

Randwick Local Planning Panel (Electronic) Meeting

Thursday 24 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, 24 October 2024

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D86/24

Subject: 80 Doncaster Avenue, Kensington (DA/799/2024)


Executive Summary

Proposal:	Alterations and additions to an existing dwelling house including rear extension, upgrades to existing roof, widening of internal doorways, new windows and landscaping works
Ward:	West Ward
Applicant:	Mr M P Barr
Owner:	Mrs B Vaughan
Cost of works:	\$121,000.00
Reason for referral:	The development involves partial demolition of a heritage item 'I125'

Recommendation

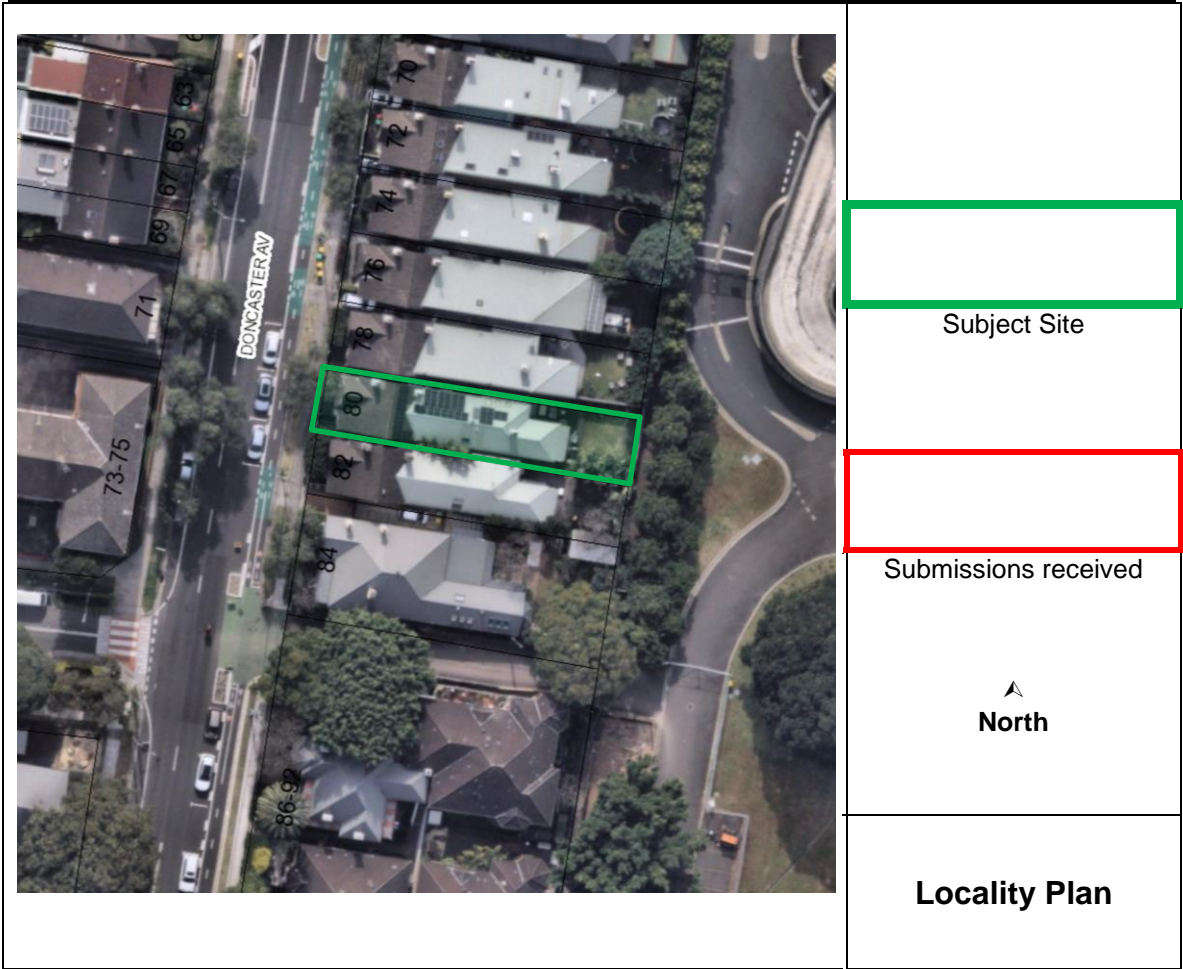
- A. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/799/2024 for alterations and additions to an existing dwelling house including rear extension, upgrades to existing roof, widening of internal doorways, new windows and landscaping works, at No. 80 Doncaster Avenue, Kensington, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/799/2024 - 80 Doncaster Avenue, KENSINGTON NSW 2033 - DEV - B I Studio Pty Ltd DA/799/2024

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1. Executive summary

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

- the development involves demolition of a heritage item.

The proposal seeks development consent for alterations and additions to an existing dwelling house including rear extension, upgrades to existing roof, widening of internal doorways, new windows and landscaping works.

The subject site is zoned R3 – Medium density residential under Randwick Local Environmental Plan 2012, under which the land use of ‘dwelling house’ is permissible with consent.

In accordance with Schedule 5 - Environmental Heritage of the Randwick Local Environmental Plan 2012, the subject site is a listed heritage item (I125) and described as ‘Detached cottage group’. The site is also located within ‘Racecourse’ Heritage Conservation Area (C13).

The key issues associated with the proposal relate to the heritage conservation management of original materials and retention of architectural features.

The proposal is recommended for approval subject to non-standard conditions that require materials and finishes to be sympathetic to the original fabric of the heritage item, original brick detailing to be retained where possible, and appropriate management of heritage fabric during the construction phase of the development.

2. Site Description and Locality

The subject site is known as 80 Doncaster Avenue and is legally described as Lot 7 in DP 11419. The site is an irregular shaped allotment with a 8.06m frontage to Doncaster Street to the west a site area of 328.8m². site features a near level topography, with no notable slope identified across the site.

The site contains a single storey detached dwelling with timber decking to the rear. Vegetation across the site is largely limited to a singular frangipani tree within the front setback alongside two small hedge plantings, all of which are not considered to be significant. Vehicular access to the site is not accommodated.

The subject site is listed as part of a group heritage item (I125) under the RLEP 2012, comprising a row of detached federation style cottages. The site is located within the Randwick Racecourse Heritage Conservation Area 'C13', and directly adjoins the racecourse grounds to the east (rear). Detached dwellings of the same heritage item adjoin the site to the north and the south at No.78 a No.82 Doncaster Avenue. Mid-rise apartment buildings adjoin the site to the west of the site, on the opposite side of Doncaster Avenue, reflecting the R3 medium density zoning of the immediate locality.



Figure 1. Street presentation of subject site, viewed from Doncaster Avenue.

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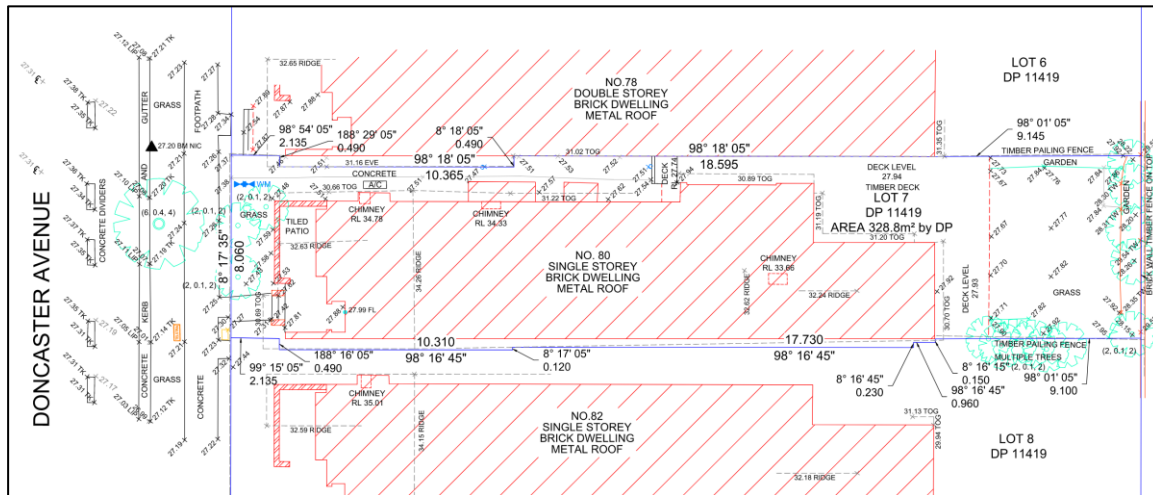


Figure 2. Survey Plan of subject site (Source: Survade Residential & Construction Surveyors).



Figure 3. Aerial view of Heritage item '1125', detached cottage group, at 68-82 Doncaster Avenue.

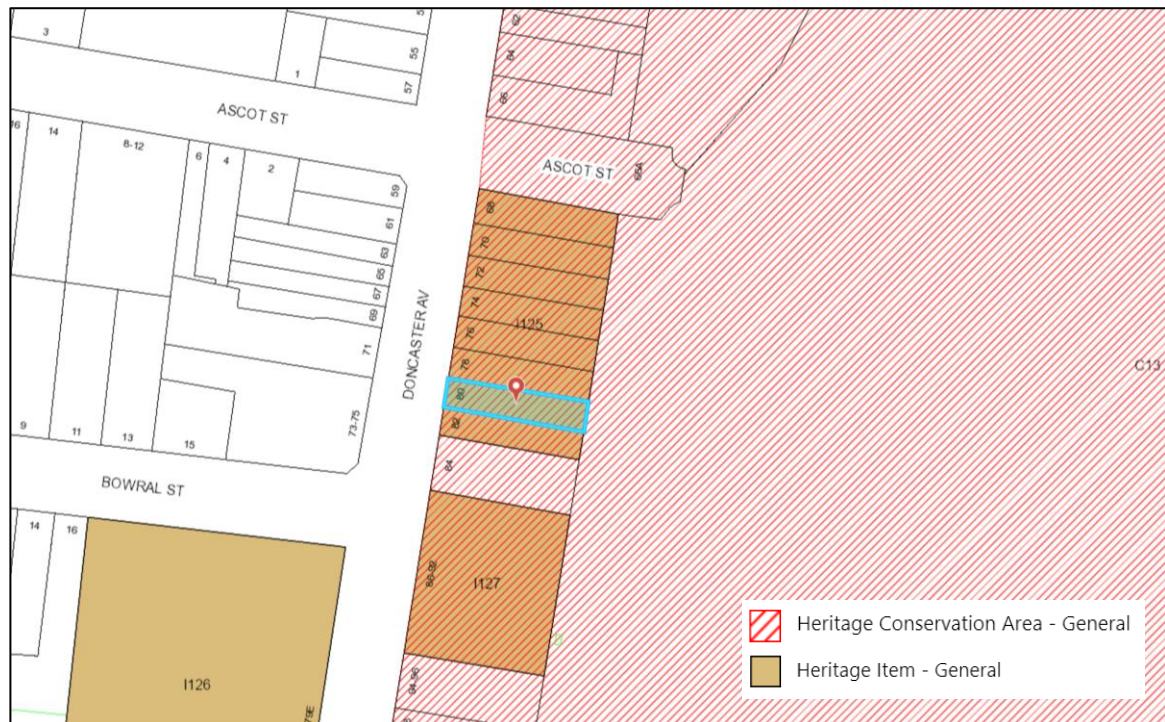


Figure 4. Heritage planning map (Source: Randwick City Council).

3. Relevant history

DA/738/2024 - Rear Extension to include a new Laundry and kitchen renovation, with upgrade to existing Roof and some Landscaping Works. The proposal was rejected prior to lodgement due to the submission of an incomplete application.

4. Proposal

The proposal seeks development consent for alterations and additions to an existing dwelling house including rear extension with construction of pergola, repair and replacement of roof tiles and skylights, widening of internal doorways, fenestration changes, and landscaping works.

Specifically the scope of works comprises the following:

- Replacement of roof tiles to the front of the dwelling;
- Remove existing sheds along the northern elevation, to be replaced by new storage shed, bin storage, and rainwater tank;
- Removal and replacement of non-original windows to the living area;
- Replacement of existing skylights and installation of additional skylights;
- Fenestration alterations, including glass doors to northern elevation, providing direct access to deck;
- Rear extension to accommodate new bathroom and laundry;
- Pergola over existing decking to the rear of the dwelling; and
- Upgrade to existing outdoor shower.

ADJACENT SINGLE STOREY BRICK DWELLING
TILE & METAL ROOF
78 DONCASTER AVENUE
LOT 6/DP11419

ADJACENT SINGLE STOREY BRICK DWELLING
TILE & METAL ROOF

ADJACENT SINGLE STOREY BRICK DWELLING
TILE & METAL ROOF
82 DONCASTER AVENUE
LOT 8/DP11419

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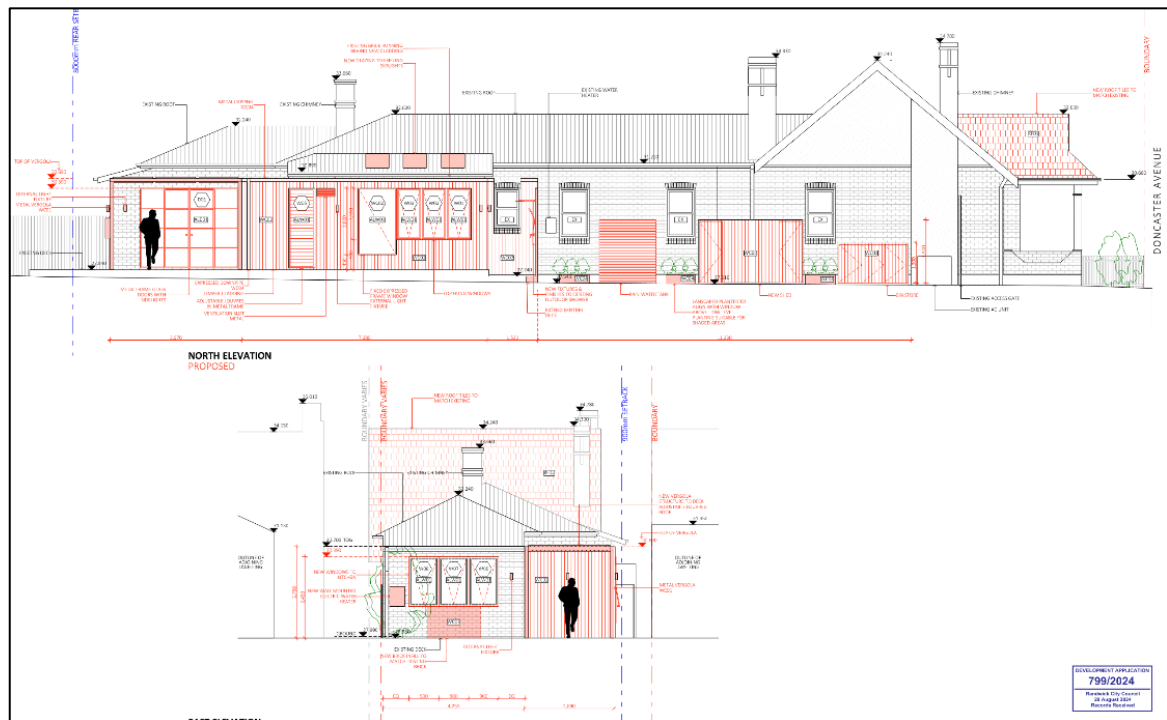


Figure 8. Extract of proposed North and East Elevation Plan (Source: B Studio).

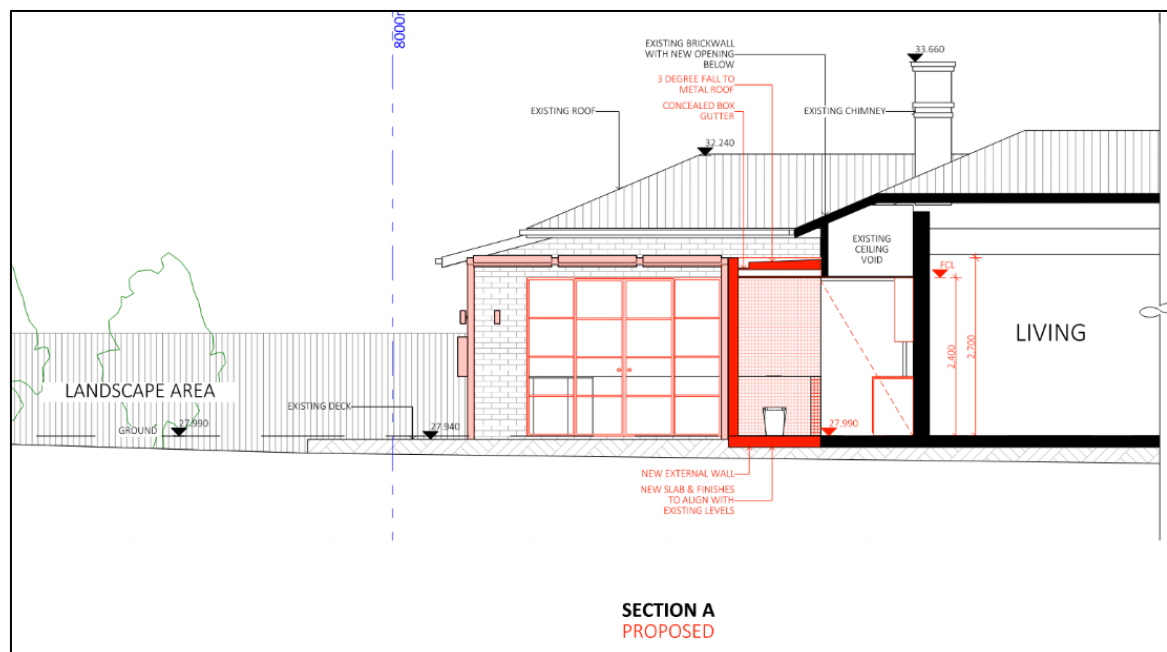


Figure 9. Extract of proposed Section Plan (Source: B Studio).

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Figure 10. Original wall to the rear of the dwelling to be partially removed and replaced with new glass door openings.

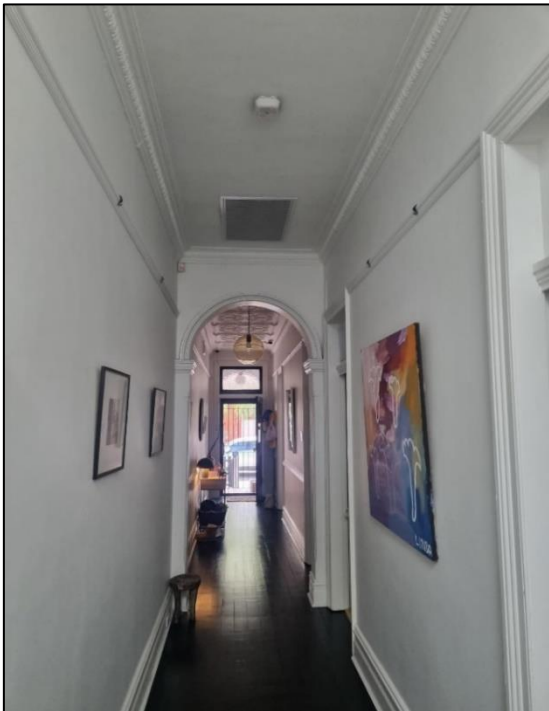


Figure 11 & 12. Original archway detailing throughout the hallway.



Figure 13. Non-original windows and doors to be removed and replaced.

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 (Certificate No. A1756533) has been submitted in accordance with the requirements of the SEPP (Sustainable Buildings) 2022.

6.2. SEPP (Biodiversity and Conservation) 2022

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 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.

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned Residential R3 Medium Density under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4A(2): Floor space ratio (max)	0.75:1	0.44:1 (144.35m ²).	Yes
CI 4.3: Building height (max)	9.5m	Maximum building height 6.76m as existing. New addition 2.9m	Yes

6.4.1. Clause 5.10 - Heritage conservation

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 site forms part of the Local heritage item '1125' 'Detached cottage group' at 68-82 Doncaster Avenue, and is located within the Racecourse Heritage Conservation Area (C13).

Council's Heritage Planner has reviewed the proposal and is satisfied that the works are consistent with considerations under clause 5.10 of RLEP 2012, subject to conditions of consent focused on the treatment and management of original detailing/ fabric of the heritage item. Refer to referral comments from Council's Heritage Planner at Appendix 1 of this report.

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 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received during 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.

8.1. Discussion of key issues

Heritage

The site is listed as a local group heritage item (I125) and located within the Racecourse Heritage Conservation Area (HCA) and therefore, as required by Clause 5.10 of the RLEP 2012, consideration must be given to the impact that the development may have upon the listed item and the wider HCA.

Key issues associated with the development are focused on the treatment and management of original features and fabric of the heritage item.

The proposal has been reviewed by Council's Heritage Planner who has considers the proposed alteration to the building envelope, roof maintenance/repair, and internal reconfiguration to be supportable subject to the recommended conditions of consent which ensure appropriate conservation and treatment of original fabric and features of the dwelling.

The colours and finishes of the replacement roof tiles to the front of the dwelling do not contain sufficient detail to enable Council's Heritage Planner to approve the schedule of colours and finishes. Council's Heritage Planner has recommended that conditions ensure that the colours and finishes for the front roof tiles be approved by Council's heritage officer prior to the issue of a construction certificate to ensure replacement tiles are sympathetic to the character of the heritage item and wider conservation area.

Towards the rear of the dwelling, proposed alterations involve minor enlargement to the building envelope to accommodate a new bathroom/laundry arrangement within the dwelling, and the partial demolition of the existing wall and removal of windows (northern elevation) to provide direct access to the alfresco area. The windows to the affected elevation feature brick arch detailing, which are an original feature to the heritage item (Figure 14). From the Architectural Plans submitted, it is unclear whether the arches are capable of being retained under the proposed window and door arrangement.

While no objection is raised to the scope of works proposed, Council's Heritage Planner has recommended that, if approved, conditions be imposed on development consent to avoid damage to the original detailing, requesting the retention of the window brick archways to the northern elevation, where possible. Where the door height needs to be reduced to retain the arch detailing, the height should still be aligned with BCA. Refer to referral comments from Council's Heritage Planner at Appendix 1 of this report.



Figure 14. Original brickwork detailing above the windows recommended to be retained.

9. Conclusion

That the application for alterations and additions to an existing dwelling house including rear extension, replacement of roof tiles and skylights, widening of internal doorways, fenestration changes and landscaping works (Heritage Item 'I125' and Heritage Conservation Area – Racecourse 'C13') be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013 & 2023
- The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community whilst conserving desirable elements of the existing streetscape 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 Heritage Conservation Area locality.
- External works do not add any significant bulk or detract from the heritage significance of the building or the streetscape
- The proposed works involve maintenance and repairs to an existing heritage item to support its continued use as a residential dwelling.

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 application was referred to Council's Heritage Planner for review. As detailed below, no objection was raised, subject to conditions:

The Site

The site is occupied by a single storey detached Federation style cottage, part of a group comprises in nos.68-83 Doncaster Avenue, which is listed as a heritage item under Randwick Local Environmental Plan 2012 (Gazetted on 1998). The cottage and the group are also within the Randwick Racecourse heritage conservation area.

Background

There is no record of a development application in Council since the erection of the building. However, there seems to be some internal alteration to original fabric of the dwelling sometime between 2009-2019.

Proposal

Alterations and additions to an existing dwelling house including rear extension, upgrades to existing roof, widening of internal doorways, new windows alongside/rear elevations and landscaping works

Submission

- D05427606 – HIS
- D05427592 – SEE
- D05427611 – Architectural Drawings

Controls

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

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

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

Comments

- *The existing roof form comprises a main cement tiled roof over the front two rooms, with a cross ridge and side gables; a hipped corrugated iron roof over the next three rooms and bathroom and a hipped corrugated iron roof over the narrower rear wing.*
- *Internally, the dwelling features a wide hallway and original ceilings to the bedrooms and sitting rooms. Original ceilings have been removed from the bathroom and kitchen/dining areas.*
- *It appears that the kitchen/dining area has been subject to previous change including replacement of original ceilings and removal of a fireplace. The provision for a wider access between living and kitchen spaces, extension of the bathroom/laundry area, and introduction of new opening/windows are considered a contemporary adaptation to improve the use and amenity of these spaces. The proposal does not result in any significant changes to the building envelope/fabric and is considered acceptable subject to conditions below.*
- *The proposal for repair/replacement of roof tiles, with sympathetic material matching the existing or original roof fabric, is supported with conditions below.*
- *The door (between living and kitchen area), doorframe, architrave and fanlight detail are to be carefully removed and safely stored on-site and/or sold or donated to a heritage*

salvaging yard to facilitate the conservation of other buildings of a similar period. The proposed opening must sit below the existing picture rail.

- *The doorframe/architrave between the hallway and the living space is to be retained. The door is not original and can be replaced.*
- *No changes proposed to the floor-boards.*

Recommendation

The following conditions should be included in any consent:

1. *An architect or tradesperson suitably qualified and experienced in heritage conservation shall be engaged to oversee the carrying out of works.*
2. *Prior to works commencing, contractors shall be briefed as to the sensitive nature of the site and conservation area, and informed of any recommended mitigation measures or controls required.*
3. *The proposed work must take measures to protect existing fabric including but not limited to floors (floor-boards, skirtings), ceilings, walls, doors, windows, fireplaces, roof structure, and decorative features. If they need to be interrupted during process of construction, they must be properly recorded and reinstated to the original condition.*
4. *New window and door openings are to be carefully made to avoid damage to original brick surfaces to the side and rear walls. New door/window opening to the side is to be carefully made to avoid damage to original brick surfaces to the wall and retain the window brick arches to the side wall.*
5. *The door (between living and kitchen area), doorframe, architrave and fanlight detail are to be carefully removed and safely stored on-site and/or sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period. The proposed opening must sit below the existing picture rail.*
6. *Salvaged traditional building materials surplus to the requirements of this project including but not limited to items such as stone, bricks, timber, and joinery must not be scrapped and are to be sold to an established dealer in second-hand heritage building materials.*
7. *A brief 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.*

An electronic digital copy of the archival recording is to be submitted to Council for inclusion in the Local History Collection of Randwick City Library and for Council's own records. This document is to be in a PDF electronic copy incorporating a detailed 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.

8. *The colours, materials and finishes of the external surfaces to the building are to be compatible with the existing building and surrounding buildings in the heritage conservation area and consistent with the architectural style of the building. Unpainted surfaces, e.g.*

brickwork/stonework are to remain unpainted, and no applied finishes are to be used. Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

Assessment officer comment: The above advice from Council's Heritage Planner is considered and concurred with. The above recommendations shall be imposed in the conditions of consent, should approval be granted.

1.2. Development Engineers and Landscape officer

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

An application has been received for alterations and additions to an existing dwelling house including rear extension, upgrades to existing roof, widening of internal doorways, new windows along side/rear elevations and landscaping works (Heritage Item and Heritage Conservation Area).

This report is based on the following plans and documentation:

- *Architectural Plans by B-Studio and dated 23/08/2024,*
- *Statement of Environmental Effects by Damian O'Toole Town Planning and Heritage Services and dated August 2024,*
- *Detail & Level Survey by Survade and dated 14/08/2024.*

General Comments

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

Flooding Comments

Upon review of Council's, "Kensington - Centennial Park Floodplain Risk Management Study and Plan", it was determined that the subject site is inundated by flooding during storm events equal to or greater than the 1% AEP storm. The site is affected by an overland flowpath of flooding that travels along Doncaster Avenue and extends into the site frontage. During the 1% AEP storm, the site frontage is affected by flooding depths that range between 0.03-0.31m.

The proposed development aims to mainly redevelop the laundry space located at the rear of the site, where there is no immediate flooding. Therefore, Development Engineering raises no objection to the proposed development in relation to flooding controls.

Undergrounding of power lines to site

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

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

It is noted that the proposed works are located towards the rear and there are no alterations or additions proposed at the front of the dwelling where the existing electricity supply connects. It is therefore considered a nexus cannot be established between the council resolution and the proposed works and subsequently the condition has not been recommended in this instance.

Tree Management Comments

Inspection was undertaken through google street view on Tuesday 17th Oct 2024, with photos of all vegetation on D05427592.

Firstly, on council's verge, centrally adjacent subject site, mature Schinus molle (Peppercorn tree) 5 metres high, poor vigour, fair health, low landscape significance, in close conflict with works, TPZ fencing will be required from protection of materials and physical damage.

Within the front setback of this development site, one Frangipani tree, hedging plants and some varied insignificant shrubs, not protected can be removed at any time.

Within the rear of the property the only vegetation found, was around the existing grass area, which an abundant of insignificant shrubs within planter beds, all vegetation within the rear is far enough away from works, no protection needed, can be removed or retained at any time.

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

All other vegetation within the north, east and south adjoining sites noted to be well clear of all works.

Assessment officer comment: The above advice from Council's development engineer and landscape officer is considered and concurred with. The above recommendations shall be imposed in the conditions of consent, should approval be granted.

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Appendix 2: DCP Compliance Table

3.1 Part C1: Low Density Residential (2023)

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 328.8m ²	
2.1	Minimum lot size		
	Minimum lot size LEP 2012 =	Proposed = No change to existing 328.8m ² .	N/A
2.4	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	Proposed = 49.5% (163m ²). Existing = 48.4% (159. m ²)	Yes
2.5	Deep soil permeable surfaces		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached dwellings: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	Proposed = 61sqm 18.6% - No change to existing deep soil areas across the site. The proposed development will result in a change in site coverage by 2.27%, which does not trigger the requirement of 35% of the site area to comprise deep soil surfaces. The enlargement of the building envelope does not result in a reduction of deep soil surfaces due to the existing groundcover within this area of the site being comprised of timber decking. Front setback = 7.4sqm/16.65sqm = 44%.	Considered acceptable
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	No change to existing landscaping across the site. The subject site does not contain significant trees. The proposed	Considered acceptable

		development will result in a change in site coverage by 2.27%, which does not trigger the tree canopy requirements across the site. Council's landscape officer has reviewed the proposal and raises no objection subject to conditions relating to street tree protection	
2.7	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Proposed = Private open space in excess of 6m x 6m (Total area = 88.04m ²).	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.75:1	Proposed = 0.44:1 (144.35m ²).	Yes
3.2	Building height		
	Building height LEP 2012 =	Proposed = no change to maximum building height proposed. 2.9m building height of (proposed rear addition).	Yes
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: <ul style="list-style-type: none"> - Topography - Site orientation - Lot configuration - Flooding - Lot dimensions - Impacts on visual amenity, solar access, privacy and views of adjoining properties. 	Proposed = Existing floor and ceiling heights at the ground, floor are maintained. Floor to ceiling height of new bathroom addition is 2.4m – compliant with NCC requirements of both habitable and non-habitable areas. Single storey presentation to the street maintained.	Yes
3.3	Setbacks		
3.3.1	Front setbacks	Proposed = No change to existing front setback.	Yes
	i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage:		

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	<ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites - Should align with setbacks of adjoining dwellings <p>iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.</p>																										
3.3.2	<p>Side setbacks</p> <table border="1"> <thead> <tr> <th colspan="4">Minimum side setbacks</th> </tr> <tr> <th>Existing primary frontage width</th> <th>Building heights 0m to 4.5m</th> <th>Building heights >4.5m to 7m</th> <th>Building heights >7m</th> </tr> </thead> <tbody> <tr> <td>Less than 6m</td> <td colspan="3">Merit assessment</td> </tr> <tr> <td>6m to less than 9m</td> <td>0.9m</td> <td>0.9m</td> <td>0.9m + (building height - 7m)</td> </tr> <tr> <td>9m to less than 12m</td> <td>0.9m</td> <td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td> <td>$1.5m + 2 \times (\text{building height} - 7m)$</td> </tr> <tr> <td>12m and above</td> <td>1.2m</td> <td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td> <td>$1.8m + 2 \times (\text{building height} - 7m)$</td> </tr> </tbody> </table> <p>Proposed = No change to minimum side setbacks, 0m to southern elevation, 0.78m to northern elevation.</p> <p>New bathroom and pergola addition has a side setback of approximately 1.13m.</p>	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	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	Required = 0.9m	Yes
Minimum side setbacks																											
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12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$																								
3.3.3	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p><i>*Definition: predominant rear setback is the average of adjacent dwellings on either side and is determined separately for each storey.</i></p> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings.</p>	<p>Proposed = No change to existing minimum rear setback of 8.73m.</p> <p>Rear setback to new bathroom addition = 13.07m</p> <p>Rear setback to new pergola addition = 9.1m</p>	Yes																								
4	Building design																										
4.1	General																										
	Respond specifically to the site	The proposed	Yes																								

	<p>characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	<p>development is consistent with the characteristics of the streetscape and surrounding natural build environment.</p> <p>Appropriate articulation is maintained to the northern elevations.</p> <p>No change is proposed to the southern elevation.</p>	
4.5	Roof design and features		
	<p><i>Dormers</i></p> <ul style="list-style-type: none"> i) Dormer windows do not dominate ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. iii) Multiple dormers consistent iv) Suitable for existing <p><i>Clerestory windows and skylights</i></p> <ul style="list-style-type: none"> v) Sympathetic to design of dwelling <p><i>Mechanical equipment</i></p> <ul style="list-style-type: none"> vi) Contained within roof form and not visible from street and surrounding properties. 	<p>Removal and replacement of three existing skylights, and 1 additional skylight to be introduced to improve solar access. The skylights are not visible from the street</p>	Yes
4.6	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone 	<p>The selected colours, materials and finishes are generally consistent with the locality and surrounding development.</p> <p>Council's Heritage Planner has recommended conditions to ensure that detailed finishes for the roof tiles be submitted to Council prior to the issue of a Construction Certificate to ensure compatibly with the original heritage fabric at the site and of the conservation area.</p>	Complies by condition
4.7	Earthworks		
	<ul style="list-style-type: none"> i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback 	Minimal earthworks proposed.	N/A

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	iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vii) cut and fill for POS is terraced <i>where site has significant slope:</i> viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas.		
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The proposal retains a single storey composition and therefore is unlikely to result in any unreasonable overshadowing living areas and private open space, beyond the current arrangement. The pergola will provide a suitable sun shading device to the POS	Yes
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site 	Proposed = The pergola to the rear provides a maximum height of 2.8m and the enlargement of the building envelope retains a single storey composition. Therefore it is unlikely to result in any unreasonable overshadowing to neighbouring properties.	Yes

	<p>coverage controls.</p> <ul style="list-style-type: none"> • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. • Topography of the subject and adjoining allotments. • Location and level of the windows in question. • Shadows cast by existing buildings on the neighbouring allotments. 		
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) Living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p>	<p>All internal habitable spaces will achieve adequate natural lighting and ventilation.</p>	Yes
5.3	Visual Privacy		
	Windows		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	<p>The development proposes fenestration changes to the north and east elevations of the dwelling.</p> <p>The location of windows is largely consistent with the existing fittings, installing modern replacements to maximise solar access.</p> <p>There are no windows along the neighbouring elevation at No.78 Doncaster Avenue (adjoining property) to be impacted upon and therefore</p>	Yes

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		no privacy concerns are raised.	
5.4	Acoustic Privacy		
	i) Noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	The alterations and additions do not raise concern in relation to acoustic privacy.	Yes
5.5	Safety and Security		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	Consistent with the existing arrangement. The proposal does not impact upon the dwelling entrance, fencing, or windows addressing the street.	Yes
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.	Existing views from neighbouring dwellings and the public domain will be maintained.	Yes
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	All dwellings		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: <ul style="list-style-type: none"> - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front 	Parking facilities are not accommodated to the site.	N/A

	yard. v) Tandem parking may be considered vi) Avoid long driveways (impermeable surfaces)		
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	No change to existing fencing.	N/A

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Responsible officer: Elizabeth James, Environmental Planning Officer

File Reference: DA/799/2024

Development Consent Conditions



Folder /DA No:	DA/799/2024
Property:	80 Doncaster Avenue, KENSINGTON NSW 2033
Proposal:	Alterations and additions to an existing dwelling house including rear extension, upgrades to existing roof, widening of internal doorways, new windows along side/rear elevations and landscaping works (Heritage Item and Heritage Conservation Area).
Recommendation:	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:

Plan	Drawn by	Dated	Received by Council
Existing and Demolition Plan	B-Projects Studio	23 August 2024	28 August 2024
Ground Plan Proposed	B-Projects Studio	23 August 2024	28 August 2024
Roof Plan Proposed	B-Projects Studio	23 August 2024	28 August 2024
Elevations North & East	B-Projects Studio	23 August 2024	28 August 2024
Elevations South & West	B-Projects Studio	23 August 2024	28 August 2024
Sections	B-Projects Studio	23 August 2024	28 August 2024

BASIX Certificate No.	Dated	Received by Council
A1756533	19 July 2024	28 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.

Condition	
2.	<p>Amendment of Plans & Documentation</p> <p>The approved plans and documents must be amended in accordance with the following requirements:</p> <p>a. In relation to installation of the new metal frame glass doors with sidelights for the kitchen, the original brick archways to the northern elevation should be retained, where possible. The height and siting of metal frame glass doors shall not interfere with the original arch detailing, subject to compliance with minimum door height requirements of Building Code Australia).</p> <p>b. The existing window along the northern elevation, which will be affected by the enlargement of the building envelope (laundry/bathroom), is to be retained in situ, including the brick arch detailing.</p> <p>Amended plans must be submitted to and approved by the Principal Certifier 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.</p> <p>Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.</p>

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
3.	<p>Consent Requirements</p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
4.	<p>External Colours, Materials & Finishes</p> <p>The colours, materials and finishes of the external surfaces to the building are to be compatible with the existing building and surrounding buildings in the heritage conservation area and consistent with the architectural style of the building. Unpainted surfaces, e.g. brickwork/stonework are to remain unpainted, and no applied finishes are to be used. Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
5.	<p>Section 7.12 Development Contributions</p> <p>In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$121,000.00 the following applicable monetary levy must be paid to Council: \$605.00.</p>

	Condition
	<p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> $\text{IDC} = \text{ODC} \times \text{CP2/CP1}$ <p>Where:</p> <p>IDC = the indexed development cost</p> <p>ODC = the original development cost determined by the Council</p> <p>CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment</p> <p>CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p>
6.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
7.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work</p>

	Condition
	<p>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>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
9.	<p>Stormwater Drainage</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>Details of any works proposed to be carried out in or on a public road/footway are to be submitted to and approved by Council prior to commencement of works.</p> <p>Condition Reason: To control and manage stormwater run-off.</p>
10.	<p>Street Tree Protection Measures</p> <p>In order to ensure the retention of the mature, <i>Schinus mole</i> (Peppercorn) centrally adjacent No 80, on council's verge, the following measures are to be undertaken:</p> <ol style="list-style-type: none">All documentation submitted for the Construction Certificate application must show the retention of the street tree, with the position and diameter of both its trunk and canopy to be clearly and accurately shown on all drawings.Prior to the commencement of any site works, the tree is to be physically protected by geo-textile, underfelt or layers of Hessian,

Condition	
	to which, 2m lengths of 50mm x 100mm hardwood timbers, spaced at 150mm centres shall be placed, and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. (NO nailing to the trunk).
c)	The street tree must also be physically protected by installing a total of 4 star pickets at a setback of 1.5 metres to the north and south and against the back of the kerb to its west, and the footpath to its east, to which safety para-webbing shall be permanently attached so as to completely enclose the tree for the duration of works.
d)	This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE, DO NOT ENTER".
e)	In order to prevent soil/sediment being washed into the TPZ, suitable erosion control measures shall be provided, with all Site Management Plans needing to recognise the fact that material storage cannot be located within the TPZ.
f)	The applicant is not authorised to perform any works to either of the street tree and shall contact Council's Landscape Development Officer on 9093-6633 should pruning or any similar such work appear necessary, with the applicant required to cover all associated costs with such work, to Council's satisfaction, prior to the issue of a final occupation certificate.
g)	Within the TPZ there is to be no storage of materials or machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of in the area, no stockpiling of soil or rubble, with all Site Management Plans needing to acknowledge these requirements.

A refundable deposit in the form of cash, credit card, cheque or bank guarantee for an amount of **\$400.00** shall be paid at the Cashier on the Ground Floor of the Administrative Centre, prior to a construction certificate being issued for the development, in order to ensure compliance with the conditions listed in this consent, and ultimately, preservation of the street trees.

The refundable deposit will be eligible for refund following an Occupation Certificate, subject to completion and submission of Council's *'Security Deposit Refund Application Form'* and pending a satisfactory inspection by Council's Landscape Development Officer (9093-6633).

Any contravention of Council's conditions relating to the tree at any time during the course of the works or prior to an Occupation Certificate may result in Council claiming all or part of the lodged security in order to perform any rectification works necessary, as per the requirements of 4.17 (6) of the Environmental Planning and Assessment Act 1979.

Condition Reason: Protection of existing environment public infrastructure, community assets and significant trees.

Condition	
11.	<p>Heritage Conditions - Archival Record</p> <p>Prior to the issue of a construction certificate a brief digital photographic archival recording of the property internally and externally shall be submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items.</p> <p>An electronic digital copy of the archival recording is to be submitted to Council for inclusion in the Local History Collection of Randwick City Library and for Council's own records. This document is to be in a PDF electronic copy incorporating a detailed 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 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> <p>Condition Reason: To protect the character, significance and setting of the heritage item.</p>

BEFORE BUILDING WORK COMMENCES

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

Condition	
	<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>
13.	<p>Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with. Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition Reason: Prescribed condition under section 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>.</p>
14.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies. A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
15.	<p>Public Utilities</p> <p>A <i>Public Utility Impact Assessment</i> must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works.</p> <p>Documentary evidence from the relevant public utility authorities confirming that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Energy Australia, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p>

Condition	
	Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.
16.	<p>Mitigation Measures – Heritage</p> <p>Prior to works commencing, contractors shall be briefed as to the sensitive nature of the site and conservation area, and informed of any recommended mitigation measures or controls required.</p> <p>Condition Reason: To protect the character, significance and setting of the heritage item.</p>

DURING BUILDING WORK

Condition	
17.	<p>Site Signage</p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> showing the name, address and telephone number of the principal certifier for the work, and showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ol style="list-style-type: none"> maintained while the building work is being carried out, and removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or Crown building work certified to comply with the Building Code of Australia under the Act, Part 6. <p>Condition Reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>
18.	<p>Restriction on Working Hours</p> <p>Building, demolition and associated site works must be carried out in accordance with the following requirements:</p>

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

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Condition	
rock, use of jack-hammers, driven-type piling/shoring or the like	3.00pm • (maximum) • Saturday - No work permitted • Sunday & public holidays - No work permitted

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

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

19.

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

	Condition
	<p>professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.</p> <p>Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.</p> <p><i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i></p> <p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.</p> <p>j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
20.	<p>Building Encroachments</p> <p>There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p>
21.	<p>Tree Management</p> <p>All vegetation within the frontage and rear of the development site were seen as insignificant, works will not affect any existing vegetation, removal or protection will be entirely at the discretion of the owner.</p> <p>Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.</p>
22.	<p>Heritage Conditions</p> <p>a) An architect or tradesperson suitably qualified and experienced in heritage conservation shall be engaged to oversee the carrying out of works.</p> <p>b) The proposed work must take measures to protect existing fabric including but not limited to floors (floor-boards, skirtings), ceilings, walls, doors, windows, fireplaces, roof structure, and decorative</p>

Condition	
	features. If they need to be interrupted during process of construction, they must be properly recorded and reinstated to the original condition.
c)	New window and door openings are to be carefully made to avoid damage to original brick surfaces to the side and rear walls. New door/window opening to the side is to be carefully made to avoid damage to original brick surfaces to the wall and retain the window brick arches to the side wall.
d)	The door (between living and kitchen area), doorframe, architrave and fanlight detail are to be carefully removed and safely stored on-site and/or sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period. The proposed opening must sit below the existing picture rail.
e)	Salvaged traditional building materials surplus to the requirements of this project including but not limited to items such as stone, bricks, timber, and joinery must not be scrapped and are to be sold to an established dealer in second-hand heritage building materials.

Condition Reason: To ensure appropriate management and treatment of original fabric to the heritage item.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
23.	<p>Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
24.	<p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>
25.	<p>Council's Infrastructure, Vehicular Crossings and Street Verge</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and</p>

Condition	
	<p>"Residents' Requests for Special Verge Crossings Policy" and the following requirements:</p> <p>(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.</p> <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>

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.

OCCUPATION AND ONGOING USE

Condition	
26.	<p>Use of Premises</p> <p>The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.</p> <p>Condition Reason: To ensure the development is used for its intended purpose.</p>
27.	<p>External Lighting</p> <p>External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
28.	<p>Plant & Equipment</p> <p>Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>

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Condition	
29.	<p>Heritage Requirements – Archival Record</p> <p>Prior to the issue of an Occupation Certificate, a brief 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.</p> <p>An electronic digital copy of the archival recording is to be submitted to Council for inclusion in the Local History Collection of Randwick City Library and for Council's own records. This document is to be in a PDF electronic copy incorporating a detailed 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 submission shall include significant building fabric or furnishings that are 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.</p> <p>Condition Reason: To protect the character, significance and setting of the heritage item.</p>

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
30.	<p>Demolition Work Plan</p> <p>A demolition work plan must be developed and be implemented for any demolition works in accordance with AS2601 (2001)- Demolition of Structures.</p> <p>The demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601 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	
31.	<p>Demolition Work</p> <p>Any demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard - AS 2601 (2001) - Demolition of Structures and Randwick City Council's</p>

Condition

<p>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>
--

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.

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

Development Application Report No. D87/24

Subject: 41 Oberon Street, Randwick (DA/312/2024)


Executive Summary

Proposal:	Alterations and additions to the existing dwelling house
Ward:	East Ward
Applicant:	P Gallagher
Owner:	Ms S R Wolifson
Cost of works:	\$82,940.00
Reason for referral:	A neighbouring objector is an employee of Randwick City Council.

Recommendation

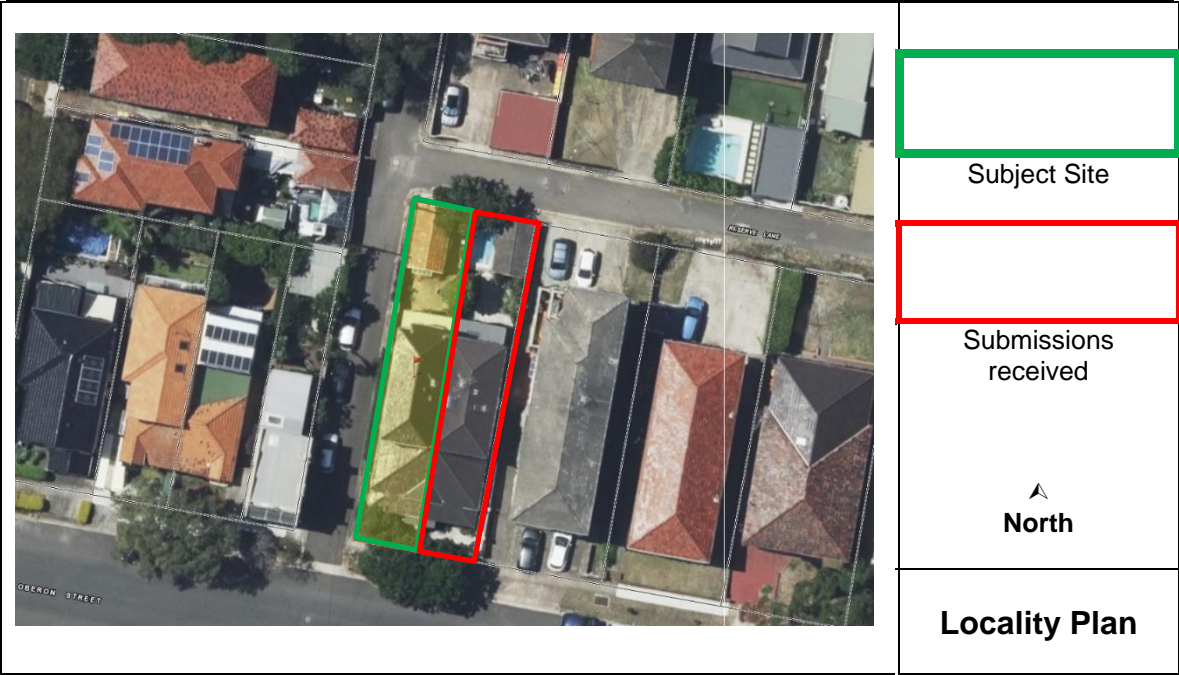
- A. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 312/2024 for alterations and additions to the existing dwelling house at No. 41 Oberon Street, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/312/2024 - 41 Oberon Street, RANDWICK NSW 2031 - DEV - Randwick City Council - Updated

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as a neighbouring objector is an employee of Randwick City Council.

The proposal seeks development consent for alterations and additions to the existing dwelling house including changes to the front façade of the dwelling (new timber framed windows), fence works in the front setback, and eave extensions to the rear of the dwelling. The proposal also includes a new detached outbuilding.

The key issues associated with the proposal relate to:

- Internal dimensions of the detached garage space.
- Maneuverability within the garage.
- Laneway character of the proposed garage.
- Proximity of the garage crossover to the existing light and power pole (Ausgrid reference No.MA9607).

A Request for Further Information (RFI) Letter was initially sent to the applicant on 3rd July 2024, recommending the application be withdrawn for the following matters:

- Council's development engineers raised concerns of the new proposed driveway proximity to the existing light and power pole owned and managed by Ausgrid (shown in Figure 8).
- Insufficient garage length.
- Suitability of positioning a car within the proposed garage.
- The width of the garage door was not compliant with the Australian Standards minimum 2.8m.
- Scaling error on Architectural plans submitted.
- Site coverage non-compliance

Following a meeting with the applicant on 8th July, additional time was granted to allow for the applicant to amend the proposal and obtain support from Ausgrid. Additional information was provided on the following dates:

- 26th July 2024 – Swept path information.

- 26th August 2024 – Amended landscape plan and response to submissions.
- 3rd September 2024 - Amended architectural package and Statement of Environmental Effects.

It is noted that the applicant attempted to lodge more additional information on the 11th September and 24th September to attempt to resolve the garage parking issues. Council received this information, which included a JPEG screenshot of architectural plans, without requesting any additional information. The applicant was given ample time and opportunity to resolve the aforementioned issues.

Upon review of the information submitted to the NSW Planning Portal on the 3rd September 2024, a number of plans submitted were unreadable due to them being cropped. The plans were also lacking details, such as the dimensions of the proposed window openings. Notwithstanding this, the Council's Development Engineer reviewed the garage floor plan, and due to the amended garage not meeting the required internal dimensions required under the Randwick Development Control Plan (RDCP) and the Australian Standard AS2890.1, it cannot be supported.

It is also not considered that the proposed garage is appropriate for the site, given the inability to comfortably comply with the Council's Controls. Additional concern is also raised about the design of the garage and around the ability to safely park in the car space due to the limited maneuverability provided for drivers and passengers entering and exiting the vehicle within the garage.

While the garage structure is not supported, the works proposed to the remainder of the site, inclusive of fence works, new windows, and eave extensions, can be supported. These works were shown on the originally submitted plans, which were accepted by the Council. As such, the Rev A plans will be approved by the Council only for the proposed fence works, new windows, and eave extensions. A condition of consent is imposed requiring the deletion of any reference to the proposed garage from the approved documentation.

2. Site Description and Locality

The subject site is known as No. 41 Oberon Street, Randwick, and is legally described as Lot 1 in DP 107203. The site is regular in shape and has a 5.715m frontage to Oberon Street to the south and Reserve Lane to the north and a depth of 33.53m, resulting in a total site area of 191.6m² (by calculation). The site currently contains a two-storey semi-detached dwelling with a detached garage within the rear yard accessed from Reserve Lane.

The site slopes from the northeast/rear corner of the site to the southwest/front corner of the site from 54.08m to 53.51m AHD for a slope of 0.57m.

The site is located within an R2 Low-Density Residential zone that consists of residential development ranging from detached and semi-detached dwellings to Residential Flat Buildings (RFBs).

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Figure 1: The south/front elevation of the site viewed from the footpath along Oberon Street.

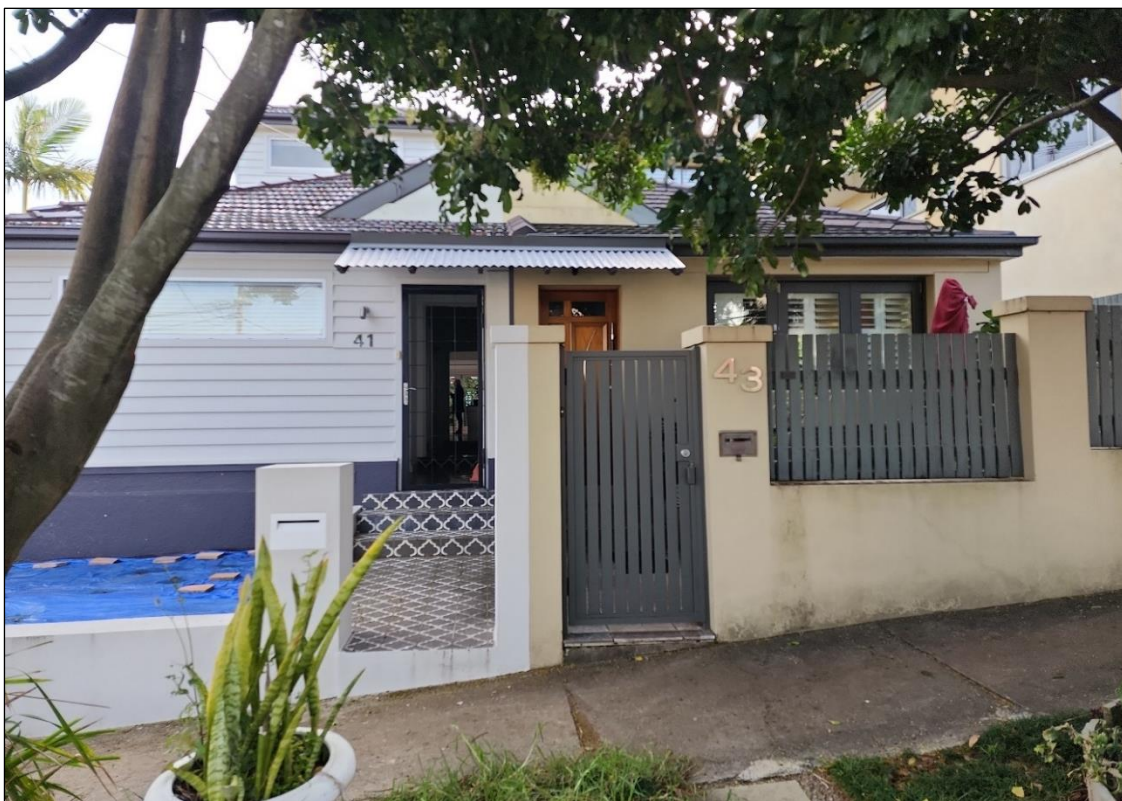


Figure 2: South/front fence and entry to the site and east adjoining dwelling at 43 Oberon Street.



Figure 3: Northwest view to the terrace at No.39 Oberon Street and dwellings further west of the site.



Figure 4: Front retaining wall, garden area, and Oberon Lane west of the site. Palisade fencing is proposed on top of the existing rendered retaining wall.

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Figure 5: View of the front of the site from Oberon Lane.



Figure 6: View of the rear portion of the building from Oberon Lane.



Figure 7: The rear of the site as viewed from Oberon Lane showing the existing garage to be demolished and the Ausgrid powerpole

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Figure 8: Ausgrid Pole No. MA9607 adjacent to the northwest corner of the site, is both a light pole and a power pole.



Figure 9: Rear elevations of residential flat buildings located north of the subject site.



Figure 10: Rear view of the detached garages at the subject site and the east neighbour at No. 43 Oberon Street, with street trees along Reserve Lane.

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Figure 11: Southern elevation of the outbuilding proposed for demolition. Removal of part of the paving along the east and west sides of the rear yard is proposed.



Figure 12: Brick paving along the eastern side of the backyard to be removed to accommodate the new outbuilding and a garden bed.

3. Relevant history

A review of the Council's records provides the following site history as listed below:

- DA/740/2012: This DA was approved on 13th November 2012 for '*Alterations and additions to the existing dwelling including new first floor*'.
- DA/740/2012/A: This modification was approved on 27th February 2013 for the '*Section 96 modification of approved development by deletion of condition 2(a) which required raising of window sill height*'.
- CC/157/2013: The construction certificate for '*Alterations and additions to existing dwelling including new first floor*' was issued on 9th April 2013

The subject application was lodged with Council on 13th April 2024. The application was notified from 1st May 2024 to 15th May 2024, during which one (1) submission was received, raising the following issues:

- Concerns the proposed outbuilding is not intended as a garage but as a secondary dwelling for short-term rental accommodation (such as Airbnb).
- The proposal does not comply with the maximum Floor Space Ratio (FSR).
- A reduction in solar access to the Private Open Space (POS) and main living room of 43 Oberon Street.
- Privacy concerns from the new outbuilding proposed.
- Design and orientation of the proposed outbuilding are asymmetrical to the dwelling attached east of the site and inconsistent with the pattern of garages in the laneways.

The preliminary assessment and site inspection conducted on 11th June 2024 considered the matters raised. Additional information was requested from the applicant in a Request for Further Information (RFI) letter sent on 3rd July 2024, which recommended the application be withdrawn due to the following matters:

- Council's development engineers raised concerns of the new proposed driveway proximity to the existing light and power pole owned and managed by Ausgrid (shown in Figure 8).
- Insufficient garage length.
- Suitability of positioning a car within the proposed garage.
- The width of the garage door was not compliant with the Australian Standards minimum 2.8m.
- Scaling error on Architectural plans submitted.
- Site coverage non-compliance

A meeting was held with the applicant along with the Council's Development Engineer on 8th July 2024 to discuss the matters raised in the RFI letter. Additional time was granted to provide the additional information and to gain a response from Ausgrid regarding the light and power pole in proximity to the proposed driveway.

The applicant contacted Ausgrid on 10th July 2024 to confirm the appropriate setback distance from the light pole to the garage opening and driveway. The applicant advised that Ausgrid provided consent on 5th August for the driveway access and door opening to be set at a minimum of 500mm from the face of the light/power pole. No proof of this correspondence or formal approval from Ausgrid was provided to the Council.

The neighbouring objector at No.43 Oberon Street requested a site visit be conducted for additional context when considering potential adverse impacts to their amenity through overshadowing and potential overlooking. The site visit was conducted on 22nd August 2024.

Additional information was provided on 26th August 2024, including a revised landscape plan and written response to the neighbour's submission. Further additional information, including revised architectural plans, a revised Statement of Environmental Effects (SEE), and a response to the RFI letter was provided on 3rd September 2024.

While the garage structure is not supported, the works proposed to the remainder of the site, inclusive of fence works, new windows, and eave extensions, can be supported. These works were shown on the originally submitted plans, which were accepted by the Council. As such, the Rev A plans will be approved by the Council only for the proposed fence works, new windows, and eave extensions. A condition of consent is imposed requiring the deletion of any reference to the proposed garage from the approved documentation.

The proposal seeks development consent for alterations and additions to the existing dwelling, including the following:

- Demolition of the existing outbuilding at the rear of the site;
- New metal palisade fencing along the existing rendered retaining wall at the front perimeter of the site and to align with the top of the existing rendered letterbox;
- New windows to the study along the southern and western elevations;
- Extension of the rear eave on the ground floor of the dwelling;
- New detached outbuilding/garage with the following:
 - Single car space;
 - New vehicle crossover access from Oberon Lane;
 - Bin storage; and
 - Solar roof ventilator.
- Landscaping works include:
 - Reduction in existing paving between the dwelling and outbuilding and
 - Removal of paving along the east side of the rear yard.

Figures 13 to 16 illustrate the proposed development.

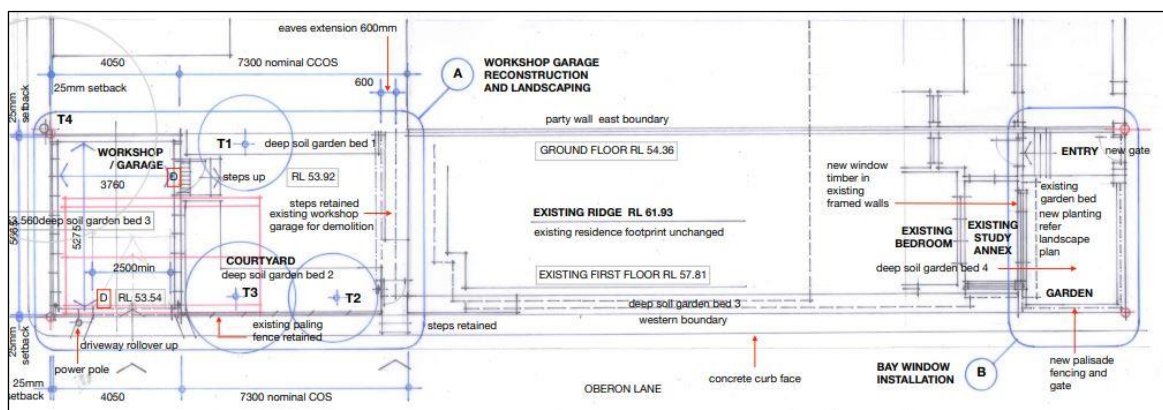


Figure 13: Site Plan



41 OBERON STREET (WEST) ELEVATION to OBERON LANE

RESERVE LANE

WORKSHOP | STUDIO | GARAGE | GARDEN LANDSCAPE WORKS

EXISTING DWELLING

FRONT FACADE | GARDEN WORKS

OBERON LANE

Annotations and Dimensions:

- EXISTING RIDGE LEVEL RL 61.89**
- EXISTING RISE LEVEL RL 61.89**
- EXISTING LIGHT POLE**
- silhouette of new garage 43 Oberon 2013 additions**
- 600mm eaves extension sunshading workshop to be demolished**
- 6.9m LANEWAY DEVELOPMENT HEIGHT LIMIT**
- 4.5m OUTBUILDING HEIGHT LIMIT**
- PROPOSED WORKSHOP RIDGE RL 56.88**
- EXISTING WORKSHOP RIDGE RL 56.88**
- EXISTING WORKSHOP GUTTER RL 56.85**
- EXISTING PALING FENCE**
- gate**
- 2000 max.**
- 2500**
- 4050**
- 7350 nominal COS**
- entry**
- 2000**
- 4500**
- 3000**
- GROUND FLOOR LEVEL RL 54.35**
- FIRST FLOOR LEVEL RL 56.89**
- new windows with existing wall**
- new passade fence addition**
- W1**
- PROPERTY LENGTH 33.530**
- Consultants:**
Architect:
Builder: CA

[illegible]

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5. Notification

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

- 43 Oberon Street, Randwick

Issue	Comment
The garage is not defined as an outbuilding and, therefore, should not rely upon the outbuilding controls within RDCP.	This assessment has made reference to the applicable controls of the DCP, as discussed in Section 8.1 and Appendix 2 of this report.
The proposed outbuilding does not result in a development that is not sympathetic or symmetrical with the neighbouring attached dwelling and outbuildings.	The symmetry between attached dwellings, as discussed in Part C1, section 4.3, applies to alterations and additions of a semi-detached dwelling building itself and does not apply to outbuildings located on a site with a semi-detached dwelling. The pattern of garages in the locality is further discussed in section 8.1 of this report.
The proposed outbuilding is not intended as a garage but may be used as a secondary dwelling for short-term rental accommodation.	Revised architectural plans specify an area of 3m x 5.4m for parking space and the remaining area for storage, including bin storage. The plans do not indicate that the building will be used as a secondary dwelling. Note that the specified 3m x 5.4m includes a portion of the front wall of the garage and, therefore, does not achieve an unobstructed length.
The proposal does not comply with the maximum FSR.	Clause 4.4A(4) states that the mapped maximum FSR does not apply for sites below 300m ² in site area. The subject site has an area of 191.6m ² . Therefore, the maximum 0.5:1 FSR does not apply to this site.
The proposal does not comply with the maximum 60% site coverage.	The dwelling and outbuilding are an existing variation. The proposal has a minor increase in site cover. On Merit alone, a minor increase to the site cover of the site is not objected to, however, the garage structure is not supported due to other reasons specified in this report. As such, as conditioned, there will be no change to the site cover of the site.
The proposal does not comply with the minimum 30% deep soil area under the DCP.	The site coverage controls in Part C1, section 2.5 applies to alteration and additions, which increase existing site coverage by more than 10%. The proposal increases the site coverage by only 6.59m ² or 5.59%. Therefore, the minimum deep soil control does not apply.
Visual impact of bulk and scale from the new outbuilding.	The proposal complies with specific building envelope controls of the DCP, as discussed in this report. Notwithstanding this, the garage is not supported due to other reasons specified in this report.
Impact on adjoining privacy from the outbuilding	The proposed garage is single-storey with no windows proposed. No adverse visual privacy impacts would result. Notwithstanding this, the garage is not supported due to other reasons specified in this report.

Issue	Comment
Impact on adjoining solar access to adjoining POS and main living room	Refer to key issues. Notwithstanding this, the garage is not supported due to other non-compliances and is conditioned to be deleted. No change to the solar access received to the objecting site will result as part of this application.
The outbuilding does not comply with the maximum 3.6m building height under section 7.4 of RDCP.	The site is located adjoining two laneways. Therefore, the 'development in laneways' controls of Section 8.1 of Part C1 apply. Section 8.1 applies a maximum 6m height, with maximum wall height of 4.5m. The proposed garage is proposed with a maximum 4.6m height and a wall height of 2.5m, which complies.
The proposal does not meet the minimum dimensions required for garage spaces.	Part C, Section 6 of RDCP requires garages to have a minimum of 3m x 5.4m internal dimensions. Amended plans show the 3m x 5.4m area. However, the internal area dimensions shown include an area of encroachment on the western side of the outbuilding. The garage dimensions are not supported by the Council's Development Engineers. As such, the proposed garage is not supported, and a condition of consent is included for its deletion from the proposal.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

A BASIX Certificate has not been submitted with the subject application. The Environmental Planning, and Assessment Regulation 2021 defines BASIX Development as the following:

BASIX development means the following development if it is not BASIX excluded development—

- (a) development that involves the erection, but not the relocation, of a BASIX building,*
- (b) development that involves a change of building use by which a building becomes a BASIX building,*
- (c) development that involves the alteration of a BASIX building, if the estimated development cost is \$50,000 or more,*
- (d) development for the purposes of a swimming pool or spa, or combination of swimming pools and spas, that—*
 - (i) services 1 dwelling only, and*
 - (ii) has a capacity, or combined capacity, of 40,000 litres or more.*

The proposal includes alterations to the dwelling house. It is noted that the cost of the alterations to the dwelling is likely to be less than \$50,000, with the majority of the cost of work being linked to the garage (which is listed within the regulations as being BASIX-excluded development). However, Section 6A of the Regulations, in regard to determination of BASIX development cost, states the following:

“(2) The consent authority or certifier must use the estimated development cost, including the cost of any part of the development that is BASIX excluded development, that is specified in the development application or application for a complying development certificate, unless, in the consent authority’s or certifier’s opinion, the specified estimated development cost is not genuine or accurate.”

As per the above, in determining whether a BASIX certificate is required, the consent authority must use the estimated development cost, including the cost of any part of the development that is BASIX-excluded development. However, as the garage is not supported and is being conditioned to be deleted as part of the approval of this application, the Council, being the consent authority,

considers that the cost of eave extension, front fence, and window replacement will be under the \$50,000 trigger.

Therefore, the proposal (as per the recommendation of this report) is not defined as BASIX development under the *Environmental Planning and Assessment Regulations 2021*, and a BASIX certificate was not required for this application.

6.2. SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the Biodiversity SEPP relates to the clearing of vegetation in non-rural areas. The proposal does not include tree removal as part of the application. Notwithstanding this, the Council's landscape officer has reviewed the application and identified that a tree is located on Council land adjacent to the rear boundary of the site, on Reserve Lane. The location of the garage would require substantial pruning works to be carried out to the tree, and also potential impacts to the root system. Council landscape officer has recommended the removal of this tree at the applicant's expense due to the tree's inappropriate location in a narrow laneway, previous damage to the trunk, and impact from the proposed garage. However, as the garage is conditioned to be deleted from this proposal, it is not considered that the removal of the tree is required; therefore, it will be retained.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 relates to the remediation of land. Clause 4.6 of the SEPP states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and, if it is contaminated, the consent authority is satisfied that the land is suitable for the purpose. If the land requires remediation to be undertaken to make the land suitable for the proposed use, the consent authority must be satisfied that the land will be remediated before the land is used for that purpose.

It is not considered that the land is contaminated, as the subject site has a history of residential land use. In addition, the surrounding area does not contain any contaminating land use that could impact the site.

Therefore, as per Chapter 4 of the SEPP (Resilience and Hazards) 2021, it can be concluded that the subject land is suitable for continued residential development.

6.4. Randwick Local Environmental Plan 2012 (LEP)

On 18th 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 1st September 2023. As the subject application was lodged on or after 1st September 2023, the provisions of RLEP 2012 (Amendment No. 9) are applicable to the proposed development, and the proposal shall be assessed against the updated RLEP 2012.

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

The following objectives apply to the R2 Low-Density Residential zone:

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

Due to the non-compliance with the minimum internal garage dimensions discussed further in this report, the proposal is considered to have a negative impact on the amenity for current and future residents who would encounter difficulty in maneuvering within the garage once a car is parked inside. Council's Development Engineers do not support the proposal, raising concern that in addition to the non-compliance with the internal car space dimensions, residents will experience difficulty in moving waste bins to and from the site due to the lack of pedestrian space when a vehicle is parked within the garage. Therefore, the proposed garage is considered inconsistent with the objectives listed above. As a result, the proposed garage is conditioned to be deleted from the proposal.

The remaining works proposed are minor in nature and consistent with the objectives of the zone and, therefore, supported as part of this application.

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)	N/A for sites less than 300m ² (CL 4.4A(4))	N/A, subject site area is 191.6m ²	N/A
CI 4.3: Building height (max)	9.5m	The dwelling building height is unchanged; garage height proposed is 4.6m.	Yes

6.4.1. Clause 4.6 - Exceptions to development standards

No clause 4.6 exceptions to development standards have been requested with this application.

6.4.2. Clause 5.10 - Heritage conservation

The site is not a heritage item, adjoining a heritage item or located within a Heritage Conservation Area.

6.4.3. Clause 6.7 Foreshore scenic protection area

The site is not located within a Scenic Protection area pursuant to RLEP.

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 1st September 2023. As the subject application was lodged after 1st September 2023, the provisions of the new RDCP 2023 are applicable to the proposed development, and the proposal is 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 the discussion in sections 6 & 7 of this report and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion on 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>Due to the non-compliance with the required internal parking dimensions, the proposal is considered to result in a poorer amenity outcome due to insufficient space for parking and maneuverability of people using the space. As such, the proposed garage is not supported and will be conditioned to be deleted. The other minor works proposed are not considered to result in any adverse impacts to the natural and built environment.</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. However, due to the narrow lot width for the new outbuilding orientation, the proposed garage does not meet the internal dimension required under AS2890.1. As such, the proposed garage is not suitable for the site and is conditioned to be deleted. The remaining works proposed as part of this proposal are considered suitable for the site.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submission have been addressed in this report.
Section 4.15(1)(e) – The public interest	This assessment has considered the public interest of the development. It is not considered that the proposed garage, which results in non-compliance with the Council's controls and Australian Standards, is in the public interest and, therefore, is conditioned to be deleted. The remaining works are considered to be within the public interest.

8.1. Discussion of key issues

- Proximity to existing infrastructure – Ausgrid light and power pole

Council's Development Engineers raised concern that the originally submitted architectural plans proposed the garage door opening and driveway in close proximity to an existing light and power pole owned and maintained by Ausgrid (see Figure 8).

Following an RFI letter and meeting with the applicant on 8th July 2024, consultation between the applicant and Ausgrid concluded that a 500mm setback between the garage door opening and driveway to the light/power pole was considered sufficient on 5th August 2024.

However, no comments from Ausgrid were provided to Council, with the applicant advising Council via email that Ausgrid accepted a setback of 500mm to the light pole. Subject to receiving a copy of Ausgrid comments, a non-standard condition would have been included to maintain the setback between the garage and door opening if the application supported the proposal of the garage. Given the garage is not supported and conditioned for deletion, no impact on the power pole will occur.

- Solar Access

A submission has raised concerns that the proposed height and setback of the proposed outbuilding would result in adverse impacts to adjoining amenity through overshadowing. The neighbouring objector requested a site visit to be conducted as part of considering solar access to their POS and main living room area. The site visit was conducted on 22nd August 2024.

The rear setback of the adjoining site features a single car space within a garage and storage on the northeast corner of the site and an inground swimming pool on the northwest corner of the site, as shown in Figures 17 and 18 below.



Figure 17: Adjoining rear setback, outbuilding, and swimming pool on No.41 Oberon Street (Source: GAT & Associates).

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Figure 18: Adjoining swimming pool at No.43 Oberon Street, common boundary fence, and existing outbuilding on No.41 Oberon Street (Source: GAT & Associates).

The key issues raised are that the taller roof height of the proposed structure, when compared to the existing garage, would result in overshadowing to their private open space, as well as to the north-facing sliding doors to their open plan kitchen and dining room within the dwelling.

In response to the submission, the applicant provided elevations that a large portion of existing shadows cast are the result of the adjacent three-storey and four-storey residential flat buildings to the north, which alter the angle at which the site receives direct sunlight.

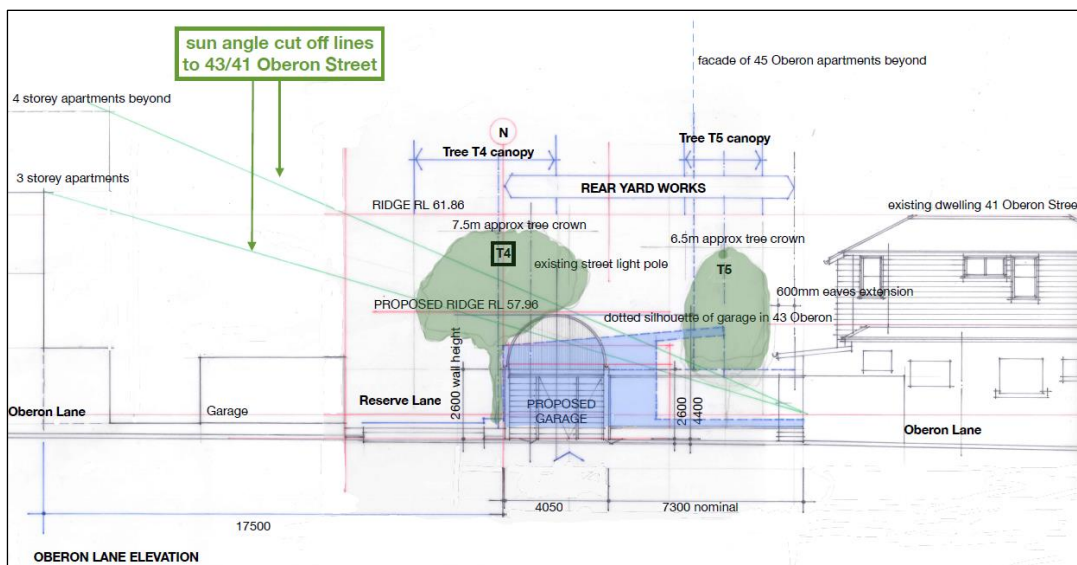


Figure 19: Expanded west elevation, including sun angles from the north adjacent RFBs (Source: Studio GA, dated June 2024).

When considering the above, it is considered that the apartments to the north will have a great impact than the garage. However, the RFBs are in a fixed position, and when the sun moves to the west in the later afternoon, the RFBs will have no impact. It is considered that hourly shadow diagrams at midwinter are required to determine whether the proposed garage allows the neighbouring private open space and living area of No. 43 Oberon Street would comply with the solar access provisions of the RDCP 2013.

Notwithstanding this, the garage is not supported due to other non-compliances and is conditioned to be deleted. As such, no change to the solar access received to the objecting site will result as part of this application.

- **Internal garage dimensions and maneuverability issues**

The initial comments received from the Council's Development Engineers raised concerns about the proposal not complying with the internal garage dimensions along with a garage door that was too narrow and too close to the Ausgrid power pole, as discussed earlier in this report.

Additional information was received, which increased the setback from the Ausgrid power pole to 500mm as per Ausgrid's request and increased the garage door width to 2.8m. However, a review of the additional information submitted found the required 3m x 5.4m shown on the garage plan includes areas obstructed by the western side wall of the proposed outbuilding as circled in blue below:

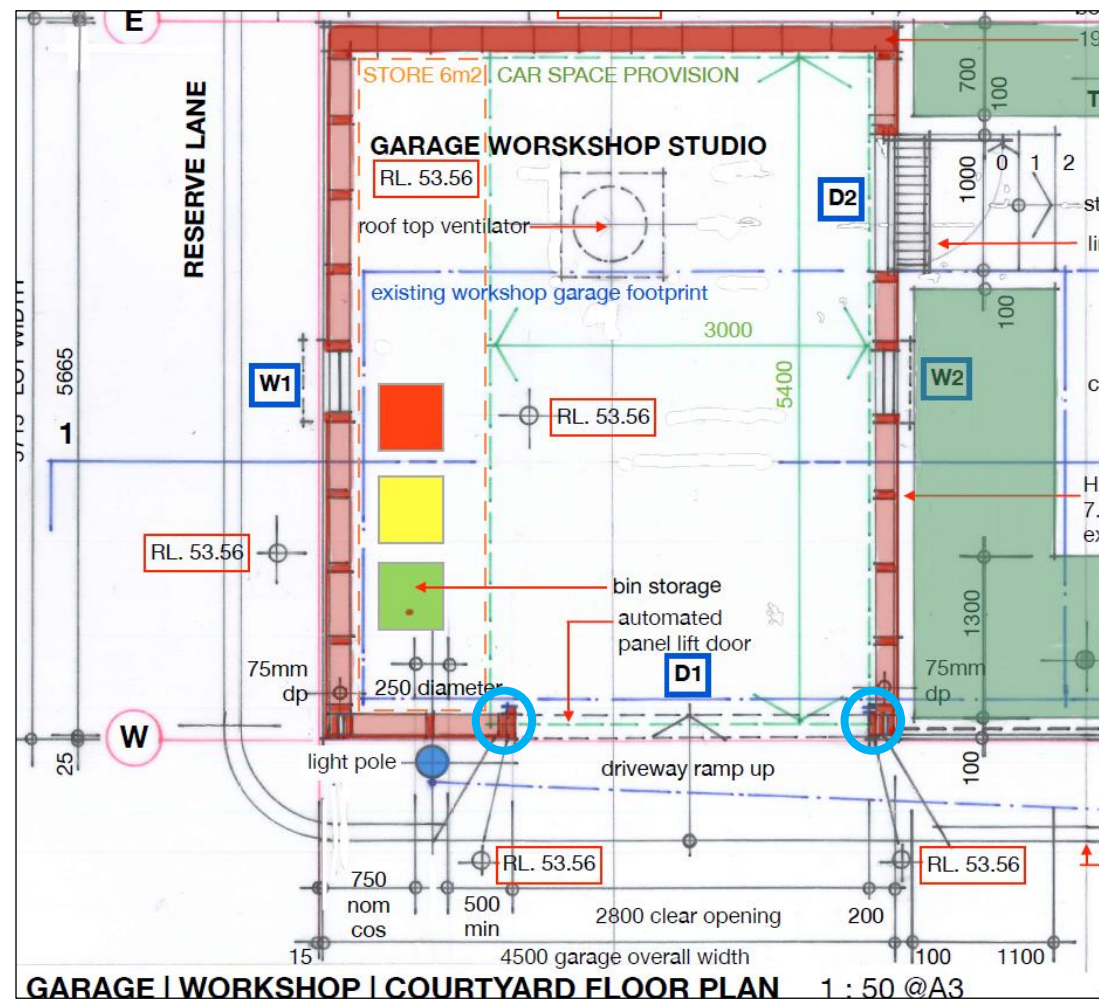


Figure 20: Extract of Garage floor plan (Source: Studio GA, dated 24.08.2024).

Further concern is raised that the current design hinders the maneuverability of people entering and exiting their vehicles from the car space. The floor plan above shows bin storage and storage area to be located directly next to the car space; this in turn would inhibit the type of vehicle that residents can comfortably park with enough room to enter and exit their vehicles. There is also a concern that once people exit the vehicle, they would be unable to actually exit the garage. For example, if a large car is used by the residents, which has a length of close to 5.4m, no people exiting the car on the northern side of the garage would be able to exit the garage. The size, orientation, and layout of the garage is inappropriate.

It is also not considered that the proposed garage achieves the objectives of Section 6 or Part C1 of the RDCP 2013, as explained below:

- *To ensure car parking and access facilities do not visually dominate the property frontage or streetscape.*

Planner's Comment: In conjunction with the comments made under Section 8.1 of Appendix 2 in response to the specific controls of the RDCP, it is not considered that the proposed car parking structure is sympathetic to the streetscape of the laneway. The majority of laneway structures within Reserve and Oberon Lane are single storey with either a low-pitched roof form or a flat roof. The proposed garage has a large semi-circular roof form that dominates the streetscape of the laneway.

In addition, the proposed garage has been designed with an uncharacteristic orientation when compared to neighbouring sites. The overwhelming majority of garages along Reserve and Oberon Lane are orientated in an identical fashion to the dwelling house or primary building in the case of an RFB. These garages are then restricted along one side boundary of the site and setback from the other, therefore, allowing for separation between built form on neighbouring sites. The proposed garage has been turned 90 degrees to the orientation of the dwelling house and has a nil setback to three boundaries. The proposed structure is uncharacteristic of development within the laneway.

- *To ensure parking facilities are integrated with the architectural expression of the dwelling as an integrated element*

Planner's Comment: The proposed garage is detached from the dwelling house; however, the proposed architectural language of the garage, with its rounded roof form, does not correlate with the key architectural expression of the dwelling.

- *To minimise hard paved surfaces occupied by driveways and parking facilities and maximise opportunities for deep soil planting and permeable surfaces for stormwater infiltration*

Planner's Comment: It is noted that deep soil is improved as part of the proposal.

- *To ensure the location and design of parking and access facilities do not:*
 - *Pose undue safety risks on building occupants and pedestrians*
 - *Adversely impact on the amenity of neighbouring properties*
 - *Result in a loss of on-street parking and street trees.*

Planner's Comment: It is considered that the proposed garage will result in undue safety risks to both building occupants, and pedestrians. The limited length of the garage and limited exit points will potentially trap residents within the garage. The garage is also located on a potential blind corner that may lead to traffic conflict of pedestrians or vehicles turning from Reserve Lane into Oberon Lane. Any vehicle exiting the garage in a reverse movement will have an obscured line of sight.

The proposed garage structure is uncharacteristic in terms of the orientation of garage structures along Reserve and Oberon Lanes; the proposal does not provide a setback to the neighbouring site, which results in adverse bulk and scale experienced by the neighbouring residents.

The proposal does not result in the loss of on-street parking. The proposal will result in the loss of a street tree, which is supported by the Council's Landscape Officer.

It is not considered that the proposed garage is acceptable as a result of non-compliance with the required car space dimension, as per the Australian Standards and RDCP 2013, and also due to streetscape and maneuverability concerns. As such, the garage is recommended for deletion through a condition of consent.

- Development in Laneways.

As outlined within Appendix 2 of this report, the proposed garage does not comply with a number of the controls within Section 8.1 of Part C1 of the RDCP. In addition to the comments made within Appendix 2 of this report, it is also not considered that the proposal of a garage that has frontages to two laneways complies with the objectives of this Section. Refer below:

- To ensure any building fronting a rear lane has a scale and mass secondary to the main dwelling on the site and is appropriate for the width of the lane.

Planner's Comment: While the proposed garage is considered to be secondary to the main dwelling, it is not appropriate for the width or character of the laneway. The proposed garage does not respect the primary orientation of structures along the laneway, as it has been rotated 90 degrees to the primary building. The character of structures along the laneway is for them to be orientated identically. In addition, the proposed garage has a large semi-circular roof form that does not respect the character of the primary building, nor the character of the laneway. The large roof form serves no functional purpose, such as an attic level, and is deemed unnecessary in this instance.

The orientation and location of the structure do not consider the blind corner on which it is located. No consideration has been made to potential traffic conflicts when a vehicle is reversing out of the garage, and pedestrians/vehicles are moving from Reserve Lane to Oberon Lane.

The proposed garage is not appropriate for the laneway.

- To promote casual surveillance and improve safety and security of laneways.

Planner's Comment: The proposed garage does not provide any opportunities for causal surveillance of the laneway. The large roof form will actually remove visibility from the first-floor rear windows of No. 41 and 43 Oberon Street, looking toward Reserve and Oberon Lane.

The proposal of the garage is not consistent with the controls and objectives of Section 8.1 or Part C1 of the RDCP, and is conditioned to be deleted from the proposal.

9. Conclusion

That the application for *'Demolition and replacement of an existing outbuilding with a new single storey outbuilding containing a garage/workshop, new driveway crossing off Oberon Lane, and ancillary/landscaping works'* be approved (subject to conditions) for the following reasons:

- A non-standard condition of consent is imposed, requiring the deletion of the garage structure.
- The proposal, as conditioned, 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 R2 Low-Density Residential zone in that the alterations to the dwelling continue to *'provide for the housing needs of the community'*. The alterations to the façade and fencing of the dwelling are consistent with the objectives in that design, colours, and materials *'recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area'*.
- The remainder of the development enhances the visual quality of the public domain/streetscape.

Appendix 1: Referrals

1. External referral comments:

1.1. Ausgrid

The initial engineering referral initially raised an objection to the proposal due to the proximity of the proposed garage door to the existing power and light pole at the verge of Oberon Lane, which was initially set 300mm from the pole.

After a meeting between the applicant and Council's engineer on 8th July 2024, the applicant consulted Ausgrid to request support for the proposed outbuilding in proximity to the light and power pole (Ausgrid pole reference No. MA-9607).

The applicant contacted Ausgrid on 10th July 2024 to confirm the appropriate setback distance from the light pole to the garage opening and driveway.

The applicant advised the Council that amended architectural plans were supported by Ausgrid on 5th August 2024, subject to the condition that the garage door opening is to remain set at least 500mm from the face of Ausgrid Pole MA-9607. A further requirement that was satisfied is a 2.7m clearance from the highest roof structure to the electrical supply of the light pole.

No formal correspondence from Ausgrid was issued to the Council. Notwithstanding, subject to receiving a copy of Ausgrid's comments, a non-standard condition would have been included in a recommendation for approval that states the garage door opening is to remain set 500mm from the face of the power pole. The non-standard condition would have also recommended that a 2.7m clearance be provided from the highest roof structure to the electrical supply of the light pole to allow for maintenance of the pole. However, these conditions are not implemented as the garage is not supported and conditioned to be deleted.

2. Internal referral comments:

2.1. Landscape planner

No objection is raised by the Council's landscape officer.

2.2. Development Engineer

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

This report is based on the following plans and documentation:

- *Amended Architectural Plans by Studio GA Architects dated 30/08/2024;*
- *Statement of Environmental Effects dated 12th April 2024*
- *Detail & Level Survey by McDonald Surveying dated 08/03/2023;*

General Comments

The application is not supported and is recommended for refusal in its present form as the proposed garage fails to meet the minimum required off-street car space length of 5.4m and does not allow for the movement of the bins into the laneways due to the lack of pedestrian space when a vehicle is parked within the garage.

It is recommended the applicant withdraw the application and find an alternative solution.

The below issues have been outlined by Jason Rider (Council's Development Engineer) and were included in the initial Request For Information.

Parking & Manoeuvrability issues

- *Internal Length Garage – NOT Complied With*
Upon review of the amended plans, the internal length of the proposed garage is indicated as 5.25m. This is less than the minimum 5.4m length required for a carspace

by AS 2890.1 and is not supported. The overall length of the garage cannot be lengthened given the width of the site and so this issue is likely to be fatal to the application, unless there is some flexibility in the thickness of the garage walls. This issue has not been successfully addressed by the current amended plans.

- Position of Carspace within Garage – Complied With
- Access from Oberon Lane – Complied With

Ausgrid Power Pole Issues

- Clearance of Garage and Driveway from Ausgrid Pole – Complied With

As noted in the engineer's referral, the internal dimensions of the garage are not supported, as they do not meet the relevant Australian Standards. As a result of this, and a number of DCP non-compliances the proposed garage is not supported and recommended for deletion via a condition of consent. Standard conditions of consent have been applied for the remaining proposed works.

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Appendix 2: DCP Compliance Table

DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	Classification	Zoning = R2 Low-Density Residential	Complies
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): <ul style="list-style-type: none"> R2 = 400sqm R3 = 325sqm 	Existing 191.6m ² . No subdivision proposed	N/A
	Minimum frontage		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m	Min = 12m Existing = 5.715m No subdivision or dual occupancy is proposed	N/A
2.2	Layout Detached dual occupancy		
	i) Detached dual occupancies may be developed only if: <ul style="list-style-type: none"> Dual frontage Secondary access Street frontage of at least 18m in width. 	No dual occupancy is proposed.	N/A
	Minimum separation: <ul style="list-style-type: none"> Dual frontage = 10m min. Secondary access: Merit assessment Detached in R2 = 1800mm min. (18m minimum frontage) 	No change to building separation	N/A
	900mm minimum footpath at rear lane Note: N/A to corner allotment.	No change to the footpath proposed	N/A
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 189.7m ² Existing = 112.41m ² (59.26%) Proposed = 116.44m ² (61.38%)	No. The proposal does not comply. The proposed garage is conditioned to be deleted. As such, no change in site coverage will occur.
2.4	Landscaping and permeable surfaces		
	i) Alterations that change site coverage over 10% requires at least 25% tree canopy cover over the site. ii) Up to 300 sqm = 2 trees iii) 301 to 450 sqm = 3 trees iv) 451 to 600 sqm = 4 trees v) 601 sqm or above = 4 trees	Change in site cover is only 4.03m ² or 3.58% the existing site cover. Two trees are proposed for planting (Frangipani and Dwarf Apple).	Yes. Would comply; however, the proposed garage is conditioned to be deleted. As such, no change to landscaping is proposed.
	vi) Up to 300 sqm = 30% vii) 301 to 450 sqm = 35% viii) 451 to 600 sqm = 40% ix) 601 sqm or above = 45% x) Deep soil minimum width 900mm. xi) Maximise permeable surfaces to front	Site = 191.6m ² Existing = 11.2m ² Proposed = 20.53m ²	N/A.

DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	xii) Retain existing or replace mature native trees xiii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. xiv) Locating paved areas, underground services away from root zones.		
	xv) Minimum 25% of front setback is to be landscaped area	Front setback area 17.145m ² Landscaped area 11.2m ² (65.32%)	No change.
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 191.6m ² Existing = 4.65m x 5.56m Proposed = 6.7m x 5.665m	Yes. As the proposed garage is conditioned for deletion, no change to the private open space area will occur.
	Dual Occupancies (Attached and Detached) POS		
	451 to 600 sqm = 5m x 5m each 601sqm or above = 6m x 6m each ii) POS satisfy the following criteria: <ul style="list-style-type: none"> Situated at ground level (except for duplex) No open space on podiums or roofs Adjacent to the living room Oriented to maximise solar access Located to the rear behind dwelling Has minimal change in gradient 	Site = 191.6m ² Existing = N/A Proposed = N/A	N/A
3	Building envelope		
3.1	Floor space ratio LEP 2012 =		
		Site area = 191.6m ² Existing FSR = 0.787:1 Proposed FSR = 0.805:1	N/A (Refer to CL 4.4A (4). As the proposed garage is conditioned for deletion, no change to the floor space ratio of the site will occur.
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m maximum	Existing = 8.32m (61.86m ridge – NGL 53.54m) No change to the maximum height of the dwelling. Outbuilding height proposed	Yes. Height for laneway structures are controlled under section 8.1 of the RDCP.
	i) (Minimum floor to ceiling height = 2.7m) ii) The minimum floor-to-floor height for building stories, excluding those above the first floor level within the building roofline, is 3.1m	N/A, no change proposed to dwelling floor to ceiling height.	N/A.

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DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	ii) Max two storeys except for consideration of topography, site orientation, lot configuration, flooding and if the height does not result in amenity impacts		
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary Street frontage: - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	No change to the setbacks of the dwelling house. Refer to Section 8.1 'Development in Laneway' controls of the RDCP, which control setbacks of laneway structures.	Yes.
3.3.2	Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> Frontage less than 6m = merit Frontage b/w 6m and 8m = 900mm for all levels Dwellings: <ul style="list-style-type: none"> Frontage less than 9m = 900mm Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	No change to the setbacks of the dwelling house. Refer to Section 8.1 'Development in Laneway' controls of the RDCP, which control setbacks of laneway structures.	Yes.
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings	No change to the setbacks of the dwelling house. Refer to Section 8.1 'Development in Laneway' controls of the RDCP, which control setbacks of laneway structures.	Yes.
4	Building design		

DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design 	The minor changes to the dwelling house, inclusive of the increased window size, increased eaves, and new front fencing, will enhance the presentation of the dwelling as viewed from the streetscape.	Yes.
4.2	New Semi-detached and dual occupancy (attached) dwellings		
	<ul style="list-style-type: none"> i) Alternations and additions must respect and enhance the architectural character of the pair of semi-detached and dual occupancy (attached) dwellings as a coherent entity ii) The design of the dwelling must be based on a detailed site and contextual analysis iii) Design solutions must respect the existing architectural expression and symmetry between the pair of semi-detached and dual occupancy (attached) dwellings and address: <ul style="list-style-type: none"> Locating the bulk of any first floor level addition, setback from the principal street frontage and accommodated to the rear of the dwelling, with a substantial portion of the existing front roof remaining intact Positioning the addition behind the apex of existing hipped roofed houses. For gable roofs, additions should be setback from the gable end 100% of the height increase and retain any existing gable features and chimneys Designing the first floor level addition as a low profile roof form that is visually secondary to the existing front roof. Alternatively, the addition should adopt a roof form that is compatible with the style and period of the existing roof to be retained. 	N/A, the proposal is for alterations and additions to an existing semi-detached dwelling.	N/A.
4.3	Alterations and additions to existing semi-detached and dual occupancy (attached) dwellings		
	<ul style="list-style-type: none"> i) Alterations are to respect the character of the pair of semi-detached dwelling as a coherent entity ii) design of dwelling to be based on a detailed site and context analysis. iii) Additions to the dwelling are to respect the existing architectural expression and symmetry between the pair or semi-detached dwellings and address: 	Alterations to the façade will provide painted steel fencing on existing rendered retaining walls with a consistent presentation to the front fencing of No.43 Oberon Street.	Yes.

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DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	<ul style="list-style-type: none"> -Location of first floor setback, setback from principal street frontage. -Position additions behind the apex of the apex of existing hipped roofed houses. -First floor additions are to <ul style="list-style-type: none"> iv) additions can be constructed to the common boundary of the attached dwelling. vi) Avoid exposure of existing blank party walls vii) Minimise creation of exposed part walls at the common boundary. 	<p>The alterations to the front-facing windows will match similar glazing that exists in the front façade of the attached neighbour.</p> <p>The proposed works to the dwelling will respect the character of the semi-detached dwellings.</p>	
4.4	Roof terraces and balconies		
	<p><i>Rooftop terraces</i></p> <ul style="list-style-type: none"> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <p><i>Dormers</i></p> <ul style="list-style-type: none"> iii) Dormer windows do not dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <p><i>Clerestory windows and skylights</i></p> <ul style="list-style-type: none"> vii) Sympathetic to design of dwelling <p><i>Mechanical equipment</i></p> <ul style="list-style-type: none"> viii) Contained within roof form and not visible from street and surrounding properties. 	No rooftop terrace or balcony is proposed	N/A.
4.5	Roof Design and Features		
	<p><u>Dormer Windows</u></p> <ul style="list-style-type: none"> iv) Dormer windows must be located and have a size, bulk and scale that do not dominate the roof form or add excessively to the building mass v) The configuration of dormer windows must satisfy the following: <ul style="list-style-type: none"> - A maximum height from base to ridge of not more than 1.5m - The highest point of a dormer must be situated below the ridge of the roof to which it is attached - Dormers must be setback from the sides of the roof by a minimum of 500mm - The front face of a dormer must be setback from the external face of the wall immediately below - The base of a dormer must be positioned above the gutter of the roof in which it is situated. vi) Dormers occurring in the same roof plane must be similarly sized, configured, and arranged symmetrically. 	No dormer windows proposed for the dwelling or outbuilding	N/A.
4.6	Colours, materials and finishes		

DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	i) The development application must include a schedule detailing the proposed materials and finishes for a new dwelling, alteration or addition in the DA documentation. The selection of colour and material palette must complement the character and style of the building ii) The exterior materials (such as wall cladding and roofing materials) of a building must be durable and non-reflective iii) External surfaces must be of lighter coloured materials to reduce the impacts of the urban heat island effect iv) The use of lighter coloured external materials must consider and mitigate undesirable or uncomfortable glare directed towards neighbouring properties v) Large expanses of rendered masonry must be avoided in street frontages and laneway elevations, except where they are required due to heritage considerations vi) A combination of materials and finishes must be selected to articulate long sections of walls and create visual interest vii) Select materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration viii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.	Schedule of colours/materials list has been submitted with the proposal. The proposed colours and materials are acceptable.	Yes.
4.7	Earthworks		
	i) Any excavation and backfilling within the building footprint must be limited to a maximum 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a dwelling within this extent of site modification. These requirements do not apply to swimming or spa pool structures ii) The outer edge of any excavation, piling or sub-surface walls must be setback a minimum of 900mm from the side and rear boundaries	A cut of 390mm from the courtyard to the garage level is proposed.	Yes.
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21st June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21st June.	No overshadowing diagrams were submitted to determine the extent of the impact on living areas and private open space areas and whether these spaces comply with the requirements of this Section.	No.

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DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	Solar access to neighbouring development:		
	<p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21st June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21st June.</p> <p>v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21st June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	No overshadowing diagrams were submitted to determine the extent of the impact on living areas and private open space areas of neighbouring properties and whether these spaces comply with the requirements of this Section.	No. Refer to section 8.1 – discussion of key issues, within this report.
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	The additional windows to the façade enhance natural lighting in the front of the dwelling.	Yes.
5.3	Visual Privacy		
	Windows		
	<p>i) All habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following design measures:</p> <ul style="list-style-type: none"> - Offsetting or staggering windows away 	No adverse visual privacy impacts will result due to the new windows within the front portion of the dwelling.	Yes.

DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	<p>from those of the adjacent building</p> <ul style="list-style-type: none"> - Setting the window sills at a minimum of 1.6m above finished floor level - Installing fixed and translucent glazing up to a minimum of 1.6m above finished floor level - Installing fixed privacy screens outside the windows in question - Creating a recessed courtyard on the side elevations of a building measuring not less than 3m x 2m in size, with windows opening towards the courtyard in lieu of the common boundary. <p>ii) The windows of living areas must be oriented away from the windows of adjacent dwellings wherever possible. In this respect, they may be oriented to:</p> <ul style="list-style-type: none"> - The front or rear of the allotment - A side courtyard. <p>iii) Focus upper floor balconies to the street or rear garden of the site. Any elevated balconies, or balcony returns on the side façade, must have a narrow width to minimise privacy impacts on the adjoining properties</p>		
	Balcony		
	<p>iv) Balconies, decks, and terraces on steeply sloping sites must minimise overlooking through careful positioning and orientation</p> <p>v) Where a balcony, deck or terrace is likely to overlook the Private Open Space or windows of the adjacent dwellings, privacy screens must be installed in positions suitable to mitigate the loss of privacy. The use of privacy screens should be a secondary mitigation device where overlooking is primarily mitigated through positioning and orientation. Privacy screens must be permanently fixed and have a minimum height of not less than 1.6m, as measured from the finished floor level. Privacy screens must achieve a minimum of 70% opaqueness and may be constructed with:</p> <ul style="list-style-type: none"> - Translucent or obscured glazing - Fixed timber or metal slats mounted horizontally or vertically - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings. <p>vi) Screen planting and planter boxes may be used as a supplementary device for reinforcing privacy protection. However, they must not be used as the sole privacy protection measure</p> <p>vii) For sloping sites, any ground floor decks, or terraces must step down in accordance with</p>	No balcony proposed	N/A

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DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	the landform, and avoid expansive areas of elevated outdoor recreation space. iii)		
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer.	Site is not mapped in the ANEF contour area.	N/A.
5.5	Safety and Security		
	i) Dwelling's main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	The new windows at the front provide passive surveillance of Oberon Street.	Yes.
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)	The site is not in proximity to any significant views or vistas.	N/A
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	All dwellings i) Provide a maximum of one vehicular access per property ii) Locate parking facilities off rear lanes, or secondary street frontages in the case of corner allotments, where available iii) Where rear lane or secondary street access is not available, parking facilities must be located behind the front façade alignment, either integrated within the dwelling or positioned to the side of the dwelling iv) Provide a single width garage or carport facing the primary street if the site frontage has a width of less than 12m	One vehicular access point is proposed. The proposed garage is located off the rear laneway. N/A. N/A.	Yes. Yes. N/A. N/A.

DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	<p>v) A double width garage or carport may only be provided where:</p> <ul style="list-style-type: none"> - The frontage width is at least 12m; and - The development is consistent with the predominant pattern in the street; and - The minimum deep soil permeable surfaces area in the front setback is achieved. <p>vi) A tandem car parking garage or single garage and a carport, or hardstand space in front of a single garage, will be considered where two car parking spaces are required for a dwelling. Refer to B7 Transport, Traffic, Parking and Access</p> <p>viii) Avoid long driveways that require large expanses of impermeable surfaces</p>	<p>N/A.</p> <p>N/A.</p> <p>N/A. (note: due to other non-compliances the garage will be conditioned to be removed from the proposal).</p>	<p>N/A.</p> <p>N/A.</p> <p>N/A.</p>
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	<p>i) The following may be considered:</p> <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage <p>ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where:</p> <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) 	<p>The proposed garage addresses Oberon Lane.</p> <p>No vehicular access is proposed to Oberon Street, the primary frontage of the site.</p> <p>(note: due to other non-compliances the garage will be conditioned to be removed from the proposal).</p>	<p>N/A.</p>
6.3	Setbacks of Parking Facilities		
	<p>i) Garages and carports comply with Sub-Section 3.3 Setbacks.</p> <p>ii) 1m rear lane setback</p> <p>iii) Nil side setback where:</p> <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	<p>Refer to comments under Section 8.1 of this appendix table.</p>	<p>Refer to comments under Section 8.1 of this appendix table.</p>

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DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
6.4	Driveway Configuration		
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	2.8m is proposed at the property boundary.	Yes.
6.5	Garage Configuration		
			Refer to key issues for further discussion.
	i) recessed behind front of dwelling	The proposed garage is recessed behind the dwelling.	No.
	ii) The maximum garage width (door and piers or columns): - Single garage – 3m - Double garage – 6m	4.5m.	No.
	iii) 5.4m minimum length of a garage.	The proposed 5.4m indicated by the applicant within the submitted plans is obstructed by western wall and garage door.	No.
	iv) May include an additional 6sqm of floor area through additional length for storage purposes that is excluded from FSR.	Additional storage is proposed, however, is added to the width of the garage rather than the length. This adds to the unnecessary bulk of the structure as viewed from both laneways.	No.
	v) 2.6m max wall height of detached garages, and max height of 3m for pitched roof.	Refer to comments under Section 8.1 of this appendix table.	Noted.
	vi) recess garage door 200mm to 300mm behind walls (articulation)	Complies. However, impacts compliance with 5.4m length.	Yes.
	vii) 600mm max. parapet wall or bulkhead	Excessive bulkhead proposed.	No.
	viii) minimum clearance 2.2m AS2890.1	Achieved. (note: due to other non-compliances the garage will be conditioned to be removed from the proposal).	Yes.

DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
6.6	Carport Configuration		
	<ul style="list-style-type: none"> i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to dwelling iii) 3m maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) front gate allowed (minimum 30% open) viii) Gate does not open to public land 	Proposal is for a garage	N/A.
6.7	Hardstand Car Space Configuration		
	<ul style="list-style-type: none"> i) Prefer permeable materials in between concrete wheel strips. ii) 2.4m x 5.4m minimum dimensions 	Proposal is for a garage	N/A.
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	<ul style="list-style-type: none"> i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street 	<p>The proposal includes palisade steel fencing on existing rendered retaining wall.</p> <p>The proposed front fencing matches the character of fencing on the adjoining semi-detached neighbour.</p>	Yes.
7.2	Front Fencing		
	<ul style="list-style-type: none"> i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. <ul style="list-style-type: none"> - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) lightweight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: <ul style="list-style-type: none"> - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> 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 	<p>Total height ranges from 1.3m to 1.6m. New steel palisade fencing is proposed at 1.1m from the retaining wall to match the top column of the letterbox column.</p> <p>The proposed front fencing matches the character of fencing on the adjoining semi-detached neighbour.</p>	Yes. On-merit.

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DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	<p>pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p>		
7.3	Side and rear fencing		
	<p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p>	Due to the garage not being supported, and recommended by condition for deletion, no change to side fencing is proposed.	N/A.
7.4	Outbuildings		
	<p>i) Locate behind the front building line.</p> <p>ii) Locate to optimise backyard space and not over required permeable areas.</p> <p>iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height)</p> <p>iv) Nil side and rear setbacks where:</p> <ul style="list-style-type: none"> - finished external walls (not requiring maintenance; - no openings facing neighbours' lots and - maintain adequate solar access to the neighbours dwelling <p>v) First floor addition to existing may be considered subject to:</p> <ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades; - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. <p>vi) Must not be used as a separate business premises.</p>	Section 8.1 overrides these controls due to the proposed garage being a laneway structure.	N/A.
7.5	Swimming pools and Spas		
	<p>i) Locate behind the front building line</p> <p>ii) Minimise damage to existing tree root systems on subject and adjoining sites.</p> <p>iii) Locate to minimise noise impacts on the adjoining dwellings.</p> <p>iv) Pool and coping level related to site topography (max 1m over lower side of site).</p> <p>v) Setback coping a minimum of 900mm from the rear and side boundaries.</p> <p>vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks.</p> <p>vii) Position decking to minimise privacy impacts.</p>	No swimming pools are proposed.	N/A.

DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.		
7.6	Air conditioning equipment		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.	No change to the A/C unit proposed.	N/A.
7.7	Communications Dishes and Aerial Antennae		
	i) Max. 1 communications dish and 1 antenna per dwelling. ii) Positioned to minimise visibility from the adjoining dwellings and the public domain, and must be: <ul style="list-style-type: none"> - Located behind the front and below roof ridge; - minimum 900mm side and rear setback and - avoid loss of views or outlook amenity iii) Max. 2.7m high freestanding dishes (existing).	No antenna or dish proposed on the outbuilding	N/A
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	As the proposed garage is conditioned to be deleted, no change to clothes drying facilities will occur.	Yes.
8	Area Specific Controls		
8.1	Development in Laneways		
	i) Max. 6m height. Max. 4.5m external wall height. Mass and scale to be secondary to primary dwelling and upper level contained within roof form (attic storey).	<p>The outbuilding is proposed with a maximum 4.6m height. A max wall height of 2.6m is proposed.</p> <p>While the max height is complied with, the proposal contains a large roof form that is uncharacteristic of laneway development within the vicinity. The large roof form serves no purpose, such as an attic roof space. Therefore, it is not considered appropriate.</p>	<p>Refer to key issues for further discussion.</p> <p>No.</p>

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DCP Clause	Controls	Proposal	Compliance (Yes/No/N/A/Conditioned)
	ii) 1 operable window to laneway elevation (casual surveillance) iii) Aligns with consistent laneway setback pattern (if no consistent setback, then 1m rear setback). (Refer to Sub-Section 6 for controls relating to setback to garage entry.) iv) Nil side setback allowed subject to: <ul style="list-style-type: none"> - adjoining building similarly constructed - no unreasonable visual, privacy and overshadowing impacts v) Screen or match exposed blank walls on adjoining properties (i.e. on common boundary).	No windows are proposed for either laneway elevation. Setbacks are consistent with the pattern of nil setbacks for outbuildings along Oberon and Reserve Lane. The proposed garage is built to the side, rear, and secondary street boundary. The character of development along Oberon and Reserve Lane generally includes garages that are open to at least one boundary. New blank walls are proposed to adjoining properties.	No. Yes. No. No.

Responsible officer: GAT & Associates, Town Planners

File Reference: DA/312/2024

Draft Development Consent Conditions



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Folder /DA No:	DA/312/2024
Property:	41 Oberon Street, RANDWICK NSW 2031
Proposal:	Alterations and additions to the existing dwelling house
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>
DA.01 (Issue A)	Studio GA	260224	23 April 2024
DA.04 (Issue A)	Studio GA	260224	23 April 2024
DA.06 – Front Fence renovation Plan and Fence Elevation	Studio GA	260224	23 April 2024
DA-07 – Façade Renovations	Studio GA	260224	23 April 2024
Schedule 1 – Schedule of External Finishes and Fittings	Studio GA	260224	23 April 2024

In the event of any inconsistency between the approved plans and supplementary documentation, the approved drawings will prevail.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Amendment of Plans & Documentation**
The approved plans and documents must be amended in accordance with the following requirements:

- a. The demolition of the existing garage/workshop & boundary fence and proposed detached garage/workshop/studio including associated landscape works within the rear yard are not approved under this consent. Any reference to these works are to be deleted from the approved plans, and from any plans/documentation forming part of any Construction Certificate.

Amended plans must be submitted to and approved by the Principal Certifier prior

Condition
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: To require amendments to the plans endorsed by the consent authority following assessment of the development.

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition
<p>3. 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.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
<p>4. External Colours, Materials & Finishes The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application as per Condition 1 of the consent.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
<p>5. Security Deposits The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none"> • \$600.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
<p>6. Sydney Water All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p>

Condition
<p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>

7. **Building Code of Australia**
- In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 69 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).
- Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.
- Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.

BEFORE BUILDING WORK COMMENCES

Condition
<p>8. Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <p>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <p>b) a Registered (Building) Certifier must be appointed as the <i>Principal</i></p>

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	Condition
	<p><i>Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</p> <p>c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</p> <p>d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and</p> <p>e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</p>
	<p>Condition Reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
9.	<p>Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition Reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p>
10.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
11.	<p>Public Utilities</p> <p>A <i>Public Utility Impact Assessment</i> must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works.</p> <p>Documentary evidence from the relevant public utility authorities confirming that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Energy Australia, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p>

Condition

Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.

DURING BUILDING WORK

Condition

12.

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.

13.

Restriction on Working Hours

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

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

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

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Condition	
	<i>written approval of Council must be obtained to vary the standard permitted working hours.</i>
	Condition Reason: To protect the amenity of the surrounding area.
14.	<p>Public Safety & Site Management</p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ul style="list-style-type: none"> a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction. d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council. f) 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. <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"> 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

Condition	
	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.
15.	Building Encroachments There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place. Condition Reason: To ensure no encroachment onto public land and to protect Council land.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

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

OCCUPATION AND ONGOING USE

Condition	
17.	Use of Premises The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes. Condition Reason: To ensure the development is used for its intended purpose.
18.	External Lighting External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance. Condition Reason: To protect the amenity of the surrounding area and residents.

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
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Condition	
19.	<p>Demolition Work Plan</p> <p>A demolition work plan must be developed and be implemented for any demolition works in accordance with AS2601 (2001)- Demolition of Structures.</p> <p>The demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601 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	
20.	<p>Demolition Work</p> <p>Any demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard - AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a demolition work plan, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations • A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress", • Council is to be given at least two days written notice of demolition works involving materials containing asbestos, • Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request, • A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works. <p>Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.</p> <p>Condition Reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

Development Application Report No. D88/24

Subject: 61 The Corso, Maroubra (DA/436/2022/A)

Executive Summary

Proposal:	<p>Section 4.55(2) Modification to the approved development for internal and external alterations to approved building, including removal of pitched roof for new flat roof, new stair configuration and location and associated internal alterations, and amendments to consent conditions.</p> <p>Original consent: Demolition of all structures on site and construction of a new part three and part four storey dwelling house with semi-basement level for parking and plant room, associated site and landscape works.</p>
Ward:	Central Ward
Applicant:	Popovbass Architects
Owner:	Ms B Wu
Cost of works:	\$2,712,976.00
Reason for referral:	Modification to Condition 2, which was imposed by the Randwick Local Planning Panel.

Recommendation

That the RLPP, as the consent authority, refuses the application made under section 4.55 of the *Environmental Planning and Assessment Act 1979*, as amended, to modify Development Application No. DA/436/2022/A for section 4.55(2) Modification to the approved development for internal and external alterations to approved building, including removal of pitched roof for new flat roof, new stair configuration and location and associated internal alterations, and amendments to consent conditions at No. 61 The Corso, MAROUBRA NSW 2035, for the following reasons:

1. Pursuant to the provisions of section 4.55(3) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to demonstrate compliance with some of matters of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979*, as outlined in the reasons below.
2. Pursuant to the provisions of section 4.55(3) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified, including the approved building envelope with a pitched roof form.
3. Pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives of the R2 Low Density Residential zone in that it is not compatible with the desired future character of the locality and exceeds the level of built form anticipated for the subject site. The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form.
4. Pursuant to the provisions of section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives and controls of the Randwick Development Control Plan 2013:

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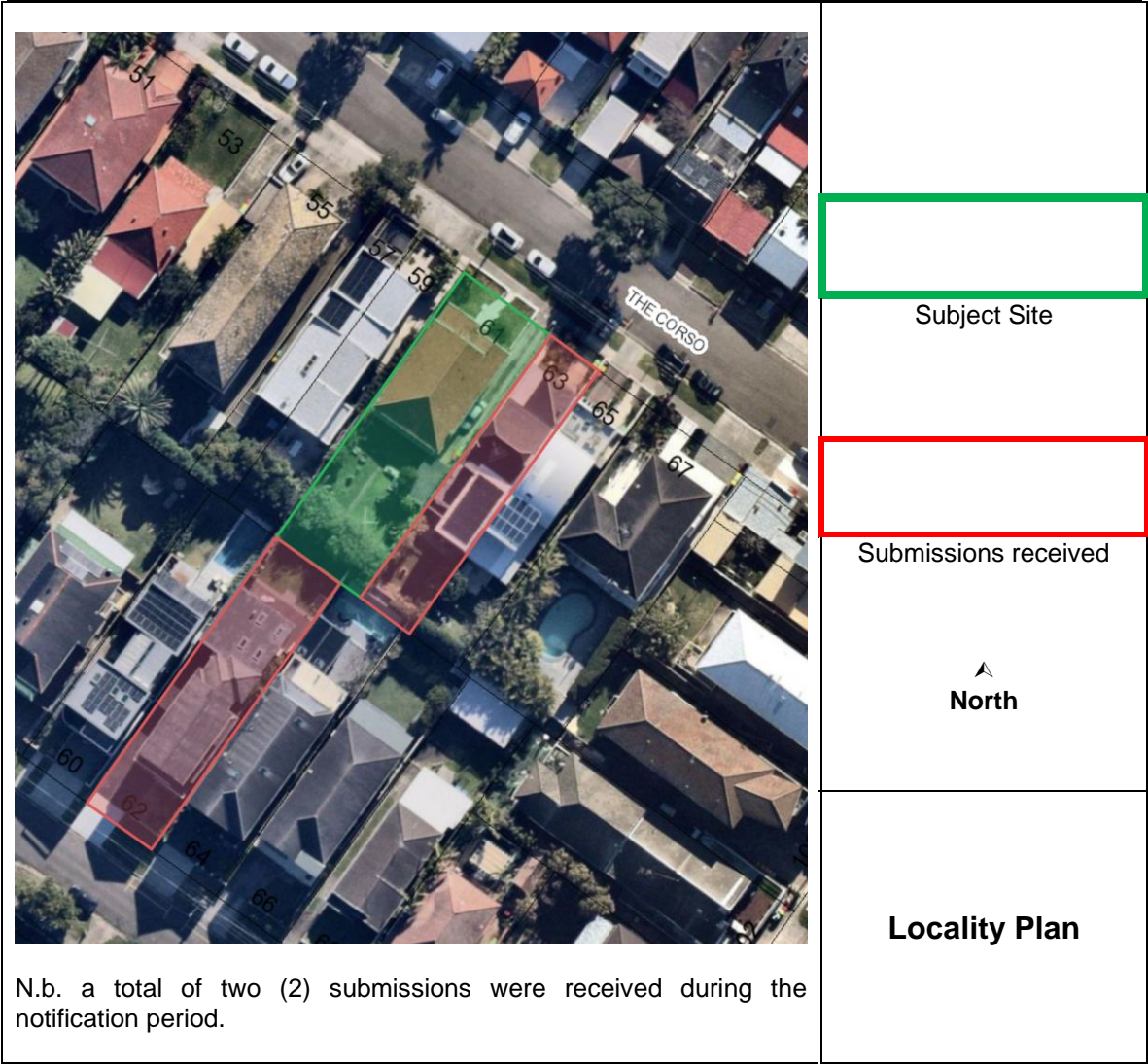
- Clause 3.2 of C1 – Building Height
- Clause 4.1 of C1 – Building Design - General
- Clause 4.4 of C1 – Roof Terraces and Balconies
- Clause 5.3 of C1 – Visual Privacy
- Clause 5.4 of C1 – Acoustic Privacy

5. Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development will result in adverse environmental impacts on the existing neighbourhood character and the visual amenity of the street.
6. Pursuant to the provisions of section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development will is not suitable to the site as the proposed development does not respect the site topography, configuration, and characteristics.
7. Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is considered to not be in the public interest as the proposal is inconsistent with the objectives of the zone and will result in significant adverse impacts on the locality.

Attachment/s:

Nil

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1. Reason for Referral

This application is referred to the Randwick Local Planning Panel (RLPP) as it is made under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* and seeks to modify a condition of consent previously imposed by the RLPP.

The original development application was referred to the RLPP as more than 10 unique submissions by way of objection were received by Council.

2. Site Description and Locality

The site is known as No. 61 The Corso, Maroubra and has a legal description of Lot 36 in DP 6127. The subject site is located to the south-western side of The Corso. The site is rectangular in shape with a north-eastern frontage to The Corso and south-western rear boundary of 13.41m in length, and side boundaries of 40.235m in length, resulting in a total site area of 539.6m². The site exhibits a fall of approximately 2m from the rear to the front boundary.

Existing on the site is a detached single storey dwelling with a rendered garage at the rear of the property and a front entrance verandah. Vehicle access to the site is provided off a single driveway which extends to the garage at the rear of the dwelling. The site contains several small tree emplacements within the rear yard, however there is no significant vegetation onsite.

The site is located within the R2 Low Density Residential zone and surrounding development is characterised by a mixture of one, two and three storey dwelling houses, including examples of basement garages. To the south-east the site is located within 100m walking distance of Jack Vanny Reserve, which connects to Maroubra beach further to the south. Maroubra Beach Town Centre has several cafes and restaurants as well as other services. The area is well serviced by public transport. Numerous bus stops are situated along Torrington Road (located parallel to The Corso), which provide services around the local area and include connections through to the city and wider Sydney.

The south-east of the site is directly adjoined by No. 63 The Corso, which contains an attached 2 storey dwelling that shares a party wall with No. 65 The Corso. Although attached, the dwellings at No. 63 and 65 The Corso vary in terms of form, materials and finishes.

The north-west of the site is adjoined by No. 59 and 57 The Corso, consisting of a rendered dual occupancy. No. 59 The Corso has several large windows facing east toward the ocean views. Further to the north-west is a four storey residential flat building at No. 55 The Corso with balconies and windows also orientated towards eastern ocean views. At the rear of the subject site is No. 62 Sackville Street, which is a two storey rendered detached dwelling. The subject site retains rear yard privacy from this dwelling through dense vegetation along the rear boundary.



Figure 1: Photo of the front of the subject dwelling from The Corso (*Source: Randwick City Council*)



Figure 2: Photo of the front of the subject dwelling and No's 63 & 65 The Corso (*Source: Randwick City Council*)



Figure 3: Photo of the front of the subject dwelling and No. 59 The Corso (Source: Randwick City Council)



Figure 4 & 5: Photo of the front of the No's 55, 57 & 59 The Corso (Source: Randwick City Council)

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Figure 6 & 7: Photo of the front of the No's 49 & 51 The Corso (Source: Randwick City Council)



Figure 8: West oblique view of the local neighbourhood (May 2023) - 61 The Corso, Maroubra (Source: Nearthmap)

3. Details of Current Approval

The original development application was lodged on 1 September 2022.

The approved development is for demolition of all structures on site and construction of a new part three and part four storey dwelling house with semi-basement level for parking and plant room, associated site and landscape works.

The original development application scheme sought consent for a full height second floor storey, in accordance with the architectural plans reproduced below:

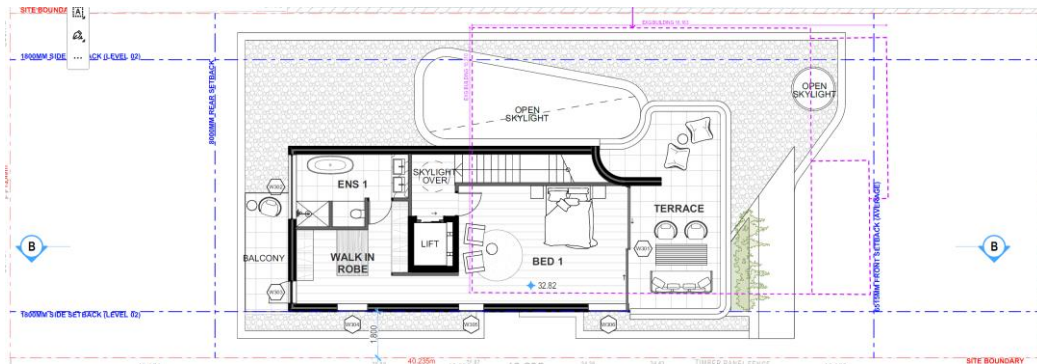


Figure 9: Originally proposed second floor plan under DA/436/2022 - 61 The Corso, Maroubra (Source: PopovBass)

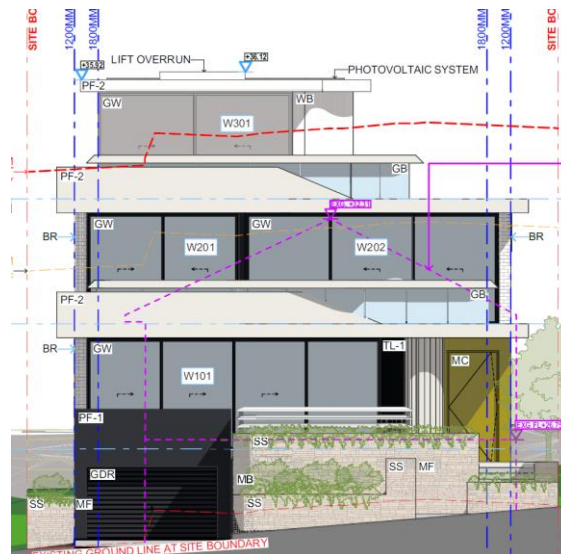


Figure 10: Originally proposed front elevation under DA/436/2022 - 61 The Corso, Maroubra (Source: PopovBass)

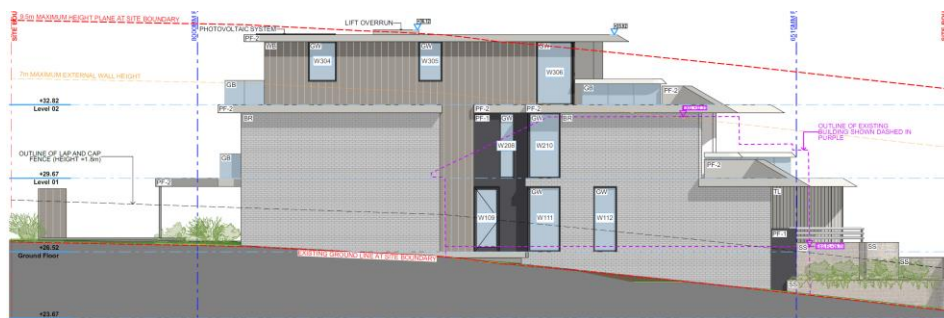


Figure 11: Originally proposed south-eastern elevation under DA/436/2022 - 61 The Corso, Maroubra (Source: PopovBass)



Figure 12: Originally proposed 3D render of the dwelling under DA/436/2022 - 61 The Corso, Maroubra (Source: PopovBass)

On 02 June 2023, Council sent a formal additional information request to the applicant outlining several issues including to the building height non-compliances, external wall height and the streetscape presentation of the proposed second floor. Council Officers did not support a full height second floor and requested the applicant amend the scheme to include the second floor within a pitched roof form.

On 30 January 2024, the applicant provided their final set of architectural plans, as reproduced below:

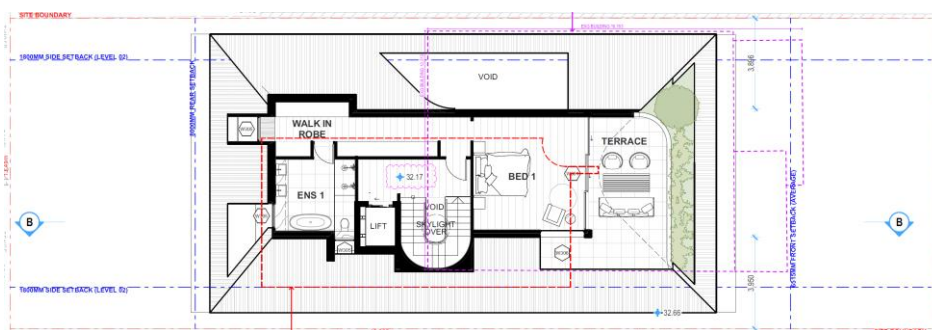


Figure 13: Approved second floor plan under DA/436/2022 - 61 The Corso, Maroubra (Source: PopovBass)

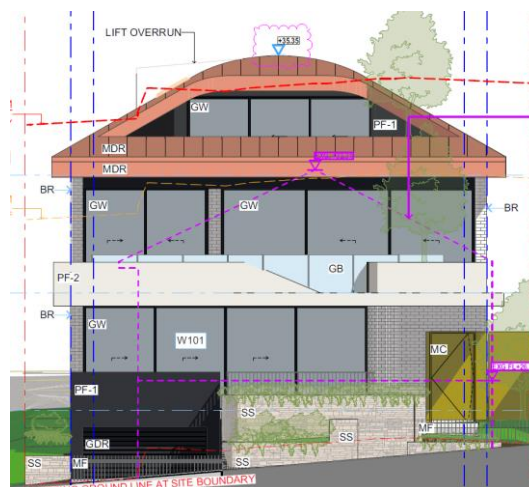


Figure 14: Approved front elevation under DA/436/2022 - 61 The Corso, Maroubra (Source: PopovBass)



Figure 15: Approved south-eastern elevation under DA/436/2022 - 61 The Corso, Maroubra (Source: PopovBass)



Figure 16: Approved 3D render of the dwelling under DA/436/2022 - 61 The Corso, Maroubra (Source: PopovBass)

The above scheme was determined by the Panel on 08 February 2024.

The Panel supported the original development application, subject to the imposition of condition 2, as detailed below in the report. The Panel provided the following reason regarding the imposed Condition 2 of the consent:

The Panel has visited the site, considered the submissions (oral and written) and reviewed the assessment report prepared by Council officers that addresses the relevant matters detailed in section 4.15 of the Environmental Planning and Assessment Act 1979, as amended.

The Panel supports the application generally for the reasons given in the assessment report, subject to amendments to Condition 2. The Panel considered that Condition 2, as drafted in the assessment report would result in unreasonable impacts to the internal amenity and compliance issues with the Building Code of Australia for the proposed development. An alternative Condition 2 has been imposed to reduce the bulk of the roof from the street, and mitigate impacts upon views and privacy. The Panel has also required that planting to the rear of the property be a species that provides privacy while maintaining views.

4. Proposal

Modification Application No. DA/436/2022/A submitted under the provisions of section 4.55(2) of the *Environmental Planning & Assessment Act 1979*, seeks to delete condition No. 2, which has been reproduced below with comments from the applicant addressing each component:

2. The approved plans and documents must be amended in accordance with the following requirements:

- a. The hip section of the main top-most roof (attic roof) to the The Corso elevation is to be removed and the roof converted to a gable form with the fascia extending a maximum of 600mm beyond the glass doors to Bed 1. Window 306 and the adjacent south-eastern portion of the terrace shall be deleted and the deleted terrace converted to non-trafficable roof area.**

Applicant Modification: The roof has been amended to the flat roof in lieu of the gable roof requested by Council. The approved maximum height has been maintained (RL 35.35). To be deleted.

- b. The terrace to Bed 1 shall be a maximum depth of 3m. The wall to the north-western side of the terrace shall be deleted and replaced with a privacy screen with a height of 1.6m above the finished floor level. The privacy screen is to be a depth of 2m.**

Applicant Modification Comment: The terrace to bed 1 has been reduced to 2.72m depth from the approved building line. Privacy screen (2m long x 1.6m high) has also been added to the north-western side. To be deleted.

- c. The overall height of the dwelling including any lift overrun shall be a maximum height of RL35.35.**

Applicant Modification Comment: The approved maximum height has been maintained (RL 35.35). To be deleted.

- d. An additional 63.1m² of deep soil permeable area, as per the definition of deep soil permeable surfaces in Council's DCP, shall be provided within the subject site.**

Applicant Modification Comment: The deep soil calculation is 162.5m² (30.1% of site). This is in accordance with Council's calculation of the deep soil and Condition for an additional 63.1m² of deep soil to meet the minimum 30% deep soil requirement. To be deleted.

- e. The dwelling entrance awning adjoining the eastern side of the first floor terrace and planter, shall have a maximum depth of 800mm, as measured from the external wall of the ground floor entrance below.**

Applicant Modification Comment: The dwelling entrance awning has been reduced to 800mm depth from the approved building line. To be deleted.

- f. The rear pergola to the ground floor rear patio shall have a maximum depth of 1.45m, as measured from the external wall of the ground floor dwelling, increasing the awning structure setback to 8m from the rear boundary line.**

Applicant Modification Comment: Rear pergola has been removed. To be deleted.

- g. The first floor front terrace is to be reduced to a maximum depth of 1.5m, as measured from the external face of the rumpus sliding doors and 2.8m as measured from the front face of Bed 2. The deleted terrace area is to be converted into a planter box.**

Applicant Modification Comment: First floor front terrace reduced to 1.5m from rumpus sliding doors and 2.762m from Bed 2 sliding doors. To be deleted.

- h. The first floor front terrace balustrading shall be constructed with either translucent or obscured glazing (the use of film applied to the clear glass pane is unacceptable).**

Applicant Modification Comment: First floor balustrade changed to translucent glazing. To be deleted.

- i. The privacy screen adjoining the internal courtyard along the north-western side of the dwelling is to be fixed and constructed with the individual blades that are angled and spaced appropriately to prevent overlooking into the windows of the adjacent dwelling.**

Applicant Modification Comment: Privacy screen to courtyard amended to individual angled blades. To be deleted.

- j. The void area on the first floor and attic floor are not to be infilled as floor space or a roof enclosure.**

Applicant Modification Comment: Void area on first and attic floor to remain as void. To be deleted.

- k. The following window must have a minimum sill height of 1.6m above floor level, or alternatively, the window is to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:**

- W210

Applicant Modification Comment: W210 changed to translucent glazing. To be deleted.

- l. The metal clad screening adjoining the north-western side of the main dwelling entrance and along the north-western side boundary, shall be reduced to a maximum height of 1.8m, as measured from the existing natural ground level.**

Applicant Modification Comment: Metal clad screen on north-west boundary reduced to 1.8m high. To be deleted.

- m. The Tristaniopsis Laurina "Luscious" planting proposed along the rear and side boundary shall be replaced with a mature native species that has a maximum height of 4m or is maintained at a height of 4m.**

Applicant Modification Comment: Landscape plan to be updated to have Tristaniopsis Laurina on rear and side boundary as requested. To be deleted.

The proposed modification seeks the following amendments to the approved architectural plans:

Basement Floor

- Reduction of the basement footprint at the rear.
- Replacement of u-shaped stairs with straight stairs and location shifted.
- Slight shifting of the lift location.

Ground Floor

- Replacement of u-shaped stairs with straight stairs and location shifted.
- Internal reconfiguration to accommodate new stairs.
- Reduction of dwelling entrance awning to 800mm depth from approved building line, in accordance with Condition 2(e).
- Enlargement of window for party.
- Installation of courtyard screen containing fixed angled blades, in accordance with Condition 2(i).
- Void over the courtyard maintained, in accordance with Condition 2(j).

First Floor

- Replacement of u-shaped stairs with straight stairs and location shifted.

- Internal reconfiguration to accommodate new stairs.
- Relocation and enlargement of Bedroom 2 window with translucent glazing to 1.6m above floor level, in accordance with Condition 2(k).
- Removal of window to courtyard (W209 in approval).
- Relocation of bathroom next to rumpus room.
- Addition of a new window to bathroom on the north-west façade.
- Reduction of the front terrace to 1.5m from rumpus sliding doors and 2.762m from Bedroom 2 sliding doors, in accordance with Condition 2(g).
- Change of balustrading to translucent glazing, in accordance with Condition 2(h).
- Addition of a new window to void over the ground floor casual living.

Second Floor

- Replacement of u-shaped stairs with straight stairs and location shifted.
- Reduction, relocation and reconfiguration of the level 2 footprint, converting the gable roof to a flat roof with full height floor-to-ceiling wall sections and new windows.
- Deletion of the north-western blade wall and replacement with a 1.6m high privacy screen, in accordance with Condition 2(b).
- Reduction of the bedroom terrace and addition of trafficable areas, in accordance with Conditions 2(a) & (b).

Roof

- Replacement of the gable roof with a flat roof.
- Addition of solar panels to the roof.
- Lift overrun and roof to be at maximum approved RL35.35, in accordance with Condition 2(c).

Site

- Deletion of the rear pergola, in accordance with Condition 2(f).
- Reduction in the height of the screen to the north-western side of the dwelling to 1.8m, in accordance with condition 2(l).
- Addition of 63.6m² of deep soil landscaping, in accordance with Condition 2(d).

5. Section 4.55 Assessment

Section 4.55(2)

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

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

An assessment against the above criteria is provided below:

1. Substantially the Same Development

The proposed modifications are not considered to result in a development that will fundamentally alter the originally approved development.

2. Consultation with Other Approval Bodies or Public Authorities:

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

3. Notification and Consideration of Submissions:

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

- 62 Sackville Street

Issue	Comment
<u>Roof Level</u> The roof level has been converted from a gable roof into a box shape. The main view from the southern houses is now viewing into a main bedroom ensuite.	Agreed, see Key Issues section of the report below.
<u>Views</u> The roof change creates further view impacts of the little water views we currently have.	Council is satisfied that the modification will not adversely impact upon obstructed views. See Key Issues section of the report below.
<u>Planting</u> The agreed upon 4m mature planting along the rear boundary has been changed on the landscape plan to a tree with a maximal height of 3m.	Council is supportive of the 'Syzygium Cascade' planting along the rear boundary, in that it will grow to a height of up to 3m, providing a balance between privacy and maintaining visual amenity and outlook.

- 63 The Corso

Issue	Comment
<u>Solar Access</u> We are concerned with the lack of light to our semi-detached property, affecting our rear garden and solar batteries. We feel we have the same right to light as our neighbours.	No. 63 The Corso will continue to receive adequate solar access to the rear yard, in accordance with the DCP controls.

Section 4.55(3)

Under the provisions of section 4.55(3) of the *Environmental Planning and Assessment Act 1979*, the consent authority must take into consideration such of the matters referred to in section 4.15(1) (as relevant) as well as take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Council is not satisfied that the proposed modification adequately addressed the relevant sections of 4.15(1) of the Act, as detailed below. Furthermore, Council is not satisfied that the proposed modification adequately takes into the reasons given by the consent authority for the grant of the consent that is sought to be modified. The proposed modification seeks to convert the second floor storey from the approved gable roof to a flat roof with full height wall sections. Such a scheme was already rejected by Council under the previous assessment of the development application. The approved development was only approved, subject to amendments to contain the second floor level in a pitched roof (as detailed in the 'details of current approval' and 'key issues' section of this report).

For this reason, the modification application is not supported for failing to demonstrate compliance with section 4.55(3) and is therefore recommended for refusal.

6. Key Issues

Second Floor Level

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

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

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

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

As noted above, the approved development application originally sought a full height second floor level. The approved DA was modified to contain the second floor within a roof form, in accordance with the previous Part C1 version of the RDCP 2013, of which was applicable to that DA.

Part C1 of the RDCP 2013 has since revised, which strengthened the design requirements to restrict the dwelling houses to present as two storeys, as per the objectives and controls outlined above.

The proposed modification application seeks to convert the second floor storey back to a full height level, which would result in a three storey dwelling with an additional basement level fronting The Corso.

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

- A streetscape analysis has found that whilst there are three storey dwellings within the street, there are currently no three storey dwellings with an additional basement level on the south-western side of The Corso.
- The approved dwelling already presents as a part two/three storey dwelling with an additional floor within the pitched roof form, varying the two-storey height and street frontage.
- The proposal does not respond to the site topography, which has a rise of approximately 2m from the front to the rear boundary. From The Corso, the proposed modification will result in a three storey presenting dwelling with an additional part basement level.
- The proposal will result in a three storey dwelling as viewed from neighbouring sites, which will impact upon the visual amenity and scale of dwelling house development in the locality. Furthermore, the proposal results in visual amenity impacts, which is exacerbated by further non-compliances with the wall length control (being a 14.15m wall length, which does not comply with the 12m control, pursuant to clause 4.1 of the DCP).
- The proposal results in adverse amenity impacts to the neighbouring dwellings, in particular from:
 - The additional windows located to the side and rear facades of the proposed full height second floor, pursuant to clause 5.3 of the DCP.
 - The second floor terrace includes a general trafficable area of 3.6m x 4.7m, which is excessive in size and results in adverse visual privacy impacts to the adjoining neighbour at No. 63 The Corso, pursuant to clause 4.4 and 5.3 of the DCP.
 - The previously approved scheme had the second floor terrace partially contained within the gable roof form, which reduced the acoustic impacts of the terrace. The

- proposed second floor terrace is large in size which will impact upon the acoustic privacy of the adjoining northern neighbour at No. 63 The Corso, which has a large capacity for people to congregate and gather.
- The full height second floor results in additional overshadowing to the north-western first floor windows to 63 The Corso. Whilst the overshadowing will be to bedroom windows and not living rooms, it results in additional overshadowing as a result from a full height second floor, of which the DCP does not support or envision.

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

- Inconsistency with the future built character of the locality for 2-3 storey dwelling houses.
- Adverse bulk, scale and visual impact of the proposed dwelling as viewed from The Corso and from neighbouring dwellings.
- Unreasonable privacy and overshadowing impacts to adjoining neighbours.
- Form that does not respect the topography of the site that accentuates the visual bulk impacts.

Council has also considered the proposed development in relation to the previous DCP version. To limit the height of buildings and number of storeys, the previous DCP had the following control:

Control 3.2(i) - the maximum external wall height is 7m. For steeply sloping sites, the maximum external wall height is 8m.

The site only has a 2m topographical rise from front to rear, and as such is not considered a steeply sloping site. Therefore, the 7m would have been applicable.

The proposed development includes an external wall height of 8.85m, which far exceeds the 7m control. Therefore, in considering the previous and current DCP versions, the proposed modification scheme does not comply and results in a building envelope that is not appropriate in terms of massing and scale in The Corso.

Based on the assessment outlined above in relation the second floor storey, Council recommends the modification application be refused for the reasons outlined above and in the section 4.15 Assessment table below.

7. Referral Comments

The proposed modification application did not trigger the requirement for any referrals, and as such, was not referred to any of Council's Internal Departments for further assessment.

8. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>State Environment Planning Policy (Sustainable Building) 2022</p> <p>Clause 55A of the EP&A Regulation requires that a new BASIX certificate be lodged for amended plans or where a section 4.55 modification makes a material change to the BASIX commitments as originally approved.</p> <p>The applicant has submitted a new BASIX certificate. The plans have been checked with regard to this new certificate and they are consistent with the requirements indicated for DA stage. Standard conditions of consent requiring the continued compliance of the development with the SEPP were included in the original determination.</p>

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Section 4.15 'Matters for Consideration'	Comments
	<p>State Environment Planning Policy (Resilience and Hazards) 2021</p> <p>The site is mapped as part of the coastal use areas pursuant to Chapter 2 of SEPP (Resilience and Hazards) 2021. In response to Clause 2.11 of Division 4 'Coastal use area', the proposal will not impede access to the foreshore or impact views from public places to the foreshore, nor impact upon the scenic qualities of the coast. As such, Council is satisfied that Clause 2.11 of SEPP (Resilience and Hazards) 2021 has been satisfied. Furthermore, in accordance with clause 2.12 of the SEPP, the proposal is not likely to cause increased risk of coastal hazards on the land or other land.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.</p> <p><u>Clause 6.7 'Foreshore scenic protection area'</u></p> <p>Council is satisfied that the proposed development will not adversely impact upon the scenic qualities and visual amenity of the foreshore area.</p>
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See Key Issues and Appendix 1 for details.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report and are not acceptable. The proposed development is inconsistent with the dominant residential character in the locality. The proposal will result in detrimental impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development. However, it is considered to not meet the relevant objectives and performance requirements in the RLEP 2012 and RDCP 2013. Further, the proposed modifications will adversely affect the character or amenity of the locality.</p>

Section 4.15 'Matters for Consideration'	Comments
	Therefore, the site is not suitable for the modified development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal is inconsistent with the objectives of the zone and will result in significant adverse impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9. Conclusion

The proposed modifications are not supported for the following reasons and recommended for refusal:

- Pursuant to the provisions of section 4.55(3) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to demonstrate compliance with some of matters of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979*, as outlined in the reasons below.
- Pursuant to the provisions of section 4.55(3) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified, including the approved building envelope with a pitched roof form.
- Pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives of the R2 Low Density Residential zone in that it is not compatible with the desired future character of the locality and exceeds the level of built form anticipated for the subject site. The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form.
- Pursuant to the provisions of section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives and controls of the Randwick Development Control Plan 2013:
 - Clause 3.2 of C1 – Building Height
 - Clause 4.1 of C1 – Building Design - General
 - Clause 4.4 of C1 – Roof Terraces and Balconies
 - Clause 5.3 of C1 – Visual Privacy
 - Clause 5.4 of C1 – Acoustic Privacy
- Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development will result in adverse environmental impacts on the existing neighbourhood character and the visual amenity of the street.
- Pursuant to the provisions of section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development will is not suitable to the site as the proposed development does not respect the site topography, configuration and characteristics.
- Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed

development is considered to not be in the public interest as the proposal is inconsistent with the objectives of the zone and will result in significant adverse impacts on the locality.

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/436/2022/A

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Appendix 1: DCP Compliance Table

1.1. Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 539.6m ²	
2.4	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	Site = 490m ² Proposed = 43.7%	Yes, complies
2.5	Deep soil permeable surfaces		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached dwellings: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	Site = 490m ² Approved = 30% (in accordance with condition 2(d). Proposed = 30.1% (151m ²) Complies with the previous DCP control of 30%. A more onerous imposition of an additional 10% of landscaping would not be appropriate in this instance.	Yes, complies on merit
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	Sufficient planting provided within the site, constraint in height by view corridors. N.b. this is a new control imposed from the previous DA which did not include this.	Yes, complies on merit
2.7	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 490m ² Proposed = >7m x 7m	Yes, complies
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.65:1	Proposed = 0.65:1 (357.2m ²)	Yes, complies
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 9.49m (RL35.35-RL25.86)	Yes, complies
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage	The proposed dwelling is three storeys with an additional part basement parking level. External wall height = 8.85m, does not comply	No, see Key Issues

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DCP Clause	Controls	Proposal	Compliance																								
	v) Alternative design which varies 2 storey street presentation may be accepted with regards to: <ul style="list-style-type: none"> - Topography - Site orientation - Lot configuration - Flooding - Lot dimensions Impacts on visual amenity, solar access, privacy and views of adjoining properties.	with the previous DCP version external wall height control.																									
3.3	Setbacks																										
3.3.1	Front setbacks <ul style="list-style-type: none"> i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites - Should align with setbacks of adjoining dwellings iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front. 	Council is satisfied that with the front setback as it maintains the existing building line.	Yes, complies																								
3.3.2	Side setbacks <table border="1"> <thead> <tr> <th colspan="4">Minimum side setbacks</th> </tr> <tr> <th>Existing primary frontage width</th> <th>Building heights 0m to 4.5m</th> <th>Building heights >4.5m to 7m</th> <th>Building heights >7m</th> </tr> </thead> <tbody> <tr> <td>Less than 6m</td> <td colspan="3">Merit assessment</td> </tr> <tr> <td>6m to less than 9m</td> <td>0.9m</td> <td>0.9m</td> <td>0.9m + (building height - 7m)</td> </tr> <tr> <td>9m to less than 12m</td> <td>0.9m</td> <td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td> <td>$1.5m + 2 \times (\text{building height} - 7m)$</td> </tr> <tr> <td>12m and above</td> <td>1.2m</td> <td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td> <td>$1.8m + 2 \times (\text{building height} - 7m)$</td> </tr> </tbody> </table>	Minimum side setbacks				Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m	Less than 6m	Merit assessment			6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	The proposed second floor addition fails to comply with the new side setback controls in the revised C1 version of the DCP. That being said, the modification complies with the previous DCP version controls, requiring a 1.8m side setback.	Yes, complies on merit
Minimum side setbacks																											
Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m																								
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6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)																								
9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$																								
12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$																								
3.3.3	Rear setbacks <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- 	Complies, in accordance with previous determination and deletion of ground floor rear awning.	Yes, complies																								

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p><i>*Definition: predominant rear setback is the average of adjacent dwellings on either side and is determined separately for each storey.</i></p> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings.</p>		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	The proposed second floor includes wall sections of 14.15m.	No, see Key Issues
4.4	Roof terraces and balconies		
	<p>i) Locate on stepped buildings only (not on uppermost or main roof)</p> <p>ii) Where provided, roof terraces must:</p> <ul style="list-style-type: none"> • Prevent overlooking • Size minimised • Secondary POS – no kitchens, BBQs or the like • Maintain view sharing, minimise structures and roof top elements • Be uncovered and comply with maximum height <p>iii) Locate above garages on sloping sites (where garage is on low side)</p> <p><i>*Note: Existing roof terraces in locality that do not comply with the above controls should not be utilised as precedent in seeking variations to the controls outlined in this section. This is to ensure that the objectives of low density residential development are met.</i></p>	<p>The proposed first floor terrace has been reduced, in compliance with the previous DA condition 2(g).</p> <p>The proposed second floor terrace includes a general trafficable area of 3.6m x 4.7m, which is excessive in size and results in adverse visual privacy impacts.</p>	No, see Key Issues
4.5	Roof design and features		
	<p><i>Dormers</i></p> <p>i) Dormer windows do not dominate</p> <p>ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof.</p> <p>iii) Multiple dormers consistent</p> <p>iv) Suitable for existing</p> <p><i>Clerestory windows and skylights</i></p> <p>v) Sympathetic to design of dwelling</p>	The proposed lift overrun is located behind the flat roof parapet.	Yes, complies

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DCP Clause	Controls	Proposal	Compliance
	<i>Mechanical equipment</i> vi) Contained within roof form and not visible from street and surrounding properties.		
4.6	Colours, Materials and Finishes		
	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	Council is satisfied that the proposed development complies with the colours, materials and finished in the FSPA, in accordance with the previous consent.	Yes, complies
4.7	Earthworks		
	i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vii) cut and fill for POS is terraced <i>where site has significant slope:</i> viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas.	The basement excavation has been reduced. No other earthworks proposed.	Yes, complies
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	In accordance with previous consent.	Yes, complies
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The proposed modification and full height second floor will result in additional overshadowing the north-western windows to 63 The Corso.	See Key Issues

DCP Clause	Controls	Proposal	Compliance
	<p>v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	No. 63 The Corso will continue to receive adequate solar access to the rear yard, in accordance with the DCP controls.	
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) Living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p>	<p>The submitted development has been accompanied with an amended BASIX Certificate identifying compliance with thermal and water energy.</p> <p>In addition, the location of windows and doors have been considered as acceptable, addressing the matter of natural light and ventilation.</p>	Yes, complies
5.3	Visual Privacy		
	Windows		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> windows are offset or staggered minimum 1600mm window sills Install fixed and translucent glazing up to 1600mm minimum. Install fixed privacy screens to windows. Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to</p>	The proposed second floor includes windows to the sides of the floor that will adversely impact upon the privacy of the adjoining dwellings.	No, see Key Issues

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DCP Clause	Controls	Proposal	Compliance
	front or rear or side courtyard)		
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	The proposed second floor terrace will directly overlook into windows to No. 63 The Corso.	No, see Key Issues
5.4	Acoustic Privacy		
	i) Noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	The proposed second floor terrace is large in size which will impact upon the acoustic privacy of the adjoining northern neighbour at No. 63 The Corso.	No, see Key Issues
5.5	Safety and Security		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	Council is satisfied that sufficient causal surveillance will be maintained to The Corso.	Yes, complies
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.	Council is satisfied that proposed development will not adversely impact upon view corridors within the foreshore area, from what has approved under the original DA.	Yes, complies
6	Car Parking and Access		
7	Fencing and Ancillary Development		
7.3	Side and rear fencing		
	i) 1800mm maximum height (from existing	The screen to the north-	Yes, complies

DCP Clause	Controls	Proposal	Compliance
	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.	western side of the dwelling fronting The Corso has been reduced to 1.8m in height, in accordance with condition 2(l).	

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Development Application Report No. D89/24

Subject: 242 Oberon Street, Coogee (DA/544/2024)

Executive Summary

Proposal:	Demolition of existing residential flat building, associated structures and retaining walls and construction of a 3-storey dwelling house with open deck, in-ground swimming pool, water feature (pond), ancillary and landscaping works
Ward:	East Ward
Applicant:	Mr S A Hurst
Owner:	Ms D A Kedzier & Mr S A Hurst
Cost of works:	\$3,140,000
Reason for referral:	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. DA/544/2024 for demolition of existing residential flat building, associated structures and retaining walls and construction of a 3-storey dwelling house with open deck, in-ground swimming pool, water feature (pond), ancillary and landscaping works, at No. 242 Oberon Street, Coogee, for the following reasons:

1. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development exceeds the Height of Buildings Development Standard contained in Clause 4.3 of the Randwick Local Environmental Plan 2012.
2. The proposed development does not demonstrate that the application of the maximum Height of Buildings development standard is unnecessary or unreasonable in the circumstances of the case and does not provide a suitably prepared written request to vary the development standard contained in Clause 4.3 (Height of Buildings) of the Randwick Local Environmental Plan 2012 pursuant to Clause 4.6(1) and (3).
3. The proposed development does not demonstrate that the application of the Floor Space Ratio (FSR) development standard as per Clause 4.4A (Exceptions to floor space ratio) of the Randwick Local Environmental Plan is unnecessary or unreasonable in the circumstances of the case in accordance with Clause 4.6(1) and (3). Additionally, Council's FSR calculation differs from the Applicant's and in the absence of an agreed numerical figure, Council cannot consider the justifications provided in the Applicant's Clause 4.6 Variation Request.
4. The proposal fails to achieve the relevant aims of the Randwick Local Environmental Plan 2012, in particular, those that pertain to supporting efficient use of land, achieving a high standard of design in the private and public domain that enhances the quality of life of the community, protecting/enhancing/promoting the environmental qualities of Randwick and promoting an equitable and inclusive social environment.
5. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:
 - a. The proposal is inconsistent with the objectives of the R2 – Low Density Residential land use zone.

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- b. The proposal is inconsistent with 4.3 Height of buildings 9.5m maximum building height development standard.
- c. The proposal is inconsistent with 4.4A Exceptions to floor space ratio – Zones R2 and R3 floor space ratio development standard.
- d. The proposal is inconsistent with the objectives of 6.2 Earthworks.
- e. The proposal is inconsistent with the objectives of 6.7 Foreshore scenic protection area.

6. The proposal does not comply with the provisions and controls of Randwick Comprehensive Development Control Plan 2023 in particular:

- a. Pursuant to Section 2.5, Part C1, the proposal does not comply with objectives/controls pertaining to deep soil permeable surfaces.
- b. Pursuant to Section 2.7, Part C1, the proposal does not comply with objectives/controls pertaining to private open space.
- c. Pursuant to Section 3.1, Part C1, the proposal does not comply with objectives/controls pertaining to floor space ratio.
- d. Pursuant to Section 3.2, Part C1, the proposal does not comply with objectives/controls pertaining to two-storey height and street frontage.
- e. Pursuant to Section 3.3.2, Part C1, the proposal does not comply with side setback provisions/controls.
- f. Pursuant to Section 4.1, Part C1, the proposal does not comply with the objectives/controls pertaining to building design – the proposed scheme fails to comprise a form, scale, massing and proportion that is sufficiently responsive to the site topography and constraints, site context and surrounds; and it reflects an uncharacteristic, bulky built form that is not consistent nor compatible with the prevailing streetscape character and development pattern of the immediate locality.
- g. Pursuant to Section 4.4, Part C1, the proposal does not comply with objectives/controls pertaining to roof terraces and balconies.
- h. Pursuant to Section 4.7, Part C1, the proposal does not comply with objectives/controls pertaining to earthworks.
- i. Pursuant to Section 5.1, Part C1, the proposal does not comply with objectives/controls pertaining to solar access and overshadowing.
- j. Pursuant to Section 5.3, Part C1, the proposal does not comply with objectives/controls pertaining to visual privacy.
- k. Pursuant to Section 6.1, Part C1, the proposal does not comply with objectives/controls pertaining to location of parking facilities.
- l. Pursuant to Section 7.5, Part C1, the proposal does not comply with objectives/controls pertaining to swimming pools and spas.

7. Pursuant to Section 4.15(1)(b) of the *Environmental Planning & Assessment Act 1979*, the application has not demonstrated that the development does not impact the natural or built environment or that it does not result in adverse social or economic impacts. The proposal will result in adverse and unreasonable impacts in terms of visual bulk and scale, view loss and safety and security.

8. 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 housing development and built form for the subject site.

9. Pursuant to Section 4.15(1)(d) of the *Environmental Planning & Assessment Act 1979*, the application has not demonstrated that the development is in the public interest as it will set an undesirable precedence including endorsement of a development (a new dwelling house) that involves unacceptable variations to Council controls/provisions/requirements including those

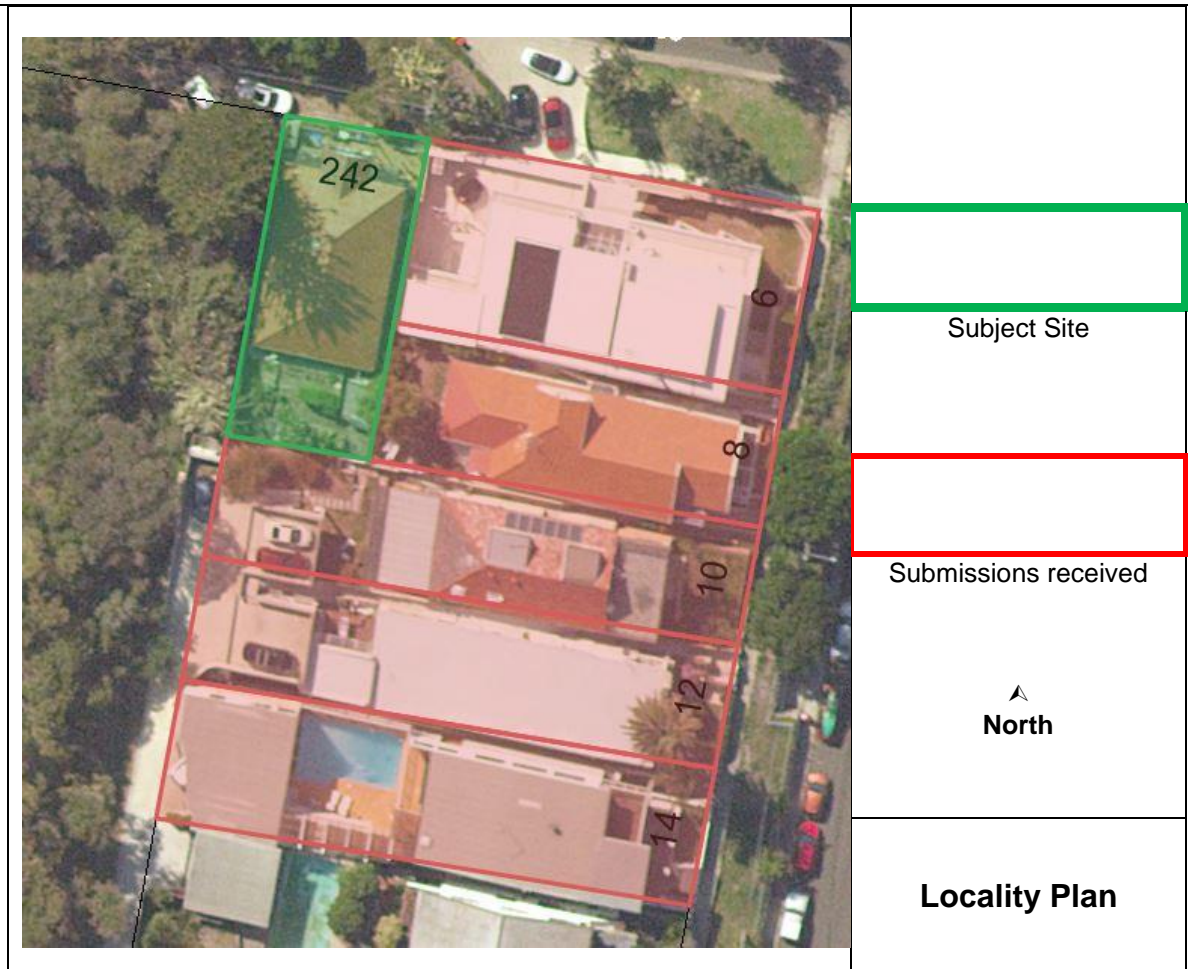
associated with floor space ratio, building height, side setbacks, visual bulk and scale, view loss, overshadowing, visual privacy, earthworks, rooftop terraces, swimming pools, parking facilities, and that will result in unreasonable/adverse impacts on neighbouring/adjoining residential properties.

Attachment/s:

Nil

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1. Executive summary

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

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

The proposal seeks development consent for demolition of existing residential flat building, associated structures and retaining walls and construction of a 3-storey dwelling house with open deck, in-ground swimming pool, water feature (pond), ancillary and landscaping works.

The key issues associated with the proposal relate to:

- Floor space ratio (FSR)
- Building height – LEP non-compliance
- Building height – DCP non-compliance
- Bulk and scale (excessive visual bulk/massing)
- Side setbacks
- Visual privacy
- Overshadowing
- View sharing
- Earthworks
- Swimming and Spa Pools
- Private Open Space & Rooftop Terraces
- Parking Access
- Landscaping

Accordingly, the proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as No.242 Oberon Street, Coogee and is legally described as Lot C in DP 958173. The site is 312.15m², is regular in shape and has a 11.645m frontage to Oberon Street to the north (refer Figure 1). The site currently contains a 2-storey residential flat building with three units (refer Figure 2) and the rear of the site contains a small outbuilding and retaining walls. It is noted that all three (3) existing residential units are owned by Ms D A Kedzier & Mr S A Hurst and as such, Strata consent is not required.

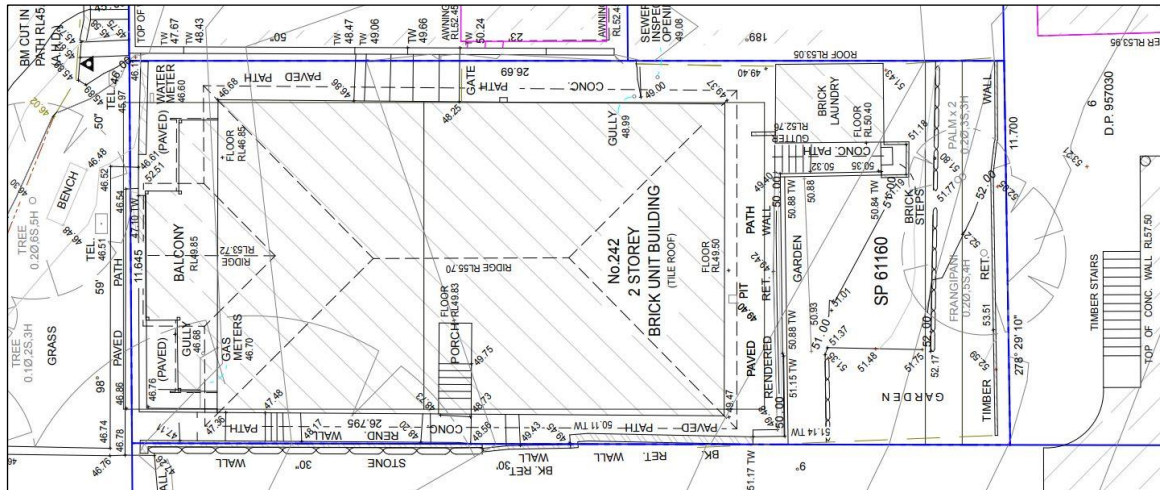


Figure 1: Site survey (Source: Norton Survey Partners)

The site is elevated approximately 3m above Oberon Street and is separated from the street by a steeply sloping area of vegetation (refer Figure 3). There is a steep slope within the site from its front boundary (RL46.11) to its rear (RL52.59), over 6 metres. The site is accessed from an extended driveway that approaches from the west as Oberon Street slopes steeply downwards from west to east. Blenheim Park is directly to the west of the site (refer Figure 4).

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Figure 2: Existing multi-unit dwelling on site.



Figure 3: Site viewed to south from Oberon Street



Figure 4: Driveway viewed to south from Oberon Street

The site is zoned R2 Low Density Residential and is across the road from an R3 Medium Density Residential zone (refer Figure 5). Surrounding development is primarily residential in nature and is characterised by a mix of detached and semi-detached dwellings and residential flat buildings. Development varies from one (1) to four (4) storeys in height. Within the R2 zone, development varies from one (1) to three (3) storeys. The site is located within a Foreshore Scenic Protection Area.



Figure 5: Land Zoning (Source: Randwick LEP 2012)

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of Council's records did not reveal any recent or relevant applications for the site.

Following an initial review of the proposal, Council sent a letter to the Applicant on 12/09/2024 detailing significant issues with the proposal. It was recommended that the application be withdrawn due to the substantial nature of the issues. On 26/09/2024 the Applicant confirmed that they did not intent on withdrawing and wished to proceed with the application in its current form.

The issues identified in the letter included:

- Floor space ratio (FSR)
- Building height – LEP non-compliance
- Building height – DCP non-compliance
- Side setbacks
- View sharing
- Earthworks
- Swimming and Spa Pools
- Private Open Space & Rooftop Terraces
- Parking Access
- Landscaping

These issues are included within the Key Issues and Appendix 1: Referrals sections of this report.

4. Proposal

The proposal seeks development consent for the demolition of an existing residential flat building, associated structures and retaining walls and construction of a 4-storey dwelling house with open deck, 1st floor swimming pool, water feature (pond), ancillary and landscaping works. Specifically, the proposal includes (refer Figures 6-18):

- Demolition of existing two (2) storey residential flat building with three (3) units.
- Lower ground floor:
 - Garage with two (2) car spaces;
 - Storage areas;
 - Plant and building services;
 - Wine storage and dry goods room;
 - 50,000 litre water storage;
 - External garbage area;
 - Outdoor shower;
 - Lift and stair.
- Ground floor:
 - Entry foyer with two (2) storey climbing wall on glass façade;
 - Music room;
 - Two (2) balconies;
 - Pool equipment enclosure;
 - Two (2) reptile enclosures;
 - Two (2) bedrooms;
 - Bathroom;
 - Laundry;
 - Under cover terrace to rear;
 - Lift and stair.
- 1st floor:
 - Master bedroom with walk-in-wardrobe, ensuite and balcony;
 - Two (2) bedrooms;
 - Bathroom;
 - Aquarium;

- Rear entry;
- Lift and stair.
- 2nd floor:
 - Open plan living/dining/kitchen;
 - 6m x 6m private open space deck;
 - Swimming pool;
 - Rear entry;
 - Water closet.
- Landscaping and external works:
 - New stair in western side setback area to entry;
 - Stepped planters in eastern side setback area;
 - New fence and masonry wall on western boundary;
 - Green wall on southern boundary;
 - Retaining walls to rear yard;
 - Elevated pond in rear yard above undercover terrace;
 - External mesh steel stair to rear from level 1 to level 2;
 - Elevated walkway;
 - Three (3) large canopy trees to rear.

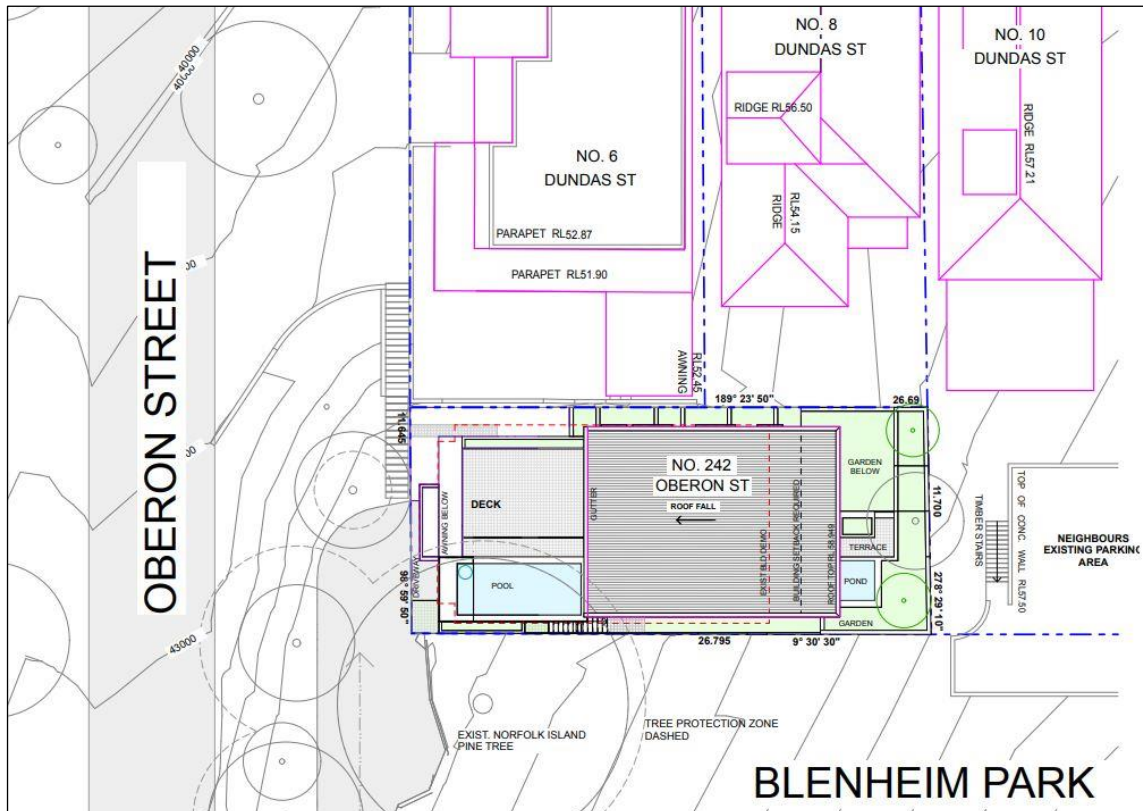


Figure 6: Site plan (Burrow Architecture)

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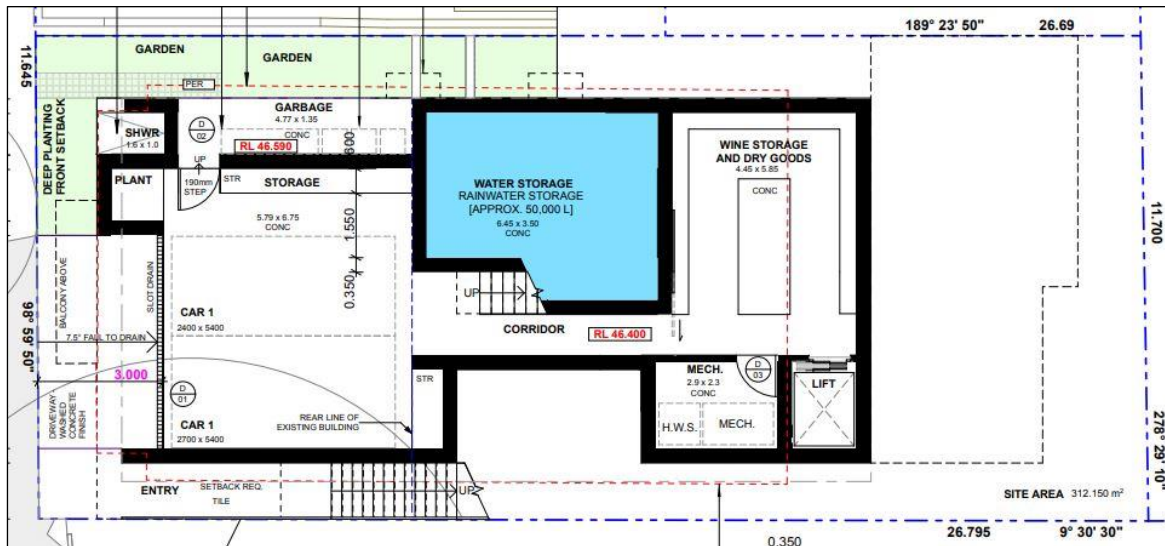


Figure 7: Lower ground floor plan (Burrow Architecture)

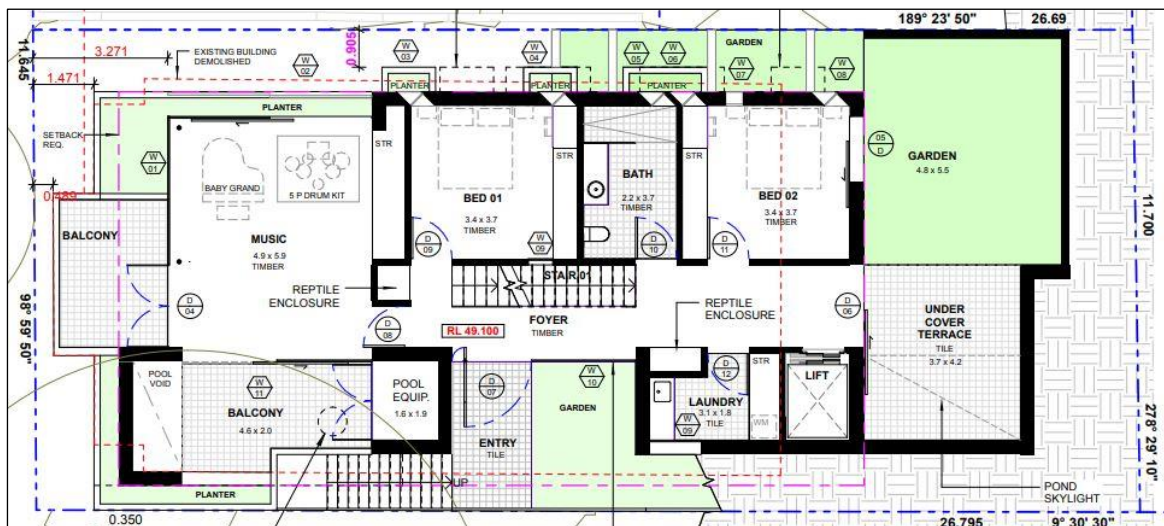


Figure 8: Ground floor plan (Burrow Architecture)

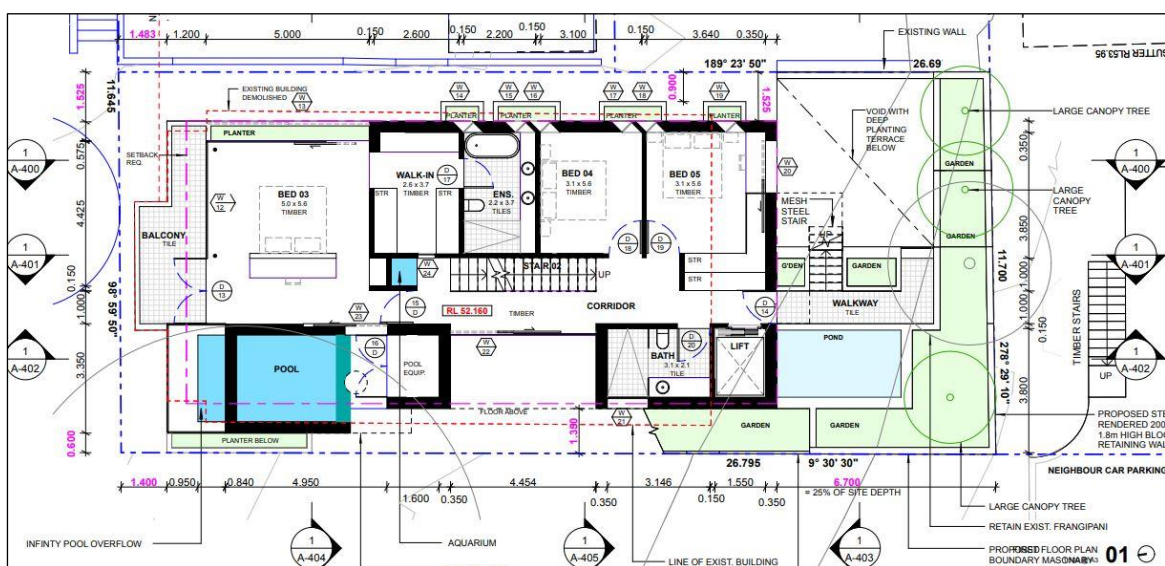


Figure 9: 1st floor plan (Burrow Architecture)

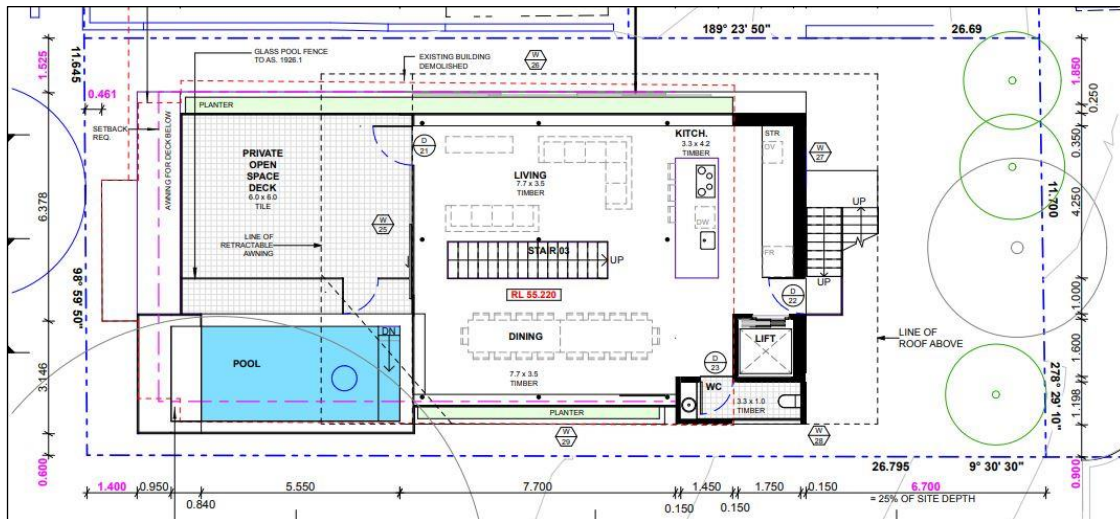


Figure 10: 2nd floor plan (Burrow Architecture)

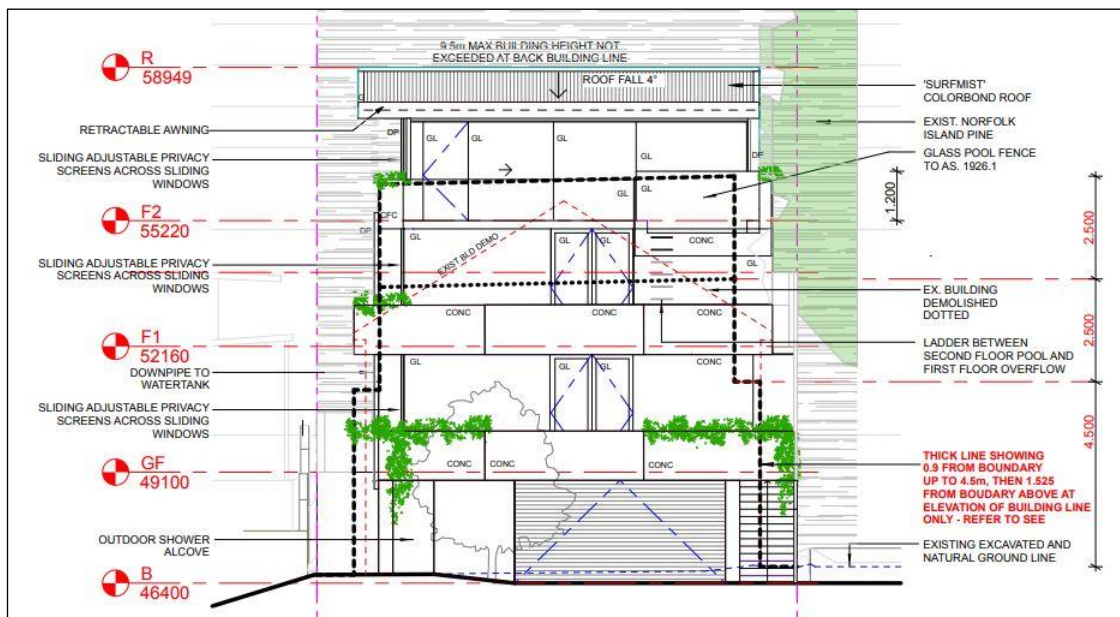


Figure 11: Northern elevation (Burrow Architecture)

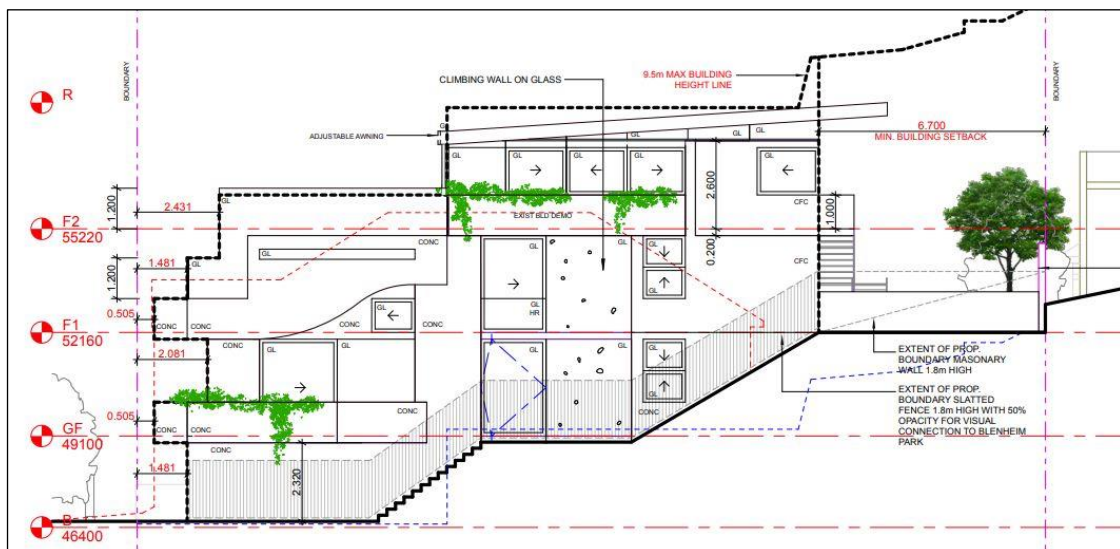


Figure 12: Western elevation (Burrow Architecture)

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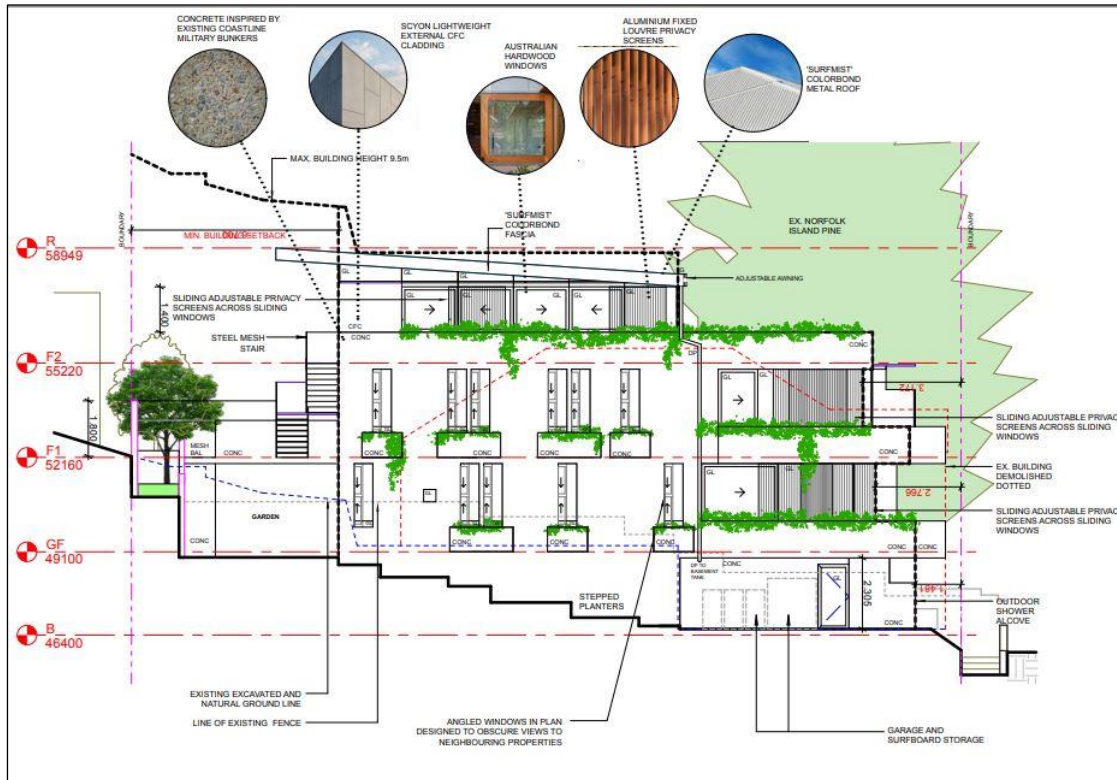


Figure 13: Eastern elevation (Burrow Architecture)

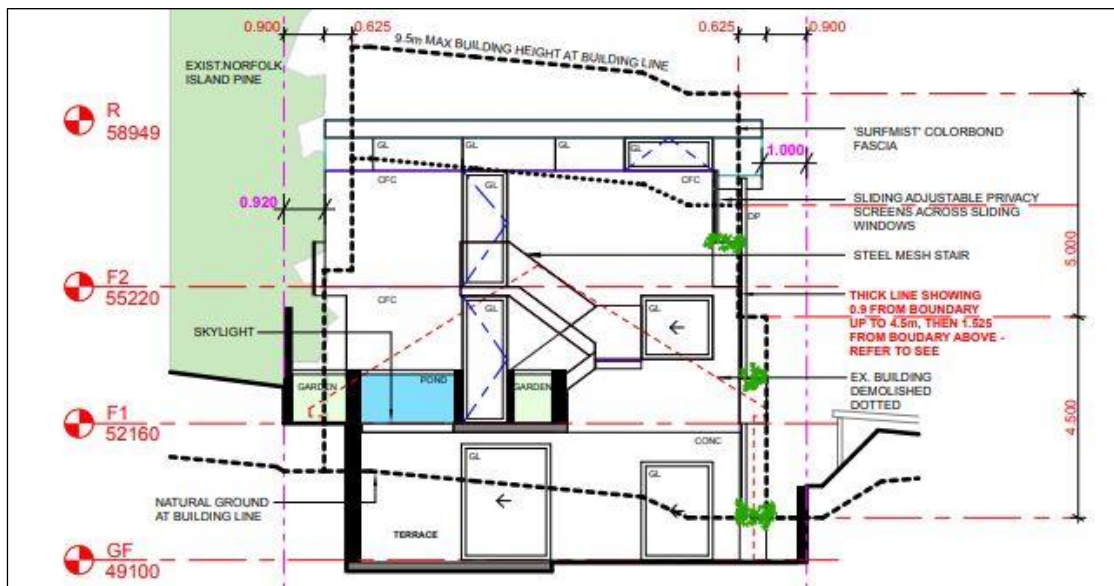


Figure 14: Southern elevation (Burrow Architecture)

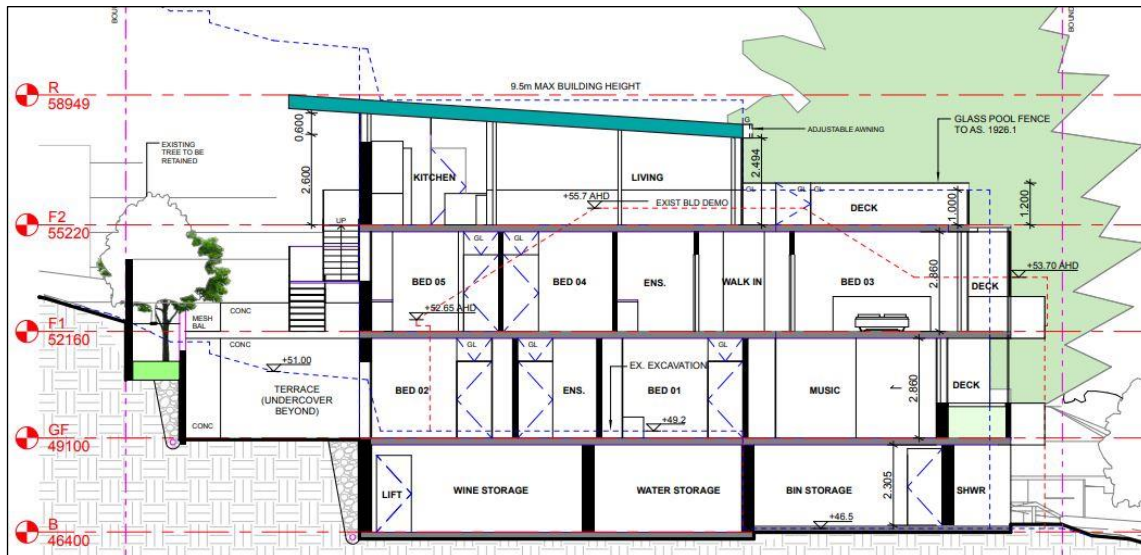


Figure 15: Long section (Burrow Architecture)

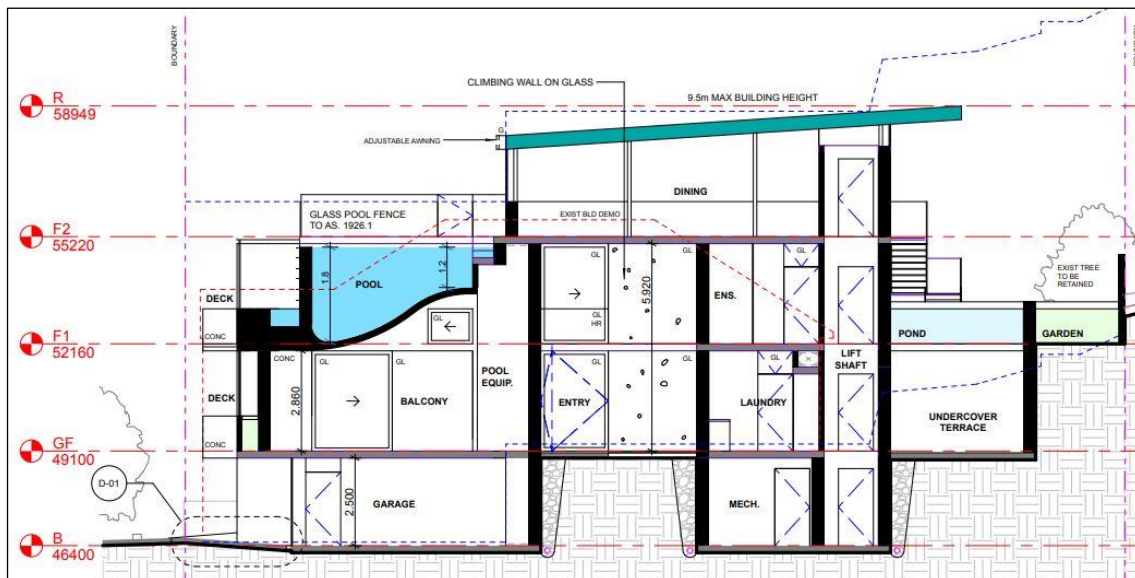


Figure 16: Long section (Burrow Architecture)

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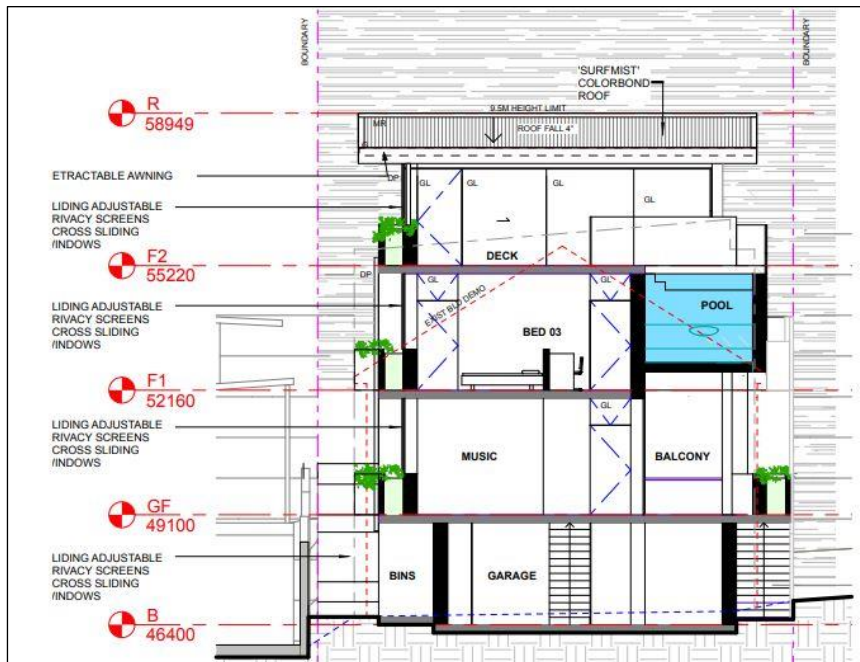


Figure 17: Short section (Burrow Architecture)

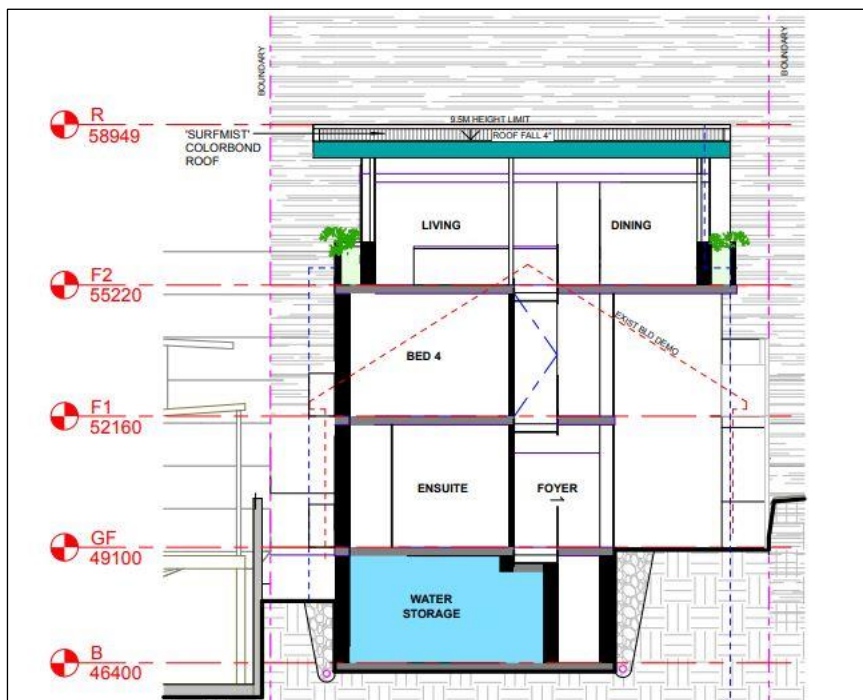


Figure 18: Short section (Burrow Architecture)

5. Notification

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

- No.6 Dundas Street, COOGEE NSW 2034

Issue	Comment
<p><u>Visual Bulk & Scale</u></p> <p>The submission asserts that the proposal will negatively impact their property due to excessive visual bulk and scale. This is a consequence of inadequate side setbacks, and exceeding both FSR and building height development standards.</p> <p>No.6 Dundas Street shares a common boundary with No.242 Oberon Street and it is asserted the proposal will significantly impact the use of internal spaces and private open space.</p>	<p>The proposal is of excessive visual bulk and scale. A 1.01:1 FSR is proposed, a 35% variation from the LEP development standard. The Clause 4.6 Variation Statement submitted does not provide adequate justification to vary the development standard. Refer to <i>Exception to the Floor Space Ratio (FSR) development standard (CI 4.4A)</i> section of this report.</p> <p>In addition to FSR, the building has a non-compliant building height of 11.45m for a small portion of the uppermost roof. The top of the balustrade to the 1st floor terrace has a non-compliant building height of 9.76m - refer to . <i>Exception to the Building Height development standard (CI 4.3)</i> section of this report</p> <p>The four (4) storey built form is non-compliant with the objectives of Section 3.2 of the DCP for two (2) storey street frontage. Refer to <i>Building Height</i> in Key Issues section of this report.</p> <p>The side setbacks are also non-compliant, refer to <i>Side setbacks</i> in Key Issues section of this report.</p> <p>The proposal has significant non-compliances with both LEP and DCP building envelope controls and the excessive visual bulk and scale will negatively impact on neighbouring properties.</p>
<p><u>Building Height</u></p> <p>The submission states that they believe building height is non-compliant with the LEP maximum building height of 9.5m. They state that more survey information is required to demonstrate compliance. It is stated that maximum building height needs to be measured from the slab level of the existing building, which will cause the proposal to exceed the development standard,</p>	<p>As above, refer to <i>Exception to the Building Height development standard (CI 4.3)</i> section of this report.</p>
<p><u>FSR</u></p> <p>The submission objects to the exceedance of the FSR control due to impacts of visual bulk, overshadowing and visual privacy impacts. It is stated that GFA has not been accurately measured due to areas within the lower ground floor not meeting the definition of a basement. Additional survey information is requested so that more accurate calculations can be made.</p>	<p>As above, the Clause 4.6 Variation Statement submitted does not provide adequate justification to vary the development standard. Refer to <i>Exception to the Floor Space Ratio (FSR) development standard (CI 4.4A)</i> section of this report.</p>

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Issue	Comment
<p><u>Visual Privacy</u></p> <p>Objection is made due to significant visual impacts caused by the windows and private open space on the 1st and 2nd storey of the eastern elevation.</p>	<p>The objection is valid, the private open space and windows on the 2nd level will overlook private open space and contravene building height DCP & LEP controls as well as side setback and roof terrace DCP controls. Refer to <i>Visual Privacy</i> in Key Issues section of this report.</p>
<p><u>Overshadowing</u></p> <p>Comment is made that the shadow diagrams are difficult to understand with no distinction between existing and proposed shadows. Detailed elevation shadow diagrams are requested so the full impact can be understood.</p>	<p>Shadow diagrams do not distinguish between existing and proposed shadows and lack clarity.</p> <p>Assessed against Section 5.1 of the DCP, the proposal is non-compliant against control (ii) and has not sufficiently demonstrated compliance against controls (iii) and (iv). Refer to <i>Overshadowing</i> in Key Issues section of this report.</p>

- No.1/8 & No.3/8 Dundas Street, COOGEE NSW 2034

Issue	Comment
<p><u>Excavation</u></p> <p>Objection is raised to the deep excavation on sand and how this will destabilise existing building as was the case when No.6 Dundas Street was built.</p>	<p>The proposed development involves substantial earthworks (excavation) that are not compliant with relevant sections of the LEP and DCP. Refer to <i>Earthworks</i> in Key Issues section of this report.</p>

- No.2/8 Dundas Street, COOGEE NSW 2034

Issue	Comment
<p><u>Overshadowing</u></p> <p>Concern is raised about overshadowing impacts.</p>	<p>As commented above, shadow diagrams do not distinguish between existing and proposed shadows and lack clarity.</p> <p>Assessed against Section 5.1 of the DCP, the proposal is non-compliant against control (ii) and has not sufficiently demonstrated compliance against controls (iii) and (iv). Refer to <i>Overshadowing</i> in Key Issues section of this report.</p>
<p><u>Excavation</u></p> <p>Objection is raised to the deep excavation on sand and how this will destabilise existing building as was the case when No.6 Dundas Street was built.</p>	<p>As commented above, the proposed development involves substantial earthworks (excavation) that are not compliant with relevant sections of the LEP and DCP. Refer to <i>Earthworks</i> in Key Issues section of this report.</p>

- No.10 Dundas Street, COOGEE NSW 2034

Issue	Comment
<p><u>View Sharing</u></p> <p>The submission raises concern that due to loss of beach and ocean views; the value of the property will be greatly reduced. The view loss will occur from the rear yard and the elevated parking area. View sharing has not been considered by the proposal.</p>	<p>The proposal will result in view loss to No.10, No.12 & No.14 Dundas Street. It has not been designed to minimise view loss and view sharing has not been considered. Refer to <i>View Sharing</i> in Key Issues section of this report.</p> <p>A View Loss Assessment has not been provided to demonstrate how the design is justified against the planning principles established under <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140.</p>
<p><u>Visual Bulk & Scale</u></p> <p>Objection is raised about the four (4) storey proposal having excessive visual bulk and that it would be imposing over the submitter's rear yard. Other dwellings in the locality are two (2) to three (3) stories in height.</p>	<p>As above, the proposed four (4) storey design is non-compliant with the objectives of Section 3.2 of the DCP.</p>
<p><u>Roof Design</u></p> <p>The submission objects to the roof design that '<i>slopes upward towards us like a ski slope</i>'.</p>	<p>There is no issue with a sloped roof design. The roof forms part of the non-compliant visual bulk and view loss.</p>
<p><u>Overshadowing</u></p> <p>Objection is made regarding excessive overshadowing. It is asserted that two thirds (2/3) of their backyard will be in shadow all day.</p>	<p>Shadow diagrams demonstrate acceptable solar access for No.10 Dundas Street. This has not been demonstrated for No.6 & No.8 Dundas Street – refer to <i>Overshadowing</i> in Key Issues section of this report.</p>
<p><u>Visual Privacy</u></p> <p>The submitter's main bedroom currently has total privacy, concern is raised that the top two (2) stories of the proposal will have unobstructed views into the bedroom.</p>	<p>The application has not demonstrated that the 2nd floor living room has acceptable visual privacy impacts in relation to looking into habitable rooms of neighbouring properties. Refer to <i>Visual Privacy</i> in Key Issues Section of this report.</p>
<p><u>FSR</u></p> <p>The submission objects to the exemption request for the FSR control due to the impacts on their property.</p>	<p>As discussed above, the Clause 4.6 Variation Statement submitted does not provide adequate justification to vary the development standard. Refer to <i>Exception to the Floor Space Ratio (FSR) development standard (CI 4.4A)</i> section of this report.</p>
<p><u>Faults in architectural drawings</u></p> <p>The submission lists several deficiencies in the architectural drawings. This includes missing labels and measurements as well as asserting that the building height should be taken from the basement level.</p>	<p>The architectural drawings were sufficient to make an assessment.</p> <p>The building height is measured from the existing ground level, refer to <i>Exception to the Building Height development standard (CI 4.3)</i> section of this report.</p>

- No.12 Dundas Street, COOGEE NSW 2034

Issue	Comment
<p><u>View Sharing</u></p> <p>It is asserted that the proposal will cause catastrophic view loss of Coogee Beach from the kitchen, living area outdoor entertainment space and car parking area of the submitter's property. In addition, city views from the bedroom are claimed to be lost. Objection is made to the comment in the SEE that there will be no view loss impacts.</p> <p>There is not sufficient information on the view loss impacts. There is also not sufficient information on the trees to be planted and how these may also impact views over time.</p>	<p>As commented above, the proposal will result in view loss to No.10, No.12 & No.14 Dundas Street. It has not been designed to minimise view loss and view sharing has not been considered. Refer to <i>View Sharing</i> in Key Issues section of this report.</p> <p>A View Loss Assessment has not been provided to demonstrate how the design is justified against the planning principles established under <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140.</p>
<p><u>FSR</u></p> <p>The submission objects to the exemption request for the FSR control due to the impacts on their property. In addition, the submission notes that their own DA, DA/365/2021, was denied on view loss grounds when they believe the impacts from this DA were less than what is being proposed for No.242 Oberon Street. Tenacity is cited:</p> <p><i>Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.</i></p> <p>The submission requests that a consistent approach be adopted.</p>	<p>As discussed above, the Clause 4.6 Variation Statement submitted does not provide adequate justification to vary the development standard. Refer to <i>Exception to the Floor Space Ratio (FSR) development standard (Cl 4.4A)</i> section of this report.</p>
<p><u>Visual Bulk & Scale</u></p> <p>Objection is made to the height, bulk and scale that is not in keeping with other detached dwellings in the locality. The claim that the proposal is for a three (3) storey building is refuted, and that it is actually a four (4) storey dwelling.</p>	<p>As discussed above. The building is non-compliant with several building envelope including building height, FSR and setbacks. It is non-compliant with Section 4.3 and 4.4A of the LEP as well as Section 3.1, 3.2 and 3.3 of the DCP.</p>
<p><u>Visual Privacy</u></p> <p>Concern is raised that the proposed stair at the rear of the proposal as well as ground floor windows on the southern elevation would have direct views into the living area without any screening,</p>	<p>There would be limited visual privacy impacts of the proposal to No.12 Dundas Street. The ground floor windows are not high enough to view No.12 Dundas over the landscaping in the rear yard. There may be some visual privacy impact from the 2nd floor external stair. This is not as significant as the visual privacy impacts of the proposal on No.6 and No.8 Dundas Street in particular.</p>

Issue	Comment
<p><u>Materiality</u></p> <p>It is asserted that the proposed materials will look unsightly over time as it is not built using suitable marine environment materials for coastal areas. The southern elevation comprises primarily sandblasted concrete that has little aesthetic relief. A formidable shaded greying form will replace the views of the beach.</p>	<p>Schedule of materials and finishes provided.</p> <p>Combination of materials and finishes that are suitable, with the exception of Colorbond Surfsmist which would be conditioned to be non-reflective matte if approval was recommended.</p> <p>Proposal has excessive visual bulk as demonstrated within this report.</p>

- No.14 Dundas Street, COOGEE NSW 2034

Issue	Comment
<p><u>Four-storey presentation</u></p> <p>Comment is made that the proposal is described as a three (3) storey building, however, it is in fact a four (4) storey building. It is stated that the SEE asserts that there are other 3-4 storey buildings in the area but these are residential apartment buildings and not a residential house.</p>	<p>The four-storey design is non-compliant against the objectives of section 3.2 of the DCP to ensure low density residential development maintains a two-storey height and street frontage. Refer to <i>Building Height</i> in Key Issues section of this report.</p>
<p><u>Visual Bulk & Height</u></p> <p>Objection is made to the visual bulk not in keeping with the surrounding residential dwellings. While the SEE mentions that the upper level will be recessed from the street it will nevertheless be highly visible from the adjoining Dundas Street properties.</p>	<p>As discussed above. The building is non-compliant with several building envelope including building height, FSR and setbacks. It is non-compliant with Section 4.3 and 4.4A of the LEP as well as Section 3.1, 3.2 and 3.3 of the DCP.</p>
<p><u>View Sharing</u></p> <p>It is asserted the proposal will result in significant view loss of Coogee Beach from the rear yard and gym of the submitter's property.</p>	<p>As commented above, the proposal will result in view loss to No.10, No.12 & No.14 Dundas Street. It has not been designed to minimise view loss and view sharing has not been considered. Refer to <i>View Sharing</i> in Key Issues section of this report.</p> <p>A View Loss Assessment has not been provided to demonstrate how the design is justified against the planning principles established under <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140.</p>
<p><u>Visual Privacy</u></p> <p>Concern is raised regarding visual privacy impact on the 1st floor living, kitchen and front deck of the submitter's property.</p>	<p>There may be some visual privacy impact from the 2nd floor external stair. This is not as significant as the visual privacy impacts of the proposal on No.6 and No.8 Dundas Street in particular.</p>

Issue	Comment
<p><u>Impact on public park</u></p> <p>Objection is made to damage and felling of trees in a public park. It is stated that native trees on council public lands add value to the public amenity and should be protected. The trees in this foreshore area are important to birds, including those on council owned land.</p>	<p>Council's Landscaping Development Officer identified the need to retain the existing sandstone wall along the western boundary to protect the public park. Refer to <i>Appendix 1: Referrals – Landscaping</i>.</p>
<p><u>FSR</u></p> <p>Comment is made that there are no sufficient planning grounds to grant an exemption to the FSR development standard,</p>	<p>As discussed above, the Clause 4.6 Variation Statement submitted does not provide adequate justification to vary the development standard. Refer to <i>Exception to the Floor Space Ratio (FSR) development standard (Cl 4.4A)</i> section of this report.</p>

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

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.

Council's Landscape Development Officer reviewed the proposal and identified an inconsistency was identified as the Arborist Report notes the small Frangipani (referenced as T9) at the rear of this development site as being removed whilst the Landscape Plans show it being retained. If this were removed this would be 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 would still achieve the relevant objectives and provisions under Chapter 2.

If approval were recommended a condition would be imposed to retain the existing sandstone wall/fence along the western boundary which separates the site and the reserve, adjacent to an existing tree (referenced as T7). This would need to remain in-situ as a form of physical protection/barrier as part of the works, refer to Appendix 1 – Internal referral comments.

6.3. SEPP (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 construction of a new 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.

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

The proposal is not consistent with the specific objectives of the zone in that the proposed activity and built form fails to recognise the desirable elements of the existing streetscape and built form; and fails to 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)	0.75:1	1.01:1	No
Cl 4.3: Building height (max)	9.5m	11.45m	No

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 6.7 Foreshore scenic protection area

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

6.7 Foreshore scenic protection area

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

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

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

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

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

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

Planning Officer Comment:

The proposed detached dwelling house will not detract from significant public views of the coast, although it will impact private views as discussed within Key Issues *View Sharing* section of this report. The excessive visual bulk and scale will be apparent when viewed from Oberon Street and is not appropriate for the location. The proposal therefore fails to meet objective (1)(d).

See ‘Section B10: Foreshore Scenic Protection Area’ in the compliance table below for the assessment of the colours, materials and finishes submitted with the application.

The proposed works are considered non-compliant with Clause 6.7 of the LEP as the proposed bulk and scale is inappropriate for the location.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.75:1 (234.1m ²)	1.01:1 (315.498m ²)	82.7 m ²	35%
Cl 4.3: Building height (max)	9.5m	11.45m	1.95 m	20.5%

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 4.4A)

The Applicant's written justification for the departure from the FSR standard is contained in Appendix 2. The Clause 4.6 states that the proposed FSR is 0.96:1, however Council has calculated an FSR of 1.01 from a GFA of 315.498m². The discrepancy between the GFA and FSR calculated by the Applicant and Council is shown in the table below and Figures 19-26.

Level	Applicant GFA	Council GFA	Reason
Basement	7.905m ²	7.755m ²	Discrepancy in lift area
Ground	102.629m ²	109.586m ²	Applicant did not count lift area

1 st Floor	103.819m ²	110.933m ²	Applicant did not count lift area
2 nd Floor	84.699m ²	87.224m ²	Applicant did not count lift area – drawings appear to erroneously show lift becoming smaller on this level
Total GFA	299.052m ²	315.498 m ²	
FSR	0.96:1	1.01:1	

Applicant GFA Calculations (inclusions in yellow):

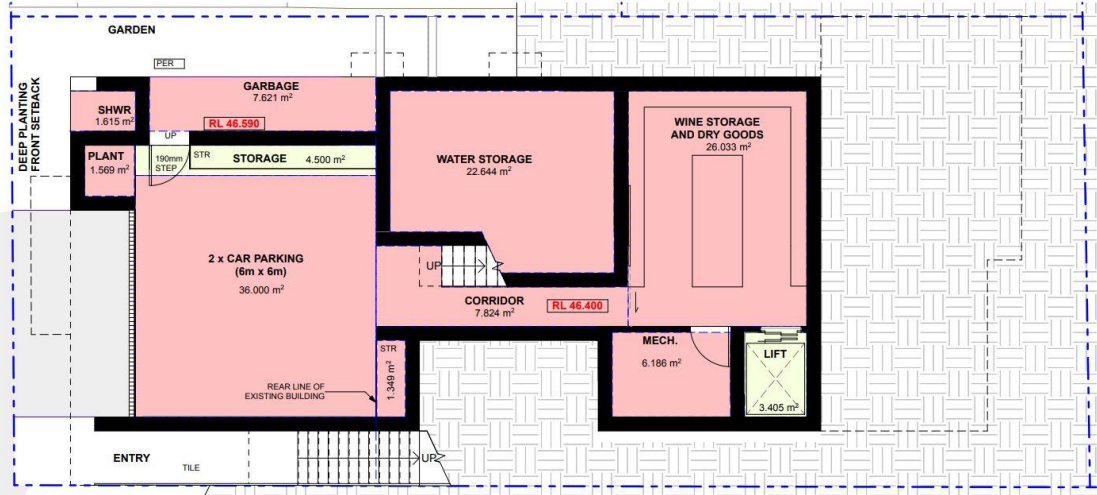


Figure 19: Basement GFA (Source: Burrow Architecture)

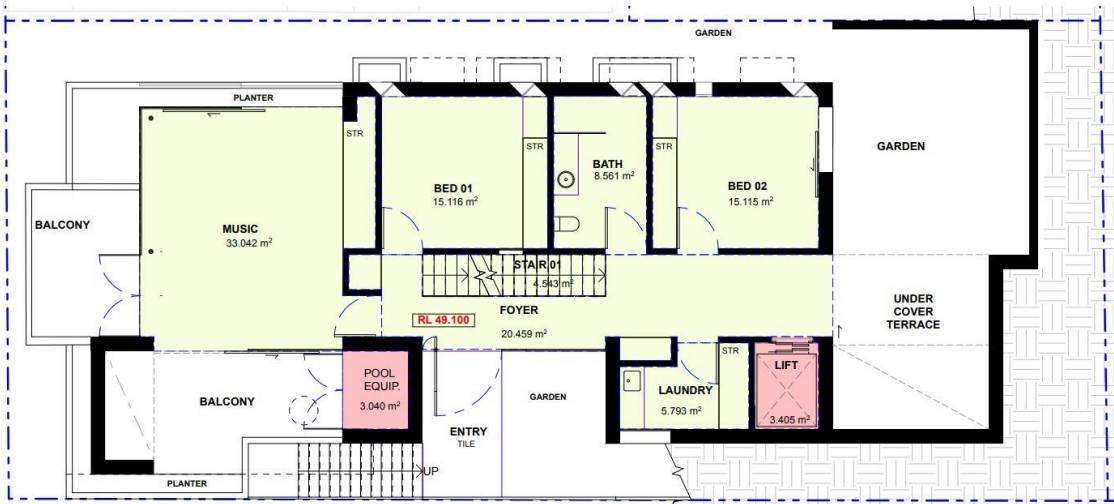


Figure 20: Ground level GFA (Source: Burrow Architecture)

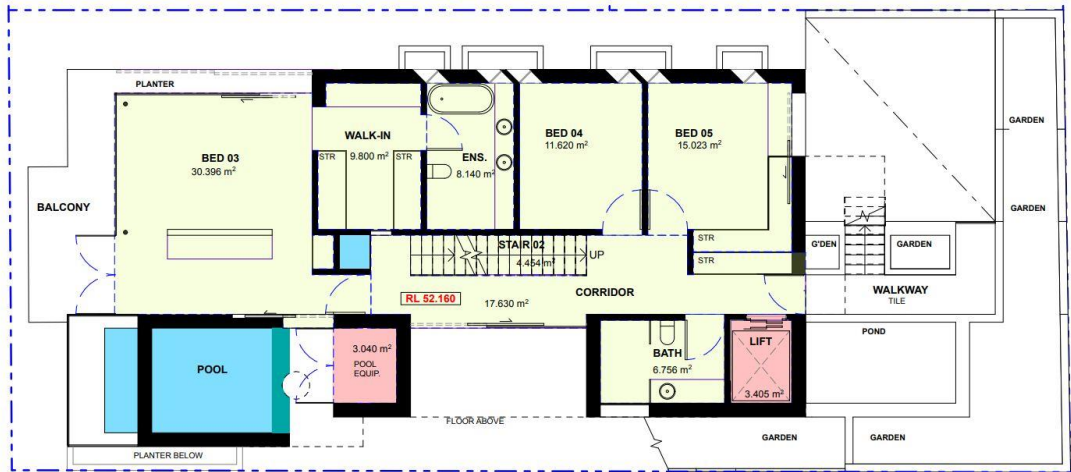


Figure 21: 1st level GFA (Source: Burrow Architecture)

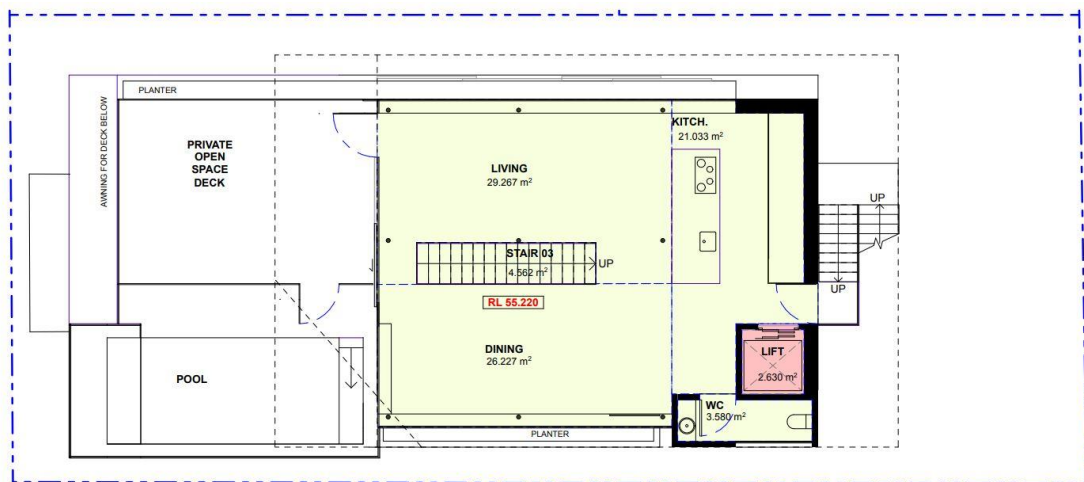


Figure 22: 2nd level GFA (Source: Burrow Architecture)

Council GFA Calculations (inclusions in blue):

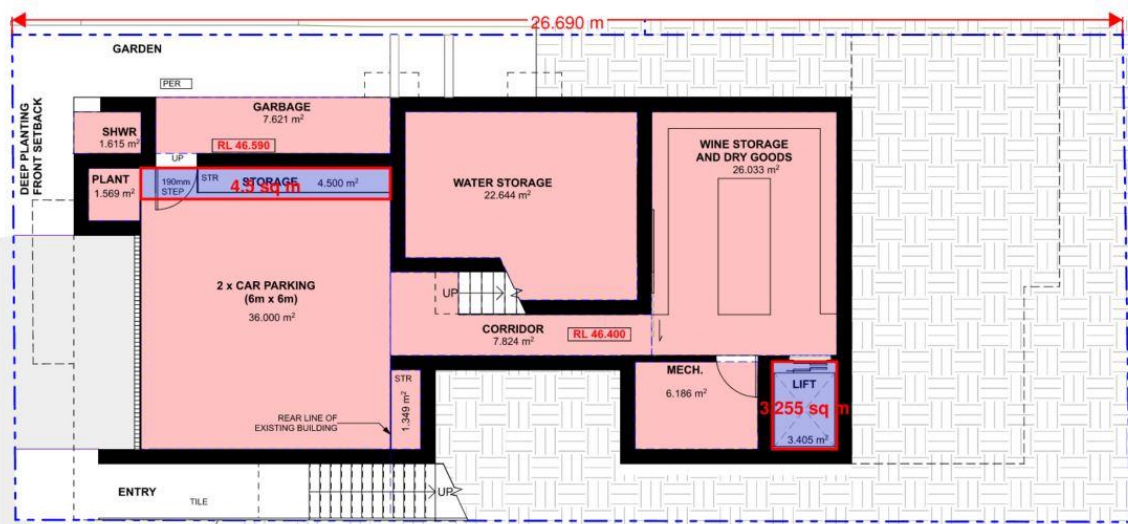


Figure 23: Basement GFA (Source: Burrow Architecture)

D89/24

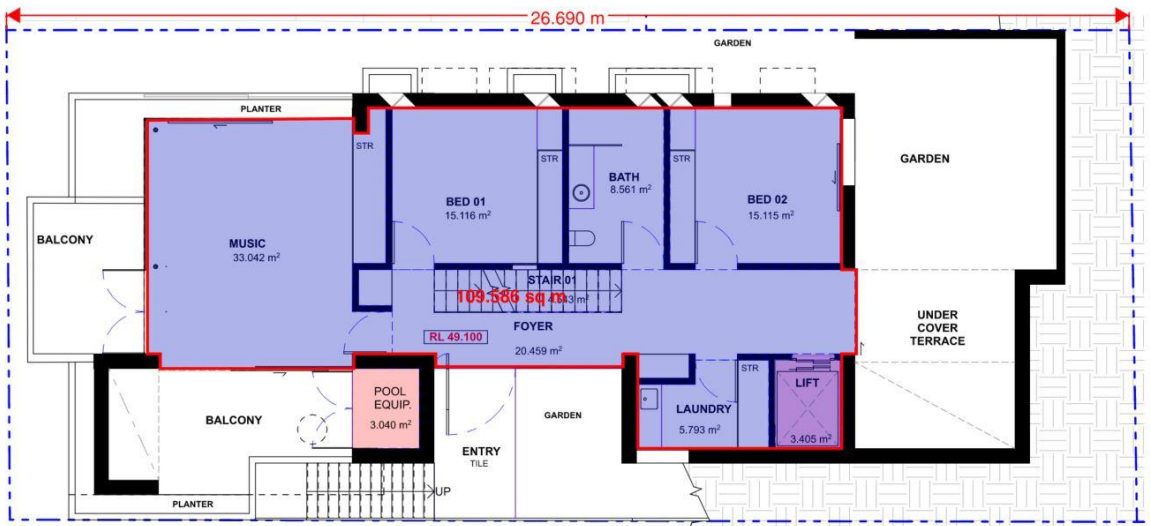


Figure 24: Ground level GFA (Source: Burrow Architecture)

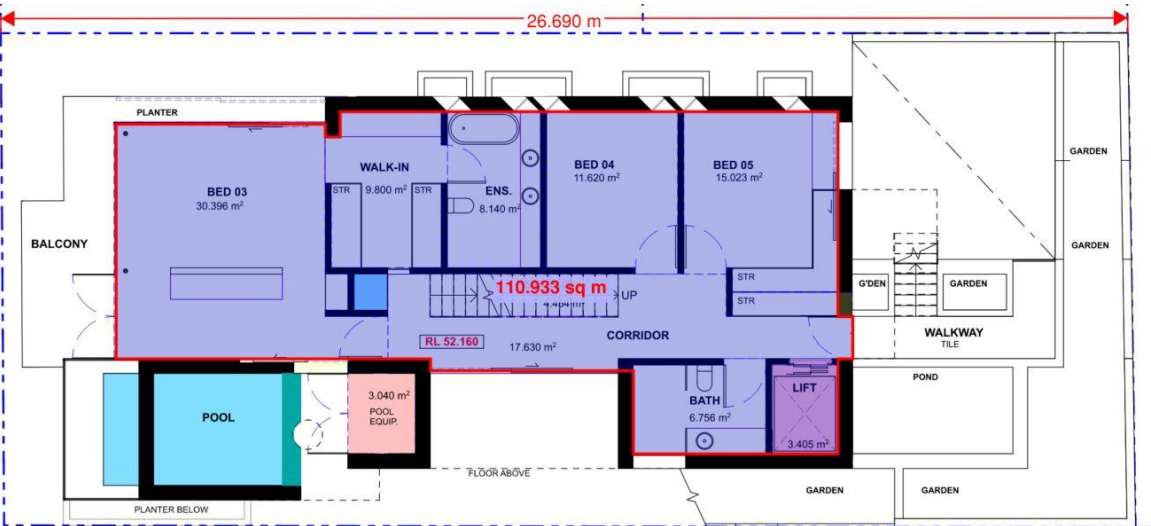


Figure 25: 1st level GFA (Source: Burrow Architecture)

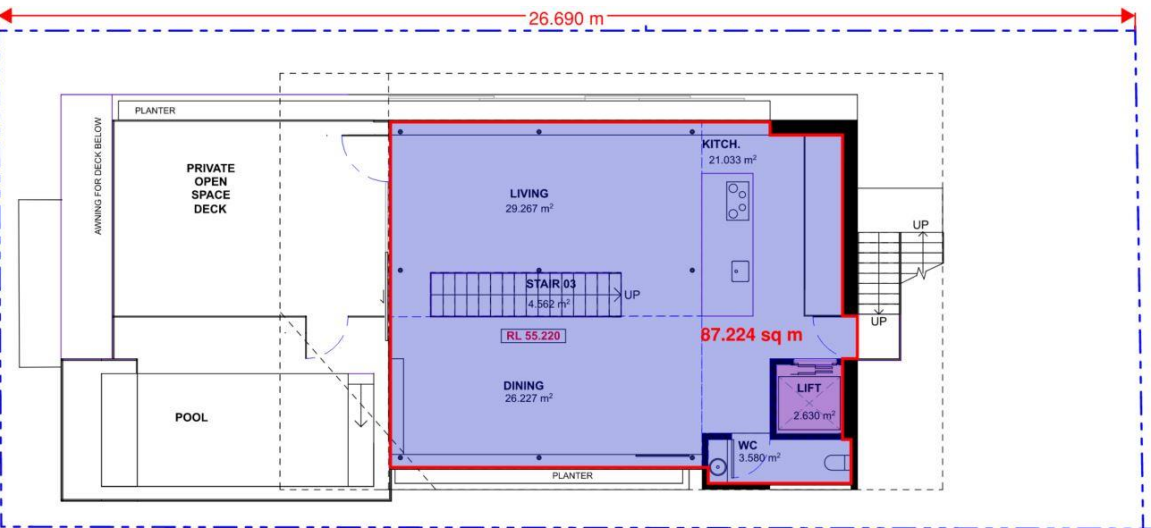


Figure 26: 2nd level GFA (Source: Burrow Architecture)

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 proposed built form, including the FSR variation, will be compatible with the desired future character as the built form will not appear out of context with the height, bulk, and scale of adjoining properties to the east. As viewed from Oberon Street, the built form to the east at No.6 Dundas Street will continue to have a greater visual bulk, noting its extended frontage of built form to the Oberon Street over three levels, with minimal landscaping in the foreground. In contrast, the proposed built form is narrower and substantially screened by vegetation, whilst the built form is also recessed at the upper level.

It is argued that there are also existing residential flat buildings opposite the site in the R3 Medium Density residential zone and likely future residential flat building at the under-developed site opposite. This will result in a continuous form of 3–4 storey residential flat buildings opposite the site. When considered in conjunction with the unscreened 3-storey dwelling to the east and the 3-4-storey flat buildings to the north, the proposed built form and associated FSR variation will not generate any inconsistency with the surrounding context of the built form. Compliance with the height standard confirms that the built form and FSR variation will be compatible with the desired future character.

Assessing officer's comment: There are no other 4-storey dwellings within the R2 Low Density Residential zone, including No.6 Dundas Street. The neighbouring dwellings are either two-storey or part two-storey, part three-storey buildings. The argument that it is in keeping with 3-4 storey residential flat buildings to the north is not accepted. These are a different building type and in a different land use zone. The steep hill that falls to the north enables homes in the R2 zone to maintain views to Coogee Beach.

(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 built form is highly articulated on all facades, fragmented and stepped. The combination of the articulation aspects described above breaks down the proposal's visual bulk while also allowing for abundant sunlight, daylight, and ventilation, which reduces reliance on artificial heating, lighting, and cooling.

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

Assessing officer's comment: It is accepted that the building is well articulated and meets BASIX requirements. It is not accepted that the articulation sufficiently breaks down the proposal's visual bulk. Compliance with overshadowing DCP controls has not been demonstrated – refer to *Overshadowing* in Key Issues of this report below.

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

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

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that the additional FSR is not responsible for any adverse or unreasonable amenity impacts to neighbouring properties, noting that only two properties to the east and one property to the south adjoin the subject site. It is asserted that these properties will continue to receive more than the required solar access under the DCP, while views will be retained. Privacy will also be improved compared with the existing interrelationship.

Assessing officer's comment: It is demonstrated within this report that the additional FSR is responsible for significant and unreasonable impacts to neighbouring properties. The proposal does not demonstrate that the neighbouring properties receive solar access required under the DCP. No detailed view loss assessment was provided to demonstrate that views will be maintained when it is evident that there will be some view loss. There are unacceptable privacy impacts associated with the 2nd floor private open space deck and living spaces. Furthermore, the proposal has excessive scale and visual bulk both to the street and neighbouring dwellings. Refer to Key Issues of this report for detail on amenity impacts.

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

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

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

- *The site is considered to have particular circumstances that contribute to the sufficient environmental planning grounds to support the FSR variation. These include the recessed nature of the site from the Oberon Street frontage combined with dense established vegetation along the street front. The discreet roadway access from the western also combines a limited perception of the subject property and the associated built form from the public domain. The combination of these factors results in the majority of the built form (and the associated FSR variation) being screened or out of view. The built form thereby presents more modestly than the other built forms to the east, which are significantly more prominent and appear to have greater bulk and scale than the proposed dwelling. The presence of 3-4 storey flat buildings in the R3 Medium Density residential zone immediately opposite also contributes to a greater extent of built form in the context of the subject property. The dense screen of vegetation to the west within the steeply sloping section of Blenheim Park also effectively screens the perception of the built form from the west and southwest. Such circumstances are considered to be atypical when compared with the consideration of bulk and scale for other properties in the vicinity of the site. Such distinct circumstances are considered to constitute sufficient environmental planning grounds in relation to the perception of FSR (including the extent of variation) on the subject site.*

Assessing officer's comment: While the site is screened by vegetation to Oberon Street, this is not sufficient grounds to justify a departure from the development standard. The excessive visual bulk will still be experienced from the street with various amenity impacts on neighbouring dwellings at No.6-No.14 Dundas Street. As above, the argument that it is in keeping with 3-4 storey residential flat buildings to the north is not accepted.

- *The steeply sloping site, combined with the above factors, is also considered sufficient environmental planning grounds. A significant proportion of the built form is excavated and or sited below ground levels of the sites to the east and south of the site. This results in the visible components of the built form being compliant with or below the permitted FSR.*

Assessing officer's comment: The excessive excavation is not a reason to justify a departure from the development standard, it is a further reason for refusal. The proposed earthworks (excavation)

that are not compliant with relevant Clause 6.2 of the LEP or Section 4.7 of the DCP. Refer to *Earthworks* in Key Issues section of this report for further detail. The visible components of the building are still of excessive visual bulk and scale causing various amenity impacts on neighbouring dwellings, see Key Issues.

- *The absence of view and shadow privacy impacts are also considered to constitute sufficient environmental planning grounds in this coastal location. The additional floor space within the proposed dwelling is able to be accommodated on the site without generating any adverse or unreasonable view impacts. The dense screen of vegetation effectively screens the perception of the built form from the west, thereby avoiding any loss of coastal view from any east-facing property to the west of the site. The properties to the east at 8-10 Dundas Street will continue to enjoy uninterrupted coastal views to the east, northeast and east, notwithstanding the FSR variation on the subject site.*

Assessing officer's comment: The proposal will have view impacts to No.10, No.12 and No.14 Dundas Street and a detailed view loss assessment demonstrating that this impact is acceptable has not been provided. The proposal has also not demonstrated that the overshadowing and visual privacy impacts are acceptable, see Key Issues.

- *The additional floor space does not generate any adverse shadow impacts on the neighbouring properties to the east or south, as all their primary north-facing living area windows are unaffected by the proposed FSR variation. Furthermore, the rear yards and private open space areas of these properties will also continue to enjoy in excess of 3 hours of solar access between 8am and 4pm on June 21. It is also noted that the rear/southern portion of the built form, which is responsible for overshadowing part of the rear yard of No. 10 Dundas Street, is well below the height limit. On this basis, it is confirmed that the additional FSR can be accommodated on this site.*

Assessing officer's comment: As above. The excessive visual bulk and scale negatively impacts the amenity of adjoining properties as demonstrated in this report.

- *Streetscape/Visual Bulk - The recessed nature of the site from the Oberon Street frontage, screening of the site by street trees, screening of the site by dense vegetation on its western and south-western sides, and its siting below-the-level area of the adjoining park, all contribute to the built form being screened from the public domain. The uppermost level of the dwelling is substantially recessed from the front of the built form (5 metres from the front) and is also set in behind landscaped planters on the sides from the levels below. These design measures reduce the visibility of the upper level from the public domain whilst also ensuring that the built form/excess FSR does not generate any adverse visual bulk impacts to the side and rear of the neighbours to the east addressed to 6, 8 and 10 Dundas Street. The surrounding area to the north contains 3- and 4-storey residential flat buildings, contributing to the area's character. On this basis, the built form and its associated FSR variation will not generate any adverse or unreasonable streetscape or visual bulk impacts on the public domain and adjoining properties.*

Assessing officer's comment: As previously discussed. The built form does generate adverse visual bulk impacts to the neighbours at No. 6-14 Dundas Street. As above, the argument that it is in keeping with 3-4 storey residential flat buildings to the north is not accepted.

- *Context- The site adjoins 6 Dundas Street, located east of the subject site. Such a site contains a large 3-storey dwelling, prominent in the Dundas and Oberon Street streetscapes. The built form, including the FSR variation on the subject site, will appear recessive when viewed from Oberon Street as it presents to Oberon Street steps away from its frontage whilst also being screened by dense tree canopies in the street frontage. On this basis, the modest presentation of the dwelling, compared with its adjoining neighbour, justifies the variation to the FSR standard.*

Assessing officer's comment: The built form does generate adverse visual bulk impacts to the neighbours at No. 6-14 Dundas Street. As above, the argument that it is in keeping with 3-4 storey residential flat buildings to the north is not accepted.

- *Height/Articulation—The FSR is contained within a compliant height, while the built form is also considered to be within compliant and/or appropriate setbacks, noting the effect of dense vegetation along the western side. The built form is highly articulated on all facades and includes landscape elements on all facades at and above ground level. The articulated and landscape features reduce the apparent bulk, scale, and associated FSR variation.*

Assessing officer's comment: The building height is non-compliant, see following section. It is non-compliant with both Clause 4.3 of the LEP as well as the objectives of Section 3.2 of the DCP, see *Building Height* in Key Issues. The side setbacks are also non-compliant, see *Side Setbacks* in Key Issues. The landscaped elements include bulky planter boxes that exacerbate the non-compliant building envelope.

- *Amenity Outcomes- The FSR variation is not considered responsible for any unreasonable amenity impacts to adjoining properties to the east or the south of the subject site. In this regard, the following analysis is provided:*
 - *Overshadowing- all adjoining neighbouring dwellings and their north-facing windows and private open space areas will continue to receive in excess of the required 3 hours of solar access between 8am and 4pm on June 21. The adjoining property to the east at 6 Dundas Street will be virtually unaffected by the proposal, as is the case with the rear of the properties addressed to 8 and 10 Dundas Street, which back onto or are adjacent to the rear of the site. The lack of shadow impact and associated retention of solar access well beyond that required by the DCP controls contributes to the justification of the FSR variation.*
 - *Privacy- the additional FSR is not considered to generate any unreasonable privacy impacts, noting that the existing flat building has numerous windows that directly overlook the adjoining property to the east at 6 Dundas Street. The proposed dwelling has been retained to balance the provision of outlook to expansive coastal views to the north and northeast without generating any unreasonable overlooking impacts. The primary aspect of balconies and openings is to the front of the site and not sideways or southeast to the primary living and outdoor areas of 6 Dundas Street. The other adjoining properties are not considered to be adversely overlooked by the proposed windows and balconies. The primary living and outdoor terrace on the uppermost level of the proposed dwelling are recessed from the levels below, which mitigates the possibility of downward overlooking opportunities. It is also noted that there is a considerable degree of mutual overlooking in this immediate context due to the desire to capture the coastal views and that privacy is secondary to achieving views. On this basis, the additional FSR is not considered to generate unreasonable privacy impacts.*
 - *Views- the siting of the built form below the level area of Blenheim Park avoids any view loss from the park. Furthermore, the siting of the built form to the west of the adjoining dwelling to the east at 6 Dundas Street avoids any view loss from that property. The site is located north of the rear portion of 10 Dundas Street, which has a ground-level studio and an elevated parking area. The property at 10 Dundas Street is accessed via the private roadway that services the properties between 10 and 20 Dundas Street (accessed from Rainbow Street). It is considered that the proposal would not generate any adverse or unreasonable view loss, noting that the proposed built form is well below the height limit at the southern portion of the proposed dwelling, from where the northern outlook to the coast is obtained. It is considered that the properties further to the south along Dundas Street would maintain views, noting that they are substantially elevated above the subject site/proposed built form. On this basis, the additional FSR is not considered to generate unreasonable view impacts.*

Assessing officer's comment: As previously explained and highlighted in further detail within the Key Issues section of this report, the proposal has not demonstrated acceptable overshadowing, privacy, or view loss impacts. In addition, the non-compliant FSR contributes to uncharacteristic and excessive visual bulk and excavation.

- *Internal amenity—The additional FSR provides a higher level of internal amenity than would be provided with a reduced FSR. The additional FSR allows for additional bedroom accommodation for the Applicant's family and other activities, including a music room and*

study. The study areas allow for work-from-home opportunities, which is desirable following the effects of COVID-19.

Assessing officer's comment: A requirement for additional floor space to improve work-from-home opportunities because of COVID-19 is not grounds for a departure from the development standard.

In conclusion, 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(3) have not been satisfied and that development consent may not be granted for development that contravenes the FSR development standard.

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

The building height is measured from the existing ground levels at any given point on the site. The existing lower ground floor has an RL of 46.85, if the floor slab is 200mm thick this yields an existing ground floor of RL 46.65 for this area. The fascia and proposed adjustable awning are 11.45m above this point. The 2nd floor private open space deck also exceeds the control, with the glass balustrade at a height of 9.76m above ground level (refer Figure 27).

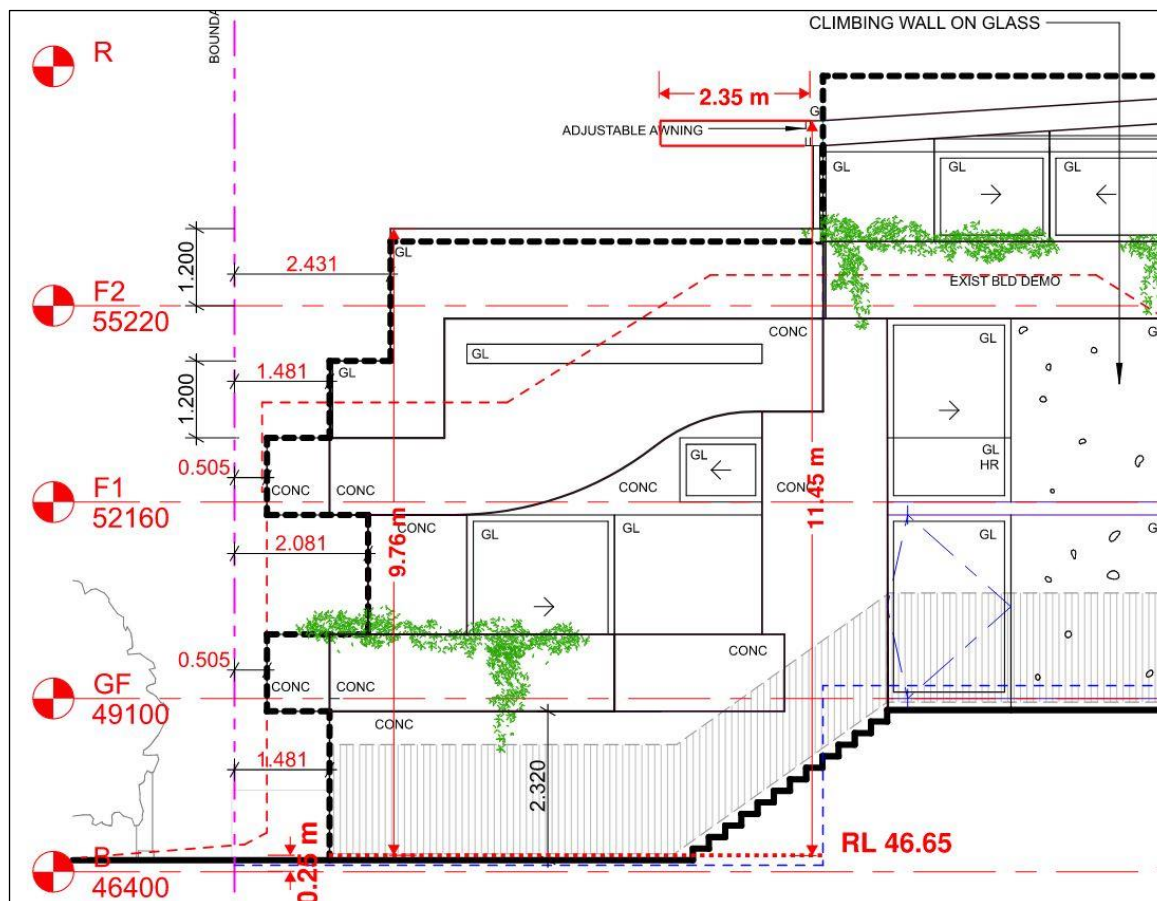


Figure 27: Western Elevation (Source: Burrow Architecture)
Measurements in red by Council Assessment Officer

Given that the proposal involves a new dwelling house, any height breach in this circumstance is not considered supportable. The letter requesting the application be withdrawn, refer to Relevant History section above, highlighted this non-compliance with Clause 4.3 Height of Buildings within the LEP. A Clause 4.6 exception to a development standard request has not been provided.

8. Development control plans and policies

8.1. 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 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 key objectives and controls of the Randwick Comprehensive DCP 2023, as discussed in the table below and in the discussion of key issues below.
Section 4.15(1)(a)(iii)a) – 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 has an adverse effect on the built environment of the locality through key amenity impacts, as discussed in this report.</p> <p>It is likely that the proposal will result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The proposed development has not appropriately considered key controls of the RLEP 2012 and RDCP 2013. As a result, they have resulted in an adverse impact on neighbouring development. Therefore, it is not considered that the development, in its current form, is suitable for the site.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal does not promote 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 not considered to be in the public interest.

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9.1. Discussion of key issues

Building Height

As discussed in Section 7.2 above, the proposal is non-compliant with the maximum building height LEP development standard of 9.5m. In addition, the proposal is non-compliant with Section 3.2, Part C1 of the DCP that relates to building height. The objectives of this Section are:

- To limit the bulk, scale and visual impact of buildings as viewed from the street and from neighbouring dwellings
- To ensure low density residential development maintains a two-storey height and street frontage
- To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity

The proposed new dwelling presents as bulky, excessive part three-storey, part four-storey building that is not compatible nor consistent with the prevailing streetscape and development pattern of the R2 Low Density Residential zone. It thereby fails to meet the objectives of Section 3.2. While the proposal is for a four-storey dwelling, it is acknowledged that the top storey interior is setback approximately 6.5m from the interior of the storey below and so will not present as a four-storey development from the street (refer Figure 28).

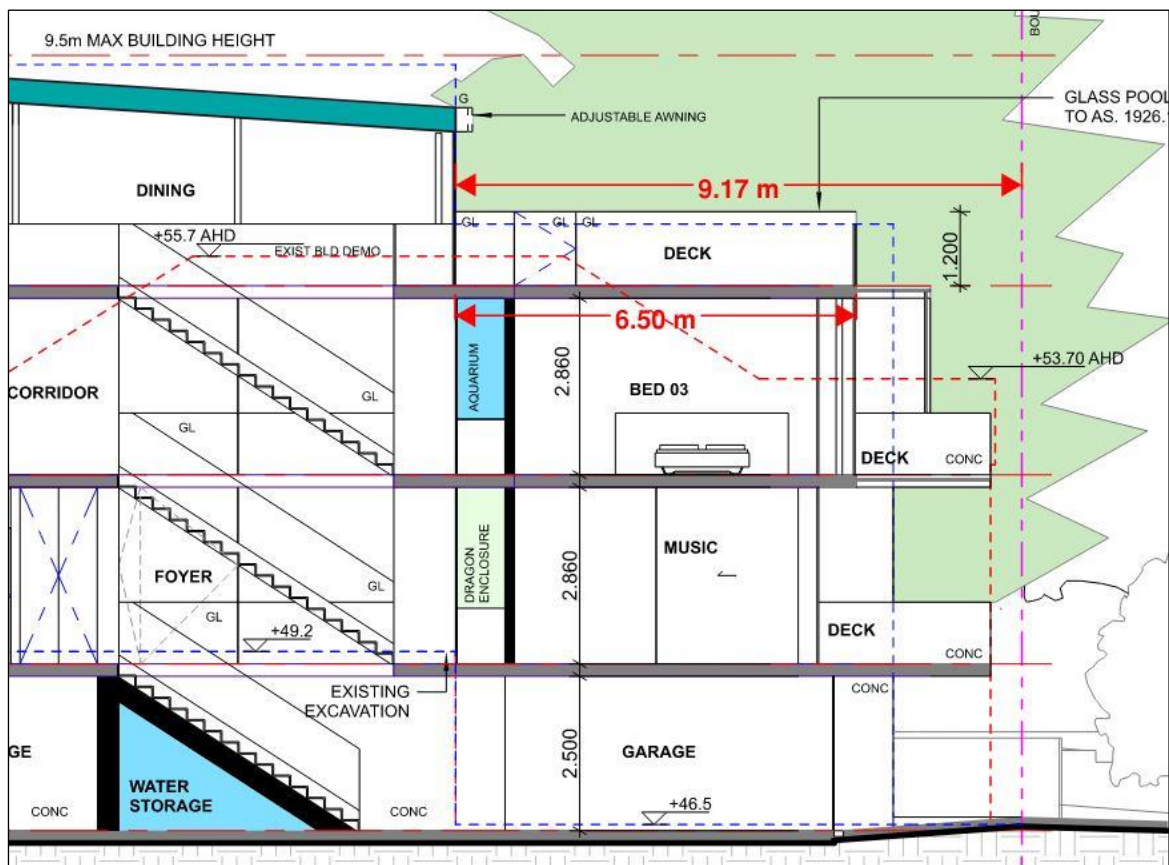


Figure 28: Section BB (Source: Burrow Architecture)
Measurements in red by Council Assessment Officer

The DCP does allow for a variation from a two-storey frontage with the following control:

- iv) An alternative design that varies from the two-storey height and street frontage in the Zone R2 may be acceptable having regard to the following considerations:
 - Site topography
 - Site orientation

- Allotment configuration
- Flooding requirements
- Allotment dimensions
- Potential impacts on the visual amenity, solar access, privacy and views of the adjoining properties.

In this instance the site orientation, allotment configuration and dimensions or flooding requirements do not necessitate a three-storey street frontage. The site topography does slope steeply upwards to the rear and so Council would consider a three-storey design that stepped upwards as a response to this site condition. Council cannot support a third storey as proposed, with a 0.46m setback from the front boundary, before the site begins to slope. The proposed design has a 35% departure from the FSR development standard and so it cannot be argued that a three-storey street presentation is necessary to enable sufficient gross floor area on a tightly constrained site.

Any departure from the two-storey height control must consider and limit the visual amenity, privacy, overshadowing and view impacts on the adjoining properties. The proposal impacts visual amenity, visual privacy, overshadowing view sharing from adjoining properties, and this has not been sufficiently considered or addressed. Comments on view sharing, overshadowing and visual privacy are provided further below.

The three-storey street presentation results in unnecessary bulk, scale, and visual impact as viewed from the street and from neighbouring dwellings. For Council to support the proposal, it would have to be re-designed to substantially reduce the bulk and scale to comply with Council's building envelope controls.

Side Setbacks

Pursuant to Part C1, Section 3.3.2 of the DCP, new buildings and alterations and additions must comply with the following minimum side setbacks based on the primary frontage width of 11.645m a 0.9m side setback is required for the building height of 0 to 4.5m, with this tapering in as per the calculations within the minimum side setback 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	<i>Merit assessment</i>		
6m to less than 9m	0.9m	0.9m	$0.9m + (building\ height - 7m)$
9m to less than 12m	0.9m	$0.9m + \frac{building\ height - 4.5m}{4}$	$1.5m + 2 \times (building\ height - 7m)$
12m and above	1.2m	$1.2m + \frac{building\ height - 4.5m}{4}$	$1.8m + 2 \times (building\ height - 7m)$

A review of the side setbacks demonstrated non-compliance with this control to a varying extent throughout the length of the building (refer Figures 29-32).

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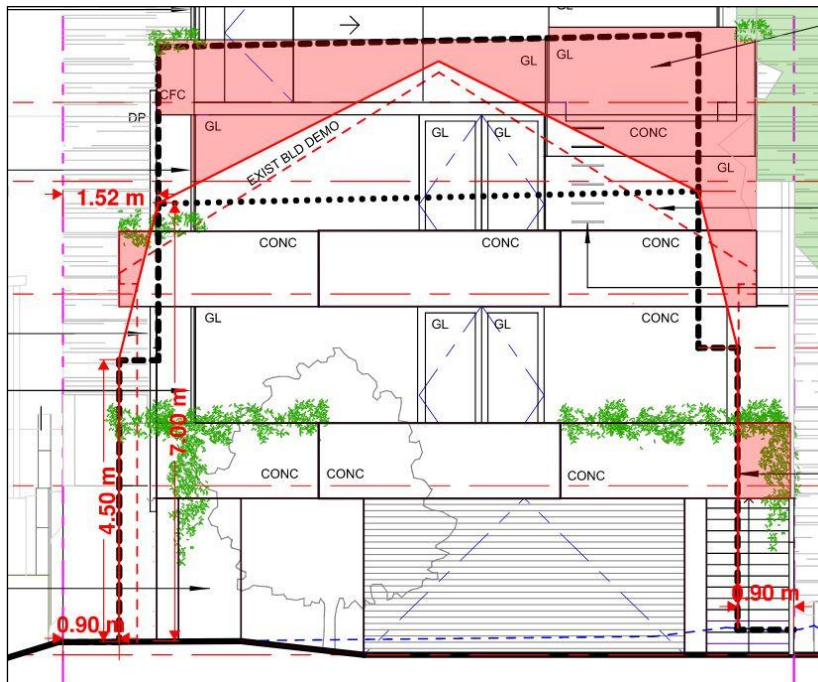


Figure 29: Northern Elevation (Source: Burrow Architecture)
Setback non-compliance in red by Council Assessment Officer

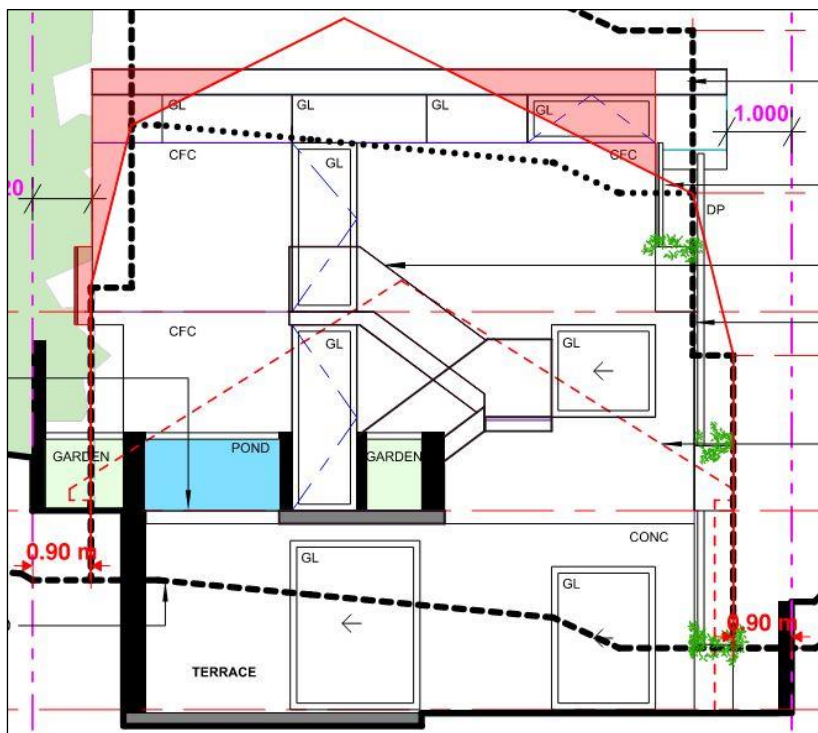


Figure 30: Southern Elevation (Source: Burrow Architecture)
Setback non-compliance in red by Council Assessment Officer



Figure 31: Section EE (Source: Burrow Architecture)
Setback non-compliance in red by Council Assessment Officer

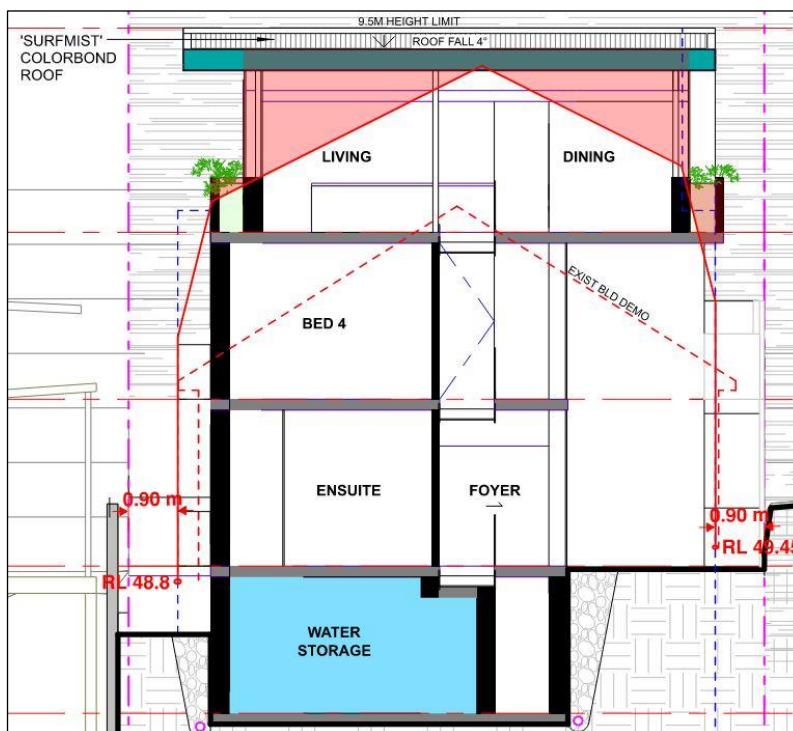


Figure 32: Section FF (Source: Burrow Architecture)
Setback non-compliance in red by Council Assessment Officer

As with the previous comments on building height, the side setback non-compliance results in unnecessary bulk, scale, and visual impact as viewed from the street and from neighbouring dwellings in addition to overshadowing and visual privacy impacts that are discussed further below. For Council to support the proposal it would have to be re-designed to substantially reduce the bulk and scale to comply with Council's building envelope controls.

View Sharing

Pursuant to Part C1, Section 5.6 of the DCP, new buildings and alterations and additions must comply with the following objectives relating to view sharing:

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

The proposal is within a Foreshore Scenic Protection Area and will result in view loss from neighbouring properties such as No.10, 12 & 14 Dundas Street. This includes some loss of views towards Coogee Beach (refer Figures 33-36).



Figure 33: Photo from standing position within private open space of No.10 Dundas Street



Figure 34: Photo from standing position within car parking area of No.10 Dundas Street



Figure 35: Photo from standing position of private open space of No.12 Dundas Street

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Figure 36: Photo from gym of No.14 Dundas Street

The DCP clearly advises:

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

Where view loss impact is likely to occur, development proposals must address this subsection of the DCP as well as the aforementioned Planning Principle in detail in a DA submission.

The SEE failed to provide an adequate view loss assessment demonstrating that any impacts are acceptable, and that the proposal passes the Tenacity Test.

As previously discussed, the proposal is non-compliant against several DCP and LEP building envelope controls and Council cannot support the excessive bulk & scale of the development in its current form. The potential view loss impacts and the failure to provide a detailed view loss assessment is an additional reason that Council cannot support the proposal.

It is recommended that any future proposals are to comply against building envelope controls and would require a detailed view loss assessment demonstrating compliance against the DCP view sharing controls and Planning Principles.

Earthworks

The proposed development involves substantial earthworks (excavation) that are not compliant with relevant sections of the LEP and DCP. This excavation is caused by the proposed basement level, that involves 3.1 metres of excavation, and the sunken terrace garden to the rear which involves 2.8 metres of excavation (refer Figure 37).

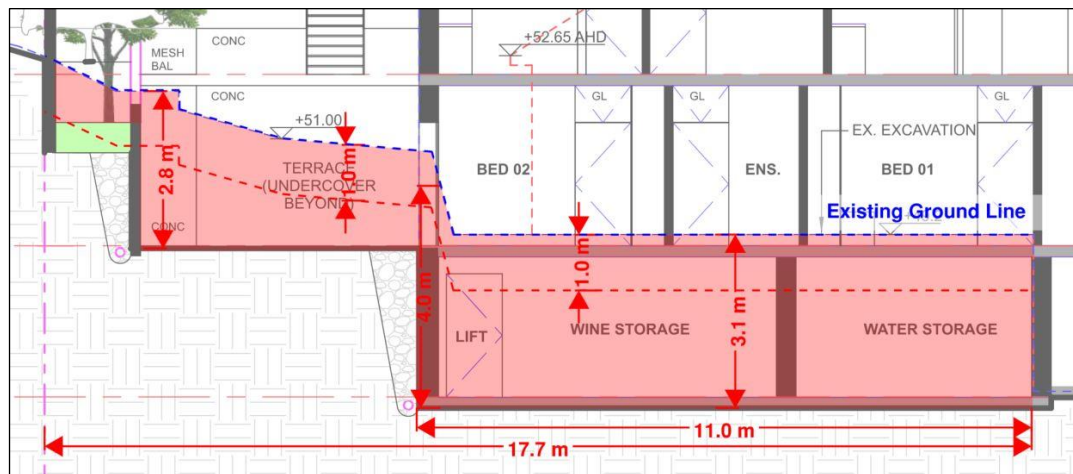


Figure 37: Section EE (Source: Burrow Architecture)

Markup and measurements in red by Council Assessment Officer

This excavation contravenes the provisions under Clause 6.2 of the LEP:

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

It is evident that the substantial excavation works required to facilitate the development is excessive, and the design of the scheme fails to appropriately respond to the existing topography and constraints of the site and surrounds.

The proposed excavation is excessive and does not comply with the relevant earthworks objectives and controls within Section 4.7 of the DCP:

- *The proposed excavation fails to achieve these objectives as: The development is not designed to step with the topography of the site and involves substantial changes to existing ground levels to accommodate the development. It also involves a number of terraced areas and high retaining walls that contribute to excessive built-up areas and poor amenity for the residence. The proposal fails to deliver a site responsive design that relates appropriately with surrounding/adjoining properties.*
- *Any usable private open space for the new dual occupancy is created by excessive excavation, resulting in a sunken space that will be adversely affected by the north-adjoining neighbour (dual occupancy) and the required high retaining walls and fencing along the northern boundary.*
- *The rear portion of the dual occupancy, particularly the northern dwelling, will have subterranean spaces that will also be affected by the north-adjoining neighbour (dual occupancy) and the required high retaining walls and fencing along the northern boundary.*
- *The amount of excavation within the building footprint is greater than 1m. It has not been demonstrated that the site gradient/conditions prevent facilitating a more responsive design for the site.*
- *The amount of excavation extends beyond the building footprint and to the site boundaries. Any earthworks should be limited to the building footprint and the existing levels outside the built form should be retained.*
- *Any cut and fill outside the building footprint (for the purposes of creating useable private open space) must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site. In this instance, the proposed terracing in the rear yards have not demonstrated that the extent of earthworks has been minimised.*

- *The required retaining walls are excessive in terms of bulk and scale – and these are directly as a result of the proposed excavation.*

A more site responsive design that respects the existing topography and unique site constraints, should be adopted. The inclusion of internal ramps and/or steps to facilitate a built form that steps with the existing topography may be required to facilitate this (refer to Figure 38).

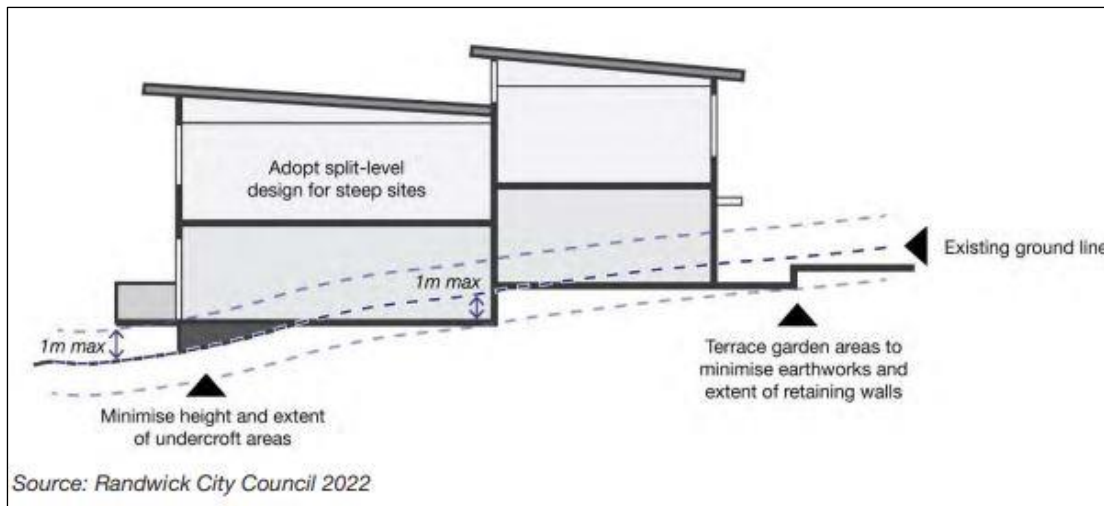


Figure 38: Split-level design (Source: Randwick DCP 2023)

Swimming and Spa Pools

Pursuant to Part C1, Section 7.5 of the DCP, swimming pools must comply with the following controls:

- i) *Locate swimming and spa pools and associated structures: a. behind the alignment of the front building facade b. to minimise damage to the root system of trees proposed or required to be retained on the subject site and on adjoining properties c. to minimise potential noise impacts on the adjoining dwellings*
- ii) *The pool coping height must relate to the topography of the site. On sloping allotments, the high side of the site must be excavated, so that the pool structure does not protrude more than 1m above the existing ground level on the lower side*
- iii) *Where pool coping height is above natural ground level, the pool should be located to avoid pool boundary fencing exceeding 2.2m from existing ground level when viewed from adjoining properties*
- iv) *Where pool coping height is above natural ground level and has the potential to create privacy impacts on adjoining properties, appropriate screening or planting extending along the full length of the pool shall be provided to address overlooking. Screen planting must ensure consistency with the Swimming Pools Act 1992 in relation to 'non-climbable zones'*
- v) *Despite subclause iv), this requirement may not apply where there is a need to retain existing view corridors from adjoining and nearby properties*
- vi) *Position any decking away from the side and rear boundaries to minimise adverse privacy impacts on the neighbours*
- vii) *Locate the pool pump and filter away from the neighbouring dwellings. The equipment must be contained within an acoustically treated enclosure that limits noise transmission.*

The proposed elevated pool forms part of the front building façade and is non-compliant against the controls. It forms part of the front building façade, is substantially elevated with associated acoustic impacts, and has a decking area that overlooks the private open space of No.6 Dundas Street. Council will not support an elevated rooftop pool; any proposed pool should be located within the rear yard and compliance must be demonstrated with the DCP controls.

Private Open Space & Rooftop Terraces

Pursuant to Part C1, Section 2.7 of the DCP, private open space must satisfy the following criteria:

- Be situated at ground level (except for dual occupancy (attached) development where one dwelling is situated above another)
- Does not include any open space on podiums or roofs
- Be adjacent to and directly accessible from the living or dining room of the dwelling
- Oriented and configured to maximise solar access
- Located to the rear of the allotment behind the dwelling where possible
- Has minimal change in gradient
- Includes landscaped areas, terraces, decks, paved surfaces and the like

The proposed street facing 2nd floor 'private open space deck' fails to meet this criteria. In addition, it is non-compliant against Section 4.4 of the DCP which includes an objective:

- To ensure trafficable roof spaces are not the primary private open space

The private open space in the rear yard is not adjacent to and directly accessible from the living or dining room of the dwelling and is not oriented and configured to maximize solar access – refer to *Overshadowing* below. The trafficable roof space has been designed to be the primary private open space. This deck is also non-compliant against the following Control within Section 4.4:

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

The deck is an excessive 6m x 6m and overlooks the private open space of No.6 Dundas Street (refer Figure 39). As established, the deck is designed as the primary private open space of the dwelling. The rooftop terrace also includes a retractable awning that is included on the roof plan, the full extension of which is not indicated on the elevation or section drawings (refer Figure 40 & 41). As discussed, the building height of this deck exceeds the 9.5m LEP development standard.

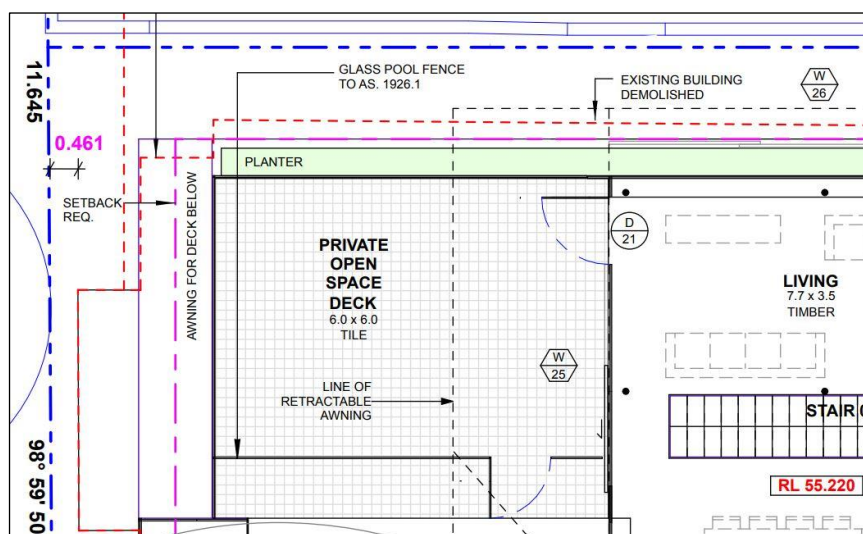


Figure 39: 2nd floor private open space deck (Source: Burrow Architecture)

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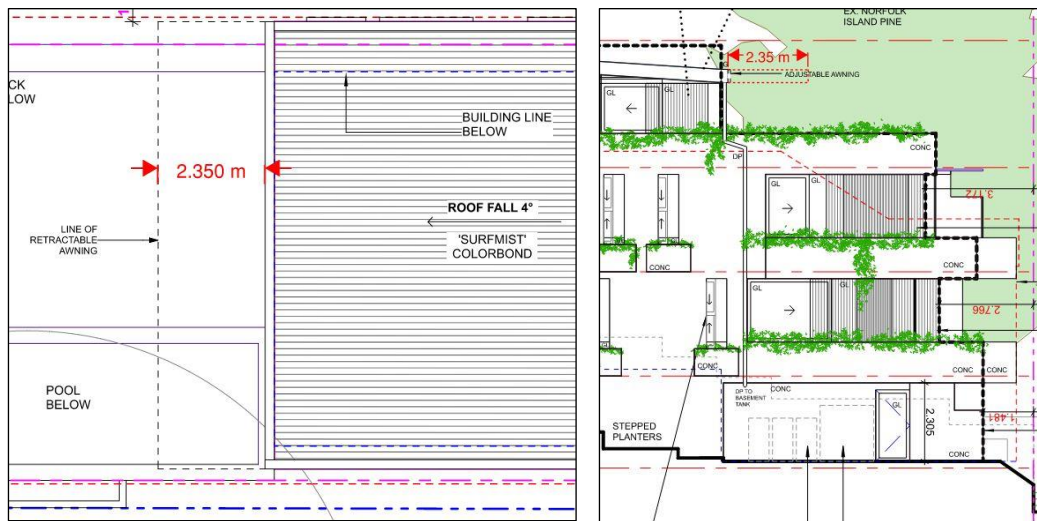


Figure 40 & 41: Rooftop plan and east elevation (Source: Burrow Architecture)
Retractable awning marked up on elevation by Council Assessment Officer

Overshadowing

Pursuant to Part C1, Section 5.1 of the DCP, proposals must meet the following solar access controls:

Solar access to proposed development

- i) A portion of the north-facing living area windows of proposed development must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice) (In so far as it does not contradict any BASIX requirement)
- ii) The private open space of proposed development must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice). The area covered by sunlight must be capable of supporting passive recreation activities.

Solar access to neighbouring development

- iii) A portion of the north facing living area windows of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice)
- iv) The private open space of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice). The area covered by sunlight must be capable of supporting passive recreation activities.
- vii) Any variation from the above requirements will be subject to a merit assessment having regard to the following factors:
 - Degree of meeting the FSR, height, setback and site coverage controls
 - Orientation of the subject and adjoining allotments and subdivision pattern of the urban block
 - Topography of the subject and adjoining allotments
 - Location and level of the windows in question
 - Shadows cast by existing buildings on the neighbouring allotments.

The shadow diagrams provided with the application (refer Figure 42) show that the proposed garden, the only private open space at ground level, to the rear of the site is completely overshadowed by the dwelling. The proposed private open space on the elevated 1st floor deck does not meet the criteria for contiguous private open space within the DCP.

Despite compliance not being clearly demonstrated by the shadow diagrams, it is expected that a portion of the north facing living area windows of neighbouring dwellings on Dundas Street will receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. This is because these properties have the street directly to the east and would receive north facing sun as the street slopes steeply upwards to the south.

The shadow diagrams do not demonstrate compliance with control (iv) with the private open space of No.6 and No.8 Dundas Street only receiving direct sunlight at 12pm. The extent to which these shadows are caused by the proposed development is not clear as the proposed shadows are not distinguished within the shadow diagrams. The diagrams are also misleading as only the four-storey portion of the proposed dwelling is highlighted in pink. The area to the north containing the pool and deck is three-storeys tall and will cause some overshadowing of No.6 Dundas Street in the afternoon.

In this case a variation from the controls would not be supported as the proposal substantially exceeds FSR controls as well as height and side setbacks.

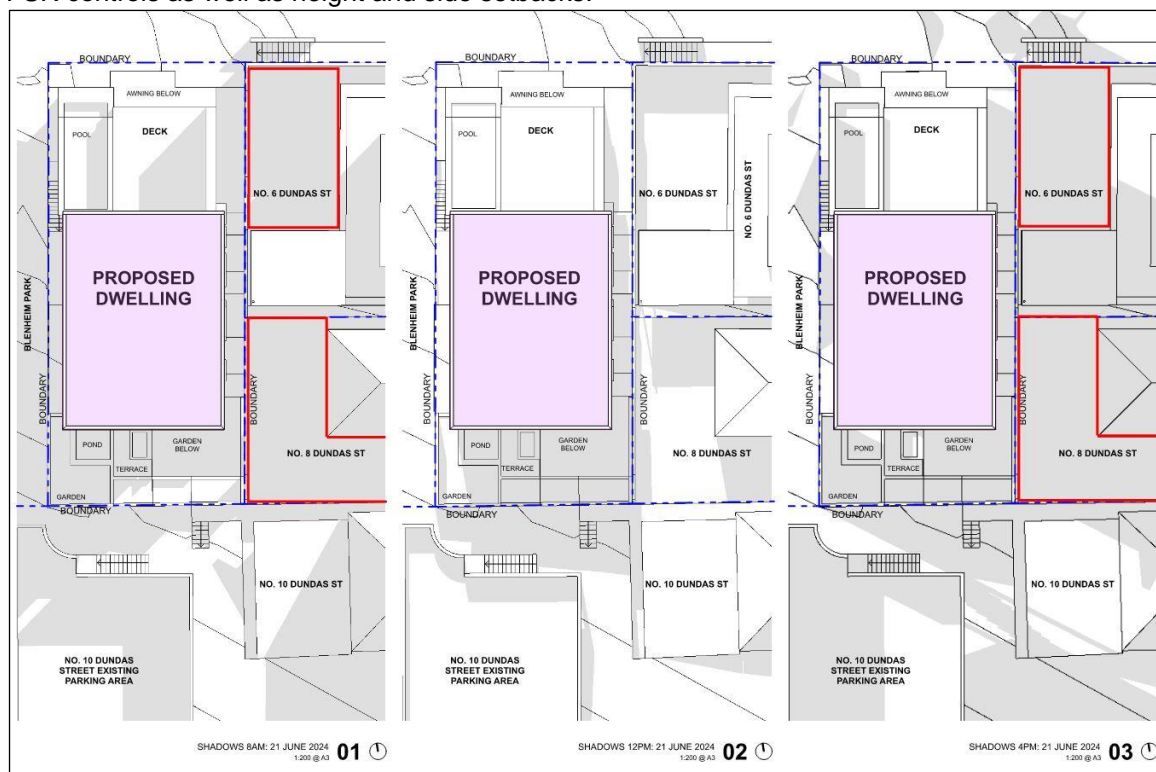


Figure 42: Shadow diagrams (Source: Burrow Architecture)

Private open space of neighbouring dwellings indicated in red by Council Assessment Officer

Visual Privacy

The objective of Part C1, Section 5.2 of the DCP, is *to ensure that development minimises overlooking or cross-viewing of neighbouring dwellings to maintain reasonable levels of privacy.*

One of the consequences of the non-compliant four-storey proposal is the creation of elevated high-intensity use living spaces that overlook neighbouring dwellings. The proposed 2nd floor 'private open space deck' will directly overlook the private open space of No.6 Dundas Street. The 2nd floor living area has sliding glazing across the entire eastern elevation with adjustable privacy screens as the only privacy mitigation measure. These windows will enable overlooking into the private open space of both No.6 & No.8 Dundas Street (refer Figure 43 & 44). It may also be possible to look into the windows of habitable spaces of No.6, No.8 and No.10 Dundas Street.

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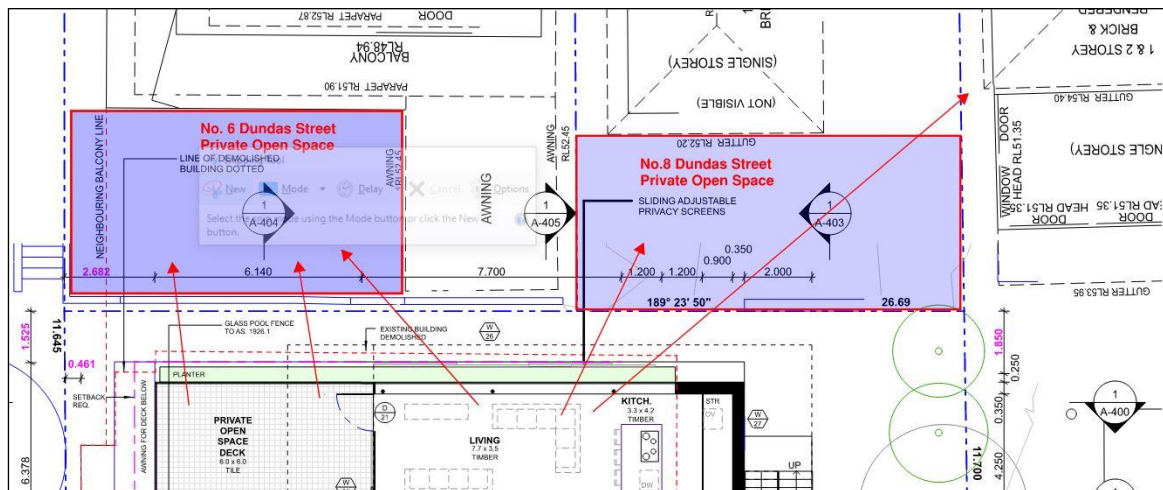


Figure 43: 2nd floor plan (Source: Burrow Architecture)
Marked up by Council Assessment Officer

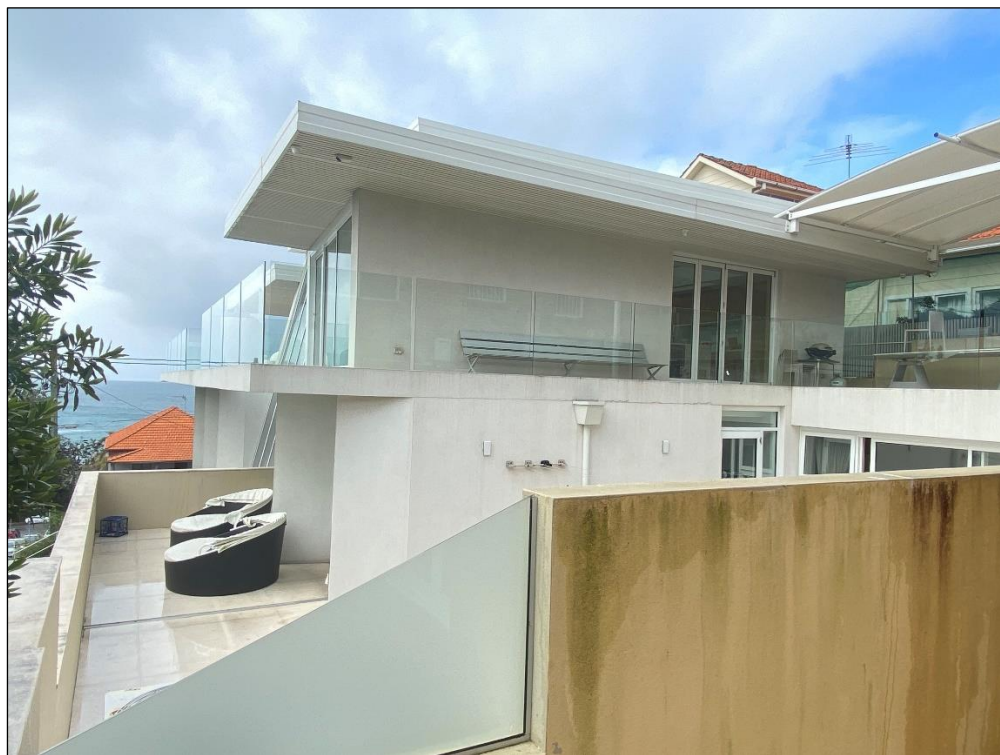


Figure 44: No.6 Dundas Street viewed from No.242 Oberon Street

The proposal is non-compliant against the associated controls as follows:

- ii) *The windows of living areas must be oriented away from the windows of adjacent dwellings wherever possible. In this respect, they may be oriented to: - The front or rear of the allotment - A side courtyard.*

Planning officer comment:

The impact of the glazing across the eastern façade of the 2nd floor living space on neighbouring windows is difficult to ascertain from the information provided. It is possible that these windows are too high to look directly into the windows of adjacent dwellings, however, this has not been sufficiently demonstrated.

- iii) *Focus upper floor balconies to the street or rear garden of the site. Any elevated balconies, or balcony returns on the side façade, must have a narrow width to minimise privacy impacts on the adjoining properties*

Planning officer comment:

The proposed 2nd floor 'private open space deck' is 6m wide. It has not been designed in any way to minimise privacy impacts on adjoining properties.

- iv) *Balconies, decks, and terraces on steeply sloping sites must minimise overlooking through careful positioning and orientation*

Planning officer comment:

As above, the proposed 2nd floor 'private open space deck' is 6m wide. It has not been designed in any way to minimise privacy impacts on adjoining properties.

- v) *Where a balcony, deck or terrace is likely to overlook the Private Open Space or windows of the adjacent dwellings, privacy screens must be installed in positions suitable to mitigate the loss of privacy. The use of privacy screens should be a secondary mitigation device where overlooking is primarily mitigated through positioning and orientation.*

Planning officer comment:

No privacy screens have been proposed to the private open space deck. If these were added it would not be sufficient as the positioning and orientation issue is substantial.

Deep Soil

Pursuant to Part C1, Section 2.5 of the DCP, the proposal is required to provide 35% deep soil permeable surface. The deep soil has been measured from the scaled drawings to be 99.65m² which equates to 32% of the 312.15m² site area (refer Figure 45).

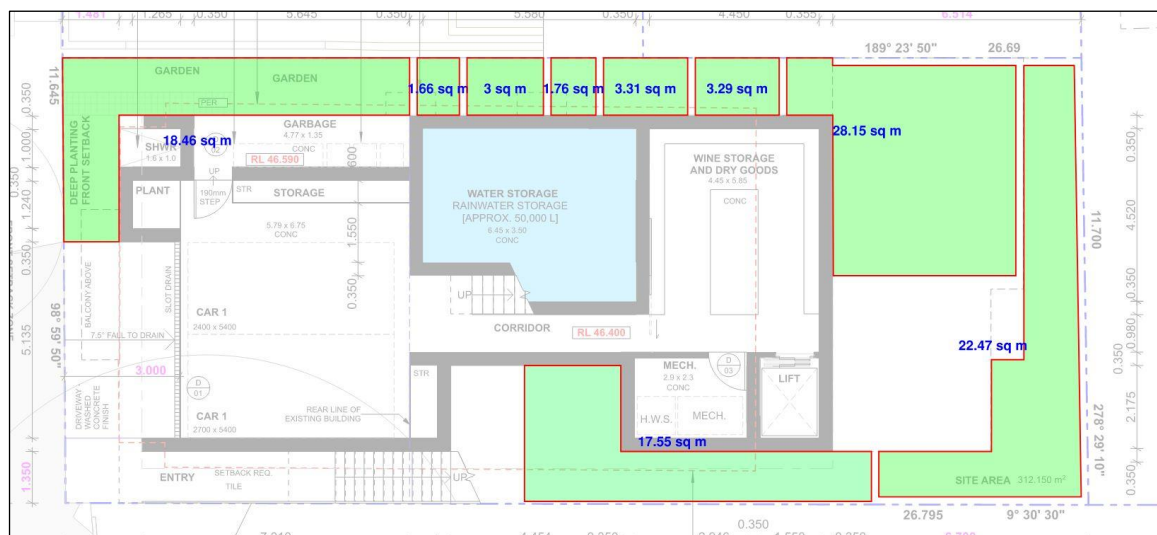


Figure 45: Lower ground floor plan (Source: Burrow Architecture)

Marked up by Council Assessment Officer

10. Conclusion

That the application for demolition of existing residential flat building, associated structures and retaining walls and construction of a 3-storey dwelling house with open deck, in-ground swimming pool, water feature (pond), ancillary and landscaping works, at No. 242 Oberon Street, Coogee be refused for the following reasons:

1. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development exceeds the stipulated Maximum Height of Buildings Development Standard contained in Clause 4.3 of the Randwick Local Environmental Plan 2012.
2. The proposed development does not demonstrate that the application of the maximum Height of Buildings development standard is unnecessary or unreasonable in the circumstances of the case and does not provide a suitably prepared written request to vary the development standard

contained in Clause 4.3 (Height of Buildings) of the Randwick Local Environmental Plan 2012 pursuant to Clause 4.6(1) and (3).

3. The proposed development does not demonstrate that the application of the maximum Floor Space Ratio development standard as per Clause 4.4A (Exceptions to floor space ratio) of the Randwick Local Environmental Plan is unnecessary or unreasonable in the circumstances of the case in accordance with Clause 4.6(1) and (3). Additionally, Council's FSR calculation differs from the Applicant's and in the absence of an agreed numerical figure, Council cannot consider the justifications provided in the Applicant's Clause 4.6 Variation Request.
4. The proposal fails to achieve the relevant aims of the Randwick Local Environmental Plan 2012, in particular, those that pertain to supporting efficient use of land, achieving a high standard of design in the private and public domain that enhances the quality of life of the community, protecting/enhancing/promoting the environmental qualities of Randwick and promoting an equitable and inclusive social environment.
5. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:
 - a. The proposal is inconsistent with the objectives of the R2 – Low Density Residential land use zone.
 - b. The proposal is inconsistent with 4.3 Height of buildings 9.5m maximum building height development standard.
 - c. The proposal is inconsistent with 4.4A Exceptions to floor space ratio – Zones R2 and R3 floor space ratio development standard.
 - d. The proposal is inconsistent with the objectives of 6.2 Earthworks.
 - e. The proposal is inconsistent with the objectives of 6.7 Foreshore scenic protection area.
6. The proposal does not comply with the provisions and controls of Randwick Comprehensive Development Control Plan 2023 in particular:
 - a. Pursuant to Section 2.5, Part C1, the proposal does not comply with objectives/controls pertaining to deep soil permeable surfaces.
 - b. Pursuant to Section 2.7, Part C1, the proposal does not comply with objectives/controls pertaining to private open space.
 - c. Pursuant to Section 3.1, Part C1, the proposal does not comply with objectives/controls pertaining to floor space ratio.
 - d. Pursuant to Section 3.2, Part C1, the proposal does not comply with objectives/controls pertaining to two-storey height and street frontage.
 - e. Pursuant to Section 3.3.2, Part C1, the proposal does not comply with side setback provisions/controls.
 - f. Pursuant to Section 4.1, Part C1, the proposal does not comply with the objectives/controls pertaining to building design – the proposed scheme fails to comprise a form, scale, massing and proportion that is sufficiently responsive to the site topography and constraints, site context and surrounds; and it reflects an uncharacteristic, bulky built form that is not consistent nor compatible with the prevailing streetscape character and development pattern of the immediate locality.
 - g. Pursuant to Section 4.4, Part C1, the proposal does not comply with objectives/controls pertaining to roof terraces and balconies.
 - h. Pursuant to Section 4.7, Part C1, the proposal does not comply with objectives/controls pertaining to earthworks.
 - i. Pursuant to Section 5.1, Part C1, the proposal does not comply with objectives/controls pertaining to solar access and overshadowing.
 - j. Pursuant to Section 5.3, Part C1, the proposal does not comply with objectives/controls pertaining to visual privacy.
 - k. Pursuant to Section 6.1, Part C1, the proposal does not comply with objectives/controls pertaining to location of parking facilities.
 - l. Pursuant to Section 7.5, Part C1, the proposal does not comply with objectives/controls pertaining to swimming pools and spas.

7. Pursuant to Section 4.15(1)(b) of the *Environmental Planning & Assessment Act 1979*, the application has not demonstrated that the development does not impact the natural or built environment or that it does not result in adverse social or economic impacts. The proposal will result in adverse and unreasonable impacts in terms of visual bulk and scale, view loss and safety and security.
8. 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 housing development and built form for the subject site.
9. Pursuant to Section 4.15(1)(d) of the *Environmental Planning & Assessment Act 1979*, the application has not demonstrated that the development is in the public interest as it will set an undesirable precedence including endorsement of a development (a new dwelling house) that involves unacceptable variations to Council controls/provisions/requirements including those associated with floor space ratio, building height, side setbacks, visual bulk and scale, view loss, overshadowing, visual privacy, earthworks, rooftop terraces, swimming pools, parking facilities, and that will result in unreasonable/adverse impacts on neighbouring/adjoining residential properties.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

The application was referred to Council's Development Engineering team. Several issues were identified relating to parking access and landscaping. These were included within the letter requesting the Applicant withdraw the application – see Relevant History section of this report. The information requested was as follows:

Development Engineering – Parking Access

The application was referred to Council's Development Engineer who identified that additional information is required to resolve concerns regarding vehicles exiting the site.

The submitted plans show a 2-car garage at the western end of the site frontage (parking side by side). Development Engineering requires turning paths for vehicles, entering and exiting both spaces, to be submitted to Council. The vehicles are to be able to enter and exit along the asphalt driveway in a forward direction.

A site inspection shows the current grassed embankment on Council property in front of the proposed vehicular entrance to the site is narrow and falls away quite steeply down to Oberon Street.

Any turning templates will have to be supported by a concept construction plan to stabilise the subject embankment for vehicle movements including retaining walls, guard rails etc. for Council to assess. This will also need to consider any impacts this may then have on the existing trees and vegetation on this area of public property (T4-6), with the Architect, Engineer and Arborist to all liaise for a solution that will provide a satisfactory solution for all parties.

An alternative for the Applicant is to reconfigure the basement level parking layout and maybe consider a 2-car tandem length garage with a vehicle turntable within the site to allow vehicles to exit the site in a forward direction.

Council's Landscape Development Officer has advised the regarding turning areas for vehicles, and the resulting need to construct new retaining walls or similar along the edge of the embankment will also need to consider any impacts this may then have on the existing trees and vegetation on this area of public property (T4-6), with the Architect, Engineer and Arborist to all liaise with each for a solution that will provide a satisfactory solution for all parties.

Landscaping

The application was referred to Council's Development Landscape Development Officer who identified the need to retain the existing sandstone wall/fence along the western boundary which separates the site and the reserve, adjacent to an existing tree (referenced as T7). This needs to remain in-situ as a form of physical protection/barrier as part of the works, with the plans to either confirm this or detail/clarify the exact scope of works here for Council's review, with the provision of this information now to assist in avoiding any further delays or requests during the next phase of the assessment.

An inconsistency was identified as the Arborist Report notes the small Frangipani (referenced as T9) at the rear of this development site as being removed whilst the Landscape Plans show it being retained. As it is a common, exotic, insignificant specimen, no objections would be raised to its removal to allow for the new retaining walls/terraced garden beds in this same area as shown, subject to all other trees being retained and protected as detailed in the Arborist Report. All plans and documentation need to be consistent with each other.

Additionally, the Planting Plan and Plant Schedule within the Landscape Plans must be amended to:

- nominate exactly what will be planted where (quantities);*
- confirm soil depth & width for any podium planters to ensure sufficient soil volume is provided to sustain the planting into the future;*

- *confirm/detail how safe and compliant access will be provided in order to perform routine maintenance activities for the external planters.*

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

Clause 4.6 - FSR

242 Oberon Street, Coogee



CLAUSE 4.6 TO CLAUSE 4.4 OF RANDWICK LEP 2012

EXCEPTIONS TO DEVELOPMENT STANDARDS – **FSR VARIATION**

Demolition of the existing residential flat building and the erection of a new dwelling house

242 OBERON STREET, COOGEE

PREPARED BY

ABC PLANNING PTY LTD

May 2024

RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for demolishing the existing two-storey residential flat building and construction of a new residential dwelling house at 242 Oberon Street, Coogee.

Clause 4.6 of the Randwick LEP 2012 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide appropriate flexibility in applying certain development standards.

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

It is noted in particular that in the SJD decision, the Court at [73] held that *"it should be noted cl 4.6 of [LEP] is as much a part of [LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome."*

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

Clause 4.6 Exceptions to development standards

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

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4(2) of the *Randwick LEP 2012* - maximum FSR of 0.75:1, demonstrated on the LEP map in **Figure 1** below. The proposed FSR of 1:1 represents a variation of 0.25:1 from the development standard.



Figure 1: FSR Map (noting that Clause 4.4(2) states that the FSR standard of 0.75:1 applies to sites with a lot size between 300-450sqm).

Justification for Contravention of the Development Standard

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

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

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

- Streetscape/Visual Bulk -The recessed nature of the site from the Oberon Street frontage, screening of the site by street trees, screening of the site by dense vegetation

on its western and south-western sides, and its siting below-the-level area of the adjoining park, all contribute to the built form being screened from the public domain. The uppermost level of the dwelling is substantially recessed from the front of the built form (5 metres from the front) and is also set in behind landscaped planters on the sides from the levels below. These design measures reduce the visibility of the upper level from the public domain whilst also ensuring that the built form/excess FSR does not generate any adverse visual bulk impacts to the side and rear of the neighbours to the east addressed to 6, 8 and 10 Dundas Street. The surrounding area to the north contains 3- and 4-storey residential flat buildings, contributing to the area's character. On this basis, the built form and its associated FSR variation will not generate any adverse or unreasonable streetscape or visual bulk impacts on the public domain and adjoining properties.

- **Context-** The site adjoins 6 Dundas Street, located east of the subject site. Such a site contains a large 3-storey dwelling, prominent in the Dundas and Oberon Street streetscapes. The built form, including the FSR variation on the subject site, will appear recessive when viewed from Oberon Street as it presents to Oberon Street steps away from its frontage whilst also being screened by dense tree canopies in the street frontage. On this basis, the modest presentation of the dwelling, compared with its adjoining neighbour, justifies the variation to the FSR standard.
- **Height/Articulation—**The FSR is contained within a compliant height, while the built form is also considered to be within compliant and/or appropriate setbacks, noting the effect of dense vegetation along the western side. The built form is highly articulated on all facades and includes landscape elements on all facades at and above ground level. The articulated and landscape features reduce the apparent bulk, scale, and associated FSR variation.
- **Amenity Outcomes-** The FSR variation is not considered responsible for any unreasonable amenity impacts to adjoining properties to the east or the south of the subject site. In this regard, the following analysis is provided:
 - **Overshadowing-** all adjoining neighbouring dwellings and their north-facing windows and private open space areas will continue to receive in excess of the required 3 hours of solar access between 8am and 4pm on June 21. The adjoining property to the east at 6 Dundas Street will be virtually unaffected by the proposal, as is the case with the rear of the properties addressed to 8 and 10 Dundas Street, which back onto or are adjacent to the rear of the site. The lack of shadow impact and associated retention of solar access well beyond that required by the DCP controls contributes to the justification of the FSR variation.
 - **Privacy-** the additional FSR is not considered to generate any unreasonable privacy impacts, noting that the existing flat building has numerous windows that directly overlook the adjoining property to the east at 6 Dundas Street. The proposed dwelling has been retained to balance the provision of outlook to expansive coastal views to the north and northeast without generating any unreasonable overlooking impacts. The primary aspect of

balconies and openings is to the front of the site and not sideways or southeast to the primary living and outdoor areas of 6 Dundas Street. The other adjoining properties are not considered to be adversely overlooked by the proposed windows and balconies. The primary living and outdoor terrace on the uppermost level of the proposed dwelling are recessed from the levels below, which mitigates the possibility of downward overlooking opportunities. It is also noted that there is a considerable degree of mutual overlooking in this immediate context due to the desire to capture the coastal views and that privacy is secondary to achieving views. On this basis, the additional FSR is not considered to generate unreasonable privacy impacts.

- Views- the siting of the built form below the level area of Blenheim Park avoids any view loss from the park. Furthermore, the siting of the built form to the west of the adjoining dwelling to the east at 6 Dundas Street avoids any view loss from that property. The site is located north of the rear portion of 10 Dundas Street, which has a ground-level studio and an elevated parking area. The property at 10 Dundas Street is accessed via the private roadway that services the properties between 10 and 20 Dundas Street (accessed from Rainbow Street). It is considered that the proposal would not generate any adverse or unreasonable view loss, noting that the proposed built form is well below the height limit at the southern portion of the proposed dwelling, from where the northern outlook to the coast is obtained. It is considered that the properties further to the south along Dundas Street would maintain views, noting that they are substantially elevated above the subject site/proposed built form. On this basis, the additional FSR is not considered to generate unreasonable view impacts.
- Heritage- the additional FSR is not responsible for any heritage impacts as the site is not adjacent to any heritage items.
- Internal amenity—The additional FSR provides a higher level of internal amenity than would be provided with a reduced FSR. The additional FSR allows for additional bedroom accommodation for the applicant's family and other activities, including a music room and study. The study areas allow for work-from-home opportunities, which is desirable following the effects of COVID-19.
- The above factors demonstrate that the FSR variation is reasonable in the circumstances and that the development standard is unreasonable and unnecessary in the circumstances of this application.

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

Consistency with the objectives of the FSR standard in the LEP	
Objectives	Assessment
4.4(1)(a) to ensure that the size and scale of development is compatible	The proposed built form, including the FSR variation, will be compatible with the desired future character as the built form will not appear out of context with the height, bulk, and

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with the desired future character of the locality,	<p>scale of adjoining properties to the east. As viewed from Oberon Street, the built form to the east at 6 Dundas Street will continue to have a greater visual bulk, noting its extended frontage of built form to the Oberon Street over three levels, with minimal landscaping in the foreground. In contrast, the proposed built form is narrower and substantially screened by vegetation, whilst the built form is also recessed at the upper level. There are also existing residential flat buildings opposite the site in the R3 Medium Density residential zone and likely future residential flat building at the under-developed site opposite. This will result in a continuous form of 3–4 storey residential flat buildings opposite the site. When considered in conjunction with the unscreened 3-storey dwelling to the east and the 3–4-storey flat buildings to the north, the proposed built form and associated FSR variation will not generate any inconsistency with the surrounding context of the built form. Compliance with the height standard confirms that the built form and FSR variation will be compatible with the desired future character.</p> <p>On this basis, the FSR variation does not generate any inconsistency with the objective.</p>
4.4(1)(b) to ensure that buildings are well articulated and respond to environmental and energy needs,	<p>The built form is highly articulated on all facades and fragmented and stepped. The combination of the articulation aspects described above breaks down the proposal's visual bulk while also allowing for abundant sunlight, daylight, and ventilation, which reduces reliance on artificial heating, lighting, and cooling.</p> <p>On this basis, the FSR variation does not generate any inconsistency with the objective.</p>
4.4(1)(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,	<p>The proposed dwelling is not in a heritage conservation area or adjoining any heritage items, so no further consideration is warranted.</p>
4.4(1)(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.	<p>The additional FSR is not responsible for any adverse or unreasonable amenity impacts to neighbouring properties, noting that only two properties to the east and one property to the south adjoin the subject site. Such properties will continue to receive more than the required solar access under the DCP, while views will be retained. Privacy will also be improved compared with the existing interrelationship.</p> <p>On this basis, it is confirmed that the proposed FSR will minimise adverse environmental impacts, notwithstanding the FSR variation.</p>
Consistency with the objectives of the Zone R2 Low-Density Residential	
Objectives	Assessment
<ul style="list-style-type: none"> To provide for the housing needs of the community within a low-density residential environment. To enable other land uses that provide facilities or services to meet the day-to-day needs of residents. 	<p>The proposal that is associated with the FSR variation replaces a non-conforming residential flat building with a high-quality dwelling house that will provide for the housing needs of the community in a low-density environment.</p> <p>Despite the FSR variation, the dwelling will be compatible with the height, bulk and scale of other dwellings in the R2 Low-Density Residential zone.</p>

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<ul style="list-style-type: none"> • To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area. • To protect the amenity of residents. • To encourage housing affordability. • To enable small-scale business uses in existing commercial buildings. 	<p>The built form responds to the desirable elements of the streetscape and unique site circumstances by orienting primary living and private open space areas to established vegetation.</p> <p>The built form protects the amenity of surrounding residents, notwithstanding the FSR variation.</p> <p>On this basis, the FSR variation does not generate any inconsistency with the zone objectives.</p>
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Based on the above assessment, strict compliance with the LEP FSR standard is considered unreasonable and unnecessary in this instance.

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

Assessment: The above points of justification in the assessment, which demonstrate that the FSR development standard is unreasonable or unnecessary, constitute sufficient environmental planning grounds. Furthermore, the following points are considered to confirm that there are sufficient environmental planning grounds to permit the FSR variation in this instance:

- The site is considered to have particular circumstances that contribute to the sufficient environmental planning grounds to support the FSR variation. These include the recessed nature of the site from the Oberon Street frontage combined with dense established vegetation along the street front. The discreet roadway access from the western also combines a limited perception of the subject property and the associated built form from the public domain. The combination of these factors results in the majority of the built form (and the associated FSR variation) being screened or out of view. The built form thereby presents more modestly than the other built forms to the east, which are significantly more prominent and appear to have greater bulk and scale than the proposed dwelling. The presence of 3-4 storey flat buildings in the R3 Medium Density residential zone immediately opposite also contributes to a greater extent of built form in the context of the subject property. The dense screen of vegetation to the west within the steeply sloping section of Blenheim Park also effectively screens the perception of the built form from the west and southwest. Such circumstances are considered to be atypical when compared with the consideration of bulk and scale for other properties in the vicinity of the site. Such distinct circumstances are considered to constitute sufficient environmental planning grounds in relation to the perception of FSR (including the extent of variation) on the subject site.
- The steeply sloping site, combined with the above factors, is also considered sufficient environmental planning grounds. A significant proportion of the built form is excavated and or sited below ground levels of the sites to the east and south of

the site. This results in the visible components of the built form being compliant with or below the permitted FSR.

- The absence of view and shadow privacy impacts are also considered to constitute sufficient environmental planning grounds in this coastal location. The additional floor space within the proposed dwelling is able to be accommodated on the site without generating any adverse or unreasonable view impacts. The dense screen of vegetation effectively screens the perception of the built form from the west, thereby avoiding any loss of coastal view from any east-facing property to the west of the site. The properties to the east at 8-10 Dundas Street will continue to enjoy uninterrupted coastal views to the east, northeast and east, notwithstanding the FSR variation on the subject site.
- The additional floor space does not generate any adverse shadow impacts on the neighbouring properties to the east or south, as all their primary north-facing living area windows are unaffected by the proposed FSR variation. Furthermore, the rear yards and private open space areas of these properties will also continue to enjoy in excess of 3 hours of solar access between 8am and 4pm on June 21. It is also noted that the rear/southern portion of the built form, which is responsible for overshadowing part of the rear yard of No. 10 Dundas Street, is well below the height limit. On this basis, it is confirmed that the additional FSR can be accommodated on this site.

Other Matters for Consideration

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

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

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

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

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

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

*Clause 4.6 - FSR**242 Oberon Street, Coogee*

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

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

Concurrence

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

Nevertheless, the Court may wish to consider the concurrence requirements.

(b) the public benefit of maintaining the development standard

Assessment: The above assessment demonstrates that the proposed FSR satisfies the objectives of the standard and the zone.

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

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

It is also noted that there is no public benefit in maintaining the FSR standard, given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

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

Assessment: There are not any additional matters beyond those discussed above that need to be considered.

Generally, as to concurrence, for the reasons outlined above – and particularly having regard to the site-specific nature of this clause 4.6 variation request – there is nothing about this proposed FSR variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development

*Clause 4.6 - FSR**242 Oberon Street, Coogee*

standard on this site. No other relevant matters are requested to be considered before granting concurrence.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the development proposal at 242 Oberon Street, Coogee and is requested to be looked upon favourably by Council.

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Appendix 3: DCP Compliance Table

3.1 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 312.15m ²	
2.4	Site coverage		
	301 to 450 sqm = 55%	Proposed = 41% (129.4m ²)	Yes
2.5	Deep soil permeable surfaces		
	301 to 450 sqm = 35%	Proposed = 32%	No
2.6	Landscaping and tree canopy cover		
	301 to 450 sqm = 3 large trees	Proposed = 3 large new canopy trees and retention of 1 large tree.	Yes
2.7	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	301 to 450 sqm = 6m x 6m	Proposed = Private open space area in rear garden is overshadowed and is not directly accessible from the living space; 6m x 6m rooftop private open space does not meet definition of contiguous private open space.	No – refer to <i>Private Open Space</i> in Key Issues
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.75:1	Proposed = 1.01:1 (315.498m ²)	No
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 11.45	No
	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 and street frontage	i) Habitable space above 1 st floor level not integrated into roofline. ii) Living room ceiling height slopes down to 2.494m. iii) Lower ground floor to ground floor = 2.7m; ground floor to 1 st floor = 3.06m; 1 st floor to 2 nd floor = 3.06m. iv) 4 storey height	No
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	Existing = 0.46m Proposed = 0.46m Front site boundary is approximately 10m from Oberon Street. Site conditions allow	On Merit

DCP Clause	Controls	Proposal	Compliance																								
		for 0.489m front setback, this is no greater than what exists on the site.																									
3.3.2	Side setbacks <table border="1"> <thead> <tr> <th colspan="4">Minimum side setbacks</th></tr> <tr> <th>Existing primary frontage width</th><th>Building heights 0m to 4.5m</th><th>Building heights >4.5m to 7m</th><th>Building heights >7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height - 7m)</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.5m + 2 \times (\text{building height} - 7m)$</td></tr> <tr> <td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.8m + 2 \times (\text{building height} - 7m)$</td></tr> </tbody> </table>	Minimum side setbacks				Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m	Less than 6m	Merit assessment			6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	Lower ground floor = 1.5m eastern side setback, 1.35m western side setback. Ground floor = 1.5m eastern side setback, 0m western side setback. 1st floor = 0.9m eastern side setback, 0.61m western side setback. 2 nd floor = 1.5m eastern side setback, 0.61m western side setback.	No – refer to <i>Side setbacks</i> Key Issues
Minimum side setbacks																											
Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m																								
Less than 6m	Merit assessment																										
6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)																								
9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$																								
12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$																								
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access	Minimum = 6.7m Existing = 8.7m Proposed = 6.7m	Yes																								
4	Building design																										
4.1	General																										
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design balconies appropriately sized Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension).	<ul style="list-style-type: none"> Articulated front façade; Fourth storey is recessed but building does not step with land, excessive excavation; Side elevations are well articulated; 2nd floor rooftop terrace is of excessive scale; Bedrooms >10sqm 	No																								
4.4	Roof terraces and balconies																										
	i) Locate on stepped buildings only (not on uppermost or main roof) ii) For stepped buildings on sloping sites, a terrace may be provided on the roof other than the uppermost roof above the storeys below, provided the terrace complies with the following controls: - Suitably located to prevent direct views to neighbouring habitable windows and private open spaces	i) Rooftop deck on 1 st floor, not the main roof. ii) - Will overlook the private open space of No.6 Dundas Street; - Excessive size, though smaller	No																								

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - The size is to be subservient to the roof form within which it is located - It is designed as a secondary private open space and does not to include entertainment facilities such as kitchens, BBQs or similar - Designed to provide for view sharing, including minimising associated structures and roof top elements - It is to be uncovered and all elements of roof terraces shall comply with the maximum building height control 	<ul style="list-style-type: none"> than the uppermost roof; - Designed as the primary private open space directly from living room; - Not designed to provide for view sharing – refer <i>View Sharing</i> in Key Issues; - All elements do not comply with maximum building height – refer <i>Building Height</i> in Key Issues 	
4.6	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone 	<ul style="list-style-type: none"> • Schedule of materials and finishes provided. • Combination of materials and finishes that are suitable, with the exception of Colorbond Surfmist which would be conditioned to be non-reflective matte if approval was recommended. 	<ul style="list-style-type: none"> • Subject to conditions were DA approved. • DA is recommended for refusal.
4.7	Earthworks		
	<ul style="list-style-type: none"> i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. 	<ul style="list-style-type: none"> Excessive excavation that significantly exceeds 1m = refer <i>Earthworks</i> in Key Issues. 	No
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct 	<ul style="list-style-type: none"> i) The north facing windows to the front of the property and the POS will maintain solar 	No – refer to <i>Overshadowing</i> in Key Issues

DCP Clause	Controls	Proposal	Compliance
	sunlight between 8am and 4pm on 21 June.	access in accordance with the DCP controls. ii) POS does not meet definition for contiguous private open space, garden in rear is shown to be overshadowed throughout the day on 21 June.	
	Solar access to neighbouring development:		
	iii) 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.	iii) Portion of the north-facing living room windows receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) Shadow diagrams do not demonstrate compliance with this control.	No – refer to <i>Overshadowing</i> in Key Issues
5.2	Energy Efficiency and Natural Ventilation		
	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"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) Living rooms contain windows and doors opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	Internalised areas are well lit. A BASIX Certificate has been provided with the application.	Yes
5.3	Visual Privacy		
	Windows		
	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"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). 	- Ground and 1 st floor windows are oriented to minimise visual privacy impacts. - 2 nd floor living area has glazing across eastern façade oriented towards neighbouring dwellings. This may look into habitable	No - refer to <i>Visual Privacy</i> section of Key Issues

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DCP Clause	Controls	Proposal	Compliance
	ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	rooms of No.6, No.8 & No.10 Dundas Street, it has not been demonstrated that the impact is acceptable - Living room windows will overlook the private open space of No.6 & No.8 Dundas Street.	
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	2 nd floor private open space deck is 6m wide and overlooks the private open space of No.6 Dundas Street.	No - refer to <i>Visual Privacy</i> section of Key Issues
5.5	Safety and Security		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)	<ul style="list-style-type: none"> • Dwelling main entry is on side elevation; there is no pedestrian pathway on the southern side of Oberon Street directly in front of the site, • Street numbering not indicated on drawings. • Complies • Complies 	On merit – street numbering would be conditioned to be on front façade if approval were recommended.
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.	<ul style="list-style-type: none"> • Not designed to maintain views of Coogee Beach from neighbouring properties on Dundas Street. • No detailed view loss impact assessment provided. 	No – refer to <i>View Sharing</i> in Key Issues
6	Car Parking and Access		
6.1	Location of Parking Facilities:		

DCP Clause	Controls	Proposal	Compliance
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	i) Existing driveway to be used to access double width garage; ii) No rear lane or secondary street available; iii) Located within the dwelling; iv) Does not meet minimum frontage for double garage - 11.645m; v) Excavation for garage is acceptable and largely utilises existing excavation for lower floor of existing building; vi) Existing driveway utilised.	No – minimum frontage for double width garage not met. Safety issues require resolution as per Council Development Engineering referral.
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks.	Proposed garage forms part of the front façade which has an acceptable front setback – see 3.3.1	Yes
6.4	Driveway Configuration		
	Maximum driveway width: - Single driveway – 3m Must taper driveway width at street boundary and at property boundary	Driveway as existing.	Yes
6.5	Garage Configuration		
	i) Recessed behind front of dwelling ii) Maximum garage width (door and piers or columns): - Double garage – 6m iii) Min. 5.4m length of garage iv) Max. 2.6m wall height and 3m building height (for pitched roof) for detached garages v) Recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) Minimum clearance 2.2m (AS2890.1)	i) Garage is a recessed element of the front façade; ii) 5.4m garage width iii) 6m garage length iv) 2.5m floor to ceiling height; v) Garage door recessed 1m from west wall and 1.6m from east wall – acceptable articulation provided; vi) No parapet or bulkhead; vii) 2.5m clearance.	Yes
7	Fencing and Ancillary Development		
7.1	General - Fencing		

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DCP Clause	Controls	Proposal	Compliance
	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	<ul style="list-style-type: none"> 1.8m boundary fence proposed on western boundary. To be conditioned if approval were recommended. 	
7.3	Side and rear fencing		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	<ul style="list-style-type: none"> 1.8m boundary fence proposed on western boundary. To be conditioned if approval were recommended. 	
7.5	Swimming pools and Spas		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). vi) Incorporate screening or planting for privacy, unless need to retain view corridors. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	i) Forms part of the front façade. ii) Does not impact existing trees. iii) Elevated pool does not minimise noise impacts on adjoining dwellings. iv) Elevated pool on 1 st floor of dwelling. vi) Pool on western side of site, minimal visual privacy impacts from pool; vii) Private open space deck has privacy impacts on No.6 Dundas Street and is non-compliant with sections 4.4 and 5.3 of the DCP.	No – refer to <i>Swimming pools and Spas</i> in Key Issues

Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Integrated outbuildings and ancillary structures with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass	<ul style="list-style-type: none"> Sufficient articulation to the street, however, excessive scale and visual bulk as demonstrated within this report. No outbuildings visible from the street. Light tone of off form concrete is acceptable and consistent with surrounding development. 	No

	<ul style="list-style-type: none">v) Use durable materials suited to coastvi) Use appropriate plant speciesvii) Provide deep soil areas around buildingsviii) Screen coping, swimming and spa pools from view from the public domain.ix) Integrate rock outcrops, shelves and large boulders into the landscape designx) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone.	<ul style="list-style-type: none">• Deep soil around building.• Pool is visible from public domain and integrated into street facing façade.	
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Responsible officer: Thomas Awford, Environmental Planning Officer

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