** (source: Group Architect, dated July 2024)



**Figure 2:** Proposed Southeast Elevation (source: Group Architect, dated July 2024)



**Figure 3:** Proposed southwest elevation (source: Group Architect, dated July 2024)

## 2. Site Description and Locality

The subject site is located at 7/18 Bona Vista Avenue, Maroubra and is legally identified as Lots 1 to 9 in Strata Plan 8473. The subject site is zoned R2 low density residential and measures approximately 695.4sqm in area.

The subject site is improved with a four storey walk-up residential flat building with undercroft garages and parking. The surrounding area provides residential flat buildings of a similar character.

The site slopes approximately 2.5m along Bona Vista Avenue.

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**Figure 4:** 18 Bona Vista Avenue (source: Site inspection 4/09/2024)



**Figure 5:** 18 Bona Vista Avenue (source: Site inspection 4/09/2024)





**Figure 6:** Bona Vista Avenue surrounding area (source: Site inspection 4/09/2024)



**Figure 7:** Bona Vista Avenue surrounding area (source: Site inspection 4/09/2024)

### 3. Relevant history

The subject site has been used for the purpose of a residential flat building for a significant period of time. **BA/1101/1972** is the application which approved the existing residential flat building.

DA/638/2024 – External alterations and additions to existing residential flat building, including new façade finishes replacement of balustrades and increased waste storage areas. This application was lodged on 17 July 2024 and has not been determined.

### 4. Proposal

The application seeks development consent for alterations and additions to unit 7 within an existing residential flat building at the subject site. In detail the application seeks to:

- Demolish the walls and windows in the southeast and west of the unit and replace them with sliding window doors;
- Demolish the existing kitchen joinery and wall;
- Swap the location of the existing living room and kitchen; and
- Construct a new column and beam between dining and living area.

## 5. Notification

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

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Housing) 2021

Chapter 4 *Design of residential apartment development* of *State Environmental Planning Policy (Housing) 2021* does not apply to the application as it proposes minor alterations and internal refurbishment.

### 6.2. SEPP (Sustainable Buildings) 2022

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

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

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

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

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

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

#### Chapter 2 – Coastal Management

The subject site is not within any area identified by *State Environmental Planning Policy (Resilience and Hazards) 2021*.

#### Chapter 4 - Remediation of Land

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

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

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

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

The site is zoned Residential R2 Low Density under Randwick Local Environmental Plan 2012. Within that zone development for the purpose of **Residential Flat Building** are **NOT** permissible with consent.

As below, the residential flat building is considered an existing use as defined under *Division 4.11 of Environmental Planning and Assessment Act 1979 (The EP&A Act)*.

### 4.65 Definition of “existing use”

*In this Division, existing use means—*

*(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land—*

*(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*

*(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

The residential flat building was approved in 1971 and likely constructed around that time, being well before the commencement of *Randwick Local Environmental Plan 2012*. The residential flat building therefore benefits from existing use rights.

Clause 4.67 of the EP&A Act allows the regulations to make provision for existing use rights as follows:

*(1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—*

*(a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*

Part 7 of *Environmental Planning and Assessment Regulation 2021* relevantly permits:

### 163 Certain development allowed

*(1) An existing use may, subject to this Part—*

*(b) be altered or extended, or*

### 165 Alteration of buildings and works

*(1) Development consent is required for an alteration of a building or work used for an existing use.*

*(2) The alteration must be—*

*(a) for the existing use of the building or work and for no other use, and*

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*(b) erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant day.*

The residential flat building is a demonstrated existing use and the application seeks development consent for alterations to the existing residential flat building only. Accordingly, the application is eligible for development consent despite not being a permitted use under *Randwick Local Environmental Plan 2012*.

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

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

Description	Council Standard	Proposed	Compliance (Yes/No/NA)
Floor Space Ratio (Maximum)	0.5:1	No changes to gross floor area.	N/A
Height of Building (Maximum)	9.5 Metres	Up to 14.25 Metres (existing)	No

6.5.1. *Clause 4.6 - Exceptions to development standards*

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

6.5.2. *Clause 5.10 - Heritage conservation*

The subject site does not comprise a heritage item, nor is it within a heritage conservation area. It is not in the immediate proximity of either.

6.5.3. *Clause 6.7 - Foreshore scenic protection area*

The subject site is within the foreshore scenic protection area. Clause 6.7 of *Randwick Local Environmental Plan 2013* requires the following to be considered.

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

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

The application would not result in any additional visual impact upon public areas, coastlines, views, or open space as there is no proposed additions which alter the existing building envelope.

The existing scenic quality of the coastal foreshore would be maintained.

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)	9.5 metres	14.25 Metres (existing height ridge)	4.75 Metres	33.33%



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 (Cl 4.3)

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

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

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

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

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

*"The proposed works so not alter the existing residential flat buildings' size and scale, and therefore remains compatible with the existing 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*

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

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

*"The proposed works are wholly within the envelope of the existing residential flat buildings' including the existing heights and therefore does not contribute any further impacts on the amenity of adjoining or neighbouring land in visual bulk, privacy, overshadowing or views."*

Assessing officer's comment: The applicant's written request has adequately demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case. The proposed works would not increase the existing approved height and are contained within the building existing envelope.



**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:

*"The proposed works do not change the existing height of the existing residential flat building, as the works relate to alterations and additions to an existing apartment within the existing building, with no change to the existing bulk and scale of the building, including the building height. As such the non-compliance is numeric only, with no material impact. The proposed works maintain the existing buildings' consistency within the existing streetscape."*

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

**Conclusion**

The height control has been breached due to the existing building, which is an existing use. It is likely that the land was the subject of rezoning which imposed a standard height limit for the zone below the existing building height.

The application has demonstrated that it is compliant with the height of building objectives under clause 4.3 of Randwick Local Environmental Plan 2012. The application would not alter the existing character of the locality and would not result in impacts of bulk, privacy, overshadowing and views.

The works proposed would be wholly within the existing building envelope, with no additional structures or elements contributing to further height or bulk in any capacity.

Given the scope of the application, there would be no reasonable manner of achieving compliance with the height of buildings development standard.

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

**8. Development control plans and policies**

**8.1. Randwick Comprehensive DCP 2013**

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

The relevant provisions of the DCP are addressed in Appendix 3.

## 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

### 9.1. Discussion of key issues

No key issues were identified which required further discussion under this section.

## 10. Conclusion

That the application for alterations and additions to unit 7 within an existing residential flat building be approved (subject to conditions) for the following reasons:

- Existing use rights have been demonstrated for the Residential Flat Building with the proposed works being permissible through existing use rights;
- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

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

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06 August 2024

General Manager  
Randwick City Council  
30 Frances St,  
RANDWICK NSW 2031

### CLAUSE 4.6 (Exceptions to Development Standards) – Clause 4.3 Height of Buildings

**Proposal:** Alterations and additions to an existing apartment within an existing residential flat building

**Property:** 7/18 Bona Vista Ave, MAROUBRA

Dear Sir/Madam,

Pursuant to Clause 4.6 (Exceptions to Development Standards) of the Randwick Local Environmental Plan 2012 (RLEP 2012), please see the below to address the provisions as detailed in Clause 4.3 of the RLEP 2012.

The proposed works in this application relate to alterations to an existing apartment including internal layout changes and the alteration of existing windows to sliding doors. No change to the existing building height is proposed.

The subject site at 18 Bona Vista Ave, Maroubra contains an existing residential flat building within an R2 zone, and is subject to Existing Use Rights. The RLEP 2012 height limit for the subject site is 9.5m. The existing building has a maximum height of 14.25m to the existing ridge line and the proposed works occurring between 11.875m – 11.475m above ground – 25% above the 9.5m height line.

The proposed works result in a numeric non-compliance with the LEP height limit, but does not result in any material change to the existing height of the building, or the overall bulk and scale.

### 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.*

Assessment against this clause is requested, as the proposed variation to the development standard will be wholly within the existing building form and maintain the existing outcomes for the existing building with no additional impacts to the surrounding properties.

- (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.*

Pursuant to this clause, this written request has been prepared to address the relevant objectives. The development standard in question is not excluded from the operation of this clause.

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

The requirements of Clause 4.6(3) are addressed below



**Clause 4.6(3) Requirements****Clause 4.6(3)a**

This clause requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. *Wehbe v Pittwater Council [2007] NSWLEC 827* established five potential tests for determining whether a development standard might be considered unreasonable or unnecessary. The five tests are as follows:

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

It is considered that the proposed development adequately satisfies Test 1 with the objectives of the Development Standard being achieved, notwithstanding the numeric non-compliance with the development standard as detailed below:

The objectives of the maximum building height development standard set out by **Clause 4.3 – Height of Buildings** 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.*

The numeric non-compliance with Clause 4.3 does not diminish the developments existing response to the the objectives of this clause.

- (a) The proposed works do not alter the existing residential flat buildings' size and scale, and therefore remains compatible with the existing character of the locality.
- (b) The subject site is not within a conservation area nor near a heritage item.
- (c) The proposed works are wholly within the envelope of the existing residential flat buildings' including the existing heights and therefore does not contribute any further impacts on the amenity of adjoining or neighbouring land in visual bulk, privacy, overshadowing or views.

Compliance with the Height of Building Development Standards is unreasonable and unnecessary in the circumstances of this development as the proposed works do not change the height of the existing residential flat building.

**Clause 4.6(3)b**

This clause requires that there be sufficient environmental planning grounds to justify contravening the development standard. There are sufficient environmental planning grounds that justify the numeric non-compliance based on the Existing Use Rights that are applicable to the site.

The proposed works do not change the existing height of the existing residential flat building, as the works relate to alterations and additions to an existing apartment within the existing building, with no change to the existing bulk and scale of the building, including the building height. As such the non-compliance is numeric only, with no material impact. The proposed works maintain the existing buildings' consistency within the existing streetscape.

**Conclusion**

In conclusion, the proposed numeric non-compliance with the Height of Buildings development standard does not alter the existing residential flat buildings compliance with the objectives of Clause 4.3 and the objectives R2 - Low Density Residential Zone of the RLEP 2012. As such the requirements of the Clause 4.6 of the LEP are satisfied and therefore we ask that Randwick Municipal Council consider this Clause 4.6 Variation request and determine the application favourably.

We trust this request to vary the planning controls meets with your approval, and if you have any queries regarding the application please do not hesitate to contact the undersigned.

**Appendix 2: DCP Compliance Table****3.3 Section C2: Medium Density Residential**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>3.</b>	<b>Building Envelope</b>		
<b>3.2</b>	<b>Building height</b>		
	<p>9.5 Metres</p> <p>Building height is a major factor affecting the visual mass of a development and influences streetscape character and adjoining residential amenity. Under RLEP the maximum building height permissible on a parcel of land is shown in metres on the Height of Buildings Map. The height of buildings is measured from the natural ground level (at any point) to the highest point of the building which includes roofs, list overruns and plants, as defined in Clause 4.3 of RLEP.</p>	<p>14.25 metres (existing ridge height).</p> <p>4.75 metres above, being 33.33% in excess of the control.</p>	<p>No.</p> <p>4.6 variation request provided.</p> <p>Acceptable on merit of existing building and appropriate proposed works.</p> <p>Detailed assessment provided in report.</p>
<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>(v) Conceal building services and pipes within the balcony slabs.</p> <p>(vi) Alterations and additions to an existing residential flat building must present an integrated design with suitable façade configuration, materials and detailing, so that the new and retained structures are visualised as one whole building.</p>	<p>(i) RFB would continue to address Bona Vista Avenue.</p> <p>(ii) No change to RFB orientation.</p> <p>(iii) Façade articulation would remain generally consistent. Proposed windows are in line with those exhibited by surrounding development.</p> <p>(iv) Not proposed.</p> <p>(v) Not proposed.</p> <p>(vi) The proposed alterations are suitable and would integrate suitably into the existing built form.</p>	<p>Yes</p>
<b>4.4</b>	<b>External wall height and ceiling height</b>		
	<p>(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.</p>	<p>The existing building was approved in 1971 and likely built around that</p>	



DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		time, being subject to different controls.  The existing wall height is 11.9 metres.  The proposed alterations and additions would not affect the existing wall height.	No.  Existing building exceed control.  Acceptable on merit.
4.7	Apartment layout		
	(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></ul> 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.	(i) Increased window sizes would improve internal lighting and ventilation.	Yes
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	(ii) Proposed internal alterations would improve internal flexibility.	
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	(iii) Maintained.	
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	(iv) Not proposed.	
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m2 and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	(i) No change to existing balcony.	Yes
4.9	Colours, materials and finishes		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.	Majority of proposed external material is glass.	Yes
	(ii) The selection of colour and material palette must complement the character and style of the building.	Standard condition for matching colours,	

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> <li>- Changes of colours and surface texture</li> <li>- Inclusion of light weight materials to contrast with solid masonry surfaces</li> <li>- The use of natural stones is encouraged.</li> </ul> <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> <li>- Reflective wall cladding, panels and tiles and roof sheeting</li> <li>- High reflective or mirror glass</li> <li>- Large expanses of glass or curtain wall that is not protected by sun shade devices</li> <li>- Large expanses of rendered masonry</li> <li>- Light colours or finishes where they may cause adverse glare or reflectivity impacts</li> </ul> <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>	materials, and finishes to be imposed.	
<b>5. 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>	The proposed windows would improve solar access into unit 7.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.		
Solar access for surrounding development			
	(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.	Unaffected.	Yes
	(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.		
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
5.2	Natural ventilation and energy efficiency		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	The proposed windows would improve natural ventilation into unit 7.	Yes
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.		
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.		
	(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.		
	(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.		
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.		
<b>5.3</b>	<b>Visual privacy</b>		
	<ul style="list-style-type: none"> <li>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</li> <li>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</li> <li>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</li> <li>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</li> <li>(v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> <li>- Translucent glazing</li> <li>- Fixed timber or metal slats</li> <li>- Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings</li> <li>- Screen planting and planter boxes as a supplementary device for reinforcing privacy protection</li> </ul> </li> </ul>	Unaffected.	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 a priority over those obtained from the bedrooms and non-habitable rooms.</li> <li>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to</li> </ul>	<p>Subject site is within the foreshore scenic protection area.</p> <p>Views would not be affected by the application.</p>	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>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>		

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**Responsible officer:** Dean Lidis, Environmental Planning Officer

**File Reference:** DA/739/2024

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Development Consent Conditions  
(Medium Density Residential)



Folder /DA No:	DA/739/2024
Property:	7/18 Bona Vista Avenue, MAROUBRA NSW 2035
Proposal:	Alterations and additions to existing residential apartment (Unit 7) within a residential flat building including internal changes to re-locate kitchen/dining to living room and replacement of windows/brickwork to provide sliding doors to existing balcony
Recommendation:	Approval

GENERAL CONDITIONS

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

Plan	Drawn by	Dated	Received by Council
Proposed Floor Plan DWG No.: 2023-030-101	Group Architects	July 2024	14 August 2024
Proposed Southeast Elevation DWG No.: 2023-030-200	Group Architects	July 2024	14 August 2024
Proposed Southwest Elevation DWG No.: 2023-030-201	Group Architects	July 2024	14 August 2024
Proposed Southeast Elevation 2 DWG No.: 2023-030-202	Group Architects	July 2024	14 August 2024
Proposed Southwest Elevation 2 DWG No.: 2023-030-203	Group Architects	July 2024	14 August 2024
Proposed Section DWG No.: 2023-030-300	Group Architects	July 2024	14 August 2024

BASIX Certificate No.	Dated	Received by Council
A1758124	01 August 2024	14 August 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
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2. **Consent Requirements**
- The requirements and amendments detailed in the ‘General Conditions’ must be complied with and be included in the construction certificate plans and associated documentation.



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Condition

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

3. **External Colours, Materials & Finishes**

The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.

Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.

4. **Section 7.12 Development Contributions**

Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$186,557.90 the following applicable monetary levy must be paid to Council: \$932.80 .

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

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

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

Where:

**IDC** = the indexed development cost

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

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

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

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

Condition Reason: To ensure relevant contributions are paid.

5. **Long Service Levy Payments**

Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction Industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with Section 6.8 of the *Environmental Planning and Assessment Act 1979*.

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

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Condition	
	<i>cost of the works.</i>
	Condition Reason: To ensure the long service levy is paid.
6.	<p><b>Security Deposits</b></p> <p>The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none"> <li>• \$5000.00 - Damage / Civil Works Security Deposit</li> </ul> <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
7.	<p><b>Sydney Water</b></p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> <li>• Building plan approvals</li> <li>• Connection and disconnection approvals</li> <li>• Diagrams</li> <li>• Trade waste approvals</li> <li>• Pressure information</li> <li>• Water meter installations</li> <li>• Pressure boosting and pump approvals</li> <li>• Change to an existing service or asset, e.g. relocating or moving an asset.</li> </ul> <p>Sydney Water's Tap in™ in online service is available at:  <a href="https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm">https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</a></p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>

Condition	
8.	<p><b>Building Code of Australia</b></p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
9.	<p><b>BASIX Requirements</b></p> <p>In accordance with section 4.17(11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 75 of the <i>Environmental Planning and Assessment Regulation 2021</i>, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
10.	<p><b>Site stability, Excavation and Construction work</b></p> <p>A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:</p> <ul style="list-style-type: none"> <li>(a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties.</li> <li>(b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.</li> <li>(c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.</li> <li>(d) Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work.</li> <li>(e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate.</li> </ul> <p>Condition Reason: To ensure the subject site/development and adjoining land is adequately supported and protected during any works.</p>

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Condition

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**BEFORE BUILDING WORK COMMENCES**

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Condition

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11. **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.

12. **Home Building Act 1989**

In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and sections 69 & 71 of the *Environmental Planning and Assessment Regulation 2021*, in relation to residential building work, the requirements of the *Home Building Act 1989* must be complied with.

Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

Condition Reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.

13. **Dilapidation Reports**

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

	Condition
	<p>The dilapidation report must be submitted to the Principal Certifier, Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).</p> <p>Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>
14.	<p><b>Construction Noise &amp; Vibration Management Plan</b></p> <p>Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.</p> <p>A <i>Construction Noise &amp; Vibration Management Plan</i> must be developed and implemented throughout demolition and construction work.</p> <p>(a) The <i>Construction Noise &amp; Vibration Management Plan</i> must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority <i>Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline</i> (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.</p> <p>(b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.</p> <p>(c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the <i>Construction Noise &amp; Vibration Management Plan</i> and which demonstrates compliance with relevant criteria.</p> <p>(d) Any recommendations and requirements contained in the <i>Construction Noise &amp; Vibration Management Plan</i> and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.</p> <p>A copy of the Construction Noise &amp; Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.</p> <p>(e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
15.	<p><b>Construction Site Management Plan</b></p> <p>A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p>

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Condition	
	<ul style="list-style-type: none"> <li>• location and construction of protective site fencing and hoardings</li> <li>• location of site storage areas, sheds, plant &amp; equipment</li> <li>• location of building materials and stock-piles</li> <li>• tree protective measures</li> <li>• dust control measures</li> <li>• details of sediment and erosion control measures</li> <li>• site access location and construction</li> <li>• methods of disposal of demolition materials</li> <li>• location and size of waste containers/bulk bins</li> <li>• provisions for temporary stormwater drainage</li> <li>• construction noise and vibration management</li> <li>• construction traffic management details</li> <li>• provisions for temporary sanitary facilities</li> <li>• measures to be implemented to ensure public health and safety.</li> </ul>
	<p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
16.	<p><b>Construction Site Management Plan</b></p> <p>A <i>Sediment and Erosion Control Plan</i> must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.</p>
17.	<p><b>Public Liability</b></p> <p>The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p>

## DURING BUILDING WORK

Condition	
18.	<p><b>Site Signage</b></p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> <li>a) showing the name, address and telephone number of the principal certifier for the work, and</li> <li>b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and</li> <li>c) stating that unauthorised entry to the work site is prohibited.</li> </ol>



## Condition

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.

19. **Restriction on Working Hours**

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> <li>• Monday to Friday - 7.00am to 5.00pm</li> <li>• Saturday - 8.00am to 5.00pm</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> <li>• Monday to Friday - 8.00am to 3.00pm</li> <li>• (maximum)</li> <li>• Saturday - No work permitted</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> <li>• Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted</li> </ul>

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

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

20. **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.

21. **Construction Site Management**

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

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### Condition

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

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

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

**Notes:**

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

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

#### 22. **Public Safety & Site Management**

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

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

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

Condition
<p><i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i></p> <p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>j) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
<p>23. <b>Dust Control</b></p> <p>Dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation, and construction process, to the satisfaction of Council.</p> <p><i>Dust control measures and practices may include:</i></p> <ul style="list-style-type: none"> <li><i>Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).</i></li> <li><i>Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.</i></li> <li><i>Installation of water sprinkling system or provision hoses or the like.</i></li> <li><i>Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.</i></li> <li><i>Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.</i></li> <li><i>Landscaping and revegetation of disturbed areas.</i></li> </ul> <p>Condition Reason: To require details of measures that will minimise impacts to the public, and the surrounding environment, during site works and construction.</p>
<p>24. <b>Site Accessway</b></p> <p>A temporary timber, concrete crossing or other approved stabilised access is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council throughout the works, unless access is via an existing suitable concrete crossover.</p> <p>Any damage caused to the road, footpath, vehicular crossing or nature strip during construction work must be repaired or stabilised immediately to Council's satisfaction.</p> <p>Condition Reason: To minimise and prevent damage to public infrastructure.</p>
<p>25. <b>Excavations and Support of Adjoining Land</b></p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and</i></p>

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Condition	
	<p><i>Assessment Act 1979</i> and section 74 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.</p> <p>Condition Reason: Prescribed condition under section 74 of the <i>Environmental Planning and Assessment Regulation 2021</i>.</p>
26.	<p><b>Complaints Register</b></p> <p>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.</p> <p>Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigation, actioned and responded to and documented in a Complaints Register accordingly.</p> <p>Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.</p> <p>Condition Reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.</p>
27.	<p><b>Building Encroachments</b></p> <p>There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p>
28.	<p><b>Survey Report</b></p> <p>A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</p> <ul style="list-style-type: none"> <li>• prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,</li> <li>• prior to construction (pouring of concrete) of new floor levels,</li> <li>• prior to issuing an Occupation Certificate, and</li> <li>• as otherwise may be required by the Principal Certifier.</li> </ul> <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p> <p>Condition Reason: To ensure compliance with approved plans.</p>

#### BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
29.	<p><b>Occupation Certificate Requirements</b></p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition Reason: Statutory requirement. To ensure the site is authorised for</p>

Condition	
	occupation.
30.	<p><b>BASIX Requirements</b></p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>
31.	<p><b>Post-construction Dilapidation Report</b></p> <p>A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.</p> <p>The dilapidation report shall detail whether:</p> <ul style="list-style-type: none"> <li>(a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and</li> <li>(b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent.</li> </ul> <p>The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.</p> <p>Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>
32.	<p><b>Fire Safety Certificate</b></p> <p>A single and complete <i>Fire Safety Certificate</i>, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the <i>Fire Safety Certificate</i> must be displayed in the building entrance/foyer at all times and a copy of the <i>Fire Safety Certificate</i> and <i>Fire Safety Schedule</i> must also be forwarded to Fire and Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, and that adequate provision is made for fire safety in the premises for building occupant safety.</p>
33.	<p><b>Structural Certification</b></p> <p>A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal Certifier</i>. A copy of which is to be provided to Council.</p>

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### Condition

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Condition Reason: To ensure the structural adequacy of the building and works.

34. **Sydney Water Certification**

A *section 73 Compliance Certificate*, under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site [www.sydneypwater.com.au](http://www.sydneypwater.com.au) > Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

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

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

Condition Reason: To ensure the development satisfies Sydney Water requirements.

35. **Noise Control Requirements & Certification**

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

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

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

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

36. **Street and/or Sub-Address Numbering**

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

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

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

Condition Reason: To ensure properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.



## OCCUPATION AND ONGOING USE

Condition	
37.	<b>External Lighting</b> External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.  Condition Reason: To protect the amenity of the surrounding area and residents.

## DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
38.	<b>Demolition Work</b> A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:  a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy.  b) The Demolition Work Plan must include the following details (as applicable): <ul style="list-style-type: none"><li>• The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor</li><li>• Details of hazardous materials in the building (including materials containing asbestos)</li><li>• Method/s of demolition (including removal of any hazardous materials including materials containing asbestos)</li><li>• Measures and processes to be implemented to ensure the health &amp; safety of workers and community</li><li>• Measures to be implemented to minimise any airborne dust and asbestos</li><li>• Methods and location of disposal of any hazardous materials (including asbestos)</li><li>• Other measures to be implemented to ensure public health and safety</li><li>• Date the demolition works will commence/finish.</li></ul> The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.  If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.  <i>Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m<sup>2</sup> of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.</i>  <i>A copy of Council's Asbestos Policy is available on Council's web site at <a href="http://www.randwick.nsw.gov.au">www.randwick.nsw.gov.au</a> in the Building &amp; Development section or a copy can be obtained from Council's Customer Service Centre.</i>  Condition Reason: To ensure demolition work area carried out in accordance with

Condition

the relevant standards and requirements.

DURING DEMOLITION WORK

- Condition
39.

Demolition Work and Removal of Asbestos Materials

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

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

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

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

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

## Development Application Report No. D78/24

**Subject:** 171 Darley Road, Randwick (DA/511/2024)

### Executive Summary

<b>Proposal:</b>	Alterations and additions to an existing attached dwelling including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works (Heritage Conservation Area – North Randwick and Heritage Item – I349)
<b>Ward:</b>	North Ward
<b>Applicant:</b>	Ahron Best
<b>Owner:</b>	Frank Barila & Caroline Barila
<b>Cost of works:</b>	\$1,125,000.00
<b>Reason for referral:</b>	The development involves demolition of a heritage item (I349), and the development contravenes the development standard for floor space ratio by more than 10%

### Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 511/2024 for alterations and additions to an existing attached dwelling including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works, at No. 171 Darley Road, for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal exceeds the maximum floor space ratio development standard in Clause 4.4 – Floor Space Ratio of Randwick Local Environmental Plan 2012. The Applicant's written request seeking an exception to the development standard fails to adequately address those matters that are required to be demonstrated pursuant to Clause 4.6 of RLEP 2012 in that it was not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard. Specifically, the proposal is not compatible with the scale and character of contributory buildings and heritage items within a conservation area – which is one of the objectives of the FSR development standard. As such, the non-compliance with the FSR development standard is not supported.
2. Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development has failed to demonstrate consistency with the objectives of the R2 Low Density Residential zone, under Randwick Local Environmental Plan 2012, as it does not contribute to the desired future character of the area or conserve and enhance the heritage significance of the locality.
3. Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the application is considered unacceptable in that the proposed development fails to satisfy the Aims of the Plan in Clause 1.2(2)(j) of Randwick Local Environmental Plan 2012 relating to the conservation of environmental heritage character of Randwick.
4. Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the application is considered unacceptable in that the proposed development fails to satisfy clause 5.10 of the RLEP 2012 as the proposal has not

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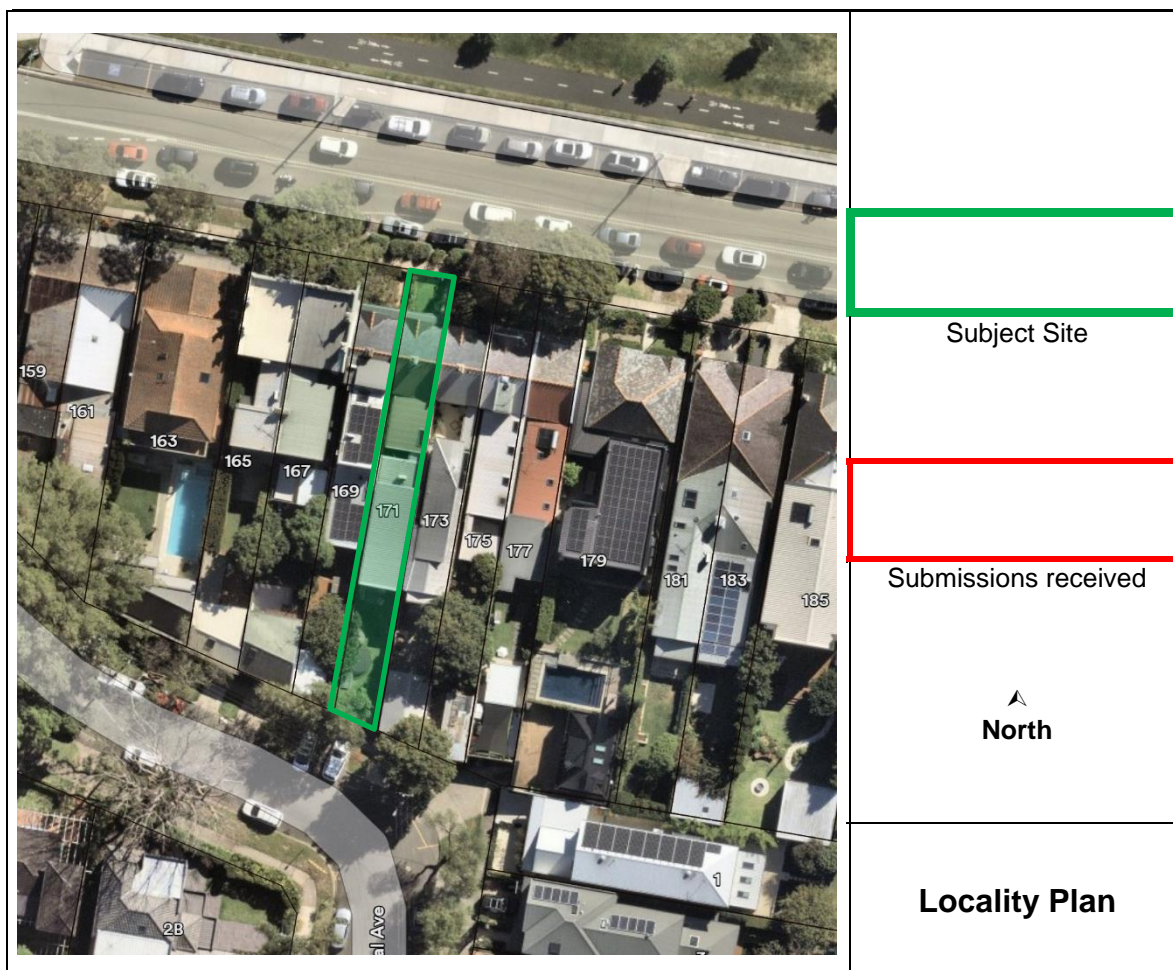
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demonstrated compatibility with the heritage significance of the “row of attached cottages” heritage item (i349) and the North Randwick HCA (C1).

5. Pursuant to the provisions of s.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives and controls of Part B2 of Randwick Development Control Plan 2013 – Section 2.3 Scale and form.
6. Pursuant to the provisions of s.4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposed development will result in adverse impact on the built environment due to alterations which are unsympathetic to the heritage significance of the site which would set an undesirable precedence to other attached dwellings within the group item (i349).
7. Pursuant to Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979, the application has not demonstrated that the subject site is suitable for the development for the following reasons: failure to demonstrate the merits of any proposed variations to Council controls/provisions/requirements, failure to demonstrate that any associated impacts are acceptable and reasonable, failure to provide a proportionate and well-balanced built form which responds to the heritage significance of the site.
8. Pursuant to the provisions of s.4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the development will create an undesirable precedent, and the building proposes significant deviations from both the numerical and merit-based controls and is therefore not in the public interest.

**Attachment/s:**

Nil



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## 1. Executive summary

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

- The development involves partial demolition of a heritage item; and
- The development contravenes the development standard for floor space ratio by more than 10%

The proposal seeks development consent for alterations and additions to an existing dwelling house including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works (Heritage Conservation Area – North Randwick and Heritage Item – I349).

The site is located within R2 – low density residential pursuant to Randwick Local Environmental Plan 2012, under which the land use ‘attached dwellings’ is prohibited. The Applicant asserts that the site benefits from existing use rights pursuant to Division 4.11 of *the Environmental Planning and Assessment Act 1979*.

The key issues associated with the proposal relate to the intrusion of the first floor addition into the original roof structure of the heritage item, exceedance in Floor Space Ratio (FSR) development standard, and deep soil areas. Concern has been raised by Council in relation to the impact of the first floor addition on the heritage significance of the site and the wider group heritage item. The Applicant has been given the opportunity to amend the proposal, however, has failed to redesign the first floor addition to conserve the roof form of the building. Accordingly the proposal is recommended for refusal.



## 2. Site Description and Locality

The subject site is known as 171 Darley Road, Randwick and is legally identified as Lot B, in DP 442452. The site has a north to south orientation, with a 5.08m frontage to Darley Road to the north, a 5.355m frontage to Centennial Avenue to the south and a total site area of 258.9m<sup>2</sup>. The topography of the site features a minor slope to the south, falling approximately 500mm across the length of the site to the Centennial Avenue frontage (rear). The site contains a single storey attached dwelling with timber decking to the rear. There are currently no parking spaces identified across the site, however there is existing driveway access to the site via Centennial Avenue. No significant vegetation is identified across the site.

The subject site forms part of a row of attached dwellings identified as heritage item (I349) within Schedule 5 of the RLEP, which describes the item as 169-177 Darley Road “*Attached row of cottages*”. The site is also located within the North Randwick Heritage Conservation Area (C1), an area characterised by its parkland views and Federation streetscapes.

The neighbouring properties to the west, 169 Darley Road, and the east, 173 Darley Road, are part of the same group heritage item, and already accommodate first floor additions. Queens Park (RE1) is located opposite the site on the opposite side of Darley Road.



**Figure 1.** Street presentation of subject site, viewed from Darley Road.





**Figure 2.** Street presentation of group heritage item (I349) 169-177 Darley Road “Attached row of cottages”.



**Figure 3.** Rear frontage of subject property, viewed from Centennial Avenue.



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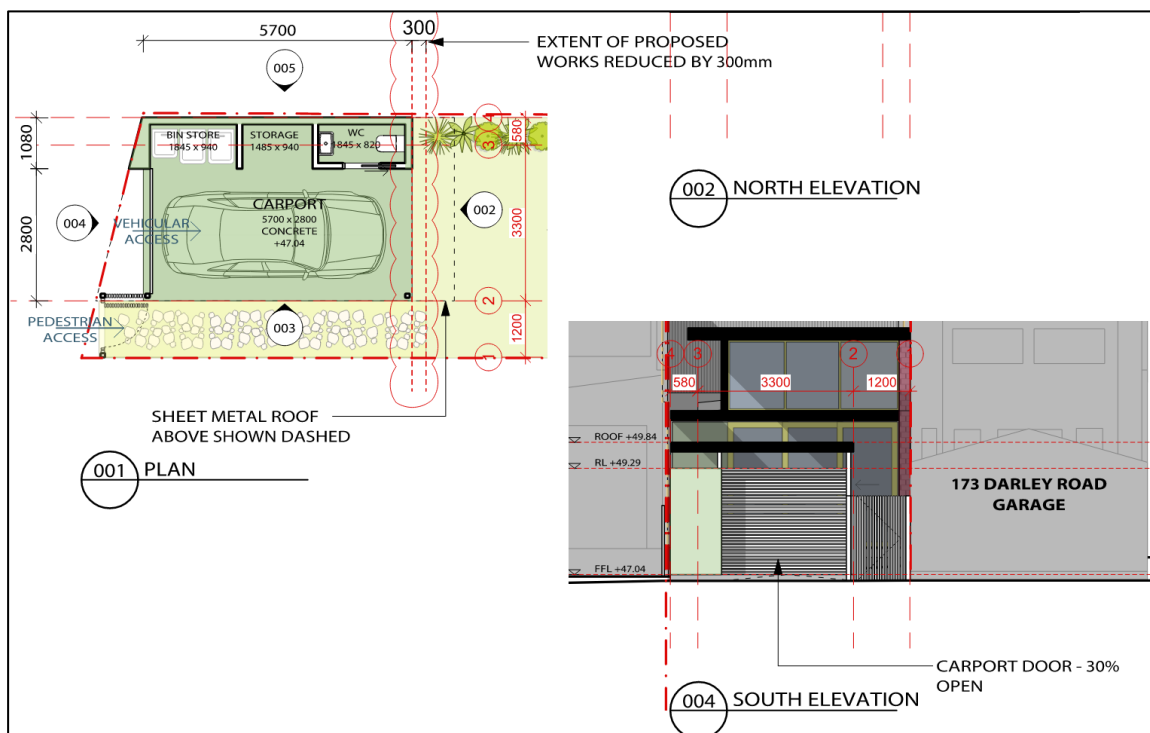


**Figure 4.** Aerial view of the rear of group heritage item, showing rear additions currently accommodated to the row of attached dwellings (Source: Nearthmaps).

### 3. Relevant history

#### Relevant Applications

DA/350/2013 - Alterations and additions to the existing dwelling house including new detached carport fronting Centennial Avenue - Approved 6 August 2013. A construction certificate application (CC/543/2013) was submitted for the works on 14 November 2013. On 1 June 2015 a final occupation certificate was issued for the rear addition, however the carport was never constructed. The development consent remains active, and the carport can still be constructed.



**Figure 5.** Extent and presentation of approved carport under DA/350/2013 (Source: Team B).  
**Additional Information Request and Applicant Meeting**

On 6<sup>th</sup> July 2024, Council's heritage planner completed referral comments for the proposed development, which detailed concerns in relation to the siting of the first floor addition due to the intrusion into the primary roof formation towards the front of the dwelling. The referral comments recommended that a meeting be held with the Applicant to discuss the comments and the potential redesign of the development.

On 17<sup>th</sup> July 2024 Council held a meeting with the Applicant, heritage consultant and owners of the site. Council's heritage planners reasserted their position on the alterations to the heritage item, and recommended potential design amendments, primarily siting the first floor addition further to the rear to maintain the roof form at the front of the dwelling. Council's heritage planners recommended that alternative designs be presented to Council in order for them to consider the feasibility and functionality of an alternative layout.

On 22<sup>nd</sup> July 2024 the formal Additional Information Request was issued to the Applicant detailing Council's concerns with the following matters:

- Heritage referral comments regarding the siting of the first floor addition, and summary of key points from the meeting;
- Amendments to the SEE to address existing use rights pertaining to the site as the proposal relates to a prohibited land use (attached dwellings) within the R2 Low density residential zone, and an assessment against Part C2 of RDCP, relating to medium density residential development;
- The requirement of a written Clause 4.6 variation request due to the exceedance to the Floor Space Ratio development standard;
- Non-compliant deep soil area across the site and fencing arrangements;
- The exceedance in height to the carport configuration.

On 30<sup>th</sup> August 2024 the Applicant submitted an Additional Information package, containing revised Architectural Plans, updated Statement of Environmental Effects, and a Clause 4.6 variation request. The revised Architectural Plans, while containing amendments in relation to deep soil, fencing, and carport design, did not provide amendments to the first floor addition, or provide alternative layouts to be considered.

Accordingly, Council's heritage planner maintains the original referral comments issued to the Applicant, which are detailed in Appendix 1 of this report.

#### **4. Proposal**

The proposal seeks development consent for alterations and additions to an existing dwelling house including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works.

The scope of works comprises the following;

##### Ground Floor

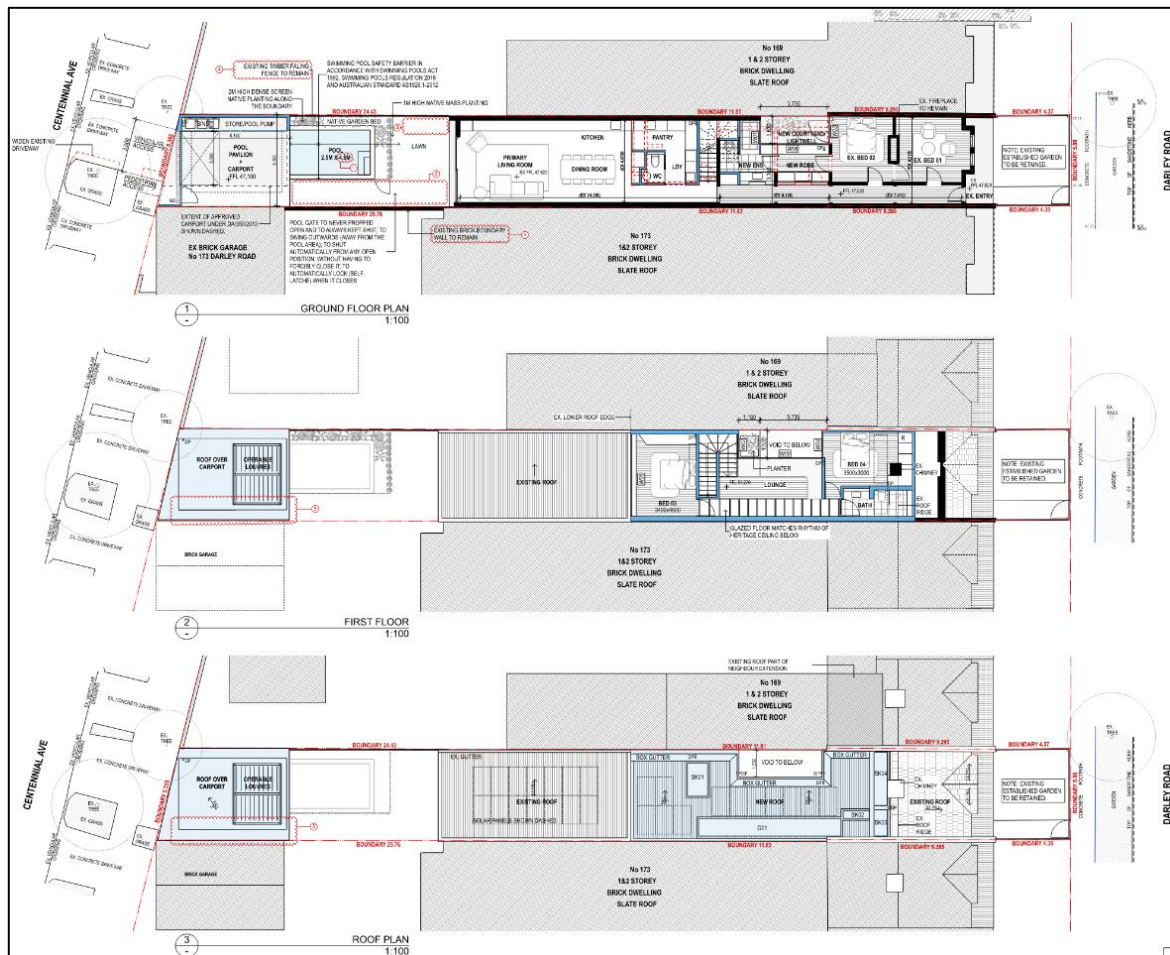
- Demolition and reconstruction of external walls to create internal courtyard
- Internal reconfiguration central to the dwelling to provide walk-in-robe, ensuite, pantry and staircase to proposed first floor addition

##### First Floor

- Partial demolition of existing pitched roof structure
- First floor addition of 2 bedrooms, bathroom and secondary living/ rumpus area
- Pavilion roof structure
- Installation of 5 skylights to roof

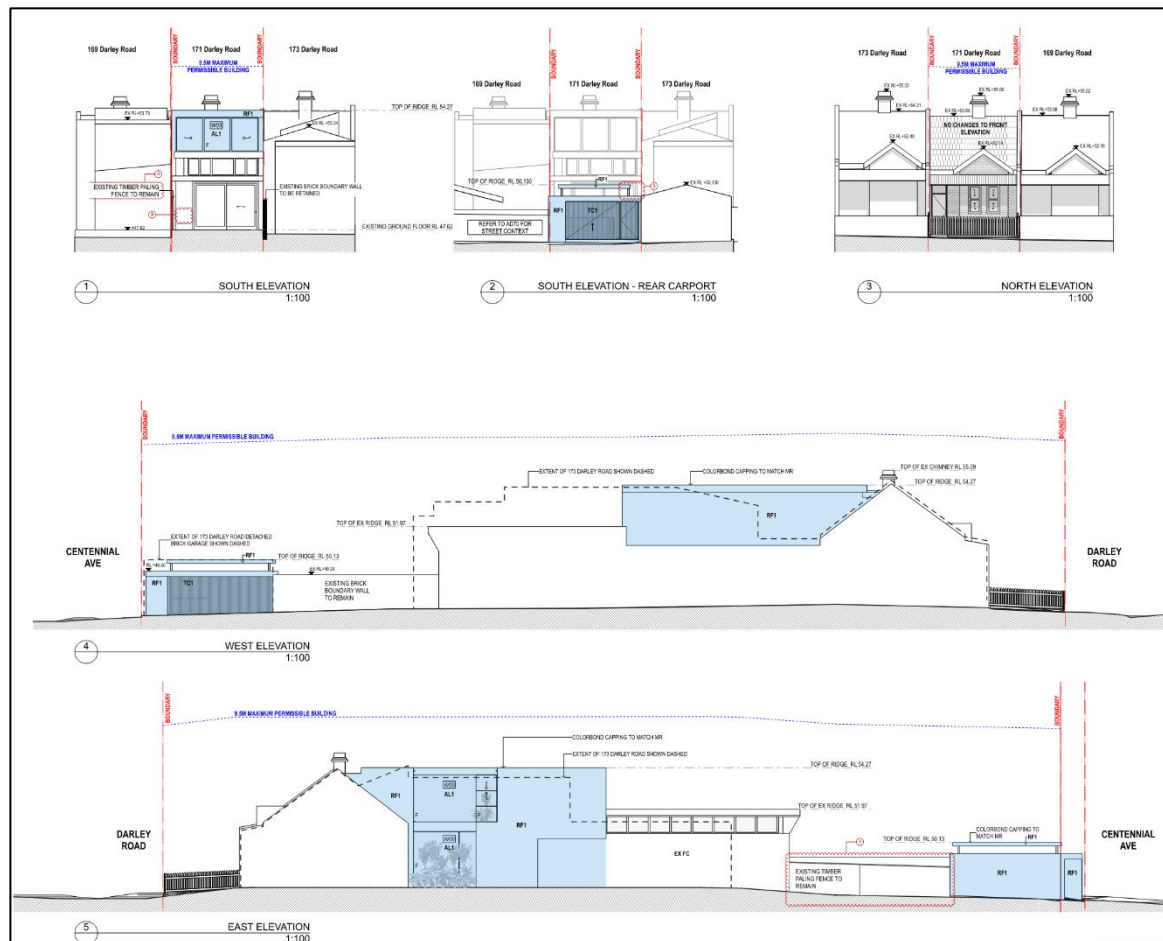
### External and ancillary

- Widen existing driveway from Centennial Avenue to 3m
- Construction of carport to the rear of the site, accessed via Centennial Avenue.
- Removal of existing decking to the rear of the site
- Inground swimming pool within rear yard
- Provision of bin storage and pool equipment within carport structure.
- Associated landscaping including lawn groundcover to replace timber decking and screen planting to the western boundary

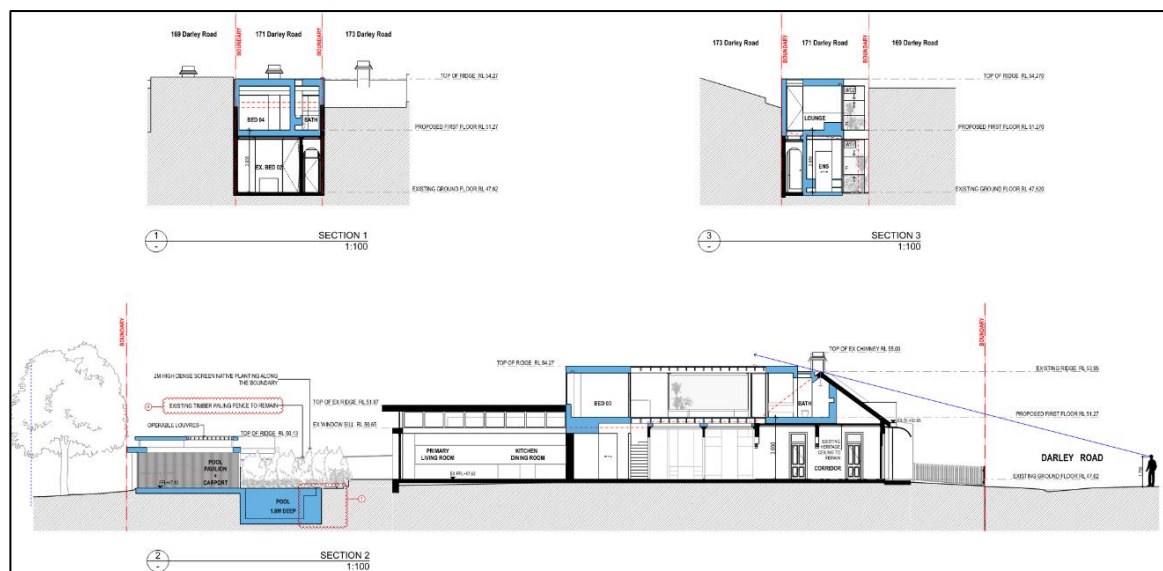


**Figure 6.** Extract of proposed Ground Floor, First Floor and Roof Plan (Source: Ahron Best Architects).





**Figure 7.** Extract of proposed Elevation Plans (Source: Ahron Best Architects).



**Figure 8.** Extract of proposed Section Plans (Source: Ahron Best Architects).

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**Figure 9 & 10.** Existing lightwell along the western elevation, to be widened to internal courtyard.



**Figure 11 & 12.** Internal features to the front of the dwelling to be retained.





**Figure 13.** Presentation of the ground floor rear extension from the rear yard (left), with first floor addition to No.173 Darley Road adjoining to the east (right).



**Figure 14.** Existing rear yard, timber decking to be removed and replaced with lawn groundcover, and carport to be constructed along the rear boundary.

## 5. Notification

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

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Sustainable Buildings) 2022

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

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

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

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

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

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

#### Chapter 4 - Remediation of Land

The provisions of Chapter 4 of the Resilience and Hazards SEPP require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

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

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

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

RLEP 2012. The existing building on the subject site is defined as an attached dwelling. Pursuant to the Land Use Table in Part 2 of RLEP 2012, an “attached dwelling” is a prohibited use in the R2 zone.

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

Based on a review of the background information, it is determined that the existing building was constructed circa 1901-1903, and the building has been the subject to building and development applications in the past, most recently in 2013, for alterations and additions involving a rear extension of the ground floor, and a carport at the rear of the site.

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

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.5:1	Site area = 258.9m <sup>2</sup>  Existing FSR = 0.48:1 (124.5m <sup>2</sup> )  Proposed FSR = 0.715:1 (185m <sup>2</sup> )	No – refer to Clause 4.6 assessment in Section 7.
Cl 4.3: Building height (max)	9.5m	6.85m	Yes

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

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

#### 6.4.2. Clause 5.10 - Heritage conservation

The subject site forms part of a row of attached dwellings identified as heritage item (I349) within Schedule 5 of the RLEP, which describes the item as 169-177 Darley Road “Attached row of cottages”. The site is also located within the North Randwick Heritage Conservation Area (C1).

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

Clause 5.10(4) of 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 main heritage concern associated with the proposal is the impact to the front roof formation to accommodate the first floor addition. Although the additions are not visible from the street, the original roof form is a significant feature of the group item which has largely been maintained, except for the dwelling immediately adjoining the site to the west (No.169). A meeting was held with the Applicant where it was requested that the first floor addition be shifted towards the rear of the existing building envelope, which has already been altered by the ground floor rear extension. The siting of the first floor addition has not been altered, and therefore the proposal remains unsupportable by Council’s Heritage Planner, due to the intrusion into the roof formation towards the front of the dwelling.

Council is therefore 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 below in Appendix 1.



## 7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.5:1 (129.45m <sup>2</sup> )	0.715:1 (185m <sup>2</sup> )	55.55 m <sup>2</sup>	42.9%

**Note.** The Clause 4.6 prepared by Chapman Planning Pty Ltd has calculated the GFA of the proposal to be 190sqm, equating to an FSR of 0.73:1. The GFA has been miscalculated as the void area above the stair has been included in the calculations. Council's internal calculations determine the GFA to be 185m<sup>2</sup> equating to an FSR of 0.715:1, presenting a 42.9% variation to the standard.

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 2.

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

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

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

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

*'The size and scale of the proposed development – resultant two storey form at the rear of the site is compatible with the desired future character of the locality, as established by the scale of surrounding development within the visual catchment of the site as viewed from Centennial Avenue.*

*The proposal is consistent with the two storey addition at the adjoining property at 169 Darley Road and nearby approved development at 177 Darley Road – first floor addition under DA/479/2019, which also presents a two storey scale to the rear frontage of the site from Centennial Avenue. The proposed two storey scale at the rear of the site, notwithstanding the proposed variation to FSR is envisioned by the planning controls – 9.5m height control which applies to the site under Clause 4.3 of the Randwick LEP 2012, and Part C2 of the Randwick DCP 2013 which provides design guidelines for contemporary additions to attached dwellings as proposed.*

*The location of the first floor proposed under this application serves to balance the heritage significance of the row of attached dwellings while minimising significant visual intrusion into the rear yards of the dwellings and providing a consistent rear building alignment with the adjoining dwelling at 169 Darley Road, and results in a two storey scale that has previously been accepted by Council under the current LEP through the approval of nearby applications at 177 Darley Road (DA/479/2019 – not yet constructed) and the contemporary two storey form at 179 Darley Road’.*

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

*‘The development and floor area exceeding the standard is well articulated with the proposed first floor addition designed in a contemporary form addressing the rear frontage of the site to Centennial Avenue, with the two storey scale of the upper level broken up by the existing clerestory window on the site. Further, the rear elevation of the addition is provided with large windows which serve to articulate the additional density on the site at the upper level. ‘*

- (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 proposed development and additional floor area is compatible with the established scale of development within the vicinity of the site – North Randwick Conservation Area and the row of attached dwellings at 169-177 Darley Road identified as item I349 under Schedule 5 of the LEP. The proposed rear addition is consistent with the established built form context at the rear of the site and adjoining property at 169 Darley Road and 173 Darley Road, as viewed from Centennial Avenue.*

*Further, the recently approved development at 177 Darley Road – first floor addition under DA/479/2019 at the end of the row of dwellings of the heritage item and adjoining detached dwelling with larger contemporary addition at 179 Darley Road are consistent in scale and character to that proposed being for contemporary two storey development to existing heritage significant buildings that is recessed from the primary street frontage – Darley Road.*

- (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 proposed development and varying floor area will not result in additional impacts with respect to bulk and scale or view loss to adjoining properties, noting the proposed upper level is integrated over the footprint below and recessed from the existing rear building line on the site, consistent with that of the adjoining two storey development at 169 Darley Road.*

*The proposed upper level is fully designed to be subservient and integrate with the existing building, being recessed from the rear yards of the adjoining dwellings to the east and west. The overall massing of the built form on the subject site is consistent with the established streetscape setting of the rear elevations of dwellings along the northern side of Centennial Avenue and does not present adverse impacts with respect to visual bulk in this regard.*

*Further, the variation does not present overshadowing or privacy impacts upon the adjoining properties or the streetscape, with the shadows cast by the proposed first floor addition confined to the roofs of adjoining properties. ‘*



Assessing officer's comment:

The size and scale of the proposed development is not consistent with the desired future character of the locality. The site is listed as a group heritage item and located within the North Randwick Heritage Conservation Area. Provisions to protect and enhance the character of the HCA and the heritage items within it are contained under Part B2 of RDCP, and make specific reference to the siting of first floor additions in relation to the existing roof form of the dwelling.

The proposed development is not compatible with the scale and character of the heritage item, with the siting of the first floor addition/ additional floor area being in direct conflict the primary roof formation towards the front of the dwelling. The design of the proposal is also out of character with the majority of other attached dwellings which form part of the group heritage item, which have maintained the roof form (excepting No.169 adjoining to the west).

The Applicant's written request has not adequately demonstrated that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

- *The subject site is located within the R2 Low Density Residential zone. While the density controls for attached dwellings within the zone anticipate a lower FSR than some other zones, importantly Clause 4.4A of the LEP recognizes that smaller lots containing dwelling house or semi-detached development are not subject to FSR standards. The development is on a small site less than 300m<sup>2</sup> whereby another building typology – dwelling house or semi-detached dwelling would be permitted a greater density than that of the proposal. The attached dwelling on the site is a prohibited land use in the zone benefiting from existing use rights, and the proposed FSR does not result in a density that is uncharacteristic of surrounding development.*
- *The existing character of the locality is partly defined by the flexible application of the floor space ratio development standard. The proposed density is consistent with the density of approved development within the locality, including development at 169 Darley Road which has a GFA of 189.9m<sup>2</sup> – 0.73:1 and at 177 Darley Road where a gross floor area of 178.1m<sup>2</sup> – 0.61:1 approved under DA/497/2019. The additional gross floor area can be accommodated in a building form which is consistent with (a) the established streetscape of Centennial Avenue and (b) the established character of development within the North Randwick Conservation area.*
- *The contravention of the FSR development standard is justified in this particular development proposal with the additional gross floor area forming part of a redevelopment of a historical built form – attached cottage on site, providing a good design and planning outcome being an object of the EPA Act. The development improves the internal amenity of the building in a form that does not present adverse amenity impacts upon surrounding properties or the public domain.*
- *There are no adverse amenity impacts arising from the breach of the floor space ratio development standard (with regard to overshadowing, visual privacy, view loss). This is a recognised environmental planning ground. Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at 34.*

Assessing officer's comment:

Council notes that the variation to the FSR standard can be attributed to the land use of the development, being a medium density development within a R2 low density zone, and the existing use rights pertaining to the site. However, the additional floor area of the development does not promote the sustainable management of built heritage at the site, which is an object of the EPA Act,

and would set an undesirable precedence for the future redevelopment of other attached dwellings within the group heritage item. While first floor additions have been accommodated to other attached dwellings within the item, the proposed density the site is inconsistent with the most recent approval within the group item, which provides an FSR of 0.61:1 and which has respected the primary roof form to the front of the dwelling, locating the first floor addition further to the rear of the dwelling.

The Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

## Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have not been satisfied and that development consent may not be granted for development that contravenes the FSR development standard.

## 8. Development control plans and policies

### 8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in Appendix 3.

## 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the relevant objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and	<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 will have a detrimental impact on the built form of the existing heritage item at the site, and set an undesirable precedence for the redevelopment of other attached dwellings which form part of the group heritage listing.</p>

Section 4.15 'Matters for Consideration'	Comments
economic impacts in the locality	The proposed development may result in social impacts due to the loss of heritage significance of the surrounds which contribute to the character of the low density residential area.
Section 4.15(1)(c) – The suitability of the site for the development	The design of the proposed development indicates that site does not provide a sufficient area to accommodate the proposed development without impacting upon the heritage significance of the site. Therefore, the site is not considered to be suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received against the development during the notification period.
Section 4.15(1)(e) – The public interest	The proposal is inconsistent with the objectives of the zone and will may result in significant adverse built form and social impacts. The development will create an undesirable precedent, and the building proposes significant deviations from both the numerical and merit-based controls. Accordingly, the proposal is not considered to be in the public interest.

D78/24

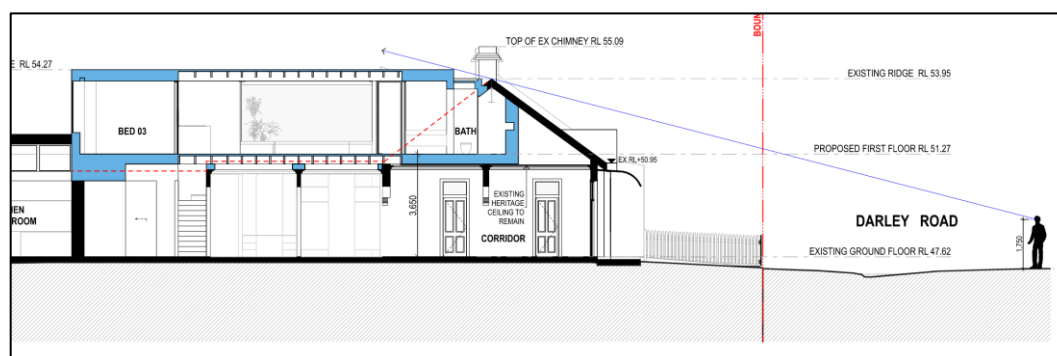
## 9.1. Discussion of key issues

### Heritage – Roof form

The proposal seeks consent for the alterations and additions to a locally listed group heritage item, involving reconfiguration the existing ground floor and a first floor addition to the existing dwelling footprint

Council's Heritage Planners have reviewed the proposed development and raise no objection to the ground floor alterations, and the carport and external works concentrated at the rear of the site, noting the balance of enhancing occupant amenity with the existing built form arrangement.

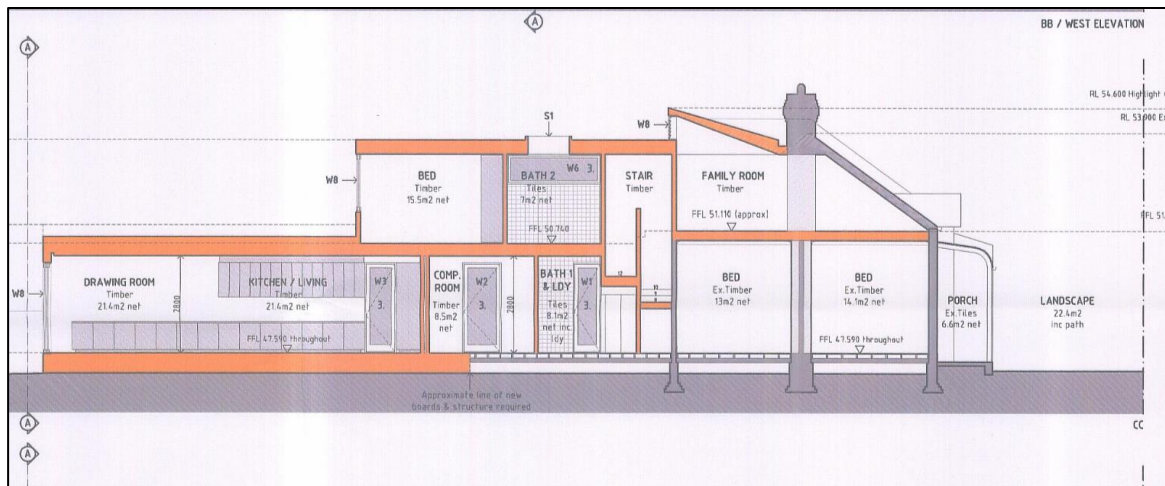
However, concern is raised in relation to the siting of the first floor addition, which impacts upon the roof form towards the front of the dwelling (Figure 15). While not being visible from street, Council's heritage planners have asserted that the retention of the roof form remains important, noting that the significance is not simply the public appreciation of the item as it fronts Darley Road (as proposed by the Applicants HIA) but rather the whole of the extent dwelling on its site.



**Figure 15.** Extract of proposed Section Plan showing impact on the existing roof form (*Source: Ahron Best Architects*).

In considering the existing condition of the group heritage item as a whole, it is noted that the adjoining dwelling to the west (no. 169) has constructed a first-floor addition that substantially impacts the forward roof formation. The first floor addition was granted approval under DA/508/2011 on 7 November 2011. While Council acknowledges that the roof form has been lost to the adjoining dwelling to the west (169 Darley Road), these changes reflect a historical approval which were granted under former DCP and LEP provisions.

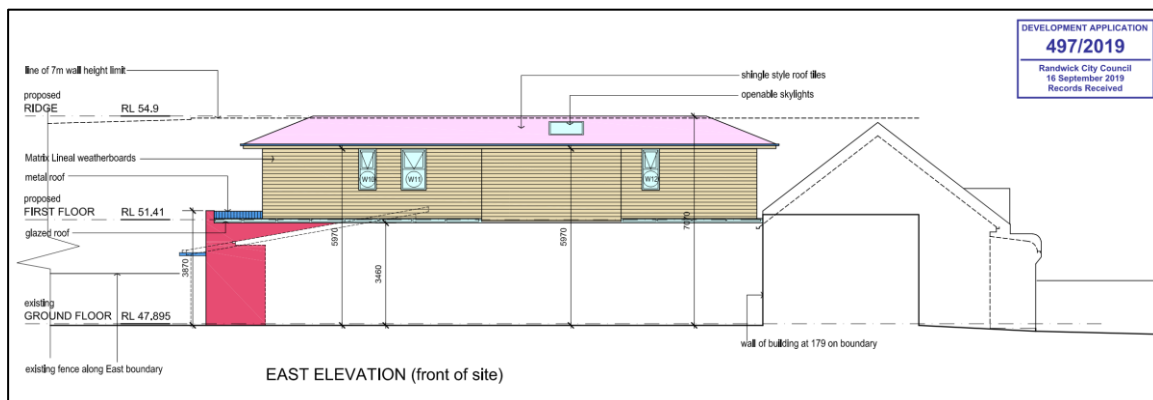
D78/24



**Figure 16.** Approved first floor addition to No.169 Darley Road, resulting in loss of the roof formation (DA/508/2011).

The current DCP provisions, which guide the redevelopment of heritage items within the Randwick LGA (Part B2 RDCP 2023), contain specific reference to the preferred siting of first floor additions, ensuring the original roof form is maintained where possible, incorporating pavilion-type forms, or siting the addition to the rear of the dwelling to minimise impact on the main roof structure.

The most recent first floor addition to be approved within the group heritage item, at No.177 Darley Road (DA/497/2019 – LPP determination), retained the primary roof form towards the front of the dwelling, concentrating the first floor addition to the rear of the site where the building has already been altered (Figure 17). Council notes that the first floor addition has not been constructed, however the consent is still active.



**Figure 17.** Approved first floor addition to No.177 Darley Road under DA/497/2019 (Source: Joanna Lukaszewicz).

A meeting was organized with the Applicant, heritage consultant, and owners of the site to discuss the heritage concerns associated with the proposal, and request that the first floor addition be redesigned to conserve the entire front roof form of the dwelling. Formal comments were also issued in an additional information request, along with other planning matters to be addressed. While amended plans were received following the issue of the additional information request, the first floor addition has not been redesigned, and therefore the original comments of the heritage referral remain relevant to the subject proposal.

In light of the above, Council is not satisfied that the proposed development will conserve and positively impact upon the heritage significance of the group item and wider HCA. Therefore it is recommended that the development application be refused.

### Existing Use Rights

Section 4.65 of Division 4.11 of the *Environmental Planning and Assessment Act 1979* requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Based on a review of the background information, it is determined that the existing building was constructed circa 1901-1903, and the building has been the subject of building and development applications in the past, most recently in 2013, for alterations and additions involving a rear extension of the ground floor, and a carport at the rear of the site. The former approval has maintained the existing and ongoing use of the building as an attached dwelling.

Therefore, it is established that the use of the building was lawfully granted and in existence prior to the implementation of RLEP 2012.

Section 4.67 of the EP&A Act provides that any provisions in an instrument that would derogate from the "incorporated provisions" of the Act would have no force or effect. It should be noted that derogation from the incorporated provisions has also been considered in recent caselaw with regards to the matters of *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made Property Group Pty Limited v North Sydney Council* [2020] NSWLEC 1332 in which it was determined that the provisions of a LEP do not necessarily derogate from the incorporated provisions of the EP&A Regs and that the existing use right permits the permissibility and alteration of the development, however may not result in the derogation from the standards of a LEP. In this instance (and adopting the Commissioner's findings in the above LEC matters), it is considered that the provisions of Clause 4.4 read in conjunction with Clause 4.6 of RLEP 2012 allow the application to be made and considered by the consent authority, and do not derogate from the incorporated provisions, and that an assessment of the development in accordance with s4.15 of the EP&A Act should be undertaken.

Furthermore, as the provisions of Clause 4.4 are applicable, and the Applicant seeks to vary the FSR, a Clause 4.6 written submission has been provided and is assessed in Section 7.1 above.

The Land and Environment Court has established a planning principle for urban development (*Fodor Investments v Hornsby Shire Council*, 2005) which establishes criteria for the assessment of proposals on land with existing use rights. As such, the proposal has been assessed against the relevant provisions of RLEP 2012 and RDCP 2013 as well as the planning principal.

Assessment against the planning principal is provided below:

#### Planning Principal 1

#### ***How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?***

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.*

Assessing officer comment: The site is identified as a locally listed heritage item and is located within the North Randwick Heritage Conservation Area. Part B2 of RDCP 2023 contain provisions for the redevelopment of heritage items and contributory buildings to contribute to the desired future character of listed sites and wider HCA's. The RDCP 2023 makes specific reference to maintaining the integrity of existing roof forms, ensuring the original form of the heritage items is maintained through redevelopment. In this regard, the bulk and scale of the proposed additions, which are in direct conflict the existing roof pitch to the front of the building, is not consistent with the desired future character of the heritage items and contributory buildings in the heritage conservation area. While it is acknowledged that the original roof form of the adjoining dwelling to the west, at 169 Darley Road (within the same heritage item) was lost under DA508/2011, it is also noted that this approval was granted under former LEP and DCP provisions, which have since been amended to conserve the existing development which contributes to the HCA status of the locality, and deliver a bulk and scale which is more consistent with the desired future character.



The proposed first floor additions request a variation to the FSR standard. The proposed works that provide for additional floor area will directly impact upon the existing roof form of the heritage item, which sets an undesirable precedence for heritage items adjoining the site and the existing and desired character of the wider HCA environment. In view of the above, the bulk and scale of the proposed development is not supportable when considered in the context of the site and surrounds.

#### Planning Principal 2

##### ***What is the relevance of the building in which the existing use takes place?***

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

Assessing officer comment: The proposed development does not involve a change of use to the existing building. The proposed development seeks alterations to the existing building to enhance the residential amenity of the existing attached dwelling by providing a first floor addition comprising 2 x bedrooms and a secondary lounge, a swimming pool within the rear yard, and a carport structure to the rear of the site accessed via Centennial Avenue. The proposed development, while increasing the bedrooms provided to the dwelling, does not intensify the use of the site as the development remains as single occupancy dwelling, and does not trigger further requirements for servicing demand such as parking.

Despite this, the existing built form of the site holds relevance with regards to the heritage significance of the site, forming part of a group heritage item under Schedule 5 of RLEP 2012. In this regard, the partial demolition of the existing roof form towards the front of the dwelling, to be replaced with an addition which presents greater bulk and scale than the existing arrangement, is not supported in relation to the existing use rights of the site.

#### Planning Principal 3

##### ***What are the impacts on adjoining land?***

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Assessing officer comment: While the proposed development will not result in unacceptable impacts in relation to visual and acoustic privacy, solar access or view loss, the proposed development could have significant impacts on adjoining land due to the interference of the original roof form of the subject site. Approval of the proposed first floor addition would set an undesirable precedence for other attached dwellings within the group heritage item, which could undermine the heritage significance of the item.

#### Planning Principal 4

##### ***What is the internal amenity?***

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

Assessing officer comment: The proposed development would provide for increased amenity for occupants through providing additional floor area to support the site's continued use, and reconfiguring the ground floor layout to support open plan living. However, the proposal for internal amenity is in direct conflict with the heritage significance of the site. Council's Heritage Planner has

considered the requirement for amenity in the assessment of the application, and is accepting of the internal reconfiguration of the ground floor to maximise occupant amenity to this level. However, the siting of the first floor addition presents significant protrusion into the existing roof form of the heritage item, which is not supported.

Based on the above existing use rights assessment, and subject to the recommendations within the report, the proposal is not considered to be reasonable in the circumstances of the case.

### **Landscape Open Space and Deep Soil (Permeable Surfaces)**

Part C2 Section 2.2 of RDCP 2013 provides controls for landscaped open space and deep soil area.

Section 2.2.2 control i) states a minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.

It is noted that the previous approval at the site (DA/350/2013) involved the construction of a single width carport to the rear of the dwelling. While the carport has not yet been constructed, the consent has been activated, and the nothing currently prohibits the carport from being constructed in the future. Noting the approved site arrangement under DA/350/2013, Council is of the opinion that a proposal which is consistent with, or has a net improvement on the deep soil arrangement approved under the active consent, may be supportable despite the non-compliance with the numerical requirements of the RDCP 2013. The existing/approved site arrangement (with DA/350/2013 considered) accommodates a deep soil area of 55sqm equating to 21.2%.

The Architectural Plans state that a total area of 56.3sqm (21.7%) will be accommodated as deep soil area, with timber decking to be removed and replaced with lawn groundcover to largely offset the swimming pool design, and new deep soil areas achieved to the internal courtyard. While the Architectural Plans claim the proposal will result in a net increase to the deep soil areas across the site, Council considers the calculation to be an overestimation and does not accept areas covered by a roof structure or fencing to be included in calculations. Internal calculations identify a minor reduction in deep soil areas to 20.6%. Council considers there to be opportunities to increase the deep soil across the site, through maintaining an unroofed structure to the pedestrian pathway along the eastern boundary of the carport. If recommended for approval conditions of consent could require the extent of the carport roof to be reduced, and permeable surfaces retained to the pedestrian pathway along the eastern boundary of the site.

## **10. Conclusion**

That the application for alterations and additions to an existing attached dwelling including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works (Heritage Conservation Area – North Randwick and Heritage Item – I349) be refused for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal exceeds the maximum floor space ratio development standard in Clause 4.4 – Floor Space Ratio of Randwick Local Environmental Plan 2012. The Applicant's written request seeking an exception to the development standard fails to adequately address those matters that are required to be demonstrated pursuant to Clause 4.6 of RLEP 2012 in that it was not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard. Specifically, the proposal is not compatible with the scale and character of contributory buildings and heritage items within a conservation area – which is one of the objectives of the FSR development standard. As such, the non-compliance with the FSR development standard is not supported.
1. Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development has failed to demonstrate consistency with the objectives of the R2 Low Density Residential zone, under Randwick Local

Environmental Plan 2012, as it does not contribute to the desired future character of the area or conserve and enhance the heritage significance of the locality.

2. Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the application is considered unacceptable in that the proposed development fails to satisfy the Aims of the Plan in Clause 1.2(2)(j) of Randwick Local Environmental Plan 2012 relating to the conservation of environmental heritage character of Randwick.
3. Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the application is considered unacceptable in that the proposed development fails to satisfy clause 5.10 of the RLEP 2012 as the proposal has not demonstrated compatibility with the heritage significance of the “row of attached cottages” heritage item (I349) and the North Randwick HCA (C1)
4. Pursuant to the provisions of s.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives and controls of Part B2 of Randwick Development Control Plan 2013 – Section 2.3 Scale and form
5. Pursuant to the provisions of s.4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposed development will result in adverse impact on the built environment due to alterations which are unsympathetic to the heritage significance of the site which would set an undesirable precedence to other attached dwellings within the group item (I349).
6. Pursuant to Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979, the application has not demonstrated that the subject site is suitable for the development for the following reasons: failure to demonstrate the merits of any proposed variations to Council controls/provisions/requirements, failure to demonstrate that any associated impacts are acceptable and reasonable, failure to provide a proportionate and well-balanced built form which responds to the heritage significance of the site.
7. Pursuant to the provisions of s.4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the development will create an undesirable precedent, and the building proposes significant deviations from both the numerical and merit-based controls and is therefore not in the public interest.

## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Heritage Planner

The application was referred to Council's Heritage Planner for comment. The original comments provided are detailed below. As the Applicant has failed to redesign the proposal, the original comments remain relevant to the proposal:

#### **The Site**

*The property has an address of 171 Darley Road, Randwick, and the legal property description of the site is Lot B in DP 442452. It has a frontage to Darley Road of 5.08m, a maximum site depth of 51.21m, and total land parcel area of 258.9m<sup>2</sup>.*

*This is a narrow rectangular shaped through-lot that is generally flat and currently contains a single storey attached dwelling. Vehicular access to the site is via driveway crossing at the rear of the site and accessed from Centennial Avenue, Randwick. The site is part of a group of five dwellings, constructed about 1903 and known as 'The Prince of Wales Terrace' and all presenting in similar style to Darley Road. The subject dwelling adjoins attached dwellings to the east and west, and number 173 to the east has a first-floor addition, set behind the front roof plane and not visible from Darley Road.*

*The property is an individually listed heritage item in Schedule 5 Part 1 of the Randwick Local Environmental Plan 2013 (RLEP) (as amended). The listing pertains to the row of five cottages, 169-177 Darley Road as group item (I349). The property is also within the North Randwick Heritage Conservation Area (C1), an area characterised by its parkland views and Federation streetscapes. The heritage provisions of RLEP relating to development of a heritage item and in a conservation area would apply. Development at the site is also subject of the Randwick Development Control Plan 2023 (RDCP) that contains detailed objectives and controls for development to heritage items and within conservation areas.*

#### **Background**

*The rear spaces have been demolished to make way for a single-storey pavilion-style addition comprising a combined kitchen, living and dining room (in tall volume space) with sliding doors onto the rear deck. The forward layout of the dwelling largely retains its original floor plan, with a side hallway with bedrooms and centrally located fireplaces. Original elements survive including the floorboards and joinery, as well as the fireplaces with original grates, surrounds and hearths. The walls and ceilings are generally modern render and plaster.*

#### **Proposal**

*The Development Application proposes the following works:*

- *At ground floor the combination of the extant two forward bedrooms into one master suite, retaining the dividing fireplace and chimney, yet removing the east section of the dividing wall to provide flow between these spaces.*
- *The enlargement of the internal courtyard for increased light, ventilation and practicality of use.*
- *The creation of a walk-in wardrobe and ensuite in the residual internal spaces.*
- *The introduction of a stairway leading to the first-floor additions to accommodate two bedrooms and a bathroom.*
- *The retaining of the rear pavilion space as kitchen dining room/living area.*
- *Substantial landscaping works in the rear yard for BBQ area, pool, pool pavilion and carport.*

- *At first floor level the creation of two bedrooms, one bathroom and a lounge area.*

### **Submission**

*For the purposes of the heritage assessment of this development application, the proposal is accompanied by the following documentation:*

- *A full set of architectural drawings prepared by Ahron Architects of Clovelly NSW, dated as 12 June 2024 (and received by Council 19 June 2024).*
- *A Materials and Finishes Schedule prepared by Ahron Architects of Clovelly NSW, dated as 12 June 2024 (and received by Council 19 June 2024).*
- *A Heritage Impact Statement (HIS) professionally prepared by John Oultram Heritage and Design, of South Head Road Double Bay, dated as June 2024 (and received by Council 19 June 2024).*
- *A Statement of Environmental Effects (SEE) professionally prepared by Chapman Planning PTY Ltd, dated as 3 June 2024 (and received by Council 19 June 2024).*

### **Controls**

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

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

*The Heritage section of Randwick Development Control Plan 2023 provides Objectives and Controls in relation to heritage properties.*

### **Comments**

*Randwick Council Planner and Heritage Officers attended the site on Friday 28 June for an overview of the property and the proposal.*

- *It was noted that the subject dwelling (no. 171) is part of an individually listed heritage item as part of a group item (an attached row of cottages, I349) and not simply a contributory item to a HCA. Therefore, significance is not simply the public appreciation of the item as it fronts Darley Road (as proposed by the Applicants HIA) but rather the whole of the extant dwelling on its site.*
- *Generally, the front facades, the forward planes of the slate-tiled front roofs and chimneys have been retained and the row maintains its appearance as a substantially intact early C20 terrace row of turn cottages.*
- *However, two dwellings in the row of five have had the face brick painted. In future works the Applicants could be encouraged to remove the more recent paintwork.*
- *It was also noted that the dwellings are historically small and are not representative of the expectations of contemporary amenity. Along with other dwellings within this group of five, this item has been subject to substantial change over some decades, particularly in its rear spatial changes and additions. However, the configurations at the front of the dwelling remain substantially unaltered.*



- The adjoining dwelling to the west (no. 169) has a first-floor addition that substantially impacts the forward roof formation. To the east, no. 175 presents with a rear facing dormer on the forward roof formation.
- However, these changes occurred under previous DCP controls, and it is reasonable to assume that allowances under precedence will result in a loss of the primary roof formation for the whole group into the future. The DCP 2013 (2.3 scale and form) highlights the importance of conserving a consistent scale and form and directs that that upper floor additions are to preferably use pavilion formations to the rear (see part viii).
- The proposed plans have been carefully reviewed and the potential loss of historical fabric in the balance of contemporary amenity requirements has been practically assessed.
- The proposed changes to the ground floor internal spaces of the dwelling are supported in view of contemporary amenity. However, it is strongly directed that the entirety of the traditionally slated forward roof formation should be conserved. The first-floor addition should be constructed to the rear of this primary formation.
- Reasons: DCP 2.3 Heritage Items and Contributory Buildings (viii, ix, xi)
- The proposed changes to the rear yard spaces – BBQ area, landscaping, pool, pool pavilion and carport are supportable. These elements have insignificant visual or physical impact.

### **Recommendation**

- That a meeting be organised with the project architect to explore the possibility of re-siting the first-floor proposal 1.5m to 2.0m to the rear to conserve the entire form of the primary historical front roof.
- That the Applicant is encouraged to consider restoration of the front façade brickwork.

**Assessing officer comment:** The above advice from Council's Heritage Planner is considered and concurred with. The application is recommended for refusal.

### **1.2. Development Engineer and Landscape**

The application was referred to Council's development engineer and landscape officer. As detailed below, no objection was raised, subject to conditions:

An **amended application** has been received for alterations and additions to the existing attached dwelling including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works (Heritage Conservation Area – North Randwick and Heritage Item – I349).at the above site.

This report is based on the following plans and documentation:

- **Amended Architectural Plans by Ahron Best Architects dated 30/08/2024**
- Statement of Environmental Effects by Chapman Planning dated 3/6/2024;
- Detail & Level Survey by V-mark Surveys dated 3/04/2024;

### **Amended Plan Comments**

**The amended plans include the reduction in the pool length from 5.00m long to 4.50m long**

### **Flooding Comments**

The site lies within the catchment for the Council commissioned and adopted Kensington/Centennial Park Flood study. The study predicts the rear of the site at the approximate location of the carport structure will be impacted by flooding during major storm events.

Comments on DA/350/2013

*It should be noted that since approval of DA/350/2013 the flood model for this catchment has been revised resulting in a general lowering of flood levels. In summary, flood levels have dropped between 250 and 300mm.*

	5% AEP (1 in 20yr) Flood Level	1% AEP (1 in 100yr) Flood Level
2013 Data	RL 47.20 AHD	RL 47.30 AHD
2024 Data	RL 46.92 AHD	RL 47.05 AHD

*Part B8 of Council’s DCP requires all open hardstand car space to be provided at or above the level of the 5% AEP (1 in 20yr) flood and it is noted the submitted plans indicate the proposed carport at RL 47.10 being 180mm above the current required flood planning level for car spaces and in compliance with the DCP. The development is therefore satisfactory from a flooding perspective and Development Engineering will not object if there is slight lowering of the carport slab to a minimum of RL 46.92 AHD, if required.*

**Parking Comments**

*The proposed carport will re-align the car space with respect to the Council vehicle crossing necessitating a slight widening of the crossing.*

**Drainage Comments**

*Stormwater runoff from the (redeveloped portion) site shall be discharged to the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system);*

**Landscape Comments**

*Site inspection was undertaken on Tuesday 22<sup>nd</sup> July with pictures of all vegetation on D05390697.*

*Within the rear of the property from Centennial Ave, within council’s property, Banksia integrifolia (Coast Banksia) 6 metres high, good condition, good vigour measuring 500mm of rear fence of subject site, centrally between the two boundaries of No 169 & 171, close conflict with works, to be protected.*

*Moving within the rear of the property, there was a total absence of vegetation, wholly within the western No 169 property, along the western side setback, south to north of common boundary fence, some insignificant Lilly Pilly hedging shrubs and small fig tree, all plotted close to the fence line of the property, due to the small size and immaturity of these shrubs and trees, the root systems would be small and should not impact the neighbouring works.*

*Whilst the proposed pool and rear carport will be in close conflict with neighbouring shrubs, small tree, a precautionary hand excavation along the western common boundary fence where proposed carport, pool works are to be constructed, this will be conditioned and applied within the report.*

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

**Assessing officer comment:** The above advice from Council’s development engineers and landscape officer is considered and concurred with. If recommended for approval the relevant conditions would be included in the consent.

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

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30 August 2024

### Clause 4.6 Request to Development Standard

**Property Description:** 171 Darley Road, Randwick  
**Development:** Alterations and Additions to Attached Dwelling  
**Development Standard:** Floor Space Ratio

#### Introduction

Under the Randwick Local Environmental Plan 2012 (**RLEP**) clause 4.6 allows for the making of a written request for the flexible application of a development standard to permit the granting of development consent for a development even though it would contravene a development standard imposed by that instrument.

This is a clause 4.6 Request to support the development proposal for alterations and additions to the existing *attached dwelling* at 171 Darley Road, Randwick. This clause 4.6 request seeks to justify the contravention to the floor space ratio (FSR) development standard contained in clause 4.4 Floor space ratio of the Randwick LEP 2012.

The site has a total area of 258.9m<sup>2</sup>. Pursuant to Clause 4.4(2) of the LEP states that an FSR development standard of 0.5:1 applies to the site under Council's mapping.

The existing dwelling on the site was previously subject of approved development consent No. DA/350/2013 issued by Randwick Council on 6 August 2013. The dwelling varies the FSR control with a current GFA of 140m<sup>2</sup> – 0.54:1 subject of this previous approval, noting the notice of determination for DA/350/2013 characterises the building on the site as a *dwelling house*.

Subject to the provisions of Clause 4.4A (previously 4.4[2B]) of the LEP and FSR control does not apply to dwelling houses on land if the lot size is 300m<sup>2</sup> or less in the R2 Low Density Residential zone.

The proposed alterations and additions under this application represent an increase of 50m<sup>2</sup> of gross floor area to the existing dwelling, presenting a FSR of 0.73:1, and a gross floor area of 190m<sup>2</sup>. The proposal presents a contravention of 60.55m<sup>2</sup> and 46.7% to the development standard.

The application is for alterations to the internal layout of the existing ground floor of the dwelling and a first floor addition to the building. Due to the existing non-compliance of the FSR development standard on the site, the rearrangement of the ground floor internal

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layout, and additional gross floor area at the first floor level the proposed floor area is dispersed across the totality of the built form, including existing components of the built dwelling, with the works representing a holistic uplift to the existing dwelling on site.

The fundamental role of clause 4.6 in any local environmental plan is reflected in the recent decision of Commissioner Clay in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In particular, Commissioner Clay notes at [73] of his decision that:

*"First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome."*

The objectives of clause 4.6 facilitate the flexible application of development standards to particular development in order to achieve an improved environmental planning outcome.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (November 2023) and various relevant decisions in the Land and Environment Court and Court of Appeal of NSW.

The request to contravene the development standard for the floor space ratio has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446,
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009,
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118,
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170, and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130
7. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the proposed development consistent with the objectives of the development standard which is not met?
2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a))
3. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b))

The public interest test has been removed from Clause 4.6. Consistency with the objectives of the land use zone are a consideration under section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act and has been addressed within the Statement of Environmental Effects submitted with the development application.

**Matters required to be demonstrated under clause 4.6(3) of the LEP****Compliance with the development standard is unreasonable or unnecessary in this particular case**

Pursuant to clause 4.6(3)(a) of the LEP, the contravention to the floor space ratio development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unnecessary because the proposed alterations to the dwelling house development are consistent with the objectives of the floor space ratio standard, notwithstanding non-compliance with the standard.

- **Objectives of the Floor Space Ratio Development Standard**

The objectives of the development standard are at clause 4.4(1) of the LEP as follows:

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

The proposed development meets the objectives of Clause 4.4 of the LEP based on the following assessment:

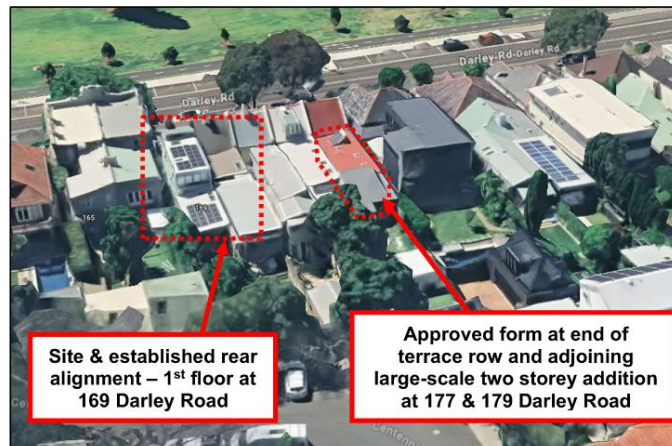
**Objective (a)** – The size and scale of the proposed development – resultant two storey form at the rear of the site is compatible with the desired future character of the locality, as established by the scale of surrounding development within the visual catchment of the site as viewed from Centennial Avenue.

The proposal is consistent with the two storey addition at the adjoining property at 169 Darley Road and nearby approved development at 177 Darley Road – first floor addition under DA/479/2019, which also presents a two storey scale to the rear frontage of the site from Centennial Avenue. The proposed two storey scale at the rear of the site, notwithstanding the proposed variation to FSR is envisioned by the planning controls – 9.5m height control which applies to the site under Clause 4.3 of the Randwick LEP 2012, and Part C2 of the Randwick DCP 2013 which provides design guidelines for contemporary additions to attached dwellings as proposed.

The location of the first floor proposed under this application serves to balance the heritage significance of the row of attached dwellings while minimising significant visual intrusion into the rear yards of the dwellings and providing a consistent rear building alignment with the adjoining dwelling at 169 Darley Road, and results in a two storey scale that has previously been accepted by Council under the current LEP through the approval of nearby applications at 177 Darley Road (DA/479/2019 – not yet constructed) and the contemporary two storey form at 179 Darley Road as depicted in the below aerial map extract:

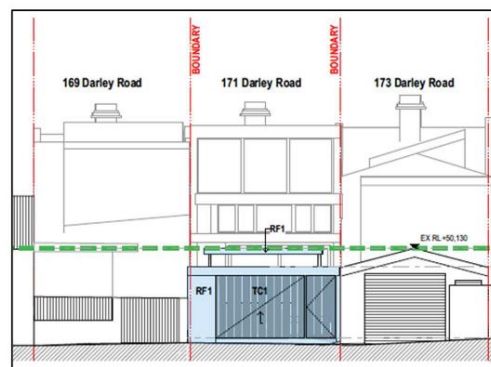


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**Objective (b)** – The development and floor area exceeding the standard is well-articulated with the proposed first floor addition designed in a contemporary form addressing the rear frontage of the site to Centennial Avenue, with the two storey scale of the upper level broken up by the existing clerestory window on the site. Further, the rear elevation of the addition is provided with large windows which serve to articulate the additional density on the site at the upper level.

**Objective (c)** – The proposed development and additional floor area is compatible with the established scale of development within the vicinity of the site – North Randwick Conservation Area and the row of attached dwellings at 169-177 Darley Road identified as item I349 under Schedule 5 of the LEP. The proposed rear addition is consistent with the established built form context at the rear of the site and adjoining property at 169 Darley Road and 173 Darley Road, as viewed from Centennial Avenue and depicted in the below plan extract:



Further, the recently approved development at 177 Darley Road – first floor addition under DA/479/2019 at the end of the row of dwellings of the heritage item

and adjoining detached dwelling with larger contemporary addition at 179 Darley Road are consistent in scale and character to that proposed being for contemporary two storey development to existing heritage significant buildings that is recessed from the primary street frontage – Darley Road.

**Objective (d)** – The proposed development and varying floor area will not result in additional impacts with respect to bulk and scale or view loss to adjoining properties, noting the proposed upper level is integrated over the footprint below and recessed from the existing rear building line on the site, consistent with that of the adjoining two storey development at 169 Darley Road.

The proposed upper level is fully designed to be subservient and integrate with the existing building, being recessed from the rear yards of the adjoining dwellings to the east and west. The overall massing of the built form on the subject site is consistent with the established streetscape setting of the rear elevations of dwellings along the northern side of Centennial Avenue and does not present adverse impacts with respect to visual bulk in this regard.

Further, the variation does not present overshadowing or privacy impacts upon the adjoining properties or the streetscape, with the shadows cast by the proposed first floor addition confined to the roofs of adjoining properties.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 the development meets the first test because compliance with a development standard is unnecessary as the objectives of the development standard are achieved notwithstanding the non-compliance.

Furthermore, it is unreasonable to require compliance with the floor space ratio development standard due to the following reasons:

- The public benefit of maintaining the development standard is not considered significant because the proposed works to the existing building present an outcome consistent with the objectives of the development standard contained in the LEP notwithstanding the numerical contravention. The site forms part of heritage item I349 within the North Randwick Heritage Conservation area, where flexibility has been applied to the FSR standard including development at 169 Darley Road which has a GFA of 189.9m<sup>2</sup> – 0.73:1 and at 177 Darley Road where a gross floor area of 178.1m<sup>2</sup> – 0.61:1 was approved under DA/497/2019. The proposed size of the works to the dwelling, provide an appropriate built form on the site consistent with the accepted two storey scale of development within the Centennial Avenue streetscape – rear elevations of Darley Road properties, do not result in an overdevelopment of the existing dwelling, and the proposed FSR is compatible with the density of recently approved dwellings and alterations to existing dwellings within the locality.
- The subject site currently does not comply with the FSR standard, with the previous development of the site under DA/350/2013 being subject of the provisions of Clause 4.4A (previously 4.4[2B]) of the LEP which provided that no FSR control applies to dwelling houses on land if the lot size is less than 300m<sup>2</sup> in size in the R2 Low Density Residential zone. Council's preliminary assessment of the proposal has not applied the provisions of Clause 4.4A to the development as previously provided to the site under the Randwick LEP 2012. The development is not of a form and scale that is

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uncharacteristic of surrounding development within the conservation area, and consistent with the accepted two storey scale of development within the row of terraces which form item I349 and as such it is unnecessary to require compliance with the standard.

- The form and scale of the development presents an uplift to the existing built form on the site whilst ensuring that the proposal is not an overdevelopment of the existing heritage item. Whilst the application includes an upper level extension, the totality of the development disperses the additional gross floor area across the dwelling as a whole through the rearrangement of internal spaces at the ground floor including a new recessed landscaped courtyard improving the residential amenity and function of the site. The building works including the new upper level are integrated into the spatial proportions of the existing dwelling aligning with the established first floor building line at 169 Darley Road adjoining the site, with no additional discernable amenity impacts to adjoining properties or the public domain. The need to enforce strict numerical compliance in circumstances where the objectives of the applicable standards are met, presents no commensurate public benefit and is unnecessary
- The additional gross floor area is comparable with similar approved dwellings in the vicinity of the site, ensuring the building density is not inconsistent with the established character of the land use zone and the environmental capacity of the site.

There are sufficient environmental planning grounds to justify contravening the development standard

Pearson C held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 request must identify environmental planning grounds that are particular to the circumstances of the proposed development on the particular site.

That decision was upheld on appeal by Pain J ([2015] NSWLEC 90) and the Court of Appeal ([2015] NSWCA 248).

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

However, in circumstances where the development standard exceedance is the FSR, the gross floor area cannot be attributed to a specific component of the development. Accordingly, it is impossible to identify one particular part of the development to which attention must focus, noting the existing dwelling does not comply with the standard and previous approval of development on the site was subject of Clause 4.4A (formerly Clause 4.4[2A]) which did not provide a maximum FSR for the site. The gross floor area is comfortably absorbed into the existing layout of the dwelling and the additional building works – first floor addition are contained within the expected location of additions within the locality, having regard to its relationship with existing adjoining residential development.

Pursuant to clause 4.6(3)(b) of the RLEP, there are sufficient environmental planning grounds to justify the contravention to the floor space ratio development standard because:

- The subject site is located within the R2 Low Density Residential zone. While the density controls for *attached dwellings* within the zone anticipate a lower FSR than some other zones, importantly clause 4.4A of the LEP recognizes that smaller lots containing dwelling house or semi-detached development are not subject to FSR standards. The development is on a small site less than 300m<sup>2</sup> whereby another building typology – dwelling house or semi-detached dwelling would be permitted a greater density than that of the proposal. The *attached dwelling* on the site is a prohibited land use in the zone benefiting from existing use rights, and the proposed FSR does not result in a density that is uncharacteristic of surrounding development.
- The existing character of the locality is partly defined by the flexible application of the floor space ratio development standard. The proposed density is consistent with the density of approved development within the locality, including development at 169 Darley Road which has a GFA of 189.9m<sup>2</sup> – 0.73:1 and at 177 Darley Road where a gross floor area of 178.1m<sup>2</sup> – 0.61:1 approved under DA/497/2019. The additional gross floor area can be accommodated in a building form which is consistent with (a) the established streetscape of Centennial Avenue and (b) the established character of development within the North Randwick Conservation area.
- The contravention of the FSR development standard is justified in this particular development proposal with the additional gross floor area forming part of a redevelopment of a historical built form – attached cottage on site, providing a good design and planning outcome being an object of the EPA Act. The development improves the internal amenity of the building in a form that does not present adverse amenity impacts upon surrounding properties or the public domain.
- There are no adverse amenity impacts arising from the breach of the floor space ratio development standard (with regard to overshadowing, visual privacy, view loss). This is a recognised environmental planning ground. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at 34.

### **Conclusion**

The development proposal presents a contravention to the floor space ratio development standard contained in Clause 4.4 of the Randwick LEP 2012; notwithstanding, the proposal has been designed to present an uplift in the existing built form on site and is an appropriate redevelopment of land suitable for the specific circumstances of the subject site.

The additional gross floor area does not attempt to affect the planning outcome for the broader locality rather the additional floor area is dispersed across the redevelopment of the site in a form that is compatible with the immediate locality and established development along the row of dwellings from 169-177 Darley Road, Randwick. The additional floor area will not impact negatively upon the public domain or adjoining properties and will not generate overshadowing or amenity impacts beyond that envisaged by the respective controls.

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Consistency with the objectives of the land use zone are a consideration under section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, demonstrating the development is in the public interest and has been addressed within the Statement of Environmental Effects. Notwithstanding, the variation to the floor space ratio development standard facilitates a good planning outcome for the existing residential building that is consistent with the objectives of the zone.

The application to contravene the floor space ratio development standard pursuant to *Randwick Local Environmental Plan 2012* is well founded and as addressed above, the proposed density meets the objectives of the development standard. The proposal achieves an acceptable design that does not result in unreasonable visual and amenity impacts upon surrounding properties and is a desirable outcome in terms of built form for the site and locality.

In accordance with the environmental planning grounds addressed in this clause 4.6 request, the floor space ratio can be supported.

Chapman Planning Pty Ltd



**Appendix 3: DCP Compliance Table****3.3 Section C2: Medium Density Residential**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>2.</b>	<b>Site Planning</b>		
<b>2.1</b>	<b>Site Layout Options</b>		
	<p>(i) Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for:</p> <ul style="list-style-type: none"> <li>• Two block / courtyard example</li> <li>• T-shape example</li> <li>• U-shape example</li> <li>• Conventional example</li> </ul> <p>(ii) For development fronting laneways, the building must incorporate operable windows enabling casual surveillance of the rear lane.</p> <p>(iii) Laneway setbacks should be aligned with existing setbacks and where there is no consistent setback, a minimum of 1m setback is to be provided from the laneway.</p>	<p>No change to existing site layout of the attached dwelling. The parking facilities addressing Centennial Avenue are consistent with other parking facilities along the street.</p> <p>The rear facing windows of bedroom 3 will overlook rear yard towards the laneway providing opportunities for casual surveillance.</p> <p>The siting of the carport structure addressing the Centennial Avenue is angled to the boundary, provided a nil setback at the western boundary, which is consistent with other parking facilities along the street.</p>	Yes
<b>2.2</b>	<b>Landscaped open space and deep soil area</b>		
<b>2.2.1</b>	<b>Landscaped open space</b>		
	<p>(ii) A minimum of 50% of the site area (129.45m<sup>2</sup>) is to be landscaped open space.</p>	<p>Site area = 258.9sqm</p> <p>Existing (with DA/350/2013 approval) = 75.4sqm (29.1%)</p> <p>Proposed = 73.2sqm (28.2%)</p> <p>The minor reduction in landscaped open space is largely attributed to the extension of the carport footprint to provide paved groundcover and a roof structure to the pedestrian entrance along the eastern boundary of the site. If recommended for approval, conditions of consent could be imposed to ensure the pedestrian entrance is maintained as an unroofed structure.</p>	Acceptable subject to conditions

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<b>2.2.2</b>	<b>Deep soil area</b>		
	<p>(i) A minimum of 25% of the site area (64.7m<sup>2</sup>) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.</p> <p>(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.</p> <p>(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.</p> <p>(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.</p> <p>(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.</p>	<p>Existing approval (DA/350/2013) = 21.2% (55m<sup>2</sup>)</p> <p>Proposed = 20.6% (53.5m<sup>2</sup>)</p> <p>While the Architectural Plans claim the proposal will result in a net increase to the deep soil areas across the site, Council considers the calculation is an overestimation and would not include areas covered by a roof structure or fencing within the calculations. There are opportunities to increase the deep soil across the site, through maintaining an unroofed structure to the pedestrian pathway along the eastern boundary of the carport. If recommended for approval conditions of consent could require a portion of the carport roof to be removed from the development.</p> <p>Sufficient connection between deep soil areas of adjoining properties within the front and rear setbacks of the site.</p>	<p>Acceptable subject to conditions – refer to key issues</p>
<b>2.3</b>	<b>Private and communal open space</b>		
<b>2.3.1</b>	<b>Private open space</b>		
	<p>Private open space is to be:</p> <p>(i) Directly accessible from the living area of the dwelling.</p> <p>(ii) Open to a northerly aspect where possible so as to maximise solar access.</p> <p>(iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.</p> <p>For attached dwellings and multi dwelling housing</p>	<p>Private open space remains directly accessible from the living area of the dwelling, adequate privacy retained.</p> <p>40sqm of private open space retained at ground level, meeting the minimum dimensions</p>	<p>Yes</p>

	<p>iv) Each dwelling is provided with an area of useable private open space or courtyard area, at ground and/or podium level with minimal or no level changes; and</p> <p>v) A minimum area of 20 square metres of private open space should be provided at ground and/or podium level capable of containing a rectangle with minimum dimensions of 3m x 4m with minimal or no level changes.</p>	of 3m x 4m with no level changes.	
<b>3. Building Envelope</b>			
<b>3.1</b>	<b>Floor space ratio</b>		
	RLEP 2012 = 0.5:1	<p>Proposed = 0.715:1</p> <p>GFA = 185sqm</p>	Refer to Clause 4.6 assessment
<b>3.2</b>	<b>Building height</b>		
	RLEP 2012 = Maximum 9.5m	<p>Proposed = 6.85m building height</p> <p>7.65m chimney height.</p>	Yes
<b>3.4</b>	<b>Setbacks</b>		
<b>3.4.1</b>	<b>Front setback</b>		
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street.</p> <p>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.</p> <p>(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.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	<p>No change to existing front setback at ground floor level.</p> <p>5.4m setback to street, consistent with other attached dwellings.</p> <p>Existing landscaping within the front setback to be retained.</p>	Yes
<b>3.4.2</b>	<b>Side setback</b>		
	<p><b>Attached Dwellings</b></p> <p>Attached dwellings should comply with the minimum side setback requirements for dwelling houses and dual occupancies (attached and detached) (see Section C1 Low Density Residential: 3.3.2 Side Setbacks) = 0.9m for frontage width &lt; 9m</p> <p>Notwithstanding the above, side setbacks do not need to comply where they attach to another dwelling within the same development.</p>	<p>The subject site contains an attached dwelling, with nil setbacks to adjoining sites.</p> <p>No change to existing minimum side setbacks at ground floor level.</p> <p>At first floor level, a nil setback is provided.</p> <p>Existing internal courtyard to be</p>	Yes

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		widened to provide setback of 1.53m	
<b>3.4.3</b>	<b>Rear setback</b>		
	For attached dwellings, provide a minimum rear setback of 25% of the allotment depth or 8m, whichever is the lesser.	Control = 8m  No change to ground floor rear setback (14.6m at minimum point)  Proposed = 24.5m at first floor level. Sufficiently setback.	Yes
<b>4.</b>	<b>Building Design</b>		
<b>4.1</b>	<b>Building façade</b>		
	<ul style="list-style-type: none"> <li>(i) Buildings must be designed to address all street and laneway frontages.</li> <li>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</li> <li>(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.</li> <li>(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.</li> <li>(vi) Conceal building services and pipes within the balcony slabs.</li> </ul>	<p>No change is proposed to the front building façade, as viewed from Darley Road.</p> <p>Suitable articulation is provided to the building elevations by way of recesses from the internal courtyard and varying materiality between the original fabric of the heritage item and existing and proposed additions.</p>	Yes
<b>4.2</b>	<b>Roof design</b>		
	<ul style="list-style-type: none"> <li>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</li> <li>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</li> <li>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</li> <li>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</li> <li>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</li> <li>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</li> </ul>	<p>Flat roof design proposed to extend from behind the roof pitch to the street frontage. Skylights have been incorporated to improve solar access.</p> <p>The first floor addition requires a portion of the forward roof formation of the heritage item to be demolished. Council's Heritage Planner has reviewed the proposal and is unsupportive of the intrusion into the roof form to accommodate the first floor addition.</p>	Refer to key issues on heritage.

	<p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> <li>- There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences.</li> <li>- The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences.</li> <li>- Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street.</li> <li>- Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building.</li> </ul> <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
<b>4.4</b>	<b>External wall height and ceiling height</b>		
	(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.	Proposed = 6.85m	Yes
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	A floor to ceiling height of 2.6m is provided to the first floor bedrooms, secondary living and circulation. A floor to ceiling height of 2.2m is provided to the first floor bathroom. The 2.6m floor to ceiling heights are consistent with the NCC requirements for habitable areas. The 2.2m height of the bathroom is consistent with floor to ceiling height of non-habitable areas such as bathrooms.	Considered acceptable
<b>4.5</b>	<b>Pedestrian Entry</b>		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	As existing, clear pedestrian entrances provided to the site from both Darley Road and Centennial Avenue.	Yes
<b>4.6</b>	<b>Internal circulation</b>		
	<p>(i) Enhance the amenity and safety of circulation spaces by:</p> <ul style="list-style-type: none"> <li>- Providing natural lighting and ventilation where possible.</li> </ul>	Skylights have been incorporated into the roof design to improve solar access to the dwelling.	Yes



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	<ul style="list-style-type: none"> <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>	<p>The development proposes to widen the internal 'courtyard' achieving a 1.5m recess from the adjoining dwelling at No.169, to improve solar access and ventilation.</p>	
<b>4.9</b>	<b>Colours, materials and finishes</b>		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> <li>- Changes of colours and surface texture</li> <li>- Inclusion of lightweight materials to contrast with solid masonry surfaces</li> <li>- The use of natural stones is encouraged.</li> </ul> <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> <li>- Reflective wall cladding, panels and tiles and roof sheeting</li> <li>- High reflective or mirror glass</li> <li>- Large expanses of glass or curtain wall that is not protected by sun shade devices</li> <li>- Large expanses of rendered masonry</li> <li>- Light colours or finishes where they may cause adverse glare or reflectivity impacts</li> </ul> <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>	<p>The proposed schedule of materials and finishes are suitable. Council's Heritage Planner has reviewed the proposal and raises no concerns in relation to colours and materials of new addition however requests the original finish to the brick work at the front of the dwelling be restored.</p>	Yes
<b>4.10</b>	<b>Alterations and additions to attached dwellings</b>		
	<p>(i) Additional storeys to the main building or street frontage are generally not supported where:</p> <ul style="list-style-type: none"> <li>- A building is part of an intact group or streetscape;</li> <li>- The existing building is comparable to a consistent or predominant building height in the streetscape;</li> <li>- The predominant height of development in the vicinity of the site is single storey</li> </ul> <p>iii) Rear additions to terraces must not alter the parapet, ridgeline, chimneys and profile of party walls projecting above the roof of the terrace, as perceived from the front streetscape</p> <p>iv) Where the rear of a group of attached dwellings (terraces) displays a consistent form that is visible from a public space, alterations and additions are to be restricted to the ground floor.</p>	<p>The proposed first floor addition has been designed to be visually recessive when viewed from the street and the dwelling presents as a single storey when viewed from the public domain.</p> <p>While the first floor addition is not visible from the street, the siting of the addition will impact on the roof form at the front of the dwelling. As the dwelling at the site is part of a group</p>	Refer to key issues on heritage

		heritage item, the intrusion into the roof form would create an undesirable precedence for similar additions to be accommodates to the other attached dwellings which form the listed item, undermining the heritage significant of the dwellings.	
<b>4.12</b>	<b>Earthworks Excavation and backfilling</b>		
	<p>(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated 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>	Excavation to a depth of approximately 2.1m is proposed for the swimming pool construction. Minimal earthworks are required to accommodate the remainder of the development.	Yes
<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>	Noting the north-south orientation of the site, the existing built form to the site a overshadows the living areas and POS during midwinter. The existing rear extension provides highlight windows to all elevations to maximise solar access to the main living area of the dwelling. The siting of the first floor addition requires the removal of the north facing highlight windows, reducing solar access to the living areas, however the shadow diagrams show that sufficient solar access can be received from other elevations.	Considered acceptable

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		<p>The submitted shadow diagrams show that the POS will receive no solar access during mid-winter, however Council notes that the only portion of the POS which receives solar access in midwinter is the area already approved as a carport under DA/350/2013. Therefore it is considered that the proposal will not reduce the solar access further than what is currently approved on the site.</p>	
	<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>	<p>The proposal will result in minor additional overshadowing of the property at 173 Darley Road in the morning, and minor overshadowing to 169 Darley Road in the afternoon. The adjoining properties would still receive sufficient solar access to POS between 8am and 4pm during midwinter. North facing windows of neighbouring dwellings remain unaffected due to the north south orientation of the site.</p>	<p>Considered acceptable</p>
<b>5.2</b>	<b>Natural ventilation and energy efficiency</b>		

	<p>(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.</p> <p>(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.</p> <p>(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.</p>	<p>Internal habitable spaces will achieve adequate natural lighting and ventilation.</p> <p>All habitable rooms are provided with window openings. Skylights are provided to the first floor addition to improve solar access, particularly to internalized areas such as the rumpus/secondary lounge.</p>	Yes
<b>5.3</b>	<b>Visual privacy</b>		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <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>	<p>Siting of windows to the first floor addition do not raise concern in relation to visual privacy.</p> <p>The windows to Bedroom 03, while being expansive in appearance, orient the POS of the site, are set back in excess of 10m from the ground floor envelope, and are considered to provide minimal overlooking to the private open space of neighbouring sites.</p> <p>The windows to the rumpus area and Bedroom 04 address the internal courtyard and does not provide direct sightlines to the windows or POS of the neighbouring site at No.169 Darley Road.</p> <p>Landscape screening to a height of 2m is proposed along the western boundary of the site along the boundary of the swimming pool. The existing side boundary fencing is considered</p>	Yes

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		acceptable to maintain visual privacy at the site.	
<b>5.4</b>	<b>Acoustic privacy</b>		
	<p>(i) Design the building and layout to minimise transmission of noise between buildings and dwellings.</p> <p>(ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities.</p> <p>(iii) Utilise appropriate measures to maximise acoustic privacy such as:</p> <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>	<p>No change is proposed to the existing residential use of the site. In this regard, the proposal is unlikely to give rise to any additional acoustic impacts.</p> <p>A swimming pool is proposed to be constructed close to the western boundary of the site (550mm setback). Landscape screening to a height of 2m is proposed within the side setback which along with existing timber fencing, is considered to be appropriate to reduce noise transmission associated with the use of the pool. Pool equipment is proposed to be concealed within the carport structure.</p>	Yes
<b>5.5</b>	<b>View sharing</b>		
	<p>(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.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</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>Existing views and vistas from neighbouring dwellings and the public domain will be maintained. There are no significant views afforded to neighbouring properties which would be impacted by the proposed development.</p>	Yes



	(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.		
<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 proposal has been designed with regard to maintaining safety and security providing clear sightlines to the entrances of the dwelling, and providing opportunities for casual surveillance to the street.	Yes
<b>6.</b>	<b>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. (ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site. (iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas. (iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.	The carport structure is located off Centennial Avenue (rear laneway).  The setback alignment of the carport structure, providing nil setbacks to the side elevations, and an angled setback to the street (to the boundary at the western boundary) is consistent with the alignment of existing garages at neighbouring sites.	Considered acceptable
<b>6.2</b>	<b>Configuration</b>		
<b>6.4</b>	(iii) For controls on the configuration of hardstand car spaces, carports, garages and driveways for attached dwellings, refer to the Low Density Residential chapter.	An assessment of the Part C1 DCP driveway and carport configuration are contained under 6.4 and 6.6 directly below	
	<b>Driveway Configuration</b>		
	(i) Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	The existing driveway off Centennial Avenue is proposed to be widened to a maximum width of 3m.	Yes
<b>6.6</b>	<b>Carport Configuration</b>		
	i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that	The proposal involves the construction of a carport structure to	Yes

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	<p>relates to dwelling</p> <ul style="list-style-type: none"> <li>iii) 3m (single) 6m (double) maximum width.</li> <li>iv) 5.4m minimum length</li> <li>v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof.</li> <li>vi) No solid panel or roller shutter door.</li> <li>vii) Front gate allowed (minimum 30% open)</li> <li>viii) Gate does not open to public land</li> </ul>	<p>the rear of the dwelling, accessed via Centennial Avenue. The structure provides opaque roller doors to the street and is largely enclosed, only presenting as an open structure to the private open space of the subject site. Whilst the parking structure presents as a garage to the street, this structure is not fully enclosed and is regarded as a carport. As such, the relevant carport controls apply.</p> <p>The carport provides a maximum wall height of 2.56, and overall building height of 3.2m. The minor non-compliance to the overall height is considered acceptable as the achieved height has been demonstrated to be consistent with the alignment of other parking structures along Centennial Avenue. Side and rear setbacks to the roof component reduce the visual bulk of the height exceedance.</p> <p>The angled alignment of the garage setback to the street is consistent with other garages along Centennial Avenue – refer to Streetscape Analysis provided by the Applicant</p> <p>Council's development engineers have reviewed the proposal and raise o</p>	
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		objection subject to conditions of consent.	
<b>7. Fencing and Ancillary Development</b>			
<b>7.1</b>	<b>Fencing</b>		
	<ul style="list-style-type: none"> <li>(i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering.</li> <li>(ii) Sandstone fencing must not be rendered and painted.</li> <li>(iii) The following materials must not be used in fences: <ul style="list-style-type: none"> <li>- Steel post and chain wire</li> <li>- Barbed wire or other dangerous materials</li> </ul> </li> <li>(i) Expansive surfaces of blank rendered masonry to street frontages must be avoided.</li> </ul>	Existing timber and brick fence materiality to remain.	Yes
<b>7.3</b>	<b>Side and Rear Fencing</b>		
	<ul style="list-style-type: none"> <li>(i) The maximum height of side, rear or common boundary fences is limited to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing).</li> <li>(ii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits.</li> <li>(iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment.</li> <li>(iv) Side or common boundary fences must be finished or treated on both sides.</li> </ul>	No change to existing front fencing proposed. Side and rear boundary fencing within the envelope of the carport is proposed to be removed. Timber fencing and entrance gate along rear boundary is proposed to be removed to accommodate carport structure and new pedestrian entrance.	Yes
<b>7.5</b>	<b>Swimming and Spa Pools</b>		
	<ul style="list-style-type: none"> <li>(i) Locate behind the alignment of the front building facade.</li> <li>(ii) Locate to minimise damage to the root system of existing trees on the adjoining properties, as well as trees on the subject site proposed or required to be retained.</li> <li>(iii) Locate to minimise noise and privacy impacts on the adjoining dwellings.</li> </ul>	<p>Inground swimming pool proposed to be constructed within the rear POS of the site.</p> <p>Council's landscape officer has reviewed the proposal and raises no objections to the siting of the swimming pool, subject to conditions which will require hand excavations to determine the existence of roots from vegetation at neighbouring sites.</p> <p>While the swimming pool is located close to the western boundary of the site (550mm), the pool is</p>	Yes

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		<p>not elevated above ground, and landscape screening to a height of 2m is proposed to reduce visual and acoustic impacts to the neighbouring site.</p> <p>Pool equipment is proposed to be stored within the carport structure, reducing noise transmission.</p>	
<b>7.6</b>	<b>Storage</b>		
	<ul style="list-style-type: none"> <li>(i) Locate behind the alignment of the front building facade.</li> <li>(ii) Locate to minimise damage to the root system of existing trees on the adjoining properties, as well as trees on the subject site proposed or required to be retained.</li> <li>(iii) Locate to minimise noise and privacy impacts on the adjoining dwellings.</li> </ul>	Waste bin storage and pool equipment proposed to be contained within the new carport structure at the rear of the site, concealed from view.	Yes

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**Responsible officer:** Elizabeth James, Environmental Planning Officer

**File Reference:** DA/511/2024

## Development Application Report No. D79/24

**Subject:** 18 Bona Vista Avenue Maroubra (DA/638/2024)

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### Executive Summary

<b>Proposal:</b>	External alterations and additions to existing residential flat building, including new façade finishes replacement of balustrades and increased waste storage areas.
<b>Ward:</b>	Central Ward
<b>Applicant:</b>	Group Architects Pty Ltd
<b>Owner:</b>	Strata Plan 8473
<b>Cost of works:</b>	\$268,537.00
<b>Reason for referral:</b>	The development involves a pre-existing variation to the Height of Building Development Standard by more than 10%.

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of building development standard in Clause 4.3 of Randwick Local Environmental Plan 2012.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 638/2024 for the refurbishment of the existing residential flat building at No. 18 Bona Vista Avenue Maroubra, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/638/2024 - 18 Bona Vista Avenue, MAROUBRA NSW 2035 - DEV - Group Architects Pty Ltd

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1. Executive summary

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

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

The proposal seeks development consent for the refurbishment of the existing flat building including the replacement of existing balcony balustrades, external building finishes and enlarged garbage storage area.

The key issues associated with the proposal relate to existing non-compliance with the height of building development standard.

The proposal is recommended for approval subject to conditions.

2. Site description and Locality

The subject site is known as 18 Bona Vista Avenue Maroubra and is legally described as Lot 26 in DP 5349, Strata Plan 8473 containing 9 lots. The site is 695m<sup>2</sup>, in area and at present contains a three storey residential flat building with garage parking beneath. The locality is residential in nature and contains a mixture of single free standing dwellings and residential flat buildings.



**Photo 1:** Existing building as viewed within the street.



**Photo 2:** South western side of building which contains the garages that are to have new roller doors installed.

### 3. Relevant history

DA/739/2024 – Alterations to unit 7. This application was lodged on 12 August 2024 and has not been determined.

### 4. Proposal

The application detail works to an existing residential flat building including new façade finishes, replacement of existing balustrades which are in poor condition and a revised garbage storage area to allow the proper storage of garbage and recyclables.

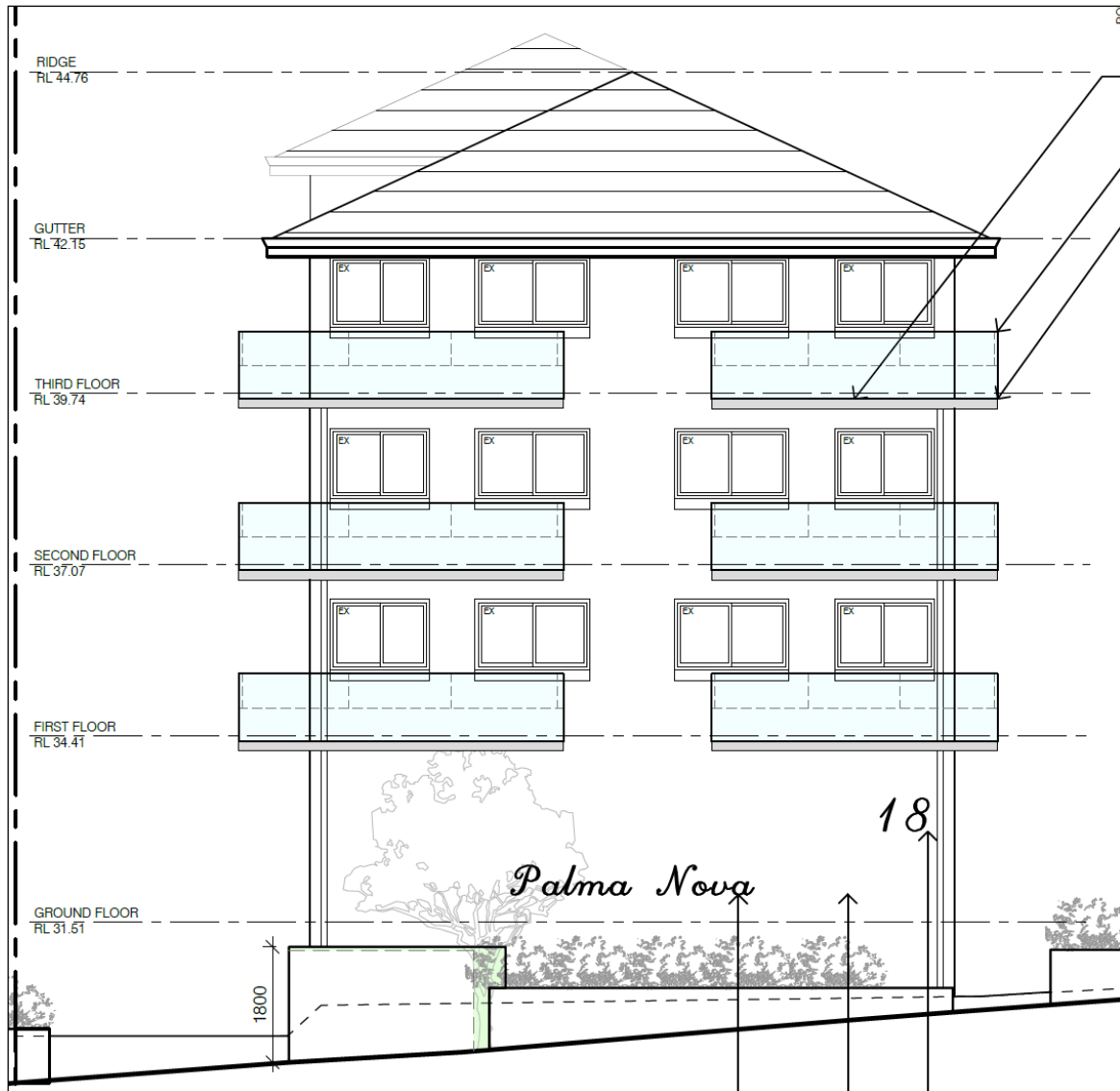
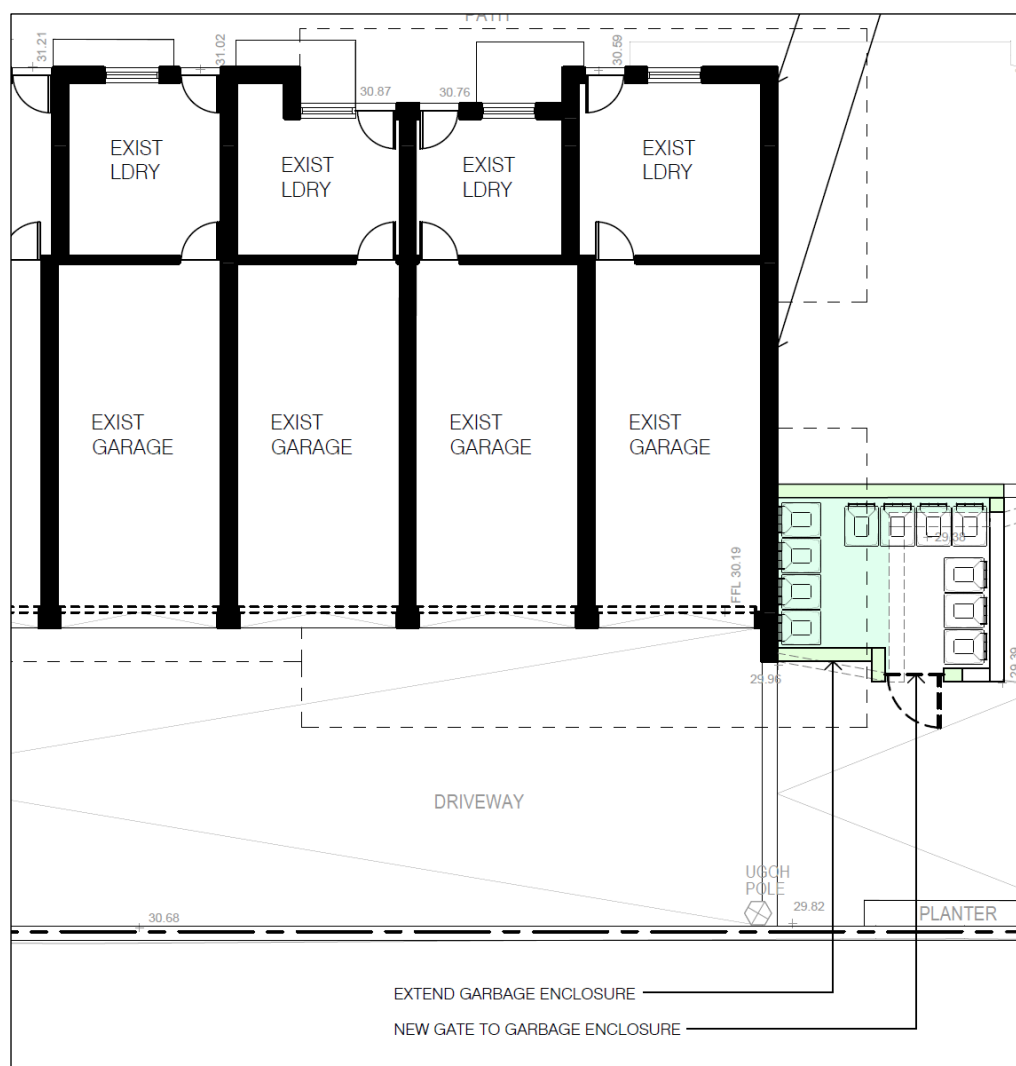


Figure 1: Proposed street elevation, new balustrades, new render finish and street number.





**Figure 2:** Proposed revised southwest elevation, new balustrade, garage doors, render and garbage enclosure.



**Figure 3:** Enlarged garbage enclosure.

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## 5. Notification

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

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Sustainable Buildings) 2022

Not applicable.

### 6.2. SEPP (Housing) 2021

Chapter 4 of this SEPP does not apply as the proposal does not detail a substantial redevelopment of the existing flat building. The proposal is for the replacement of existing balustrades to balconies, new façade finishes, and new designated garbage store area.

#### Apartment Design Guide

The relevant design criteria contained in parts 3 and 4 of the Apartment Design Guidelines do not apply to this development, as noted above the proposal does not substantially alter the existing building.

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

Not applicable.

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

Not applicable.

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

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

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

A search of Council records indicates that the original building was approved under Building Application 1101/1972.

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

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

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



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

Description	Council Standard	Proposed	Compliance (Yes/No/NA)
Height of Building (Maximum)	9.5m	14.25m existing overall building height. Point of building at which works are proposed 11.875m (existing and proposed are unchanged)	No

The proposal increases neither the existing FSR or Building Height.

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

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

### 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	11.875m	11.875m, as existing remains unchanged.	25%

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.

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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 standard is contained in Appendix 1.

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

The applicant's written request seeks to justify the contravention of the Height of Building 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 Building standard are set out in Clause 4.3 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the works do not alter the existing height of the building with the no compliance numeric only with no change to the existing bulk and scale of the building.

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that there is no change to the existing height of the building. There are also no views impacted.

Assessing officer's comment: In conclusion, the applicant's written request has 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 Building development standard as follows:

The main issue is that the existing overall building height is not being increased by the proposal. The existing building height is at 14.25m and the works are between 11.47m to 11.875m which is at the point of the building that includes the replacement of the existing balcony balustrades with new glazed balustrades.

The proposed replacement of the balustrades will not result in the overall objectives of the Height of Building standard as the overall bulk and scale of the building is not altered, the appearance of the building in the local streetscape will be significantly improved from a very dated 1970's building to a contemporary element, and the works will not impact the amenity of the adjoining properties in terms of privacy and solar access and in addition there are no impacts upon views.

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

## Conclusion

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

## 8. Development control plans and policies

### 8.1. Randwick Comprehensive DCP 2013

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

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

## 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions have been received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## 9.1. Discussion of key issues

### Permissibility

The proposed modification can be defined as alterations and additions to a residential flat building. A residential flat building is prohibited in the R2 Low Density Residential zone. The proposal; however, benefits from existing use rights under Section 4.65 – 4.67 of the *Environmental Planning and Assessment Act 1979*.

### Existing Use Rights

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

A search of Council records indicates that the original building was approved under Building Application 1101/1972 and was subsequently strata titled.

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

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

Section 4.67 of the EP&A Act provides that any provisions in an instrument that would derogate from the “incorporated provisions” of the Act would have no force or effect. This effectively means that provisions (objectives, controls or standards) of an environmental planning instrument that would restrict the redevelopment of the site do not apply. In the absence of such provisions, the Land and Environment Court has established a planning principle for urban development (*Fodor Investments v Hornsby Shire Council, 2005*) which establishes criteria for the assessment of proposals on land with existing use rights. Assessment against the planning principal is provided below:

#### Planning Principal 1

***How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?***

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.*

The proposed modification involves removal and replacement of the existing balustrades within a residential flat building and other minor external works to the building finishes and alteration to an existing garbage storage area. There is no additional bulk proposed. The proposal does not involve any increases to the existing FSR of the residential flat building.

The proposed balustrades of the uppermost level (units) will have a maximum height of 11.875m above existing ground level, which exceeds the maximum building height development standard under the LEP. See Clause 4.6 Objection and discussion above.



Planning Principal 2***What is the relevance of the building in which the existing use takes place?***

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.*

The proposed modification retains the approved use of the residential flat building and does not involve a change of use to the existing development. The proposed modification involves minor changes to building including the replacement of balcony balustrades, changes to external finishes and an enlarged garage storage area.

Planning Principal 3***What are the impacts on adjoining land?***

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

The proposed changes are only to the existing balconies and are considered minor. The bulk, scale and massing of the existing residential flat building remains unchanged. The proposed modification does not result in any adverse acoustic and visual privacy impacts, overshadowing impacts and view loss.

Planning Principal 4***What is the internal amenity?***

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

The proposed modification facilitates increased amenity and functionality for the occupants of the existing residential flat building by ensuring balconies are appropriately designed and built.

Conclusion

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the continued use of the site as a residential development, shall not fundamentally alter the existing streetscape, and shall not result in any unreasonable amenity impacts upon adjoining and surrounding properties. Based on the above existing use rights assessment, and subject to the recommendations within the report, the proposal is considered reasonable.

**Numerical Development Standards**

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

Description	Council Standard	Proposed	Compliance (Yes/No/NA)
Floor Space Ratio	Max 0.5:1 (942.9m <sup>2</sup> )  However, Clause 4.4A(4) applies to the proposal:	N/A – unchanged from existing	N/A

Description	Council Standard	Proposed	Compliance (Yes/No/NA)
Height of Building	Max 9.5m	14.25m existing overall building height. Point of building at which works are proposed 11.875m (existing and proposed are unchanged)	See Clause 4.6 Objection discussion.

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## 10. Conclusion

That the application to replace the existing balcony balustrades, provide new external finishes to the building and enlarge the garbage storage area be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2023
- The proposal is consistent with the specific objectives of the R2 zone in that the proposal will provide for the continued use of the site as a residential development and continues to reflect the desired future character of the area and not result in any unreasonable amenity impacts to the adjoining and surrounding properties.
- The site is subject to existing use rights and the proposal is considered to be appropriate to the subject site and will not result in any unreasonable adverse impacts upon either the amenity of the adjoining premises or the character of the locality.

Appendix 1: Applicant’s written request seeking to justify the contravention of the development standard

CLAUSE 4.6 (Exceptions to Development Standards) – Clause 4.3 Height of Buildings

Proposal: Alterations and additions to an existing apartment within an existing residential flat building  
Property: 18 Bona Vista Ave, MAROUBRA

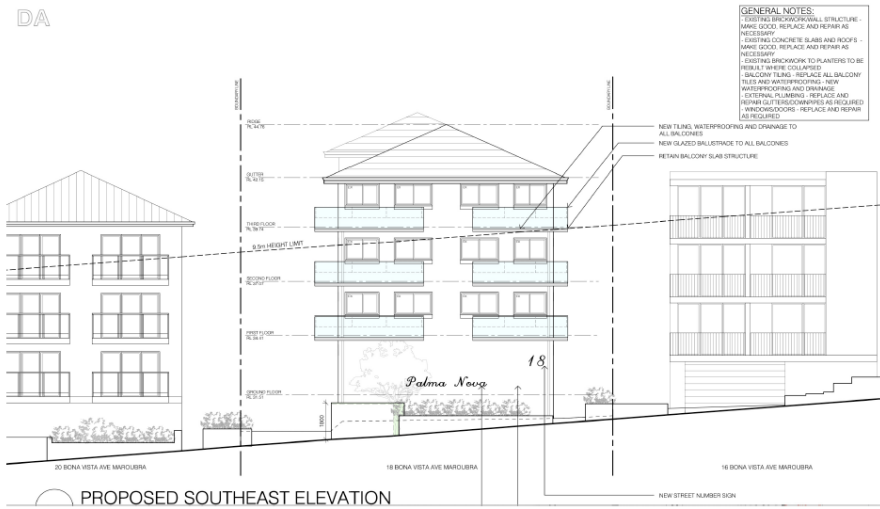
Dear Sir/Madam,

Pursuant to Clause 4.6 (Exceptions to Development Standards) of the Randwick Local Environmental Plan 2012 (RLEP 2012), please see the below to address the provisions as detailed in Clause 4.3 of the RLEP 2012.

The proposed works in this application relate to alterations to an existing apartment including internal layout changes and the alteration of existing windows to sliding doors. No change to the existing building height is proposed.

The subject site at 18 Bona Vista Ave, Maroubra contains an existing residential flat building within an R2 zone, and is subject to Existing Use Rights. The RLEP 2012 height limit for the subject site is 9.5m. The existing building has a maximum height of 14.25m to the existing ridge line and the proposed works occurring between 11.875m – 11.475m above ground – 25% above the 9.5m height line.

The proposed works result in a numeric non-compliance with the LEP height limit, but does not result in any material change to the existing height of the building, or the overall bulk and scale.



Proposed balcony replacement to 18 Bona Vista Ave Maroubra – no change to building height.

## **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.*

Assessment against this clause is requested, as the proposed variation to the development standard will be wholly within the existing building form and maintain the existing outcomes for the existing building with no additional impacts to the surrounding properties.

*(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.*

Pursuant to this clause, this written request has been prepared to address the relevant objectives. The development standard in question is not excluded from the operation of this clause.

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that —*

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

The requirements of Clause 4.6(3) are addressed below

### **Clause 4.6(3) Requirements**

#### **Clause 4.6(3)a**

This clause requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. *Wehbe v Pittwater Council [2007] NSWLEC 827* established five potential tests for determining whether a development standard might be considered unreasonable or unnecessary. The five tests are as follows:

*Test 1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard;*

*Test 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

*Test 3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

*Test 4. The development standard has been 'virtually abandoned or destroyed' by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and*

*Test 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is considered that the proposed development adequately satisfies Test 1 with the objectives of the Development Standard being achieved, notwithstanding the numeric non-compliance with the development standard as detailed below:

The objectives of the maximum building height development standard set out by **Clause 4.3 – Height of Buildings** 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.*

The numeric non-compliance with Clause 4.3 does not diminish the developments existing response to the the objectives of this clause.

- (a) The proposed works so not alter the existing residential flat buildings' size and scale, and therefore remains compatible with the existing character of the locality.

- (b) The subject site is not within a conservation area nor near a heritage item.
- (c) The proposed works are wholly within the envelope of the existing residential flat buildings' including the existing heights and therefore does not contribute any further impacts on the amenity of adjoining or neighbouring land in visual bulk, privacy, overshadowing or views.

Compliance with the Height of Building Development Standards is unreasonable and unnecessary in the circumstances of this development as the proposed works do not change the height of the existing residential flat building.

**Clause 4.6(3)b**

This clause requires that there be sufficient environmental planning grounds to justify contravening the development standard. There are sufficient environmental planning grounds that justify the numeric non-compliance based on the Existing Use Rights that are applicable to the site.

The proposed works do not change the existing height of the existing residential flat building, as the works relate to alterations and additions to an existing apartment within the existing building, with no change to the existing bulk and scale of the building, including the building height. As such the non-compliance is numeric only, with no material impact. The proposed works maintain the existing buildings' consistency within the existing streetscape.

**Conclusion**

In conclusion, the proposed numeric non-compliance with the Height of Buildings development standard does not alter the existing residential flat buildings compliance with the objectives of Clause 4.3 and the objectives R2 - Low Density Residential Zone of the RLEP 2012. As such the requirements of the Clause 4.6 of the LEP are satisfied and therefore we ask that Randwick Municipal Council consider this Clause 4.6 Variation request and determine the application favourably.

We trust this request to vary the planning controls meets with your approval, and if you have any queries regarding the application please do not hesitate to contact the undersigned.

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**Appendix 2: DCP Compliance Table****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 the tables below. (Note: a number of control provisions that are not related to the proposal have been deliberately omitted.)

**Section B6: Recycling and Waste Management**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>4.</b>	<b>On-Going Operation</b>		
	(iv) Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street where possible.	The existing bin storage area at the front of the building is being enlarged. There is no other suitable location.	Yes.
	(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.	No change in location of waste storage area.	Yes.
	(vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.	The area is screened from the public domain.	Yes.
	(vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step-free and unobstructed access to the collection point(s).	The waste storage area remains accessible for all residents.	Yes.
	(ix) Bin enclosures / rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply.	The waste storage area remains open to the air and easily maintained.	Yes.

**Section C2: Medium Density Residential**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>2.</b>	<b>Site Planning</b>		
<b>2.1</b>	<b>Site Layout Options</b>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for:</p> <ul style="list-style-type: none"> <li>Two block / courtyard example</li> <li>T-shape example</li> <li>U-shape example</li> <li>Conventional example</li> </ul>	No change to layout of building.	Yes.
<b>2.2</b>	<b>Landscaped open space and deep soil area</b>		
<b>2.2.1</b>	<b>Landscaped open space</b>		
	<p>A minimum of 50% of the site area is to be landscaped open space.</p>	<p>31.7% at present which is reduced to 30.7%.</p> <p>The small reduction in existing landscaped area is a result of the increased garbage storage area. The existing area of POS to the rear of the building which is used by residents is not reduced nor the gardens and soft soil areas within the northern side of the site and the front garden areas.</p> <p>In this instance the loss of landscaping in this area is acceptable.</p>	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>	<p>The new balustrades, new render and garage doors will improve the visual appearance of the building.</p>	Yes.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<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.	No change to balcony dimensions.	N/A
<b>4.9</b>	<b>Colours, materials and finishes</b>		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> <li>- Changes of colours and surface texture</li> <li>- Inclusion of light weight materials to contrast with solid masonry surfaces</li> <li>- The use of natural stones is encouraged.</li> </ul> <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> <li>- Reflective wall cladding, panels and tiles and roof sheeting</li> <li>- High reflective or mirror glass</li> <li>- Large expanses of glass or curtain wall that is not protected by sun shade devices</li> <li>- Large expanses of rendered masonry</li> <li>- Light colours or finishes where they may cause adverse glare or reflectivity impacts</li> </ul> <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>	The new colour palette of the building will uplift the visual presentation of the building within the local streetscape and is consistent with the recommendations contained with the Randwick Design Ideas for Rejuvenating Residential Flat Buildings.	Yes
<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	Minimal earthworks to the front of the site to enlarge	Yes.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>allotment, unless it is demonstrated 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>	the existing bin store area.	

### Appendix 3: Randwick Council Design Ideas for Rejuvenating Residential Flat Buildings.

The purpose of this document is to guide and encourage the refurbishment of older residential flat buildings that recognise and promote the benefits of refurbishing older buildings.

In this case the building owner have recognised that the building requires updating in terms of new balustrades to the existing balconies, new render and roller doors and a revised garbage store area.

The proposed works are consistent with this document.

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**Responsible officer:** Perry Head, Environmental Planning Officer

**File Reference:** DA/638/2024

## Development Consent Conditions (Medium Density Residential)



D79/24

Folder /DA No:	DA/638/2024
Property:	18 Bona Vista Avenue, MAROUBRA
Proposal:	External alterations and additions to existing residential flat building, including new façade finishes, replacement of balustrades and increased waste storage area.
Recommendation:	Approval

### GENERAL CONDITIONS

#### Condition

1. **Approved plans and documentation**

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

Plan	Drawn by	Dated	Received by Council
2023-030-100	Group Architects	21/6/2024	19/7/2024
2023-030-101	Group Architects	21/6/2024	19/7/2024
2023-030-200	Group Architects	21/6/2024	19/7/2024
2023-030-201	Group Architects	21/6/2024	19/7/2024
2023-030-202	Group Architects	21/6/2024	19/7/2024
2023-030-203	Group Architects	21/6/2024	19/7/2024
2023-030-F01	Group Architects	21/6/2024	19/7/2024

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. **Section 7.12 Development Contributions**

In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$268,537 the following applicable monetary levy must be paid to Council: \$2,685.35.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a



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Condition	
	<p>construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone <b>9093 6000</b> or <b>1300 722 542</b> for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> $\text{IDC} = \text{ODC} \times \text{CP2/CP1}$ <p>Where:</p> <p><b>IDC</b> = the indexed development cost</p> <p><b>ODC</b> = the original development cost determined by the Council</p> <p><b>CP2</b> = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment</p> <p><b>CP1</b> = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at <a href="http://www.randwick.nsw.gov.au">www.randwick.nsw.gov.au</a>.</p>

Condition Reason: To ensure relevant contributions are paid.

4. **Long Service Levy Payments**

Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with Section 6.8 of the *Environmental Planning and Assessment Act 1979*.

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

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

#### BEFORE BUILDING WORK COMMENCES

Condition	
5.	<p><b>Building Certification &amp; Associated Requirements</b></p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):</p> <ol style="list-style-type: none"> <li>a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</li> </ol> <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ol style="list-style-type: none"> <li>a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</li> <li>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</li> </ol>

Condition
<p>accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</p> <p>d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and</p> <p>e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</p>
<p>Condition Reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
<p>6. <b>Home Building Act 1989</b>  In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 &amp; 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition Reason: Prescribed condition under section 69 &amp; 71 of the Environmental Planning and Assessment Regulation 2021.</p>
<p>7. <b>Construction Noise &amp; Vibration Management Plan</b>  Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.</p> <p>A <i>Construction Noise &amp; Vibration Management Plan</i> must be developed and implemented throughout demolition and construction work.</p> <p>(a) The <i>Construction Noise &amp; Vibration Management Plan</i> must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority <i>Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline</i> (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.</p> <p>(b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.</p> <p>(c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the <i>Construction Noise &amp; Vibration Management Plan</i> and which demonstrates compliance with relevant criteria.</p> <p>(d) Any recommendations and requirements contained in the <i>Construction Noise &amp; Vibration Management Plan</i> and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.</p> <p>A copy of the Construction Noise &amp; Vibration Management Plan and</p>

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Condition
associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.
(e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.

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

8. **Construction Site Management Plan**

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

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

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

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

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

9. **Construction Site Management Plan**

A *Sediment and Erosion Control Plan* must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.

Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

#### DURING BUILDING WORK

Condition
10. <b>Site Signage</b>
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

Condition
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.

11. **Restriction on Working Hours**

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

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

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

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

12. **Construction Site Management**

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

Temporary site fences must have a height of 1.8 metres and be a cyclone wire

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	Condition
	<p>fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.</p> <p>Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.</p> <p>All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.</p> <p><i>Notes:</i></p> <ul style="list-style-type: none"> <li>• <i>Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.</i></li> <li>• <i>A separate Local Approval application must be submitted to and approved by Council's Health, Building &amp; Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.</i></li> </ul> <p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p>
13.	<p><b>Public Safety &amp; Site Management</b></p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.</li> <li>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.</li> <li>Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.</li> <li>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.</li> <li>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.</li> </ol> <p>Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.</p> <p><i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or,</i></p>



Condition	
	<i>operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i>
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.

#### BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

#### DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
15.	<b>Demolition Work</b> A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements: <ul style="list-style-type: none"> <li>a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy.</li> <li>b) The Demolition Work Plan must include the following details (as applicable):               <ul style="list-style-type: none"> <li>• The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor</li> <li>• Details of hazardous materials in the building (including materials containing asbestos)</li> <li>• Method/s of demolition (including removal of any hazardous materials including materials containing asbestos)</li> </ul> </li> </ul>

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Condition
<ul style="list-style-type: none"> <li>Measures and processes to be implemented to ensure the health &amp; safety of workers and community</li> <li>Measures to be implemented to minimise any airborne dust and asbestos</li> <li>Methods and location of disposal of any hazardous materials (including asbestos)</li> <li>Other measures to be implemented to ensure public health and safety</li> <li>Date the demolition works will commence/finish.</li> </ul> <p>The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.</p> <p>If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.</p> <p><i>Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m<sup>2</sup> of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.</i></p> <p><i>A copy of Council's Asbestos Policy is available on Council's web site at <a href="http://www.randwick.nsw.gov.au">www.randwick.nsw.gov.au</a> in the Building &amp; Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition Reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.</p>

## Development Application Report No. D80/24

**Subject:** 5/39-41 Harbourne Road, Kingsford (DA/521/2024)

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### Executive Summary

<b>Proposal:</b>	Enclosure of existing balcony to dwelling within residential flat building
<b>Ward:</b>	West Ward
<b>Applicant:</b>	F Rutter
<b>Owner:</b>	J Mo
<b>Cost of works:</b>	\$3 452
<b>Reason for referral:</b>	The proposal exceeds the Floor Space Ratio development standard by more than 10%

### Recommendation

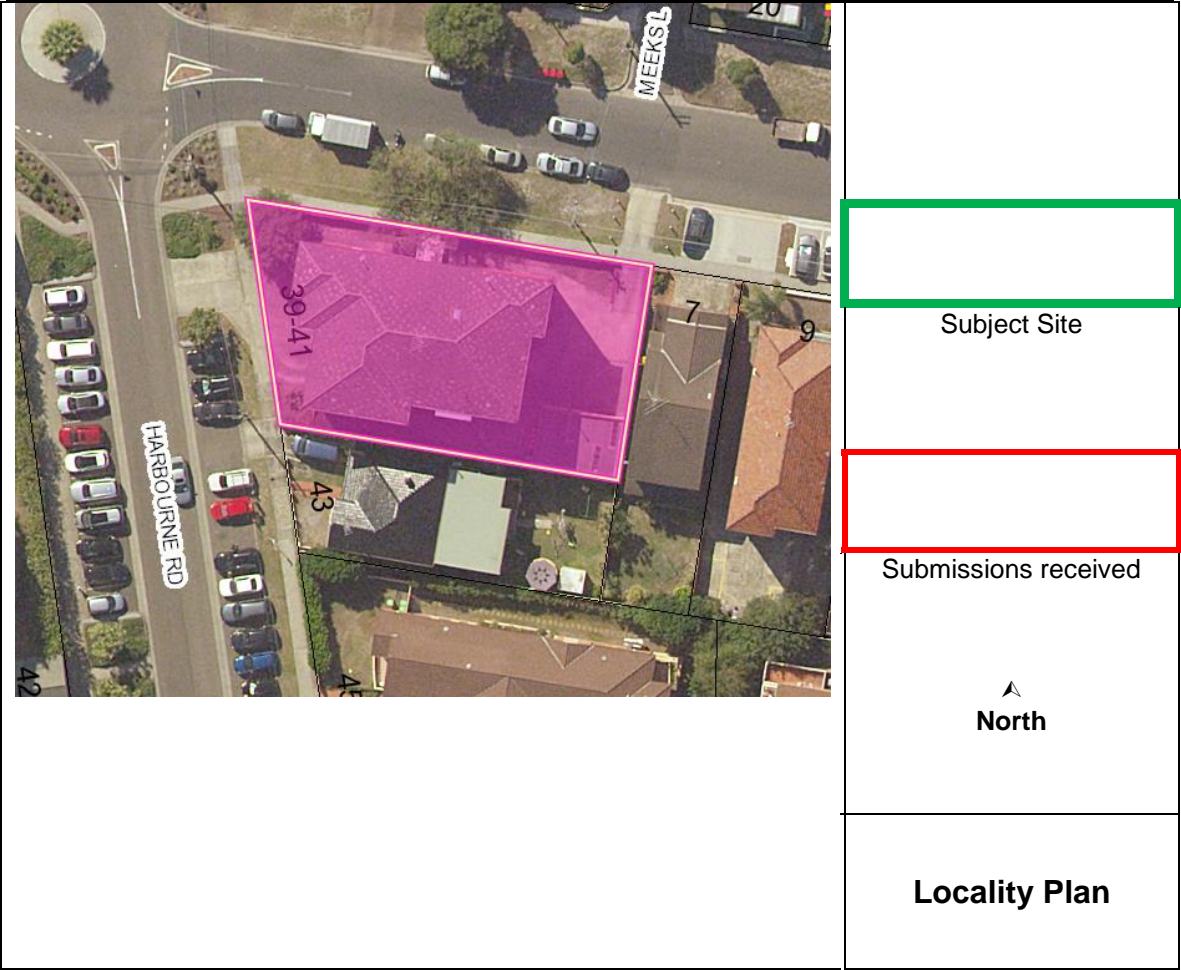
- A. That the RLPP is satisfied the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 521/2024 for the enclosure of the balcony of Unit 5 at 39-41 Harbourne Road, Kingsford, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.   RLPP Dev Consent Conditions (med density res) - DA/521/2024

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1. Executive summary

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

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

The proposal seeks development consent for the enclosure of the existing balcony to unit 5 within the existing residential flat building.

The key issues associated with the proposal relate to the variation to the FSR development standard. The FSR variation arises because the FSR of the existing building already exceeds the current standard and these works further increase that.

The increase in GFA which is a result of the enclosure of the balcony is 6.59sqm.

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

It is noted that of the 12 dwellings 6 already have enclosed balconies.

The proposal is recommended for approval subject to conditions.

## 2. Site Description and Locality

The subject site is known as 39-41 Harbourne Road Kingsford and is legally described as Lots 1 & 2 in DP 6134, Strata Plan 797 containing 12 lots.

The site is 804m<sup>2</sup> in area, is trapezoid in shape and is on the corner of Harbourne Road and Meeks Street.

The works detailing the balcony enclosure are to the northern elevation of the building which fronts Meeks Street. See photos below.



**Photo 1. Northern elevation of building, Meeks Street frontage. Subject balcony is in the middle right hand side, obscured by tree.**



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Photo 2. Harbourn Road elevation.



**Photo 3. Other existing enclosed balconies within the Meek Street elevation.**

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**Photo 4. Proposed balcony to be enclosed, between the existing enclosed and upper level open balcony.**





**Photo 5. Meeks Street entrance of the building.**

### **3. Relevant history**

BA/777/1970 – Balcony Enclosure to Unit 11.

BA/1141/1984 – Balcony Enclosure to Unit 2.

BA/1142/1984 – Balcony Enclosure to Unit 4.

BA/1104/1989 – Balcony Enclosure to Unit 1.

BA/1105/1989 – Balcony Enclosure to Unit 12.

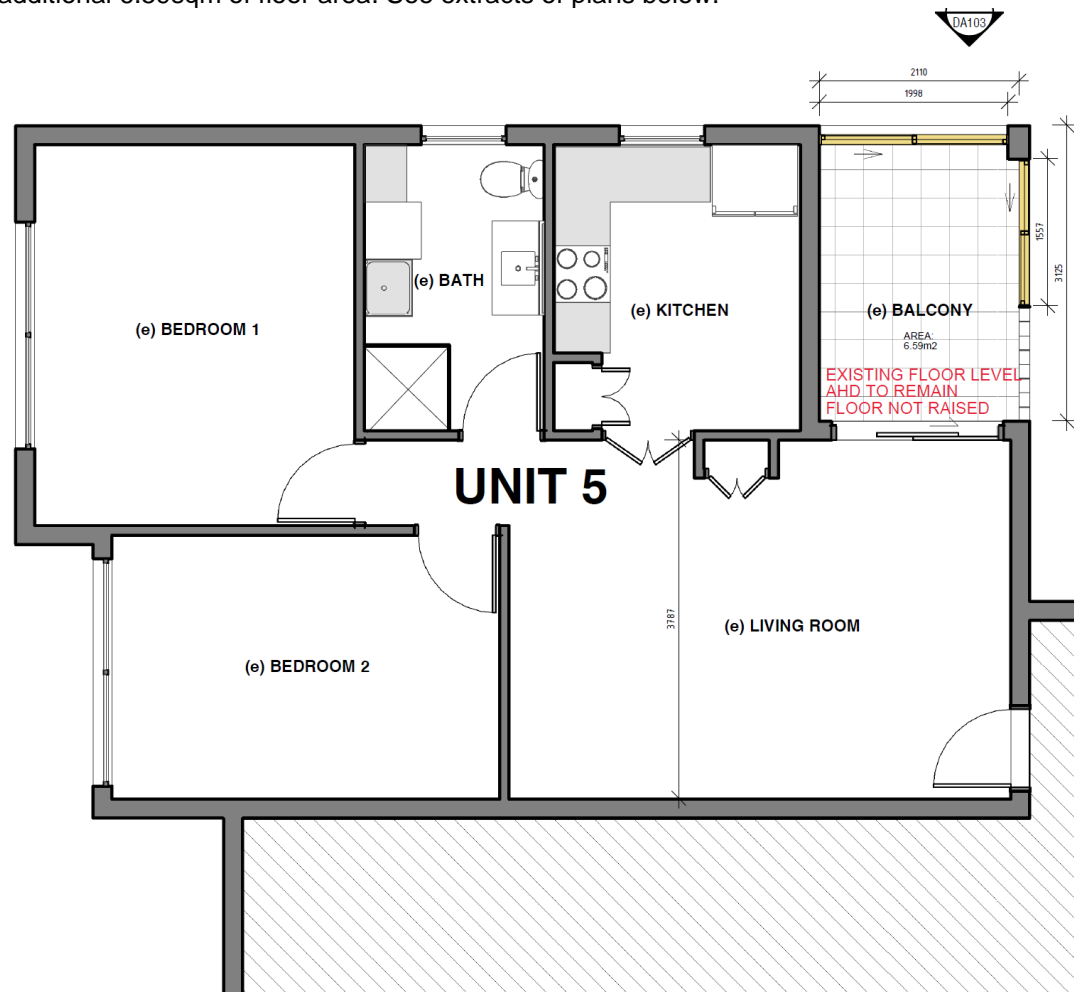
BA/1106/1989 – Balcony Enclosure to Unit 8.

DA/342/1984 – Balcony Enclosures to Units 2 & 4.

DA/271/1989 – Balcony Enclosure to Units 1, 8 & 12.

#### 4. Proposal

The proposal seeks development consent for the closure of the balcony to unit 5 which will provide for an additional 6.59sqm of floor area. See extracts of plans below.



#### 1 | LAYOUT PLAN

SCALE: 1 : 50

Figure 1. Floor plan.





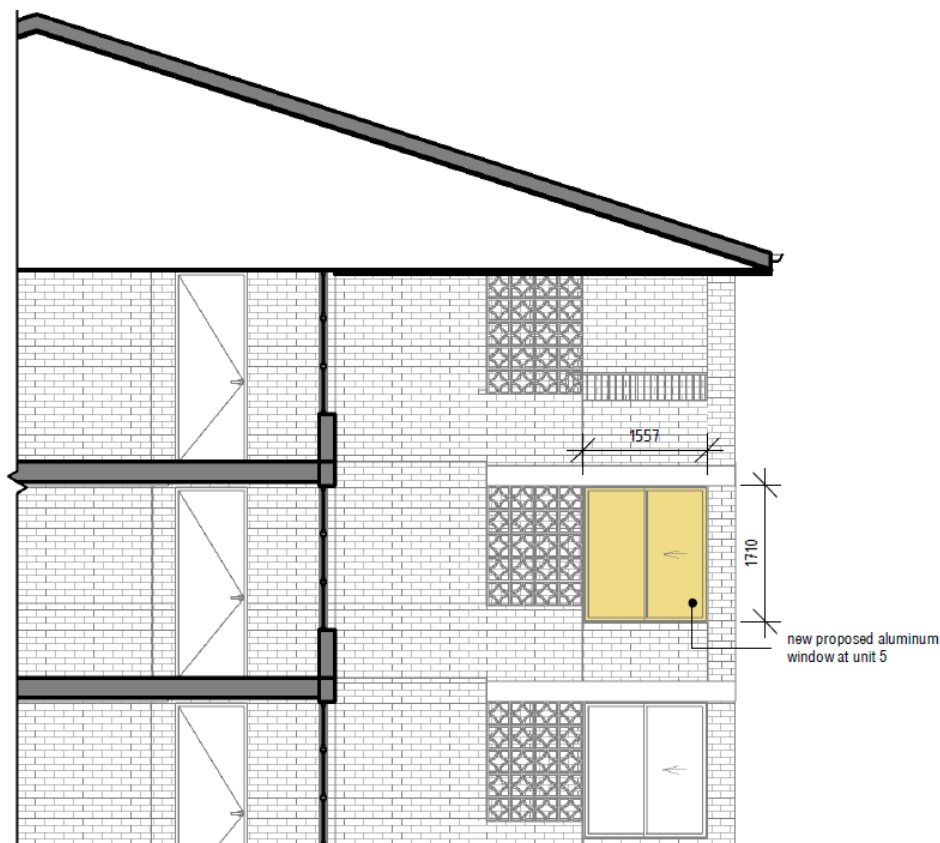
## 1 | ELEVATION - NORTH

SCALE: 1 : 100

**Figure 2. Northern elevation. Meeks Street elevation**

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## 2 | BUILDING SECTION

SCALE: 1 : 100

**Figure 3. Building section.**

### 5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No response has been received.

### 6. Relevant Environment Planning Instruments

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

Not applicable.

#### 6.2. SEPP (Housing) 2021

Chapter 4 of this SEPP does not apply as the proposal does not detail a substantial redevelopment of the existing flat building. The proposal is for the enclosure of an existing balcony only.

#### Apartment Design Guide

The relevant design criteria contained in parts 3 and 4 of the Apartment Design Guidelines do not apply to this development, as noted above the proposal does not substantially alter the existing building.

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

Not applicable.

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

Not applicable.

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

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

The site is zoned R3 under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will continue to provide for the housing needs to the community within the R3 zone and protect the amenity of the residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.9:1	1.179:1  Existing FSR = 1.17:1	No

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

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

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

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.9:1	1.179:1	222.65m <sup>2</sup>	31%

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 development standard (CI 4.4)

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

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

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

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

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

The applicant notes that the proposed works will not impact on the size and scale of the existing development, as the works is within the outer envelope of the building. So the development will maintain its compatibility with the desired future character of the locality.

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

The applicant notes that the enclosure of the existing balcony will have minor impact on the articulation of the existing building. The new glazing will respond to any environmental and energy needs.

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

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

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

The applicant notes that the proposed work will not result in unreasonable overshadowing or create visual bulk to adjoining properties. The enclosure of the existing balcony will include new glazing along the frontage of unit 5. This will not create unreasonable overshadowing, given it is within the outer envelope of the building and will not result in loss of privacy to adjoining properties, given the glazing is located to the front.

Assessing officer's comment: In conclusion, the applicant's written request has addressed the underlying objectives of Clause 4.4 and provided sufficient arguments against those objectives and has adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case.

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

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the FSR development standard by the following justification as summarized below. Also see Appendix 1.

- a) *The building is a 60 year old building that already exceeds the FSR standard, the FSR addition is negligible as the area already exists, many other balconies are enclosed, the enclosure will help residents' protection from noise from the busy road.*
- b) *The enclosure of 6.95sqm follows precedent set by other balconies,*



- c) *The proposal's non-compliance with the development standard does not result in adverse environmental impacts in regards to the public domain, with there being no visual or acoustic impact at all,*
- d) *The proposed development results in a well articulated building with the proposed second floor enclosure resulting in no perceived increase in bulk and scale when viewed from the public domain and adjacent sites,*
- e) *The proposal is compliant with the relevant objectives for the zone as outlined in the Randwick LEP.*

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

## Conclusion

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

## 8. Development control plans and policies

### 8.1. Randwick Comprehensive DCP 2013

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

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

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

## 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below.
Section 4.15(1)(a)(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 environmental impacts of the proposed development on the natural and built environment have been addressed in this report.

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

### 9.1. Discussion of key issues

The fundamental issue is the assessment and consideration of the applicants Clause 4.6 Objection to the FSR development standard which is necessary as the proposal will result in a further exceedance of the 0.9:1 maximum FSR.

As noted in the Key Issues the applicants Clause 4.6 Objection to the development standard adequately address the underlying objectives of Clause 4.4 of the RLEP in relation to maximum floor space ratio.

### 10. Conclusion

That the application to enclose the balcony to Unit 5 be approved, subject to conditions, for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2023
- The proposal is consistent with the specific objectives of the R3 zone in that the proposal will provide for the continued use of the site as a residential development and continues to reflect the desired future character of the area and not result in any unreasonable amenity impacts to the adjoining and surrounding properties.

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

Re: Unit 5 / 39-41 Harbourne Road Kingsford

Request to contravene a Development Standard in accordance with Clause 4.6 of  
Randwick Council LEP 2012

Lot Description: SP797 Lot 5 for 39-41 Harbourne Road Kingsford

Site Area: 797m<sup>2</sup>

**Introduction**

This request accompanies a Development Application (DA) made to the Randwick Council. The proposal seeks the consent for the enclosure of an existing balcony.

The proposal seeks exception pursuant to Clause 4.6 of the RLEP 2012 to the development standard contained within Clause 4.4 which relates to Space Ratio. We have based this document on that recommended for minor variations by the Land and Environment Court.

**1, What is the name of the environmental planning instrument that applies to the land?**

Randwick Local Environmental Plan 2012.

**2, Zoning of the land?**

Medium Density Residential R3

**3, What are the objectives of Zone?**

Objectives of zone R3:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To recognize the desirable elements of the existing streetscape and built form or, in 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

#### **4, What is the development standard being varied?**

Floor space ratio

#### **5, Under what clause is the development standard listed in the environmental planning instrument?**

Clause 4.4 of RLEP 2012

#### **6, What are the objectives of the development standard?**

The objectives of this clause are as follows—

- A. To ensure that the size and scale of development is compatible with the desired future character of the locality.  
The proposed works will not impact on the size and scale of the existing development, as the work is within the outer envelope of the building. So, the development will maintain its compatibility with the desired future character of the locality.
- B. To ensure that buildings are well articulated and respond to environmental and energy needs.  
The proposal seeks to enclose the existing balcony and will have minor impact on the articulation of the existing building. The new glazing will respond to any environmental and energy needs.

- C. To ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item.

The existing dwelling is not a heritage item and is not near a conservation area contributory or heritage item.

- D. To ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

The proposed work will not result in unreasonable overshadowing or create visual bulk to adjoining properties. The enclosure of the existing balcony will include new glazing along the frontage of unit 5. This will not create unreasonable overshadowing, given it is within the outer envelope of the building and will not result in loss or privacy to adjoining properties, given the glazing is located to the front.

**7, What is the numeric value of the development standard in the environmental planning instrument?**

Floor Space Ratio 0.9:1(717.3sqm)

**8, What is the numeric value of the development standard in the development application?**

The building is sixty years old. We cannot access any dimensioned floor plans. The enclosed strata report from 1964 is the best estimate of floor area we have. We estimate the existing area of the building GFA is 932.7sqmm, and the land area as 796.7sqm, so the current FSR is  $932.7\text{sqm}/796.7\text{sqm}=1.17:1$ . The addition of 6.95 sqm will increase the GFA to be  $932.7\text{sqm}+6.95\text{sqm}=939.65\text{sqm}$ . The FSR will be increased to  $939.65\text{sqm}/796.7\text{sqm}=1.179:1$ .

**9, What is the percentage variation?**

The data available is not reliable or accurate, but best estimate of additional variation would be an increase of 0.9 %. The exceedance from the current FSR standard is 222.65 m2, or 31%.

**10, How is the strict compliance with the development standard unreasonable or unnecessary in this particular case?**



This is a 60 YO building. It is on a busy road. The building cannot comply with the current FSR standard. The FSR addition is negligible as the area already exists, many other balconies are enclosed, and the enclosure will help the resident with protection from noise from the busy road. The enclosure of 6.95 m2 balcony follows precedent set by other balconies in this development.

10.1. Clause 4.6(3)(a) requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Compliance with the standard is unreasonable and unnecessary as the proposed development has little impact on perceived bulk or scale or impact on the public domain or adjacent sites. The additional floor area increases the overall amenity and living nature of the house.

10.2. Clause 4.6(3)(b) requires demonstration that there are sufficient environmental planning grounds to justify contravening the development standard. Grounds to justify varying this development standard include:

In this instance the increased floor area can be achieved with no impact on the site itself or adjacent sites, as such strict numerical compliance would be unreasonable. Sufficient planning grounds to justify varying the development standard include:

- The proposals non-compliance with the development standard does not result in adverse environmental impacts in regards to the public domain, with there being no visual or acoustic impact at all.
- The proposed development results in a well-articulated building, with the proposed second floor resulting in no perceived increase in bulk and scale when viewed from the public domain and adjacent sites.
- The proposal is compliant with the relevant objectives for the zone as outlined in Randwick LEP.

The variation of the floor area development standard has been demonstrated to present no adverse environmental impacts and overall the varying of the control creates a better planning outcome, consistent with Clause 4.6(b) of the Randwick LEP resulting in a building of suitable form and density.

10.3. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?

The proposed development will be in the public interest as it meets the objectives of both the Randwick LEP (as outlined above) and presents no impact on the amenity of the surrounding sites or public domain.

The proposal remains consistent with the objectives of the Zone outlined below in Clause 4.4 despite the non-compliance and is meets the requirements of the relevant controls.

10.4. Whether contravention of the development standard raises any matter of significance for the State or regional environmental planning?

As the proposed works have negligible environmental impacts and is generally compliant with RLEP and DCP except for the FSR control, however the increased FSR does not change the height or outer shape of the existing building.

10.5. Is there public benefit in maintaining the development standard?

The FSR control is used to ensure development of suitable density and scale and desired future character. As the minor FSR change is located by enclosing an existing balcony there is no reason that would benefit the public by maintaining the standard.

### **Conclusion**

The proposal has demonstrated that there will be no adverse environmental impacts on the subject site, adjacent sites, or the public domain. As a result, it is considered that there are sufficient environmental planning grounds to justify varying the floor space ratio of the development standard on the grounds that such compliance would be considered unreasonable and unnecessary in this instance.

**Appendix 2: DCP Compliance Table****Section C2: Medium Density Residential**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>2.</b>	<b>Site Planning</b>		
<b>2.1</b>	<b>Site Layout Options</b>		
	Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> <li>• Two block / courtyard example</li> <li>• T-shape example</li> <li>• U-shape example</li> <li>• Conventional example</li> </ul>	The enclosure of the balcony to unit 5 does not alter the layout of building.	Yes.
<b>4.</b>	<b>Building Design</b>		
<b>4.1</b>	<b>Building façade</b>		
	(i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (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. (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. (vi) Conceal building services and pipes within the balcony slabs.	The enclosure of the balcony as proposed is consistent with the enclosure of other balconies to the building and will not impact adversely upon the Meeks Street façade of the building.	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.	The enclosure of the balcony does not reduce the dimensions.	N/A
<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.	The proposed windows and colour finishes are consistent with the existing building.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> <li>- Changes of colours and surface texture</li> <li>- Inclusion of light weight materials to contrast with solid masonry surfaces</li> <li>- The use of natural stones is encouraged.</li> </ul>		

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**Responsible officer:** Perry Head, Environmental Planning Officer

**File Reference:** DA/521/2024

## Development Consent Conditions (Medium Density Residential)



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<b>Folder /DA No:</b>	DA/521/2024
<b>Property:</b>	5/39-41 Harbourne Road, KINGSFORD
<b>Proposal:</b>	Enclosure of existing balcony with windows (Variation to FSR).
<b>Recommendation:</b>	Approval

### GENERAL CONDITIONS

#### Condition

1. **Approved plans and documentation**

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
DA100	Affordable Plans	4/10/23	20/6/2024
DA101	Affordable Plans	4/10/23	20/6/2024
DA102	Affordable Plans	4/10/23	20/6/2024

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.

### BEFORE BUILDING WORK COMMENCES

#### Condition

2. **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



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	Condition
	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.
3.	<p><b>Construction Noise &amp; Vibration Management Plan</b></p> <p>Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.</p> <p>A <i>Construction Noise &amp; Vibration Management Plan</i> must be developed and implemented throughout demolition and construction work.</p> <p>(a) The <i>Construction Noise &amp; Vibration Management Plan</i> must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority <i>Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline</i> (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.</p> <p>(b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.</p> <p>(c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the <i>Construction Noise &amp; Vibration Management Plan</i> and which demonstrates compliance with relevant criteria.</p> <p>(d) Any recommendations and requirements contained in the <i>Construction Noise &amp; Vibration Management Plan</i> and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.</p> <p>A copy of the Construction Noise &amp; Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.</p> <p>(e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
4.	<p><b>Construction Site Management Plan</b></p> <p>A Construction Site Management Plan must be developed and implemented prior</p>

Condition
<p>to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none"> <li>• location and construction of protective site fencing and hoardings</li> <li>• location of site storage areas, sheds, plant &amp; equipment</li> <li>• location of building materials and stock-piles</li> <li>• tree protective measures</li> <li>• dust control measures</li> <li>• details of sediment and erosion control measures</li> <li>• site access location and construction</li> <li>• methods of disposal of demolition materials</li> <li>• location and size of waste containers/bulk bins</li> <li>• provisions for temporary stormwater drainage</li> <li>• construction noise and vibration management</li> <li>• construction traffic management details</li> <li>• provisions for temporary sanitary facilities</li> <li>• measures to be implemented to ensure public health and safety.</li> </ul> <p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>

#### DURING BUILDING WORK

Condition
<p>5. <b>Site Signage</b></p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> <li>a) showing the name, address and telephone number of the principal certifier for the work, and</li> <li>b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and</li> <li>c) stating that unauthorised entry to the work site is prohibited.</li> </ol> <p>The sign must be—</p> <ol style="list-style-type: none"> <li>a) maintained while the building work is being carried out, and</li> <li>b) removed when the work has been completed.</li> </ol> <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> <li>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</li> <li>b) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</li> </ol> <p>Condition Reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p> <p>6. <b>Restriction on Working Hours</b></p> <p>Building, demolition and associated site works must be carried out in accordance with the following requirements:</p>

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## Condition

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

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

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

7. **Public Safety & Site Management**

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

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided

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

#### BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
8.	<b>Occupation Certificate Requirements</b> An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> .
Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.	





## Development Application Report No. D81/24

**Subject:** 18 Doncaster Avenue, Kensington (DA/754/2024)

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
### Executive Summary

<b>Proposal:</b>	Alterations and additions to existing heritage-listed terraces within an approved student accommodation development including internal wall demolition and installation of fire doors (Heritage Item I122 – ‘2 storey terraced pair’ and Heritage Conservation Area – Racecourse – C13).
<b>Ward:</b>	West Ward
<b>Applicant:</b>	Urbis
<b>Owner:</b>	The Trust Company (Australia) Limited
<b>Cost of works:</b>	\$60,709
<b>Reason for referral:</b>	The development involves partial demolition of a heritage item

### Recommendation

That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/754/2024 for alterations and additions to existing heritage-listed terraces within an approved student accommodation development including internal wall demolition and installation of fire doors (Heritage Item I122 – ‘2 storey terraced pair’ and Heritage Conservation Area – Racecourse – C13), at No. 18 Doncaster Avenue, Kensington, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

-  [RLPP Dev Consent Conditions \(general\) - DA/754/2024 - 18 Doncaster Avenue, KENSINGTON NSW 2033 - DEV - Randwick City Council](#)

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1. Executive summary

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

- The development involves partial demolition of a heritage item

The proposal seeks development consent for alterations and additions to existing heritage-listed terraces within an approved student accommodation development including internal wall demolition and installation of fire doors (Heritage Item I122 – ‘2 storey terraced pair’ and Heritage Conservation Area – Racecourse – C13).

The key issues associated with the proposal relate to alterations to a Heritage Item. The proposal is recommended for approval subject to non-standard conditions that require treatment and retention of heritage value.

2. Site Description and Locality

The subject site is known as 18 Doncaster Avenue and is legally described as Lot 10 in DP 1276707. The site is 4273 m<sup>2</sup>, is regular in shape and wide fronted with and has an approximate frontage of 107m to Doncaster Avenue to the west. The site contains recently completed student accommodation, see Relevant history section below, in addition to the twin two-storey Victorian terraces which are subject to internal alterations under this application (refer Figures 1-3).



**Figure 1:** Twin two-storey Victorian terraces flanked by new student accommodation, viewed to south-east from Doncaster Avenue.



**Figure 2:** Existing ground floor hallway.



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**Figure 3:** Existing first floor hallway.

### 3. Relevant history

On 21 May 2020, approval was granted by the Independent Planning Commission for a student accommodation development comprising excavation of basement and construction of a three-storey building including:

- 259 student accommodation beds within 201 student units;
- Student amenities, communal open space and landscaping;
- 56 car, 55 motorcycle and 178 bicycle parking spaces; and
- Realignment of concrete stormwater channel and provision of a substation.

The approved development also included the retention and adaptive reuse of twin two-storey Victorian terraces, which are listed on the Randwick LEP 2012 as “2 storey terraced pair” (Heritage Item 122) and are also referred to as the ‘Doncaster Terraces’.

Since SSD-9649 was approved, various modifications have been approved for minor design development updates. Construction of the student accommodation was recently completed, and an Occupation Certificate has been issued for the site.

### 4. Proposal

The proposal seeks development consent for Alterations and additions to existing heritage-listed terraces within an approved student accommodation development including internal wall demolition and installation of fire doors (Heritage Item I122 – ‘2 storey terraced pair’ and Heritage Conservation Area – Racecourse – C13). Specifically, the proposal includes (refer Figures 4-6):

- Demolition and forming up of two new openings in the solid masonry dividing wall;
- Removal of skirting board which is to be retained and reused for future repair works;
- Installation of new timber boards, new fire rated frames, new fire rated door leaves and timber architraves and skirting blocks;
- Installation of two illuminated exit signs above the doors.

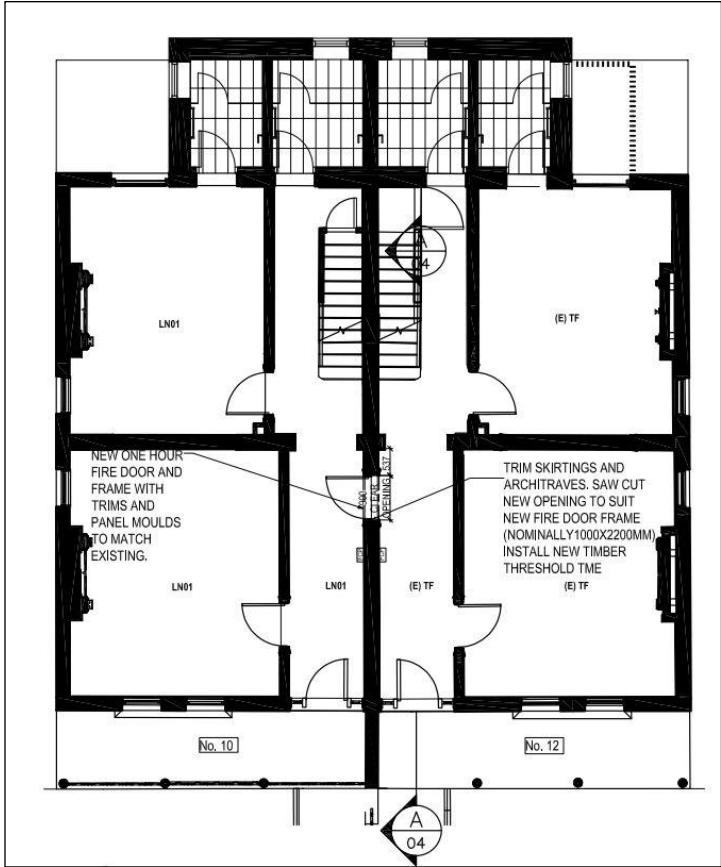


Figure 4: Ground floor plan (Source: Artefact Heritage and Environment)

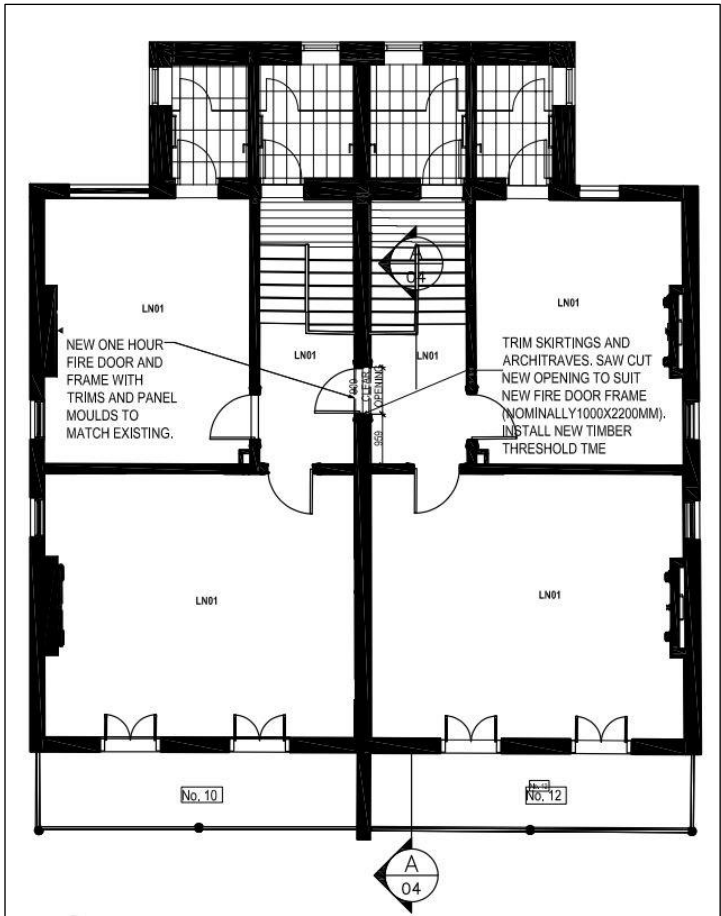
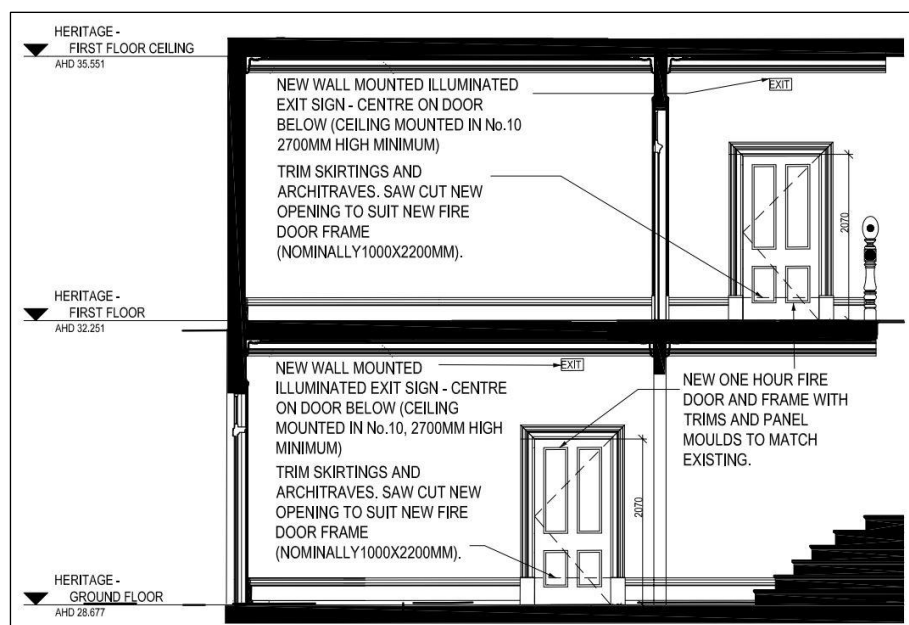


Figure 5: First floor plan (Source: Artefact Heritage and Environment)





**Figure 6:** Internal elevations (*Source: Artefact Heritage and Environment*)

## 5. Notification

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

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Housing) 2021

The approved land use on the subject site is student accommodation development, which is defined as *co-living housing*, to which Part 3 of the SEPP (Housing) 2021 applies. Given the minor nature and location of the proposed works, comprising internal wall demolition and installation of fire doors; none of the non-discretionary and other development standards for co-living housing, have been triggered by the proposal. The proposal does not alter the approved gross floor area/floor space ratio, room sizes, communal areas, parking spaces and other components of the respective student accommodation development, such that would necessitate further consideration and assessment against Part 3 of this SEPP.

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

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

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

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

### 6.3. 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 the subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject to a site audit statement. In this regard it is Council's position that the site will be suitable for the proposed development, posing no risk of contamination. Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered to be suitable for the proposed land use.

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

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

The site is zoned R3 Medium Density Residential under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent. The proposal is consistent with the specific objectives of the zone, the alterations do not change building height or FSR.

##### **6.4.1. 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.

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

The application was assessed as acceptable by Council's Heritage Planning team, subject to conditions. Refer to discussion by Council's Heritage Officer at Appendix 1.

### **7. Development control plans and policies**

#### **7.1. Randwick Comprehensive DCP 2013 & 2023**

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

Council has commenced a comprehensive review of the 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 proposal was assessed against the Heritage Objectives and Controls of section B2 of the DCP. This has been undertaken by Council's Heritage Planner. See Appendix 1 of this report above for these comments.

### **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.

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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.
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 & 2023.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## 8.1. Discussion of key issues

### DCP and Heritage Summary

No areas of non-compliance were identified in Council's assessment. All works are being done within the existing footprint and do not involve new placement or changes in the dimensions of existing windows.

Key issues are all focused on heritage treatment and conservation matters, see Appendix 1 of this report for Heritage Planning assessment, noting that the application is recommended for approval subject to consent conditions.

## 9. Conclusion

That the application for alterations and additions to existing heritage-listed terraces within an approved student accommodation development including internal wall demolition and installation of fire doors (Heritage Item I122 – '2 storey terraced pair' and Heritage Conservation Area – Racecourse – C13) be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013 & 2023
- The proposed amendments to the heritage item were supported in the review of Council's Heritage Planner; and
- The proposal is consistent with the specific objectives of the R3 zone.

The recommendations from Council's Heritage Planner shall be imposed in the conditions of consent, should approval be granted. See Appendix 1.

## **Appendix 1: Referrals**

### **1. Internal referral comments:**

#### **1.1. Heritage planner**

##### **The Site**

*The subject site is identified as a heritage item of local significance I122 and located within the Racecourse Heritage Conservation Area (HCA).*

##### **Background**

*Approved DA/931/2015 - Demolition of existing dwellings at numbers 4-8, 14 and 16 Doncaster Avenue and construction of new three storey residential flat building comprising of 48 dwellings, retention and refurbishment of existing terraces at numbers 10 and 12 (18) Doncaster Avenue and basement parking for 71 vehicles*

##### **Proposal**

*Alterations and additions to existing heritage-listed terraces (student accommodation) development including internal wall demolition and installation of fire doors*

##### **Submission**

- D05414191 – HIS
- D05414184 – SEE
- P00350697-701 – Architectural Drawings

##### **Controls**

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

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

*The Heritage section of Randwick Development Control Plan 2023 provided Objectives and Controls in relation to heritage properties.*

##### **Comments**

- *The proposal appears to adopt a performance solution that minimises adverse impact on the heritage fabric.*
- *The recommended mitigation measures are acceptable from a heritage perspective.*

##### **Recommendation**

*The following conditions should be included in any consent:*

*HIS –*

1. *A suitably qualified heritage architect must be engaged during detailed design to provide heritage advice and input into developing design phases, and to oversee heritage sensitive works at the heritage terraces.*

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2. *Should new works not detailed in the current design be proposed during detailed design or construction, these new works should be assessed by the heritage architect who has been engaged for the proposed works for adverse heritage impacts. New or increased adverse heritage impacts may require further approval from City of Randwick.*
3. *New works should generally be in accordance with the design and heritage guidelines established in the Schedule of Conservation Works prepared by Artefact.*
4. *Skirting boards for removal should be carefully trimmed and salvaging for future repair works.*
5. *The party wall should be saw cut of prior to breaking out of the bricks to minimise vibration and damage to surrounding fabric.*
6. *The installation of new timber board threshold to the ground floor opening should match the existing floor boards and particleboard to the first floor opening.*
7. *The new fire rated door leaves to the new frames should include surface fixed timber panel moulds matching the profile and panel configuration of existing panel doors.*
8. *The new profiled timber architraves and skirting blocks should match the existing panelled door profiles.*
9. *The new illuminated (wireless) exit signs above the doors should be installed on the plasterboard ceiling above the doors in 10 Doncaster Avenue, and on the wall above the doors in 12 Doncaster Avenue (preserving the decorative plaster cornices).*

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**Responsible officer:** Thomas Awford, Environmental Planning Officer

**File Reference:** DA/754/2024



Development Consent Conditions



D81/24

Folder /DA No:	DA/754/2024
Property:	18 Doncaster Avenue, KENSINGTON NSW 2033
Proposal:	Alterations and additions to existing heritage-listed terraces within an approved student accommodation development including internal wall demolition and installation of fire doors (Heritage Item I122 – ‘2 storey terraced pair’ and Heritage Conservation Area – Racecourse – C13).
Recommendation:	Approval

GENERAL CONDITIONS

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

Plan	Drawn by	Dated	Received by Council
Ground Floor Plan & RCP	Artefact Heritage and Environment	26/06/2024	20/08/2024
First Floor Plan & RCP			
Internal Elevation			

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

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

2. **Amendment of Plans & Documentation**  
The approved plans and documents must be amended in accordance with the following requirements from Council's Heritage Planner:
- a) Skirting boards for removal should be carefully trimmed and salvaging for future repair works.

b) The party wall should be saw cut of prior to breaking out of the bricks to minimise vibration and damage to surrounding fabric.

c) The installation of new timber board threshold to the ground floor opening should match the existing floor boards and particleboard to the first floor opening.

d) The new fire rated door leaves to the new frames should include surface fixed timber panel moulds matching the profile and panel configuration of

	Condition
	existing panel doors.
	e) The new profiled timber architraves and skirting blocks should match the existing panelled door profiles.
	f) The new illuminated (wireless) exit signs above the doors should be installed on the plasterboard ceiling above the doors in 10 Doncaster Avenue, and on the wall above the doors in 12 Doncaster Avenue (preserving the decorative plaster cornices).
	Amended plans must be submitted to Council and approved by Council's Manager Development Assessment/Coordinator Development Assessment prior to the issue of any construction certificate.
	The above amendment/s must be reflected in the final construction plans and any documentation submitted as part of any construction certificate.
	Condition Reason: Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development and to achieve heritage conservation and minimise potential impacts on the heritage item.
3.	<b>Qualified Heritage Oversight</b> A suitably qualified heritage architect must be engaged during detailed design to provide heritage advice and input into developing design phases, and to oversee heritage sensitive works at the heritage terraces.  Should new works not detailed in the current design be proposed during detailed design or construction, these new works should be assessed by the heritage architect who has been engaged for the proposed works for adverse heritage impacts. New or increased adverse heritage impacts may require further approval from Randwick Council.  Condition Reason: To ensure the heritage value and significance of the terraces (heritage item) are maintained and to ensure that all matters relating to significant fabric and spaces are resolved and recorded using best practice for heritage conservation
4.	<b>Schedule of Conservation Works</b> New works should generally be in accordance with the design and heritage guidelines established in the Schedule of Conservation Works prepared by Artefact.  Condition Reason: To ensure the heritage value and significance of the terraces (heritage item) are maintained.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
5.	<b>Consent Requirements</b> 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.

Condition	
6.	<p><b>Building Code of Australia</b></p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>

### BEFORE BUILDING WORK COMMENCES

Condition	
7.	<p><b>Building Certification &amp; Associated Requirements</b></p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <ul style="list-style-type: none"><li>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</li></ul> <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ul style="list-style-type: none"><li>b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</li><li>c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</li><li>d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and</li><li>e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</li></ul> <p>Condition Reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
8.	<p><b>Home Building Act 1989</b></p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 &amp; 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of</p>

Condition	
	Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.
	Condition Reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.
9.	<b>Construction Noise &amp; Vibration Management Plan</b> Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.  A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.  Condition Reason: To protect the amenity of the neighbourhood during construction.

DURING BUILDING WORK

Condition					
10.	<b>Site Signage</b> 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: <ul style="list-style-type: none"><li>a) showing the name, address and telephone number of the principal certifier for the work, and</li><li>b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and</li><li>c) stating that unauthorised entry to the work site is prohibited.</li></ul> The sign must be— <ul style="list-style-type: none"><li>a) maintained while the building work is being carried out, and</li><li>b) removed when the work has been completed.</li></ul> This section does not apply in relation to— <ul style="list-style-type: none"><li>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</li><li>b) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</li></ul> Condition Reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.				
11.	<b>Restriction on Working Hours</b> Building, demolition and associated site works must be carried out in accordance with the following requirements: <table><tr><th>Activity</th><th>Permitted working hours</th></tr><tr><td>All building, demolition and site work, including site deliveries (except as detailed below)</td><td><ul style="list-style-type: none"><li>Monday to Friday - 7.00am to 5.00pm</li><li>Saturday - 8.00am to 5.00pm</li></ul></td></tr></table>	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></ul>
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></ul>				

Condition	
	<ul style="list-style-type: none"> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> <li>• Monday to Friday - 8.00am to 3.00pm</li> <li>• (maximum)</li> <li>• Saturday - No work permitted</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>

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

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

12.

**Public Safety & Site Management**

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

- Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, 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.



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Condition	
	<i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i>
h)	The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
i)	Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.
j)	Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
k)	Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the 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.	

#### BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
13.	<p><b>Occupation Certificate Requirements</b></p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.</p>

#### OCCUPATION AND ONGOING USE

Condition	
14.	<p><b>External Lighting</b></p> <p>External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
15.	<p><b>Plant &amp; Equipment</b></p> <p>Noise from the operation of all plant and equipment upon the premises shall not</p>

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Condition

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give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

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

## DEMOLITION WORK

### BEFORE DEMOLITION WORK COMMENCES

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Condition

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16.

#### Demolition Work Plan

A demolition work plan must be developed and be implemented for any demolition works in accordance with AS2601 (2001)- Demolition of Structures.

The demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601 Demolition of Structures and Randwick City Council's Asbestos Policy.

The demolition work plan must include details of the demolition, removal, storage and disposal of any hazardous materials (including materials containing asbestos).

A copy of the demolition work plan must be provided to the Principal Certifier and Council. A copy shall also be maintained on site and be made available to Council officers upon request.

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

### DURING DEMOLITION WORK

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Condition

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17.

#### Demolition Work

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

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

- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m<sup>2</sup> of bonded asbestos (i.e. fibro),
- Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations
- A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",
- Council is to be given at least two days written notice of demolition works involving materials containing asbestos,
- Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,
- A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works.

Condition
<p>Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.</p> <p>Condition Reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

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## Development Application Report No. D82/24

**Subject:** 317 Clovelly Road, Clovelly (DA/409/2024)

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### Executive Summary

<b>Proposal:</b>	Change of use and occupation from an art gallery and framing business to a hairdresser with associated beauty rooms (Heritage Item).
<b>Ward:</b>	North Ward
<b>Applicant:</b>	A Smyth
<b>Owner:</b>	Asbo Investments Pty Ltd
<b>Cost of works:</b>	\$90,200
<b>Reason for referral:</b>	The development involves partial demolition of a heritage item.

### Recommendation

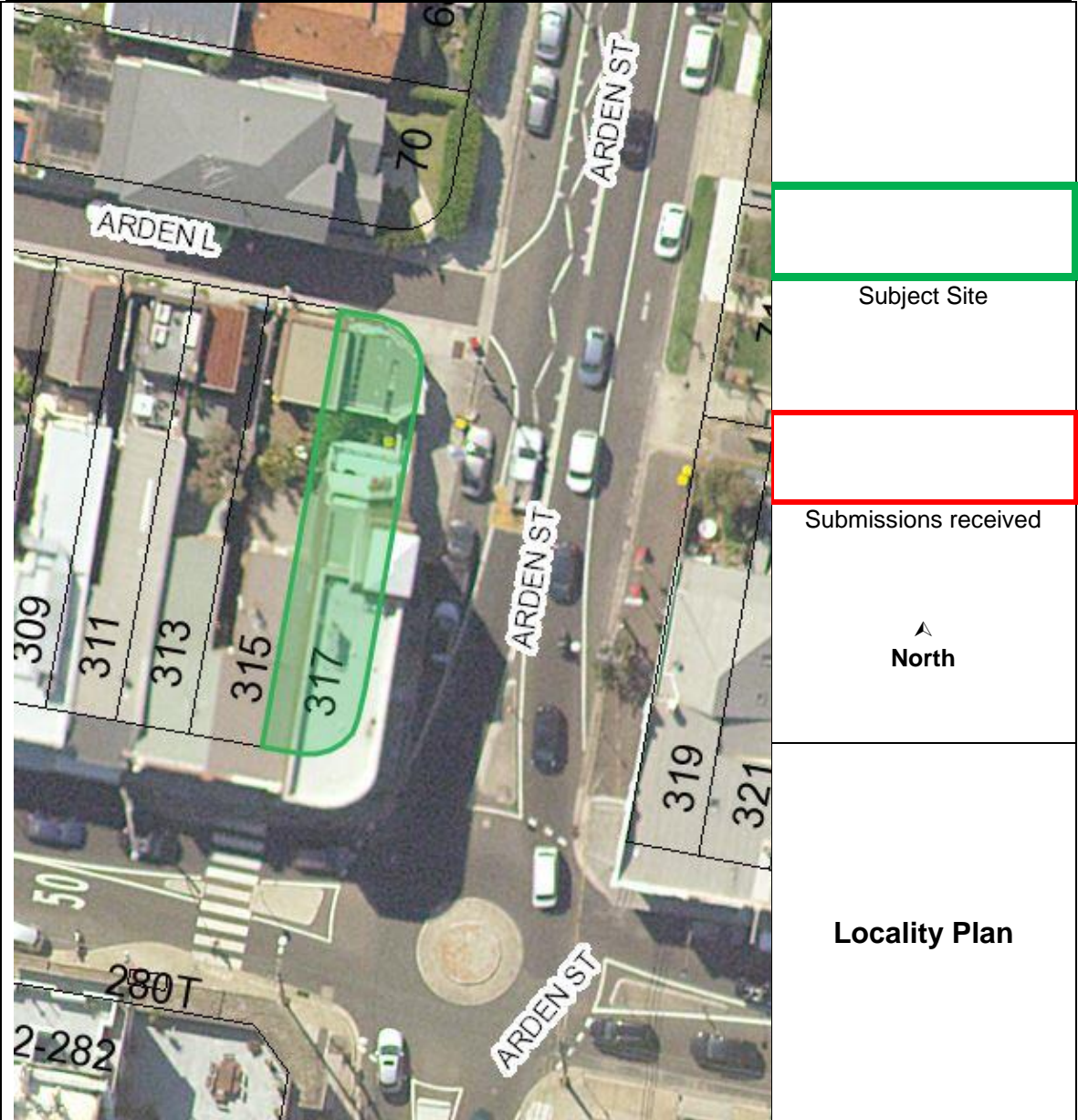
That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/409/2024 for change of use and occupation from an art gallery and framing business to a hairdresser with associated beauty rooms, at No. 317 Clovelly Road, Clovelly, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

-  RLPP Dev Consent Conditions (general) - DA/409/2024 - 317 Clovelly Road, CLOVELLY NSW 2031 - DEV - Randwick City Council

D82/24

D82/24



1. Executive summary

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

- The development involves partial demolition of a heritage item.

The proposal seeks development consent for change of use and occupation from an art gallery and framing business to a hairdresser with associated beauty rooms (Heritage Item).

The key issues associated with the proposal relate to alterations to a Heritage Item. The proposal is recommended for approval subject to non-standard conditions that require treatment and retention of heritage value.

2. Site Description and Locality

The subject site is known as 317 Clovelly Road, Clovelly is legally described as Lot 1 in DP 10532. The site is 183.4m<sup>2</sup> and is a corner lot at the intersection between Clovelly Road and Arden Street. It is regular in shape with rounded corners to Arden Street. The site has an approximate 5.5m width



and 30.2m length and rises steeply to the north and gently to the west. It is located in an E1 Local Centre zone.

The built item comprises a shop at ground floor level and residences above (refer Figure 1). The ground floor forward retail area is approximately 35m<sup>2</sup>. To the rear and at ground level there is a separate kitchen, bathroom, and ancillary spaces. The built item forms a part of a small, linear local business and character precinct along Clovelly Road, consisting of groups of two-storey shops with residences above, some single-storey dwellings and apartment buildings.



**Figure 1:** Existing building on site, photo taken to west from Arden Street (Source: *Weir Philips Heritage and Planning*)

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**Figure 2:** Existing building on site, photo taken to north from Clovelly Road (Source: Weir Phillips Heritage and Planning)



**Figure 3:** Existing floor plan (Source: realestate.com.au)

The site is not contained within a Heritage Conservation Area, however, the built item itself is an individually listed heritage item (I15) under Schedule 5 of the Randwick LEP 2012. Moreover, in the vicinity of this item, immediately across Arden Street, is the 1917 “Walder’s Corner” group of shops (319-325 Clovelly Road), and again, this is an individually listed heritage item (I16), with fine elevations to Clovelly Road and Arden Street (refer Figures 4-6).





**Figure 4:** Heritage items in immediate locality (Source: Geocortex Viewer)



**Figure 5:** Walder's Corner, photo taken to north east from Clovelly Road (Source: Weir Philips Heritage and Planning)

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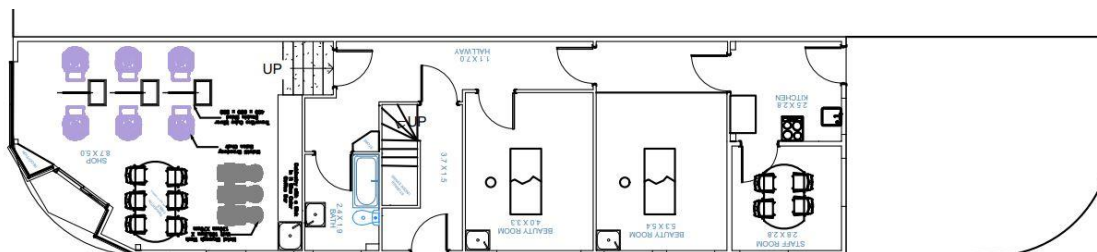
**Figure 6:** Existing building on site, photo taken to east from Arden Street (Source: *Weir Philips Heritage and Planning*)

### 3. Relevant history

A picture framing business, known as *Fine Picture Framing and Art* was the last use of the ground floor commercial premises. A Development Application DA/109/2007 was approved by Randwick City Council for that change of use and fit-out from a previous locksmith premises to the art gallery and picture framing business on 10 April 2007.

### 4. Proposal

The proposal sought development consent for change of use and occupation from an art gallery and framing business to a hairdresser with associated beauty rooms (Heritage Item). This was to involve a fit out and furniture installation and did not include any structural alterations to the existing ground floor retail tenancy with the existing doors, windows and the like to remain unchanged. The two beauty rooms were to be used for local services such as make-up, massages, and waxing (refer Figure 7).



**Figure 7:** Proposed change of use plan (Source: *Unknown*)

#### Unauthorised Works

A site inspection on 11 June 2024 revealed unauthorised works to the internal built fabric. These works related to the removal of skirting boards, architraves and doors, new flooring, modification to and seeming interventions into walls and surfaces, removal of ceilings and reconfiguration of various services *etc.* A stop demolition work order was subsequently issued on 13 June 2024.

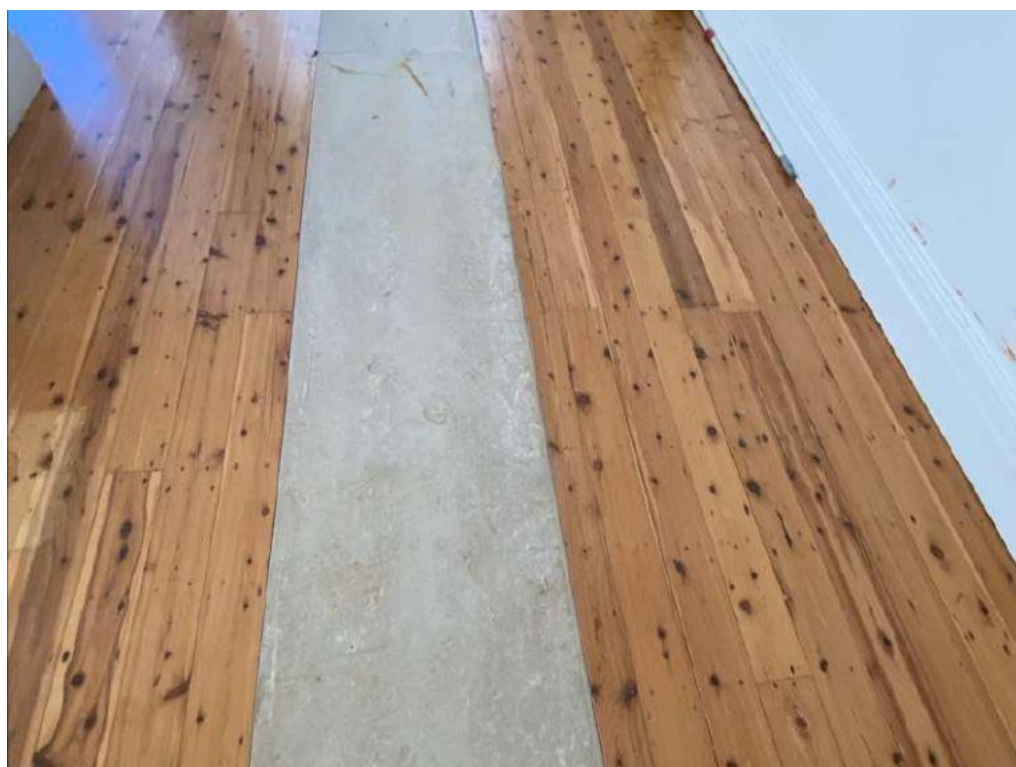


On the June 14, 2024, Council issued a request for information to provide updated detailed architectural drawings indicating the scope of works in their entirety, with unauthorised works already completed clearly detailed as 'works-as-executed'. It was also requested that a *Statement of Heritage Impact* (SOHI) and a *Conservation Management Plan* (CMP) be provided detailing the unauthorised works, impacts to the heritage item, and any surrounding items, and the approach to conserving the heritage value.

The information requested was provided on 28 August 2024 and was assessed by Council's Heritage Planning Team who advised the information had satisfactorily addressed the issues detailed within the request for information (refer to Appendix 1).

The CMP identified the unauthorised works, all of which were located within the interior of the ground floor. These included, specifically:

- A section of the shop floor was removed and repaired, (Figure 8). This work occurred to facilitate emergency corrective maintenance as noted in a brief report prepared by County Road Plumbing Pty. Ltd., (Figure 9). A copy of this report can be found in Appendix 5.
- The hallway has had parquetry laid over the original floor boards, (Figure 10).
- Bedroom 1 has had parquetry laid over the original floor boards, (Figure 11).
- The living room/dining room has had parquetry laid over the original floor boards, (Figure 12).
- The bathroom has been striped, and a new fibre cement sub-floor has been installed on the original timber floor joists, (Figure 13).
- The bathroom floor was removed to facilitate emergency corrective maintenance as noted in the brief report prepared by County Road Plumbing Pty. Ltd., (Figure 14).
- The kitchen cabinetry has been removed and has had parquetry laid over the original floor boards, (Figure 15).
- The original architraves and skirtings have been salvaged and are to be reinstated, (Figure 16).



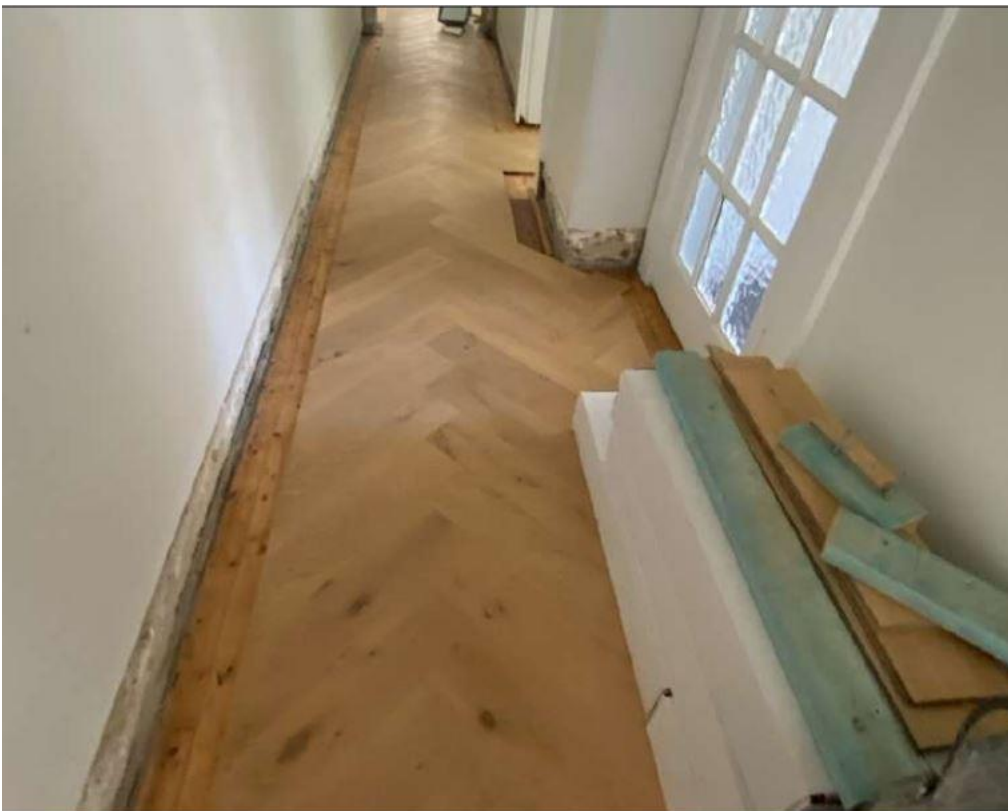
**Figure 8:** A section of the shop floor was removed and repaired (Source: Weir Philips Heritage and Planning)



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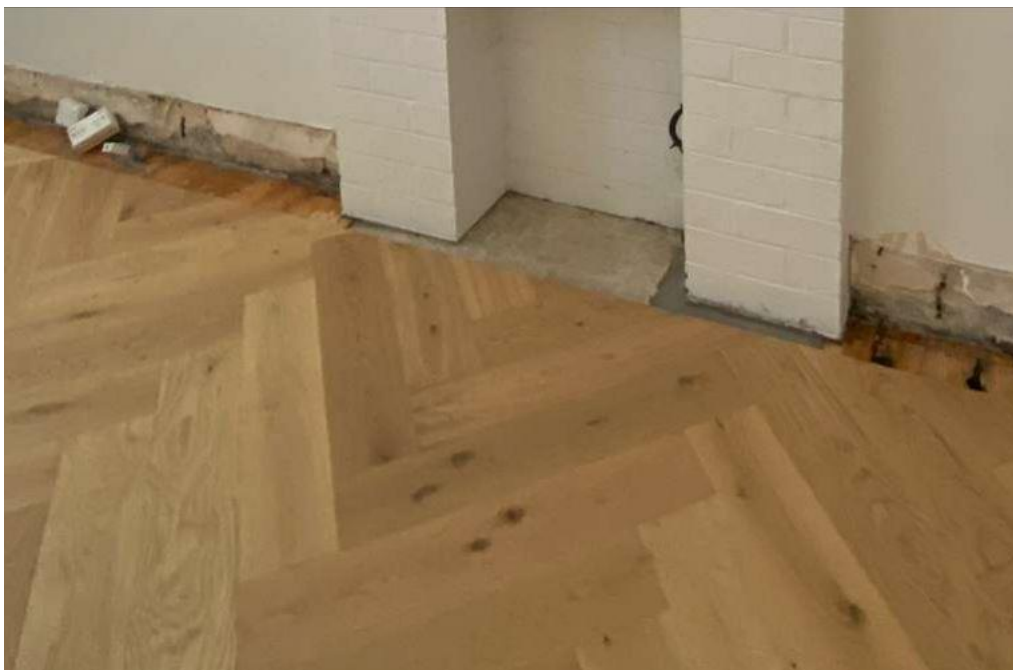
**Figure 9:** The section of the shop floor was removed to facilitate emergency corrective maintenance as noted in the brief report prepared by County Road Plumbing Pty. Ltd (Source: *Weir Philips Heritage and Planning*)



**Figure 10:** The hallway has had parquetry laid over the original floor boards (Source: *Weir Philips Heritage and Planning*)



**Figure 11:** Bedroom 1 has had parquetry laid over the original floor boards (*Source: Weir Philips Heritage and Planning*)



**Figure 12:** The living room/dining room has had parquetry laid over the original floor boards (*Source: Weir Philips Heritage and Planning*)

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**Figure 13:** The bathroom has been striped, and a new fibre cement sub-floor has been installed on the original timber floor joists. (Source: *Weir Philips Heritage and Planning*)



**Figure 14:** The bathroom floor was removed to facilitate emergency corrective maintenance as noted in the brief report prepared by County Road Plumbing Pty. Ltd. (Source: *Weir Philips Heritage and Planning*)





**Figure 15:** The kitchen cabinetry has been removed and has had parquetry laid over the original floor boards (Source: Weir Philips Heritage and Planning)



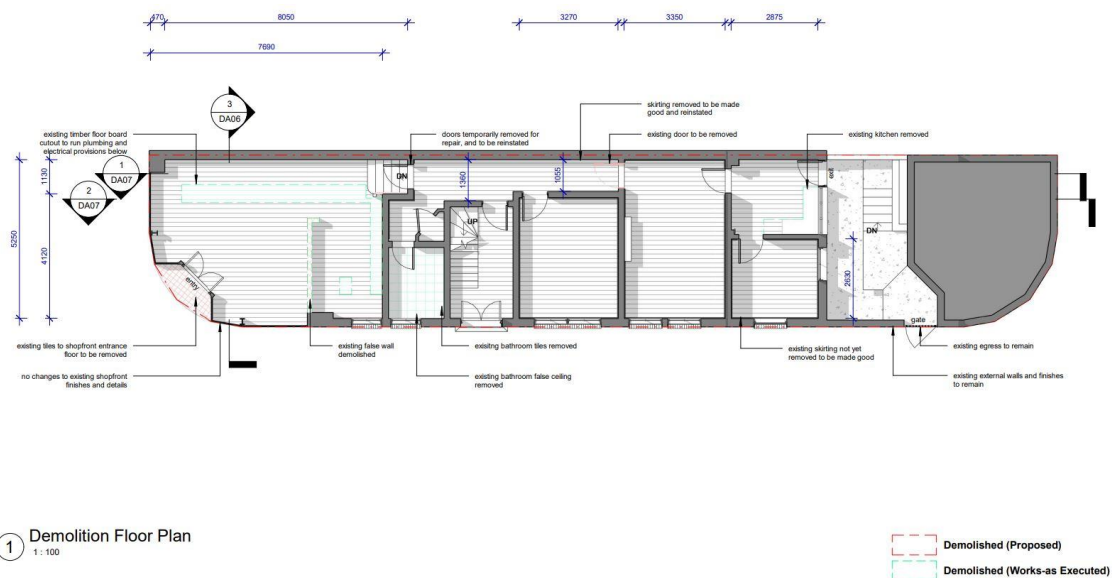
**Figure 16:** The original architraves and skirtings have been salvaged and to be reinstated (Source: Weir Philips Heritage and Planning)

The updated architectural plans supported both the CMP and the SOHI and illustrated additional works to be completed. These works specifically are (refer Figures 17-21):

- External works:
  - Existing tiles to shopfront entrance to be removed and replaced with new mosaic tiles;

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- New signage to faces of awning;
- New brass signage to external wall face on both Arden Street and Clovelly Road facades;
- Installation of non-glare external light to rear;
- Fit out and repair of front room (salon):
  - New herringbone timber floor boards over existing floorboards;
  - 6x new salon chairs with built in mirrored hair stations;
  - Built-in cushioned seating areas below existing glazing;
  - 3x new hair wash lounge units;
  - Cabinetry;
  - Brass handrail to replace existing handrail and new oak risers & treads over stairs leading from salon to hallway;
  - New wall mounted lights;
  - Existing lighting to be replaced by new light fixtures;
  - Existing redundant vent to be removed and sealed;
  - Bulkhead cladding damage to be repaired, and all internal wall finishes to be made good;
  - Existing cornice removed due to water leak, to be repaired.
  - Door separating front room (salon) from rear to be repaired and reinstated;
- Skirting that was removed to be made good and reinstated;
- Existing skirting not yet removed to be made good;
- Wall opening with architraves to replace existing door in hallway;
- False ceiling, lights, and fan to be replaced in bathroom;
- Selected bathroom tiles laid to fall on screed, with waterproof membrane;
- Additional lights to be installed along hallway walls and ceiling;
- New joinery and sinks to all beauty rooms;
- Timber framed divider wall with 20mm clearance between top of wall and ceiling to beauty rooms;
- New kitchen to replace existing;



**Figure 17:** Demolition floor plan (Source: Grounded Building Design)



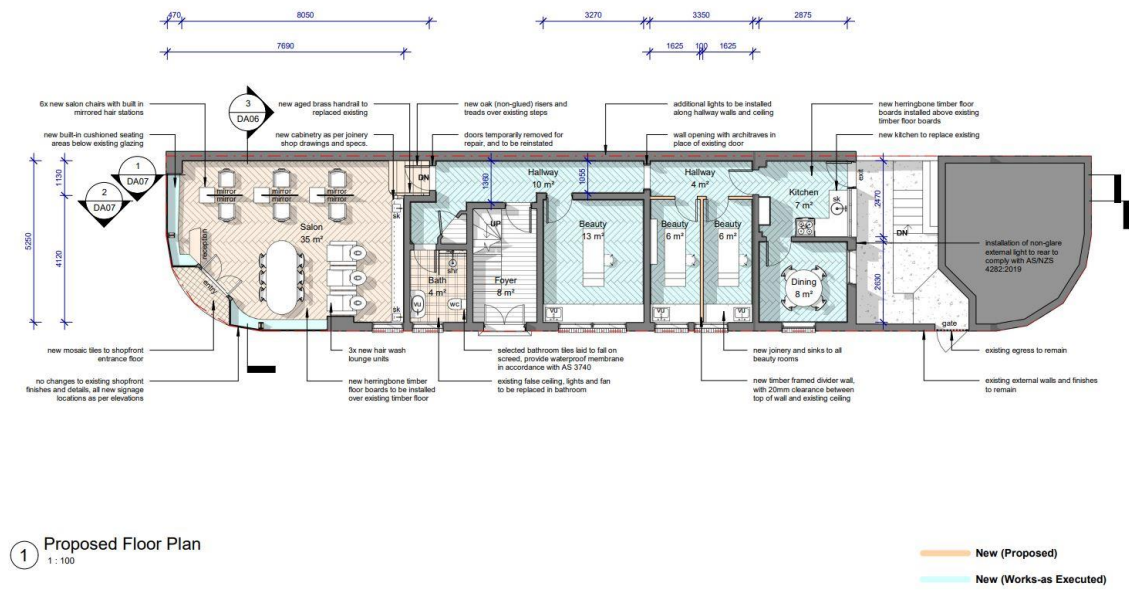


Figure 18: Proposed floor plan (Source: Grounded Building Design)

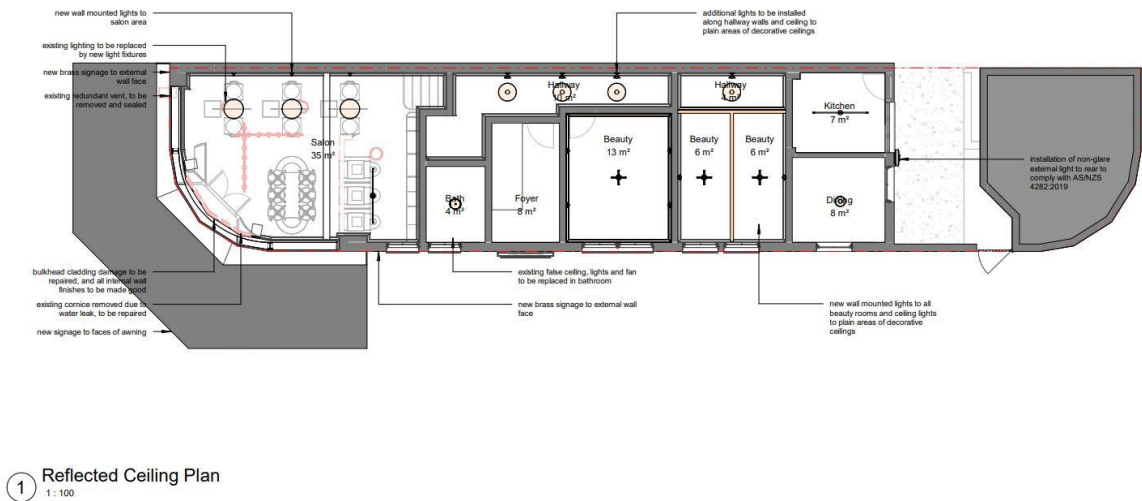


Figure 19: Reflected ceiling plan (Source: Grounded Building Design)

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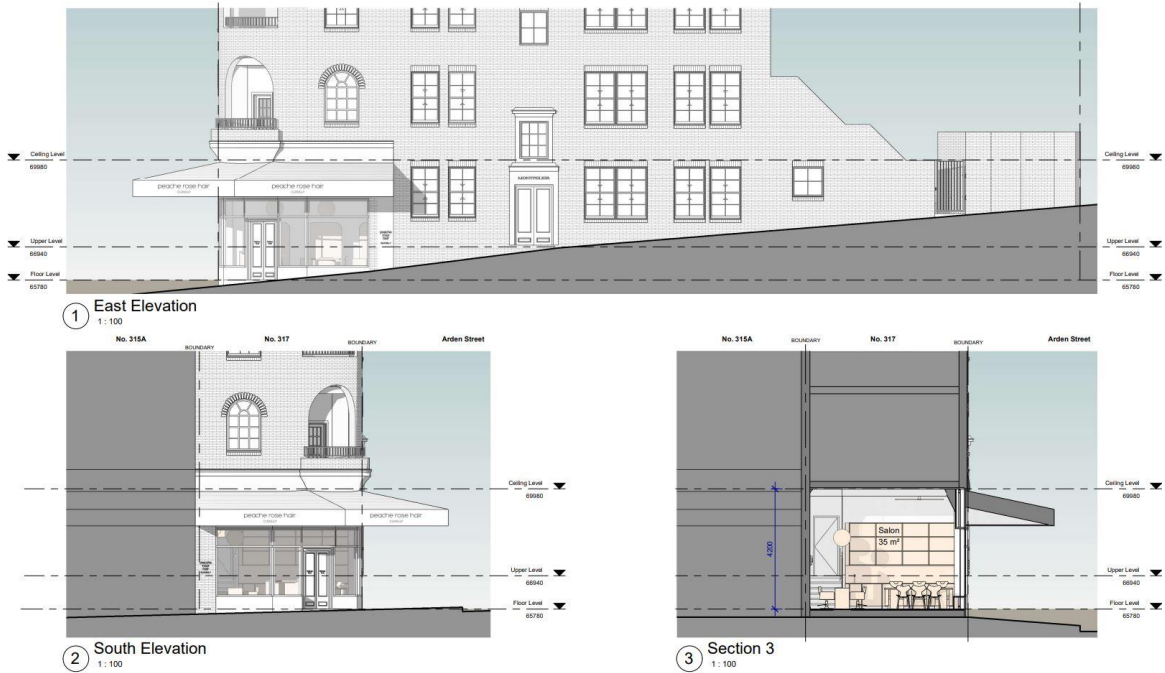


Figure 20: Elevations & section (Source: Grounded Building Design)

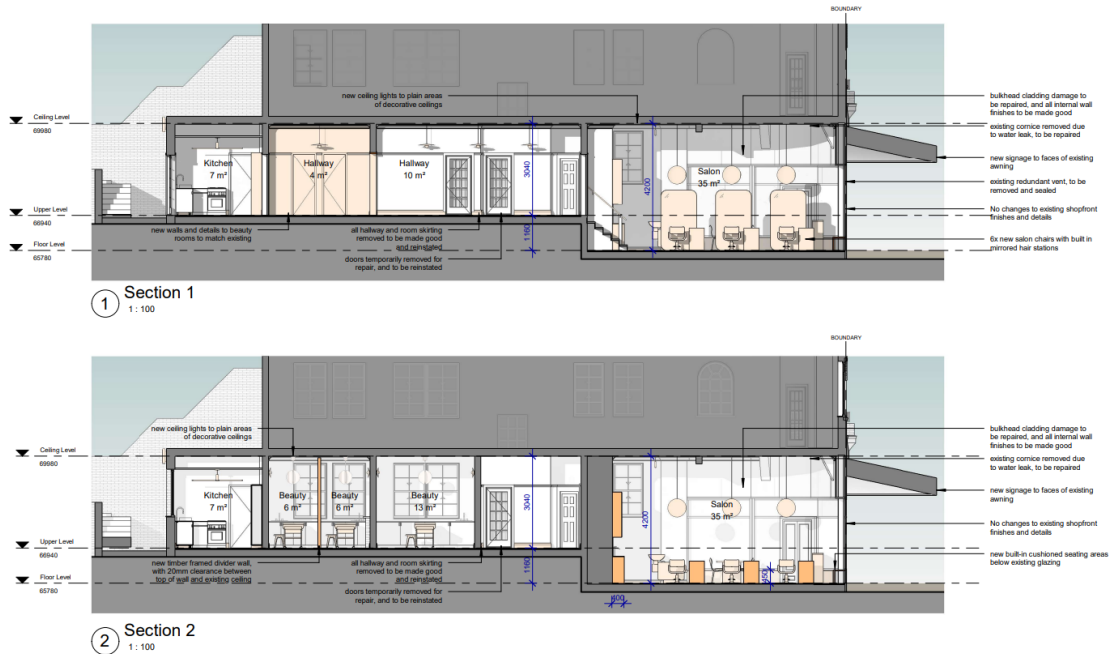


Figure 21: Sections (Source: Grounded Building Design)

5. Notification

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

## 6. Relevant Environment Planning Instruments

### 6.1. State Environmental Planning Policies

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

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

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

#### 6.1.2. SEPP (Industry and Employment) 2021

##### Chapter 3 Advertising and signage

Chapter 3 of SEPP (Industry and Employment) 2021 requires the consent authority to ensure that advertisement and signage is compatible with the desired amenity and visual character of urban/natural setting by regulating the impact of outdoor advertising.

The proposed development seeks consent for business identification signage to the fascia of the existing awning as well as modest wall mounted brass font to the rendered wall on either side of the shop windows.

##### Clause 3.1 - Objectives Compliance Table

Clause 3.1 outlines the aims of Chapter 3, which have been reproduced below:

- (a) *to ensure that signage (including advertising):*
  - (i) *is compatible with the desired amenity and visual character of an area, and*
  - (ii) *provides effective communication in suitable locations, and*
  - (iii) *is of high-quality design and finish, and*
- (b) *to regulate signage (but not content) under Part 4 of the Act, and*
- (c) *to provide time-limited consents for the display of certain advertisements, and*
- (d) *to regulate the display of advertisements in transport corridors, and*
- (e) *to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

The site is located within the Arden St (and Clovelly Rd), Clovelly Local Centre. The locality is characterised by a range of commercial and residential uses. The proposed signage is considered compatible with the desired amenity and visual character of the immediate locality. The business identification signage is permitted within the E1 Local Centre zone.

##### Clause 3.11 - Matters for consideration

Clause 3.11 of the SEPP outlines the matters of consideration specifically relating to advertising development, which states the following:

- (1) *A consent authority (other than in a case to which subsection (2) applies) must not grant consent to an application to display an advertisement to which this Chapter applies unless the advertisement or the advertising structure, as the case requires—*
- (a) *is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and*
  - (b) *has been assessed by the consent authority in accordance with the assessment criteria in Schedule 5 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and*
  - (c) *satisfies any other relevant requirements of this Chapter.*

The subject advertising has been assessed as per Clause 3.11 of the SEPP, addressing each of these components. See Clause 3.1 assessment above regarding the objectives of the chapter. An assessment against the Schedule 5 criteria is included below in Appendix 3.

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

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

The site is zoned E1 Local Centre under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will:

- Provide an addition to the range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- Encourage investment in local commercial development that generates employment opportunities and economic growth.
- Encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

### 6.2.1. Clause 5.10 - Heritage conservation

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

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

Council's Heritage Planning team assessed the application against the LEP controls and supported the proposed works as described in pages 30-32 of the Statement of Heritage Impact dated August 2024 prepared by Weir Phillips Heritage and Planning (refer to Appendix 4), with conditions below, subject to conditions. Refer to Appendix 1.

## 7. Development control plans and policies

### 7.1. Randwick Comprehensive DCP 2013

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

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

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

## 8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## 9. Conclusion

That the application to change of use and occupation from an art gallery and framing business to a hairdresser with associated beauty rooms (Heritage Item) be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013 & 2023.
- The proposal is consistent with the specific objectives of the E1 zone in that at the proposed activity and built form will:



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- Provide an addition to the range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
  - Encourage investment in local commercial development that generates employment opportunities and economic growth.
  - Encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The proposed development will make a positive contribution to the commercial centre.
- The proposed amendments to the heritage item were supported in the review of Council's Heritage Planner.

Conditions recommended by Council's Heritage Planning and Environmental Health teams have been concurred with and have been provided for inclusion in any consent issued. This consent grants approval for the change of use to a hairdresser with associated beauty rooms and for the works proposed in the approved plans and documentation. It does not include approval for works carried out prior to the issue of the development consent.

## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Heritage Planning

##### Controls

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

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

The Heritage section of Randwick Development Control Plan 2023 provided Objectives and Controls in relation to heritage properties.

##### Comments

- Detailed architectural drawings have been provided.
- The statement of heritage impact and conservation management plan/schedule are detailed and targeted and satisfactorily addressed the issues raised in the previous referral.
- The proposed impact/works as described in pages 30-32 of the Statement of Heritage Impact dated August 2024 prepared by Weir Phillips Heritage and Planning are supported, with conditions below.

##### Recommendation

The following conditions should be included in any consent:

1. A digital photographic archival recording of the property internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture. A PDF electronic copy of the archival record is to incorporate a brief historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base floor and site plans showing the locations of archival photographs taken, and index print of the photographs.

The first submission of the archival recording of significant building fabric or furnishings is to be prior to the removal of any significant building fabric or furnishings from the site, and must be submitted to and approved by Council prior to the commencement of any work on site and prior to a Construction Certificate being issued.

The second submission of the archival recording is of significant building fabric or furnishings that is exposed during demolition or construction and after work has been completed on site and must be submitted to Council prior to any Occupation Certificate being issued.

2. All maintenance and repair works identified in "Conservation Management Schedule" (CMS), prepared by Weir Phillips Heritage and Planning August 2024, must be implemented to the satisfaction of Council prior to the issue of any Occupation Certificate. Regular inspections should be undertaken by the heritage consultant throughout the construction period to ensure works are being undertaken in accordance with the CMS and good heritage practice.
3. An architect or tradesperson suitably qualified and experienced in heritage conservation shall be engaged to oversee the carrying out of the works.

4. *New materials for making good and repairs, are to match the existing in terms of colours, finishes, sizes, profile and properties.*
5. *The face brickwork/stone/tiles must not be rendered, painted or coated. Interventions to the face brick including but not limited to any chasings for introduction of electrical/lightings or fittings such as wall signs are not allowed.*
6. *Any intervention to the original walls and ceilings i.e. any chasings for introduction of electrical or plumbing requisites or fittings such as shelving, etc. must use existing service runs or use non-intrusive alternative solutions i.e. wireless lightings. Where this is not possible, details of alternative solution must be shown in drawings at a suitable scale and submitted and approved by Council prior to issue of any Construction Certificate.*

*New lights for internal spaces, i.e. front room, hallway, the proposed 2x6sqm rooms must use existing service runs or use non-intrusive alternative solutions. The existing ceiling/walls must be retained intact with no intervention.*

7. *Where internal partition meets original wall/window/ceiling it must abut window mullion/brick-wall between the windows or finish below the ceiling height and not glazing or ceiling plaster/cornices.*

## **1.2. Environmental Health**

The application was referred to Council's Environmental Health team for consideration and comment. Conditions have been provided for inclusion in any consent issued.

## Appendix 2: DCP Compliance

### 2.1 Section B2: Heritage

The proposal includes an assessment against the Heritage Objectives and Controls of this section of the DCP. This has been undertaken by Council's Heritage Planner. See Appendix 1 of this report above for these comments.

### 2.2 Section D6 Neighbourhood Centres: General Controls

An assessment against the relevant objectives of the DCP have found that, the proposed change of use will enhance the commercial amenity and ongoing economic viability of Randwick City's neighbourhood centres. The site manages to maintain the small shop character of the area. The proposed change of use is compatible with the character and form of existing development in the neighbourhood. And finally, that the development will provide additional amenity for residents living in or near the centre. For these reasons Council considers that the change of use meets the objectives of Section D6 of the DCP.

### 2.3 Section F2: Outdoor Advertising and Signage

<b>2</b>	<b>General Design and Siting</b>		
	i) Signage should recognise the legitimate needs for directional advice, business identification and promotion. ii) Signage must complement and be compatible with the development on which it is situated and with adjoining development. 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. vi) Signage shall be displayed in English but may include a translation in another language.	The proposed advertising signage on the existing awning fascia and the wall mounted advertising is considered acceptable as it will not detract from the streetscape, will not result in visual clutter, is appropriately scaled to the adjoining buildings in the area.	Yes, complies
<b>3</b>	<b>Signage based on land use zones</b>		
<b>3.1</b>	<b>Business Zones</b>		
	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. ii) Signage must not dominate or obscure a building or its architectural features. Advertising should highlight and reinforce architectural details. 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). v) The visual amenity and value of streetscapes should be protected through careful	The proposed advertising signage on the existing awning fascia and the wall mounted advertising is suitably scaled and do not dominate the streetscape.	Yes, complies

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	<p>consideration of proposals for flush wall signage.</p> <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>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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**Appendix 3: Advertising Compliance Table under Industry and Employment SEPP 2021**Objectives and Schedule 5 criteria

Compliance with the objectives and Schedule 5 criteria is considered in the following tables:

Relevant Clause	Comment
Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The site is located within the Arden St (and Clovelly Rd), Clovelly Local Centre. The proposal is compatible with the current and future character for the centre in providing a mix of commercial, retail and residential uses that serve the needs of the local community.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The signage is compatible with the scale and proportions of the locality.
Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The signage is not located in an environmentally sensitive area, natural or other conservation area, open space area, waterways, rural landscapes or residential areas.  Council's Heritage Planner is satisfied that the proposed development will not negatively impact upon the Heritage Item subject to conditions.
Views and vistas Does the proposal obscure or compromise important views?	The signage does not obscure views.
Does the proposal dominate the skyline and reduce the quality of vistas?	The height of the signage does not dominate the skyline or reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	The proposal does not affect the viewing rights of other advertisers.
Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The signage is integrated into the existing awning, wall mounted signage is limited to appropriately scaled font on rendered section of external wall.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal does not have an adverse impact on the visual interest of the streetscape and is sited appropriately.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	There is no existing advertisement at the site.
Does the proposal screen unsightliness?	Not applicable.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposal does not protrude above buildings.
Does the proposal require ongoing vegetation management?	No vegetation management required.
Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or	The signage is integrated into the existing awning, wall mounted signage is limited to

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Relevant Clause	Comment
building, or both, on which the proposed signage is to be located?	appropriately scaled font on rendered section of external wall.
Does the proposal respect important features of the site or building, or both?	The proposal is compatible with the existing building.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is appropriate for the site.
Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Not applicable.
Illumination Would illumination result in unacceptable glare?	Not applicable.
Would illumination affect safety for pedestrians, vehicles or aircraft?	Not applicable.
Would illumination detract from the amenity of any residence or other form of accommodation?	Not applicable.
Can the intensity of the illumination be adjusted, if necessary?	Not applicable.
Is the illumination subject to a curfew?	Not applicable.
Safety Would the proposal reduce the safety for any public road?	Not applicable.
Would the proposal reduce the safety for pedestrians or bicyclists?	Not applicable.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.

**Appendix 4: Excerpt of Heritage Impact Statement by Weir Phillips Heritage and Planning dated August 2024****5.4 Effect of Works on the Site**

The preparation of a Conservation Management Schedule has had a positive impact. This document has identified corrective maintenance work and provided guidelines on how this work should be executed. This will help ensure the ongoing maintenance of the building in an appropriate manner.

The proposed works continue the use of the building for mixed commercial-residential purposes. This is part of its significance.

The proposed exterior works will not impact upon the significance of the site for the following reasons:

- There will be no change in the massing, scale, pattern of exterior openings, architectural finishes or detailing of the building. These characteristics are central to the ability to understand the building as an Interwar period mixed use building.
- The proposed works are not of a type that will block view corridors to/from the site.
- The replacement of the ingo tiles with the proposed tiles will have no impact. The existing tiles are not original or sympathetic to the age and style of the building; they

do not inform the significance of the site. The proposed tiles complement the building. They will not have undue prominence in view corridors towards the site.

- The proposed signage is minimal, restrained and located within traditional signage locations on the building. It will not have undue prominence in view corridors to/from the site and is reversible without damage to significant fabric.
- The removal of the redundant vent in the Clovelly Street shopfront will have a positive impact. This is an intrusive element that does not further understanding about the significance of the site.

Given the above, the proposed works will have no impact on the ability to understand the massing, scale, architectural character and detailing of the building or alter its landmark status within the streetscape. All significant fabric is retained and will remain visible. New fabric- tiling to the ingo and signage- compliments the building and will not have undue prominence in view corridors.

The proposed interior works will have an acceptable impact on the site for the following reasons:

- The repair of the bulkhead and cornice in the shop will have a positive impact. This fabric has been damaged by long term water ingress.
- The removal of the partition wall within the shop has had no impact. This was not original fabric. No significant fabric was damaged when this partition was removed.
- The proposed works retain a full understanding of the floor plan. No new openings will be created in masonry walls or walls removed. The proposed dividing wall in the existing living room will have an acceptable impact because it is not full height, thereby preserving the decorative ceiling above. It will be a light weight wall fixed using the minimal safe fixings to ensure stability and the ability to remove it at a later date should use change.
- The plumbing works that have been executed have resolved long standing issues that will help ensure the preservation of the building fabric. Most of this work is located below sub floor level, which is not a significant space. The chasing into the walls will be made good. As required by the *DGP* controls for heritage listed commercial buildings (Section 2.13), the service works have been limited to those essential to permit the proposed use to proceed.
- The new floor will have an acceptable impact because the existing cypress boards do not appear to be original. The new floor will be installed in a reversible manner over the stair treads, which appear original. The door panels do not appear to require adjustment to accommodate the minor change in floor height.
- Reinstating the skirting boards, architraves and door panels will return these significant interior elements, which are typical of a building of the mid 1920s. Any missing pieces will be replicated to match the existing.
- The proposed kitchen and bathroom fit outs will have a minimal and acceptable impact. These facilities will be located in rooms where they have been located in the past and where there are services available.
- The false ceiling in the bathroom replaces an existing ceiling, retaining what remains of the original, damaged, ceiling above in situ.
- Cabinetry, including the bench seating, will be installed with minimal safe fixings.



- Lighting has been carefully considered to facilitate what is an appropriate use of the space whilst preserving significant architectural features.
- No intrusive vents etc. are detailed by the accompanying plans.

### **5.5 Effect of Works on Heritage Items in the Vicinity of the Site**

The only heritage item that the proposed works have the potential to impact upon is Walder's Corner, opposite the site.

The proposed works will have no impact on the fabric of Walder's Corner.

No changes are proposed to the footprint, setback, height, massing or scale of the existing building. No significant view corridors to/from the item will be blocked.

The proposed works propose only minor changes to the shop front, which will not alter its form or architectural character. No changes are proposed to the elevations above the awning. Replacing the non-original floor tiles to the ingo with the proposed tiles will have no impact. The proposed signage is confined to traditional signage locations, is restrained in character, is not excessive and will not be illuminated. As a result, there will be no impact on the character of the setting of this item.

Interior alterations to the rear behind the shop will not be visible from this item.

Given the above, there will be no impact upon the ability to view and appreciate the significance of Walder's Corner.



**Appendix 5: Report prepared by Country Road Plumbing, dated 18 July, 2024.**

D82/24

18<sup>th</sup> July 2024

To Whom it May Concern

**Property:** 317 Clovelly Road, Clovelly  
**Project:** Hydraulic Repairs & Upgrade

**REPORT**

Mr Brian O'Brian, the owner of the above property, engaged Country Road Plumbing to investigate and advise on all hydraulic services, commencing on 2<sup>nd</sup> May 2024.

On completion of investigations and testing there were a number of issues with all the existing hydraulic services as noted below and repairs and upgrades carried out.

**DRAINAGE SERVICE**

- On completion of testing there were leaks found on various clay joints under existing bathroom. Due to the state of the existing clay drainage we installed new 100mm UPVC drainage pipework above ground under existing floor and fastened to existing floor joists with hanging brackets.

**HOT & COLD WATER**

- On completion of testing it was evident there were water leaks due to a drop in guage pressure.
- There were soft soldered welded joints along with previous repairs with pro-fit pipe which does not meet AS3500 standards.
- There was a section of galvanised pipe under the floor that wasn't leaking but due to the state of all hot and cold services we replaced all hot and cold water services in copper and Tradeplex plastic pipe to meet AS3500 standard.

PO Box 7540 Bondi Beach 2026 Tel 0411 343 693 Fx 9399 6556 Email [crp100@bigpond.com](mailto:crp100@bigpond.com)

Licence No 113056C ABN 82 078 952 977

GAS SERVICE

- On completion of testing it was evident that the existing galvanised pipework was leaking due to a drop in pressure.
- Removed existing galvanised pipework and new gas service installed in copper and gas Tradeplex pipe to bring it up to Australian Standards.

STORM WATER

- High pressure water-jetting of all existing storm water services only.
- Install 3m of new 90mm UPVC to connect existing trench grate to rear pit.

ALL SERVICES

- All new services fastened under existing timber floor and saddled to floor joists.

CONCLUSION

- On completion of the original testing it was evident that all existing services required attention.
- All new and repair works carried out by Country Road Plumbing to high standards.
- I can be contacted directly for further information if required.

D82/24

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**Responsible officer:** Thomas Awford, Environmental Planning Officer

**File Reference:** DA/409/2024

Development Consent Conditions  
(Commercial)



Folder /DA No:	DA/409/2024
Property:	317 Clovelly Road CLOVELLY
Proposal:	Change of use and occupation from an art gallery and framing business to a hairdresser with associated beauty rooms (Heritage Item).
Recommendation:	Approval

GENERAL CONDITIONS

Condition

1.

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Cover Page – DA00	Grounded Building Design	16/09/2024	18/09/2024
Demolition Floor Plan – DA03			
Proposed Floor Plan – DA04			
Reflected Ceiling Plan – DA05			
Shopfront Elevations – DA06			
Sections – DA07			

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

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

2.

**Amendment of Plans & Documentation**  
The approved plans and documents must be amended in accordance with the following requirements:

a.

The face brickwork/stone/tiles must not be rendered, painted or coated. Interventions to the face brick including but not limited to any chasings for introduction of electrical/lightings or fittings such as wall signs are not allowed.



Condition	
	<p>b. Any intervention to the original walls and ceilings i.e. any chasings for introduction of electrical or plumbing requisites or fittings such as shelving, etc. must use existing service runs or use non-intrusive alternative solutions i.e. wireless lightings. Where this is not possible, details of alternative solution must be shown in drawings at a suitable scale and submitted and approved by Council prior to issue of any Construction Certificate.</p> <p>c. New lights for internal spaces, i.e. front room, hallway, the proposed 2x6sqm rooms must use existing service runs or use non-intrusive alternative solutions. The existing ceiling/walls must be retained intact with no intervention.</p> <p>d. Where internal partition meets original wall/window/ceiling it must abut window mullion/brick-wall between the windows or finish below the ceiling height and not glazing or ceiling plaster/cornices.</p>
	<p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation, and to ensure the heritage significance of the building is maintained.</p>
	<p>3. <b>Works Without Consent</b> This consent grants approval for the following:</p> <ul style="list-style-type: none"> <li>change of use to a hairdresser with associated beauty rooms and the works proposed in the approved plans and documentation.</li> <li>use of the works shown as 'works-as-executed' on DA03 and DA04 only.</li> </ul> <p>Condition Reason: To clarify that the consent only relates to the change of use to a hairdresser and any proposed works (that have not commenced).</p>

## BUILDING WORK

### BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
4.	<p><b>Consent Requirements</b> The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
	<p>5. <b>External Colours, Materials &amp; Finishes</b> The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.</p> <p>Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by the Certifier prior to issuing a construction certificate for the development.</p> <p>New materials for making good and repairs, are to match the existing in terms of</p>

	Condition
	<p>colours, finishes, sizes, profile and properties.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
6.	<p><b>Sydney Water</b></p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> <li>• Building plan approvals</li> <li>• Connection and disconnection approvals</li> <li>• Diagrams</li> <li>• Trade waste approvals</li> <li>• Pressure information</li> <li>• Water meter installations</li> <li>• Pressure boosting and pump approvals</li> <li>• Change to an existing service or asset, e.g. relocating or moving an asset.</li> </ul> <p>Sydney Water's Tap in™ online service is available at:  <a href="https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm">https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</a></p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
7.	<p><b>Building Code of Australia</b></p> <p>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).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
8.	<p><b>Design &amp; Construction of Premises</b></p> <p>The design, construction and fit-out of the premises must be carried out in accordance with the relevant requirements of the:</p> <ul style="list-style-type: none"> <li>• Public Health Act 2010</li> <li>• Public Health Regulation 2022</li> <li>• Relevant NSW Health Codes of Best Practice</li> </ul> <p>Details of compliance are to be provided in the plans and specifications with the application for a construction certificate, including work area surfaces, storage, sinks, wash-hand basins, sanitary facilities and waste disposal/storage.</p>

Condition	
	Condition Reason: To ensure compliance against relevant health legislation and guidelines.
9.	<p><b>Design &amp; Construction of Premises</b></p> <p>Hairdressing and beauty treatment areas must be constructed with floor coverings and shelving with, material that is durable, smooth, impervious to moisture and capable of being easily cleaned. Details should be provided to the certifying authority prior to the issuing of a construction certificate.</p> <p>Condition Reason: To ensure appropriate hygiene measures are in place.</p>
10.	<p><b>Sanitary Facilities</b></p> <p>Adequate sanitary facilities, plus wash hand basin and paper towel dispenser or hand dryer and appropriate signage, must be provided for staff and customers, to the satisfaction of the Certifying Authority and details are to be provided in the Construction Certificate Application.</p> <p>Condition Reason: To ensure appropriate hygiene measures are in place.</p>
11.	<p><b>Sanitary Facilities</b></p> <p>A dedicated cleaning area is to be provided with a separate sink that has a supply of clean, warm water for cleaning equipment.</p> <p>Condition Reason: To ensure appropriate hygiene measures are in place.</p>
12.	<p><b>Sterilisation Requirements</b></p> <p>Any reusable equipment which is used to penetrate the skin must be sterilised in appropriate sterilisers in accordance with the relevant standards and regulation.</p> <p>Condition Reason: To ensure appropriate hygiene measures are in place.</p>
13.	<p><b>Waste Management</b></p> <p>Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council and details are to be included in the construction certificate documentation.</p> <p>Condition Reason: To ensure that waste management practices to the satisfaction of Council are in place.</p>
14.	<p><b>Heritage Archival Recording</b></p> <p>A digital photographic archival recording of the property internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture. A PDF electronic copy of the archival record is to incorporate a brief historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base floor and site plans showing the locations of archival photographs taken, and index print of the photographs.</p> <p>The first submission of the archival recording of significant building fabric or furnishings is to be prior to the removal of any significant building fabric or furnishings from the site, and must be submitted to and approved by Council prior to the commencement of any work on site and prior to a Construction Certificate being issued.</p>

Condition	
	The second submission of the archival recording is of significant building fabric or furnishings that is exposed during demolition or construction and after work has been completed on site and must be submitted to Council prior to any Occupation Certificate being issued.
	Condition Reason: To provide a historical record of heritage significant fabric on site for archival purposes.

### BEFORE BUILDING WORK COMMENCES

Condition	
15.	<p><b>Building Certification &amp; Associated Requirements</b></p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <ul style="list-style-type: none"> <li>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</li> </ul> <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ul style="list-style-type: none"> <li>b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</li> <li>c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</li> <li>d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and</li> <li>e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</li> </ul> <p>Condition Reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
16.	<p><b>Public Utilities</b></p> <p>A <i>Public Utility Impact Assessment</i> must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works.</p> <p>Documentary evidence from the relevant public utility authorities confirming that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Energy Australia, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p>

Condition	
	Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.
17.	<p><b>Heritage Qualified Oversight</b> An architect or tradesperson suitably qualified and experienced in heritage conservation shall be engaged to oversee the carrying out of the works.</p> <p>Condition Reason: To ensure the heritage significance of the dwelling is maintained.</p>

### DURING BUILDING WORK

Condition							
18.	<p><b>Site Signage</b> It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> <li>showing the name, address and telephone number of the principal certifier for the work, and</li> <li>showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and</li> <li>stating that unauthorised entry to the work site is prohibited.</li> </ol> <p>The sign must be—</p> <ol style="list-style-type: none"> <li>maintained while the building work is being carried out, and</li> <li>removed when the work has been completed.</li> </ol> <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> <li>building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or</li> <li>Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</li> </ol> <p>Condition Reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>						
19.	<p><b>Restriction on Working Hours</b> Building, demolition and associated site works must be carried out in accordance with the following requirements:</p> <table border="1"> <thead> <tr> <th>Activity</th><th>Permitted working hours</th></tr> </thead> <tbody> <tr> <td>All building, demolition and site work, including site deliveries (except as detailed below)</td><td> <ul style="list-style-type: none"> <li>Monday to Friday - 7.00am to 5.00pm</li> <li>Saturday - 8.00am to 5.00pm</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul> </td></tr> <tr> <td>Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like</td><td> <ul style="list-style-type: none"> <li>Monday to Friday - 8.00am to 3.00pm (maximum)</li> <li>Saturday - No work permitted</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul> </td></tr> </tbody> </table>	Activity	Permitted working hours	All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> <li>Monday to Friday - 7.00am to 5.00pm</li> <li>Saturday - 8.00am to 5.00pm</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>	Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> <li>Monday to Friday - 8.00am to 3.00pm (maximum)</li> <li>Saturday - No work permitted</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>
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	Condition
	<p><i>An application to vary the abovementioned hours may be submitted to Council's Manager Health, Building &amp; 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.</i></p>
	<p>Condition Reason: To protect the amenity of the surrounding area.</p>
20.	<p><b>Public Safety &amp; Site Management</b></p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ul style="list-style-type: none"> <li>a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.</li> <li>b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.</li> <li>c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.</li> <li>d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ul> <p>Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.</p> <p><i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i></p> <ul style="list-style-type: none"> <li>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.</li> </ul>

Condition	
	<p>i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.</p> <p>j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
21.	<p><b>Building Encroachments</b></p> <p>There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p>

#### BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
22.	<p><b>Occupation Certificate Requirements</b></p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
23.	<p><b>Unauthorised Works</b></p> <p>Any unauthorised works shall be covered under separate approvals. Such approvals must be granted and evidence reflecting this must be provided to Council prior to the issue of an Occupation Certificate.</p> <p>Condition Reason: To ensure that all unauthorised works are compliant with the Building Code of Australia and are covered under appropriate approvals.</p>
24.	<p><b>Conservation Management Schedule</b></p> <p>All maintenance and repair works identified in "Conservation Management Schedule" (CMS), prepared by Weir Phillips Heritage and Planning August 2024, must be implemented to the satisfaction of Council prior to the issue of any Occupation Certificate. Regular inspections should be undertaken by the heritage consultant throughout the construction period to ensure works are being undertaken</p>

Condition	
	in accordance with the CMS and good heritage practice.
	Condition Reason: To ensure the heritage significance of the dwelling is maintained.
25.	<p><b>Registration and Inspection of Premises</b></p> <p>The business must be registered with Council and be inspected by a Council Environmental Health officer prior to commencing business operations.</p> <p>Condition Reason: To ensure development has met relevant environmental health conditions and regulations.</p>
26.	<p><b>Registration and Inspection of Premises</b></p> <p>Beauty salons must comply with the Local Government (General) Regulations 2021 and the Public Health Act &amp; Regulations 2022, and the premises is to be registered with Council prior to occupation and the approved registration/inspection fee is to be forwarded to the Council prior to occupation.</p> <p>Condition Reason: To ensure development has met relevant environmental health conditions and regulations.</p>
27.	<p><b>Skin Penetration Procedures</b></p> <p>Any skin penetration procedures conducted on the premises must comply with Public Health Act 2010 and Regulations 2022.</p> <p>Condition Reason: To ensure skin penetration procedures comply with relevant environmental health legislation and regulations.</p>
28.	<p><b>Skin Penetration Procedures</b></p> <p>Any reusable skin penetration device must be cleaned and sterilised in accordance with the Public Health Act 2010 and Regulations 2022.</p> <p>Condition Reason: To ensure skin penetration procedures comply with relevant environmental health legislation and regulations.</p>
29.	<p><b>Sanitary Facilities</b></p> <p>Hairdressing and Beauty treatment areas must be provided with accessible wash hand basin that has potable hot water through a common spout and soap and paper towels.</p> <p>Condition Reason: To enable adequate and accessible hygiene.</p>
30.	<p><b>Waste Management</b></p> <p>Trade/commercial waste materials must not be disposed via council's domestic garbage service or be deposited in public garbage bins. All trade/commercial waste materials must be collected by Council's Trade Waste Service or an appropriately licensed waste contractor and details of the proposed waste collection and removal service are to be submitted to Council prior to commencing business operations. In relation to skin penetration sharps containers must be provided and used for any sharp skin penetration materials used during treatments. All waste must be transported to an approved waste facility.</p> <p>Condition Reason: To ensure the appropriate disposal of trade/commercial waste to the satisfaction of Council.</p>
31.	<p><b>Fire Safety Certificate</b></p> <p>A single and complete Fire Safety Certificate, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the Environmental</p>

Condition	
	Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.
	A copy of the Fire Safety Certificate must be displayed in the building entrance/foyer at all times and a copy of the Fire Safety Certificate and Fire Safety Schedule must also be forwarded to Fire and Rescue NSW.
	Condition Reason: Statutory requirement. To ensure compliance with the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, and that adequate provision is made for fire safety in the premises for building occupant safety.

### OPERATIONAL CONDITIONS

Condition	
32.	<b>Use of Premises</b> The use of the premises is restricted as a hair and beauty salon only. Any changes to the use of the premises may require further consent from Council.  Condition Reason: To ensure the development is used for its intended purpose.
33.	<b>Operational Hours</b> The hours of operation of the business are restricted to: <ul style="list-style-type: none"><li>Monday to Wednesday, Friday and Saturday 8:00am to 6:00pm</li><li>Thursday: 8:00am to 9:00pm</li><li>Sunday: 10:00am to 6:00pm</li></ul> Condition Reason: To ensure that the approved use is operated within the approved hours of operation, to ensure safety and security and protect the amenity of surrounding areas.
34.	<b>Public Health &amp; Environmental Amenity</b> The use and operation of the business must be carried out in accordance with the relevant requirements of the Public Health Act 2010, Public Health Regulation 2022 and associated guidelines and codes of best practice, at all times.  Condition Reason: To ensure compliance against relevant health legislation and guidelines.
35.	<b>Skin Penetration</b> Any beauty treatment involving skin penetration shall comply with the Public Health Act 2010 and Public Health Regulation 2022.  Condition Reason: To ensure compliance against relevant health legislation and guidelines.
36.	<b>Inspection</b> The business may be the subject of a routine inspection by Council's Environmental Health officer's and relevant inspection fees are payable, as provided in Council's annual Pricing Policy.  Condition Reason: To ensure development has met relevant environmental health conditions and regulations.
37.	<b>Sanitary Condition</b> The premises must be maintained in a clean, healthy and sanitary condition at all

Condition	
	times.
	Condition Reason: To ensure appropriate hygiene measures are in place.
38.	<b>External Lighting</b> External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.  Condition Reason: To protect the amenity of the surrounding area and residents.
39.	<b>Emissions &amp; Discharges</b> The use and operation of the premises shall not give rise to an environmental health or public nuisance.  There are to be no emissions or discharges from the premises which give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations.  Condition Reason: To protect the amenity of the surrounding area and residents.
40.	<b>Plant &amp; Equipment</b> The 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.  In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background (LA90), 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed as an LAeq, 15 min and adjusted in accordance with the NSW Environmental Protection Authority's Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).  Condition Reason: To protect the amenity of the surrounding area and residents.

## DEMOLITION WORK

### BEFORE DEMOLITION WORK COMMENCES

Condition	
41.	<b>Demolition Work Plan</b> A demolition work plan must be developed and be implemented for any demolition works in accordance with AS2601 (2001)- Demolition of Structures.  The demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601 Demolition of Structures and Randwick City Council's Asbestos Policy.  The demolition work plan must include details of the demolition, removal, storage and disposal of any hazardous materials (including materials containing asbestos).  A copy of the demolition work plan must be provided to the Principal Certifier and Council. A copy shall also be maintained on site and be made available to Council officers upon request.  Condition Reason: To ensure demolition work area carried out in accordance with



Condition
the relevant standards and requirements.

#### DURING DEMOLITION WORK

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

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

- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m<sup>2</sup> of bonded asbestos (i.e. fibro),
- Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations
- A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",
- Council is to be given at least two days written notice of demolition works involving materials containing asbestos,
- Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,
- A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works.

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

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