

Randwick Local Planning Panel (Electronic) Meeting

Thursday 14 November 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, 14 November 2024

Declarations of Pecuniary and Non-Pecuniary Interests

General Reports

GR2/24 Randwick Local Planning Panel Guidelines 1

Development Application Reports

D91/24 23 Torrington Road, Maroubra (DA/565/2024)..... 19

D92/24 73 Darley Road, Randwick (DA/165/2023/A) 59

Meryl Bishop
DIRECTOR CITY PLANNING

General Report No. GR2/24

Subject: Randwick Local Planning Panel Guidelines

Executive Summary

- The Randwick Local Planning Panel (RLPP) was established in March 2018 and operates in accordance with the RLPP Guidelines, originally adopted by the Panel on 22 March 2018. Periodic reviews of the Guidelines are undertaken to ensure best practice and that relevant legislative requirements are incorporated into the Guidelines. As part of the ongoing process, the current RLPP Guidelines were due for review on 30 June 2024.
- On 03 June 2024, Council received confirmation from the Minister for Planning and Public Spaces that a new Chair and two (2) Alternate Chairs had been approved for appointment to Randwick Local Planning Panel, and that the list of independent experts had been approved for Council to select at least fifteen (15) expert members for their LPP. As such, on 25 June 2024, Council resolved to appoint the new Chair, Alternate Chairs and fifteen (15) Expert members to the Randwick Local Planning Panel.
- In view of the appointment of the new members, with particular regards to the appointment of a new Chair, the review of the Guidelines was extended to allow the new members to familiarise themselves with the current procedures and process for the operation of the Panel, as per the RLPP Guidelines.
- The RLPP Guidelines have been reviewed and minor amendments are proposed to ensure updated and accurate references to the relevant authorities and departments. The purpose of this report is to seek endorsement of the Guidelines, as amended, or to impose any further amendments as recommended by the Chair.

Recommendation

That the amendments to the Randwick Local Planning Panel Guidelines be adopted.

Attachment/s:

1.  Draft RLPP Guidelines (November 2024 Update)

Purpose

A periodic review of the Guidelines has been undertaken following the appointment of new members to ensure best practice processes for the Panel and to incorporate any relevant legislative requirements.

The purpose of this report is to identify amendments made to the RLPP Guidelines for endorsement by the Randwick Local Planning Panel.

Discussion

It is noted that since the previous review in June 2023, there have been no new Ministerial Directions in relation to the operational procedures of Local Planning Panels or other legislative changes that would impact upon the current Guidelines, and there are no legislative updates required. Notwithstanding, a review of the current Guidelines has identified incorrect references to relevant authorities and departments due to name changes etc.

As such, minor amendments are proposed to the Randwick Local Planning Panel Guidelines to ensure accuracy in the document and allow for the ongoing efficient operation of the Panel. The proposed changes are as follows:

- Sections 4.2 and 4.38 updated to reference the NSW Department of Planning, Housing and Infrastructure.
- Section 5 updated to delete reference to the Greater Sydney Commission and amend to the Minister.

Strategic alignment

The relationship with our 2022-26 Delivery Program is as follows:

Delivering services and regulatory functions:	
Service area	Development Assessment
Function	Assessment of Development Applications
Delivery program commitment	Assess and determine Development Applications, Modification Applications and Review Applications under the Environmental Planning and Assessment Act 1979

Resourcing Strategy implications

Nil

Policy and legislative requirements

- Division 2.5 of the *Environmental Planning and Assessment Act 1979*;
- Section 9.1 of the *Environmental Planning and Assessment Act 1979*;
- Schedule 2 of the *Environmental Planning and Assessment Act 1979*.

Conclusion

The Randwick Local Planning Panel Guidelines provide clarity on the operation of the Panel. The proposed amendments to the Randwick Local Planning Panel Guidelines involve minor amendments to update references to the relevant authorities and departments, and shall ensure the ongoing operation of the Panel.

Responsible officer: Angela Manahan, Executive Planner

File Reference: F2018/00147

GR2/24

GR2/24

CITY PLANNING

Randwick Local Planning Panel Guidelines

Adoption Date:
11 August 2022

Review Date:
30 June 2025

Version:
7

Responsible Department:
Development Assessment

TRIM Document Number:
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Introduction

The Randwick Local Planning Panel (Panel) is a local planning panel established for Randwick City Council (Council) under [Part 2, Division 2.5](#) of the Environmental Planning and Assessment Act 1979 (Act). It is responsible for determining certain [development applications](#) (and modifications) and providing advice on [planning proposals](#) (collectively referred to as applications in this guide).

Local planning panels (commonly referred to as Independent Hearing and Assessment Panels (IHAPs)) are mandatory for all councils in Sydney and Wollongong. They have been created to ensure that the process of assessment and determination of applications with a high corruption risk, sensitivity or strategic importance is transparent and accountable.

The Panel is comprised of four (4) members:

- Chair
- Two (2) expert members
- A community representative

The members for each meeting will be selected by the chair from the pool of members appointed to the Panel. Two alternate chairs have been appointed who will have the same role as the chair when presiding over a Panel meeting or other business.

This guide details how the Panel is to operate. It incorporates:

- Procedural requirements from the Act (refer to [Division 2.5](#) and [Schedule 2](#))
- Requirements from the [Local Planning Panels Direction – Operational Procedures](#) issued by the NSW Minister for Planning under section 9.1 of the Act; and
- Requirements from the [Local Planning Panels Direction – Planning Proposals](#) issued by the NSW Minister for Planning under section 9.1 of the Act; and
- Relevant provisions from the *IHAPs Overview and Best Practice Meeting Procedures* issued by the Department of Planning and Environment; and
- General requirements to ensure the efficient and effective operation of the Panel. While these requirements will generally be followed, they may be varied by the chair depending on the circumstances of a particular meeting or application or to respond to changed circumstances such as COVID 19.

A local planning panel is not subject to the direction or control of the council, except on matters relating to panel procedures and the time within which the panel is to deal with a matter, provided they are not inconsistent with the Directions of the Minister under section 9.1 of the Act.

1. Panel composition

Chair

- 1.1 The chair is responsible for the management of the Panel's functions and operations, including managing conflicts of interest.
- 1.2 The chair is to preside over panel meetings and other business.
- 1.3 The chair is to ensure the Panel fully discharges its responsibilities under the Act, (including the relevant operational procedures), any other directions from Council, the code of conduct, and these Guidelines in a timely manner.
- 1.4 The chair is responsible for the good and orderly conduct of the Panel. The chair may do all things necessary to fulfil this responsibility.
- 1.5 The chair is to decide which panel members (or alternates) are to hear a matter prior to the meeting commencing.
- 1.6 The chair must regularly rotate the independent expert members and the community representatives from the pool of appointed members to reduce opportunities to improperly influence panel members.
- 1.7 The chair and alternate chairs shall rotate presiding over meetings (unless the chair or alternative chairs are unavailable for any reason).
- 1.8 Alternate chairs have the same role as the chair when presiding over a panel meeting or any other business.

Independent expert members

- 1.9 The expert members can be interchanged as needed by the chair for reasons including:
 - a member has a conflict of interest;
 - a member is unable to attend on the day; and/or
 - to ensure there is a level of randomization involved in which expert members and alternates hear a matter, through regular rotation of the members, to reduce opportunities to improperly influence members.

Community representatives

- 1.10 A community representative can be interchanged as needed by the chair for reasons including:
 - a member has a conflict of interest;
 - a member is unable to attend on the day; and/or
 - to ensure there is a level of randomization involved in which community representatives and alternates hear a matter, through regular rotation of the representatives, to reduce opportunities to improperly influence representatives.

Note: The representatives on the Panel have been appointed on the basis that their skills and attributes could be equally applied to any of the wards. Consequently, the choice of

community representative for a meeting will consider factors such as: items in a particular ward, availability and rotation.

Quorum

- 1.11 Where a quorum (3 members) for a meeting is not present, the meeting shall be deferred.

Randwick Local Planning Panel members

- 1.12 A list of current Randwick Local Planning Panel members is available on Council's website.

Review of Panel decisions

- 1.13 All of the processes detailed below for determination of a development application also apply to the determination of a request to review a decision under Division 8.2 of the Act.
- 1.14 The determination of a review application from a Panel decision shall be determined by different members (including the chair) of the Panel to those who made the original determination.

2. Conduct of Panel Members

- 2.1 All Panel members must comply with the [code of conduct](#) approved by the Minister for Planning.

Conflict of interests

- 2.2 Panel members must avoid or appropriately manage any conflicts of interests. The onus is on the individual Panel member to identify a conflict of interests and take appropriate action.
- 2.3 All Panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting. These declarations and any management measures put in place are to be published on Council's website as soon as practicable.

Note: If a Panel member becomes aware of a conflict of interest after they have signed their declaration of interests form, and the interest appears to raise a conflict with the proper performance of the member's duties, the member must, as soon as possible, disclose the nature of the interest and sign a new declaration of interests form.

- 2.4 After a Panel member has disclosed a pecuniary interest in any matter, the member must not be present during any deliberation of the Panel with respect to the matter, or take part in any decision of the Panel with respect to the matter.

Note: A contravention of this requirement does not invalidate any decision of the Panel.

- 2.5 Any disclosure made must be recorded in the Minutes by the panel and be made publicly available upon request.

- 2.6 A person who is in the pool of members appointed to the Panel, must limit and disclose development/planning related work in the Randwick Local Government Area.
- 2.7 A person who is in the pool of members appointed to the Panel, shall not represent an applicant, Council or submitter at a meeting of the Panel.

Interactions with third parties

- 2.8 Panel members are not to discuss any matter that is to be considered by the Panel with councillors, the applicant, their consultants, parties who have made a submission, or any other person with an interest in the matter outside of the Panel meeting.

Note: This does not apply to persons employed by the Council to assess the matters to be considered by the Panel

3. Meetings

- 3.1 The Panel shall meet on the 2nd Thursday of every month (excluding January) unless there are insufficient applications to conduct a meeting.
- 3.2 If required, the Panel shall also meet on the 4th Thursday of the month or any other time as may be agreed by the chair.
- 3.3 The Panel is only required to hold a public meeting (as of August 2020) where the development application has attracted 10 or more unique submissions by way of objection.

A unique submission means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

- 3.4 A public meeting will normally be held via teleconference (i.e. Microsoft Teams) or in certain circumstances in person. Public meetings will be recorded and made publicly available on Council's website (see clause 25(3) of Schedule 2 of the Act).
- 3.5 Other applications that are required to be considered by the Panel that have not attracted 10 or more unique submissions by way of objection are to be determined at a non-public meeting (referred to as an "electronic meeting").

4. Meeting procedures

4.1 The Panel has adopted the following procedures for its meetings:

RLPP meetings will be either:

- Public Meeting
- Electronic Meeting

4.2 The requirement for either a public or electronic meeting is set out by directions issued by the NSW Minister for Planning and Public Spaces, which are available to view through the NSW Department of Planning, Housing and Infrastructure's [website](#).

4.3 Meetings will be held on the same day, commencing at 1.00pm on the Thursday for the public meeting, and the electronic meeting will commence at the conclusion of the public meeting.

4.4 At the public meeting, the panel will hear oral submissions from registered speakers and will generally then close the public meeting for deliberation and/or voting and determination (in confidential session).

4.5 At the conclusion of the public meeting (and the decision making process), the Panel will consider the matters on the electronic meeting agenda. Members of the public are unable to address the panel in relation to the matters on the electronic meeting agenda, however, may submit correspondence, up to the close of business 2 working days prior to the scheduled meeting date, that raises any additional matters not addressed in previous submissions.

Preparation of agenda & business paper

4.6 The agenda shall be prepared two weeks prior to the meeting and sent to the chair for approval.

4.7 No later than 10 days prior to the meeting, the chair shall approve the agenda and nominate which panel members (or alternates) are to sit on the Panel for that meeting.

4.8 Electronic copies of the business paper and associated plans and submissions shall be made available to panel members at least 6 days prior to the meeting. Hard copies of the business paper and plans shall be couriered to the nominated panel members (if required).

Notice of meetings

4.9 Notice of panel meetings (time and place) shall be provided through Council's website at least 6 days prior to the meeting.

4.10 Applicants and submitters shall be advised (in writing) when an application will be heard by the Panel.

4.11 Business papers for meetings shall be made publicly available on Council's website 6 days

preceding the meeting.

- 4.12 Any late submissions must be lodged at least 48 hours before the meeting. A late submission must be limited to addressing matters raised in the Business Paper such as responding to conditions or perceived errors of fact. It should not repeat information that has already been lodged. Any new information must be assessed by the relevant council staff prior to the meeting.

Notice of intention to address the public meeting

- 4.13 Any person wishing to address the Panel at a public meeting must register their intention to do so with Council by 12 noon on the day before the meeting. If any speaker wishes to use a PowerPoint presentation or the like, it must be received by Council by 12 noon on the day before the Panel meeting.
- 4.14 Unless the chair otherwise permits, the number of speakers shall be limited to one for and one against on each application. A person wishing to speak against an application must have already lodged a written submission on the subject application OR must provide a written summary (no longer than one A4 page) of the matters upon which they wish to address the Panel. Council must receive this summary at least 48 hours before the meeting.

Note: Additional speakers may be permitted if the chair considers that they are raising discrete different issues. Any requests for additional speakers must be received by 12 noon on the day before the meeting and approved by the chair before the meeting commences.

- 4.15 Councillors are able to address the Panel on any items. This is in addition to the other speakers. Any Councillor who wishes to address the Panel must register their intention to do so by 12 noon on the day before the meeting.

Site visits and briefings

- 4.16 The chair may elect for the Panel to undertake site inspections for applications that will be considered at a meeting. The Panel shall inspect the sites together, however in certain circumstances, such as COVID 19, site inspections may need to be undertaken independently and only from the public domain or as determined by the chair.
- 4.17 Appropriate Council planning staff shall accompany the Panel on site visits that are undertaken together.
- 4.18 Site visits should be conducted on the same day as the public meeting and will normally commence at 9.30am or as otherwise determined by the chair.
- 4.19 Site visits are solely to be used to identify and clarify issues with a proposal. At a site visit, a Panel member must not offer an opinion on the merit of the proposal or ask those involved with the assessment of the proposal for their opinion or recommendation.
- 4.20 Adjoining and/or affected properties may be visited by the Panel at the discretion of the chair. It is not a requirement for the Panel to visit every objector's property, however, it may visit if

the chair decides that the Panel's consideration of an application would benefit from viewing an objector's property. If so, the objector will be requested to provide access prior to the site visit.

- 4.21 Site visits are not to be used as a forum for applicants or objectors to address the Panel, however, the Panel may ask questions to clarify issues whilst visiting a site.
- 4.22 The panel may be briefed by Council staff and any other person engaged in the assessment of the matter about the proposal. On request, and at the chair's discretion, the applicant for a development application or planning proposal which is to be considered by the panel may brief the panel prior to its decision. Council staff are to be in attendance and ensure a written record is made of attendees and key issues discussed.
- 4.23 A written record of the site visit or briefing must be publicly available on the panel's website. For the purpose of this requirement, when a site inspection or briefing of the panel by Council Staff or an applicant is undertaken, a reference is included in the Minutes.

Public meeting

- 4.24 The public meeting shall commence at 1pm.
- 4.25 Electronic audio recordings shall be made of public meetings and these recordings shall be made publicly available on Council's website.
- 4.26 The chair/alternate chair, or in the absence of the chair/alternate chair, a member appointed by the Panel, is to preside at the meeting.
- 4.27 Speakers shall be heard for each item in the agenda in the following order:
- Councillor/s
 - Objector (or representative) speaking against the application; and then
 - The applicant (or the applicant's representative) speaking for the application.

Note: The chair may vary the order of presentations if required.

Unless the chair otherwise permits, there shall be no more than one speaker against and one speaker for each application. This is in addition to any councillors who wish to address the Panel.

- 4.28 A person is not entitled to be legally represented at any meeting of the Panel unless the chair grants permission. In granting any such permission, the chair shall have regard to the following matters;
- the nature and complexity of the matter and whether it involves a question of law,
 - whether the person has the capacity to present their submission without legal representation, and
 - such other matters as the chair considers relevant.
- 4.29 Unless the chair otherwise permits, no speaker may address the Panel for more than 3 minutes in respect of any one matter at any particular meeting. The chair may allow for an extension of time to enable relevant issues to be adequately addressed.
- 4.30 A person, other than a member of the Panel, shall not speak while another person is

speaking or otherwise interrupt that person while speaking.

- 4.31 Panel members may seek to clarify any matter with a speaker or Council officer.
- 4.32 Speakers (and all other people attending the public meeting) must refrain from engaging in disorderly conduct, or making potentially defamatory statements. If this behaviour occurs, the chair may ask the person to stop speaking and/or leave the meeting, or may adjourn the meeting.
- 4.33 The chair may adjourn the public meeting where a Panel briefing is required to hear confidential or sensitive information.
- Before the adjournment the chair should publicly state the reasons for the adjournment which should be recorded in the meeting minutes.
- 4.34 The Panel is not bound by the rules of evidence and may inquire into and inform itself on any matter, in such manner as it thinks fit, subject to the rules of natural justice and procedural fairness.
- 4.35 The Panel is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- 4.36 The panel meeting is for decision making and not an avenue to present new information or plans that may require further assessment by council staff. The chair has discretion to decide whether to accept material presented at the Panel meeting.
- 4.37 Following the address from councillors, objectors and applicants on all matters scheduled for that meeting, the chair shall adjourn or close the public meeting unless a decision is made to deliberate in public (Refer to 'Deliberation and Voting' below).

Deliberation and voting

- 4.38 In accordance with Part 3 of the *Local Planning Panels Direction – Operational Procedures* issued by the NSW Department of Planning, Housing and Infrastructure, the chair may choose how to manage the deliberation and voting process. The options include:
1. Deliberate, vote and make a determination in the public meeting;
 2. Adjourn the public meeting to deliberate and reconvene the meeting for voting and determination; or
 3. Close the public meeting, deliberate, vote and then notify the public of the outcomes outside the public meeting.
- The normal procedure for the Panel will be to adopt option 3 and close the public meeting prior to deliberation and voting. However, the chair has discretion to adopt the procedures detailed in options 1 or 2 above) for any item on the agenda. For example, it may be appropriate to adopt option 2 when dealing with contentious matters with significant impacts on the broader community; or option 1 for simple matters that can be determined without a lengthy deliberation process. Thereasons for varying the normal procedures shall be articulated by the chair and recorded in the meeting minutes.
- The procedures detailed in these guidelines relate the normal procedures that will be followed (option 3)
- 4.39 After the public meeting has been closed, the Panel shall attend a closed session to

deliberate and vote on each matter. Only voting members of the Panel (and Council staff, for administrative support and if matters require clarification) are able to attend the closed session.

- 4.40 For each item on the agenda, the Panel shall:
- prepare a draft written resolution, including reasons; and
 - vote on the resolution.
- 4.41 A decision supported by a majority of the votes is the decision of the Panel. In the event of an equality of votes, the chair (or presiding member) has a second or casting vote.
- 4.42 If a Panel member has a dissenting view to the majority, this view is to be formally documented and recorded in the Panel's reasons for its decision.

Deferring a decision

- 4.43 The Panel may defer its determination to a subsequent meeting, or to be determined by circulation of papers outside of a meeting (refer to section 6 below).
- 4.44 If an application is deferred, the Panel shall provide reasons and advise of the procedures to be followed for determination of the application.
- 4.45 Where possible, a deferred application shall be determined by the same chair and Panel members that presided over the original deferment.
- 4.46 Unless the deferred application requires renotification, it should be determined through the circulation of papers outside of a meeting.

Delegating a decision

- 4.47 The Panel may delegate the determination of an application to Council staff.
- If determination of an application is delegated to Council staff, the Panel shall provide reasons.

Post-meeting procedures

- 4.48 Minutes of the meeting shall include the decision, the outcome of voting and the reasons for the decision.
- 4.49 All voting Panel members shall review and sign the minutes after the meeting.
- 4.50 A copy of the minutes shall be made publicly available on Council's website.
- 4.51 All parties that made written submissions shall be advised of the outcome in writing.
- 4.52 The Notice of Determination shall be provided to the applicant.
- 4.53 Should the Panel resolve to defer or delegate determination of an application, the applicant shall be advised (in writing) and requested to provide the required additional information and/or amended plans within the time period specified by the Panel.

5. Planning proposals

- 5.1 When a planning proposal is referred to the Panel for advice, it is to be accompanied by an assessment report prepared by Council staff setting out recommendations in relation to the proposal, including whether or not the planning proposal should be forwarded to the Minister under section 3.34 of the Act.
- 5.2 The advice from the Panel must be received before council considers whether or not to forward the planning proposal to the Minister.
- 5.3 Prior to providing the advice, the Panel may request to be briefed by Council staff or other persons. If a briefing is conducted, a record of the briefing shall be published on Council's website that includes the time, date, attendees and key issues discussed.
- 5.4 Planning proposals are able to be considered by an electronic circulation of papers.

6. Transaction of business outside meetings

- 6.1 A Panel may, if it thinks fit, transact any of its business by the circulation of papers (electronically or in hard copy) among all the members of the Panel. A resolution approved in writing by a majority of those members is taken to be a decision of the Panel.

The chair and each member of the Panel have the same voting rights as they have at an ordinary meeting of the Panel.

The resolution is to be recorded in the minutes of the meetings of the Panel.
- 6.2 A Panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

7. Obligation to consult with Council

- 7.1 The Panel must not exercise a function that will result in the making of a decision that would have, or that might reasonably be expected to have, a significant adverse financial impact on Council until after it has consulted with Council.

The consultation may be in writing, with Council being given a specified time to respond in writing. Where a meeting with the General Manager (or delegate) is held to discuss the matter, all relevant Panel members should be present and minutes kept of the meeting and its outcomes.

8. Control and Direction of Court Appeals

Pursuant to Section 2.20(8) of the EPA Act, the Panel has delegated to Council's General Manager, Director City Planning and Manager Development Assessment the functions of the Panel under Section 8.15(4) of the EPA Act in respect of the control and direction of Appeals subject to the following:

- I. As required by Section 8.15(4) of the EPA Act, Council is to give notice to the Panel Chair and Alternate Panel Chair (electronically) of all Appeals relating to the determination or decision of the Panel or any deemed refusal within 7 days of the Appeal being served.
- II. In the case of an Appeal relating to a determination or decision of the Panel that is contrary to a Council officer's development assessment report, either the General Manager, Director City Planning or Manager Development Assessment will consult with the Chair of the Panel that made the determination or decision (or the Chair's nominee) as to the conduct of the Appeal within 5 business days of the notice of service of the appeal.
- III. In the case of all Appeals relating to a determination or decision of the Panel, either the General Manager, Director City Planning and Manager Development Assessment will keep the Panel Chair that made the determination or decision (or the Chair's nominee) informed as to major developments in, and the outcome of, the Appeal.
- IV. In the case of an Appeal being lodged relating to a deemed refusal of a development application, that application shall be referred to the first practical meeting, following the date that the Appeal was served, for determination or decision by the Panel. If it is not practical to provide a report, the Chair (or the Chair's nominee) shall be consulted prior to any Statement of Facts and Contentions being filed with the Court. Should there be no opportunity to consult with, or a response to a draft Statement of Facts and Contentions not be received from, the Chair (or the Chair's nominee) at least two business days prior to the date required for the filing of the Statement of Facts and Contentions the General Manager, Director City Planning or Manager Development Assessment shall have delegation to settle the Statement of Facts and Contentions without consultation or a response.
- V. The Council shall circulate a memo to all Panel members quarterly on the status of all Appeals relating to the determination or decision of the Panel and deemed refusals which would, but for the appeal, have come before the Panel. If an agreement under Section 34 of the Land and Environment Court Act has been made, the memo shall include reasons sufficient to demonstrate how the Panel's determination was addressed in the Section 34 agreement.

9. Consideration of advice from Design Review Panel

- 9.1 Council assessment officers and the panel should consider the advice of any design review report in its assessment reports and in making a determination. The design review report may be used in the following ways:
- to support the application of relevant planning controls in a flexible manner where the design review panel has identified this will achieve better outcomes;
 - to establish if the reasonable recommendations of the design review panel have been followed;
 - as evidence for refusing development consent where the advice of the design review panel has not been adopted.
- 9.2 In some instances, the panel may require additional design quality advice or clarification of design quality matters to finalise their recommendations or to make a determination. In this instance, they may refer the project back to the design review panel. The following criteria can be used to establish when to re-engage with the design review panel:
- the application is poor and has not considered the advice of the design review panel – refusal.
No return to design review panel
 - Application will require minor modifications – to be managed via conditions of consent.
No return to design review panel
 - The application will require significant modification, the extent and nature of which requires advice from the design review panel.
Return to design review panel



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Randwick City Council
30 Frances Street
Randwick NSW 2031

Development Application Report No. D91/24

Subject: 23 Torrington Road, Maroubra (DA/565/2024)

Executive Summary

Proposal:	Alterations and additions to the existing dwelling house including new attic level with balcony and driveway gate
Ward:	Central Ward
Applicant:	Mr G Christoforou
Owner:	Mr G Christoforou
Cost of works:	\$200,000.00
Reason for referral:	The development contravenes the development standards for floor space ratio and building height by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of buildings and floor space ratio development standards in Clauses 4.3 and 4.4 of Randwick Local Environmental Plan 2012.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/565/2024 for Alterations and additions to the existing dwelling house including new attic level with balcony and driveway gate, at No. 23 Torrington Road, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  [RLPP Dev Consent Conditions - DA.565.2024 - 23 Torrington Road, MAROUBRA NSW 2035 - DEV - Randwick City Council](#)

D91/24



Subject Site

Submissions received

North

Locality Plan

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standards for height of buildings and floor space ratio (FSR) by more than 10%.

The proposal seeks development consent for an attic addition, which comprises of a master bedroom, sitting area, bathroom and new stairs to an existing two- storey detached brick dwelling.

The key issues associated with the proposal relate to non-compliance with the height of buildings and FSR development standards pursuant to clauses 4.3 and 4.4 of RLEP 2012. The proposed variations are supported as the proposal is consistent with the objectives of the height of buildings development standard, FSR development standard, and the R2 zone. The Applicant’s written requests have adequately addressed the matters for consideration pursuant to clause 4.6.

The proposed attic addition is well integrated with the existing building and will not adversely impact the amenity of neighbouring properties.

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The subject site as shown in Figures 1 and 2 is known as 23 Torrington Road, Maroubra and is legally described as Lot 1 in DP 315461. The site is 466m², is rectangular in shape and has a 11.58m frontage to Torrington Road to the north east.

Existing on site is a two (2) storey detached dwelling with a lower ground garage and pitched front façade.

The site slopes approximately 1.25m (RL 45.67 – RL 44.42) from the front (north east) to the rear.(south west).



Figure 1: Subject site, viewed from Torrington Road (Source: Council officer).



Figure 2: Existing internal ground floor layout facing Torrington Road (Source: Council officer).

D91/24

The surrounding locality is characterised by low density residential development including mainly two storey and single storey dwellings of various size, colours and architectural style (refer Figures 3- 5).

D91/24



Figure 3: Neighbouring two (2) storey dwelling at No. 25 Torrington Road (Source: Council officer).



Figure 4: Neighbouring two (2) storey dwelling at No. 21 Torrington Road (Source: Council officer).



Figure 5: Opposite neighbouring two (2) storey dwellings at No. 30 (left) and No.32 (right) Torrington Road (Source: Council officer).

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of Council records revealed the following:

SC/2372/1925

Subdivision Certificate No. SC/2372/1925 was approved on 27 October 1925 for the a land subdivision into two (2) lots. Which are Inown as No.21 and 23 Torrington Road, Maroubra.

DA/374/1988

Development Application No. DA/374/1988 was approved on 7 Feburary 1989 for a new two storey dwelling house and to modify consent.

CDC/240/2017

Construction Development Certificate No. CDC/240/2017 was approved on 31 August 2017 for the installation of an inground pool and spa.

4. Proposal

The proposal seeks development consent for an attic addition to an existing dwelling house (refer Figures 6-10). Specifically, the proposed works include:

- New attic floor within existing roof structure;
- Master bedroom with stacking doors opening onto front balcony;
- Bathroom, walk in wardrobe and sitting room;
- New timber stairs from ground floor to new attic floor;
- New automatic metal gate across existing driveway;
- New cladded finish to attic level and front façade.

D91/24

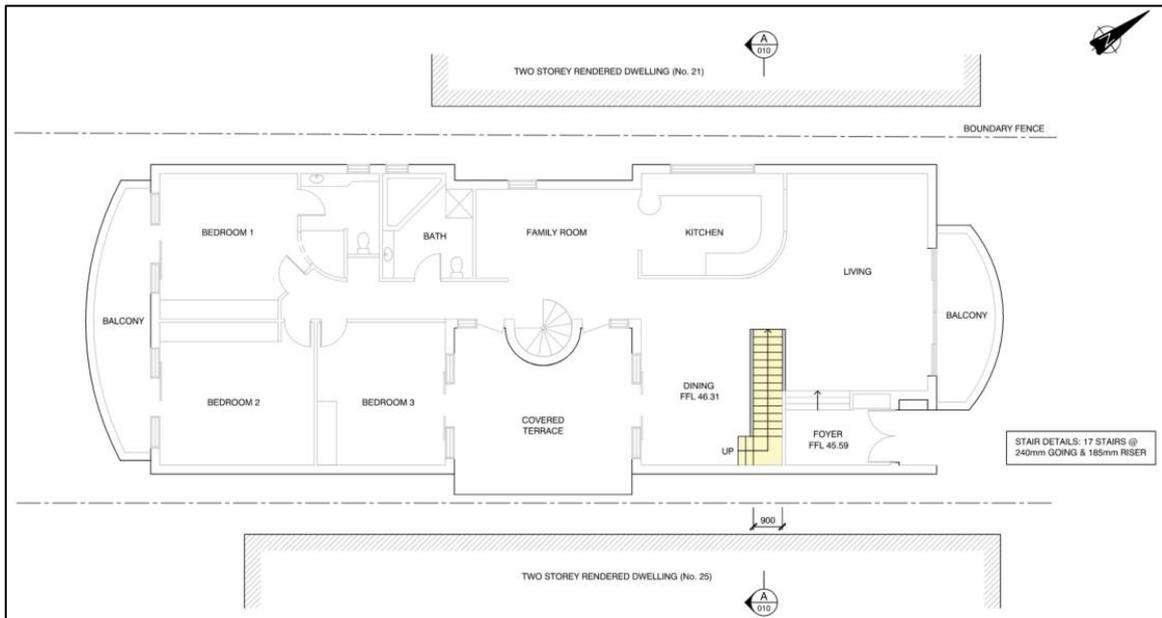


Figure 6: Proposed Ground Floor Plan (Source: Paterson Designs).

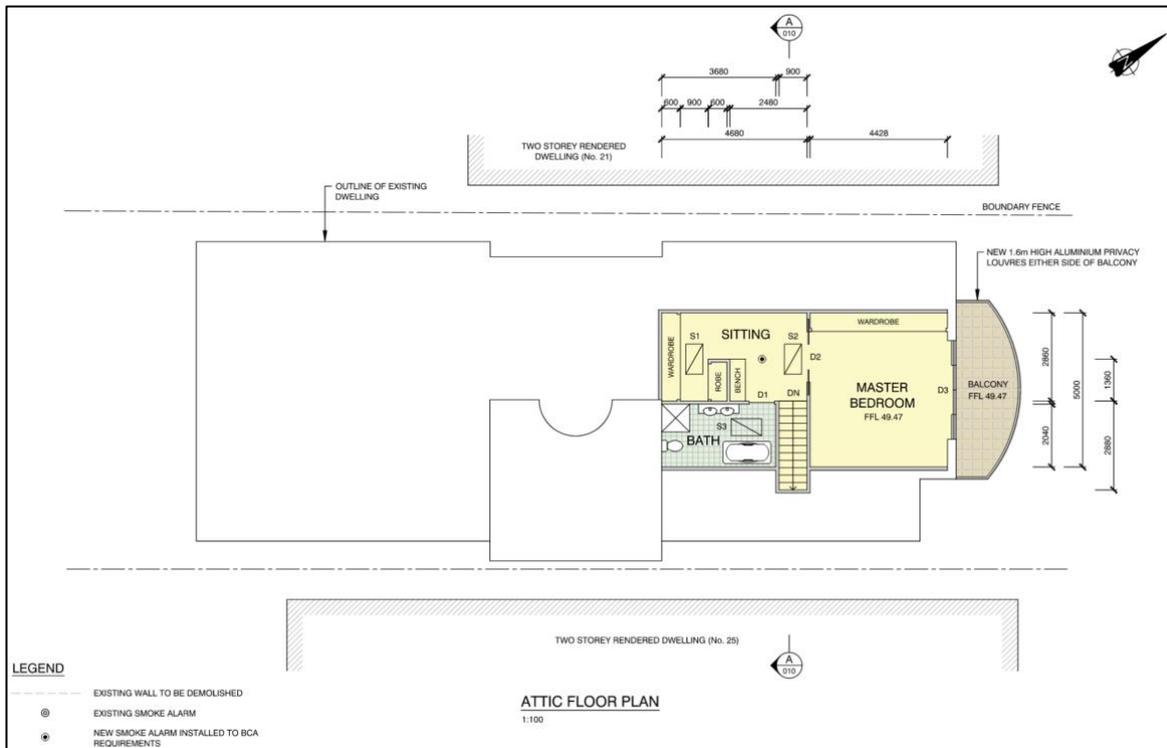


Figure 7: Proposed Attic Floor Plan (Source: Paterson Designs).

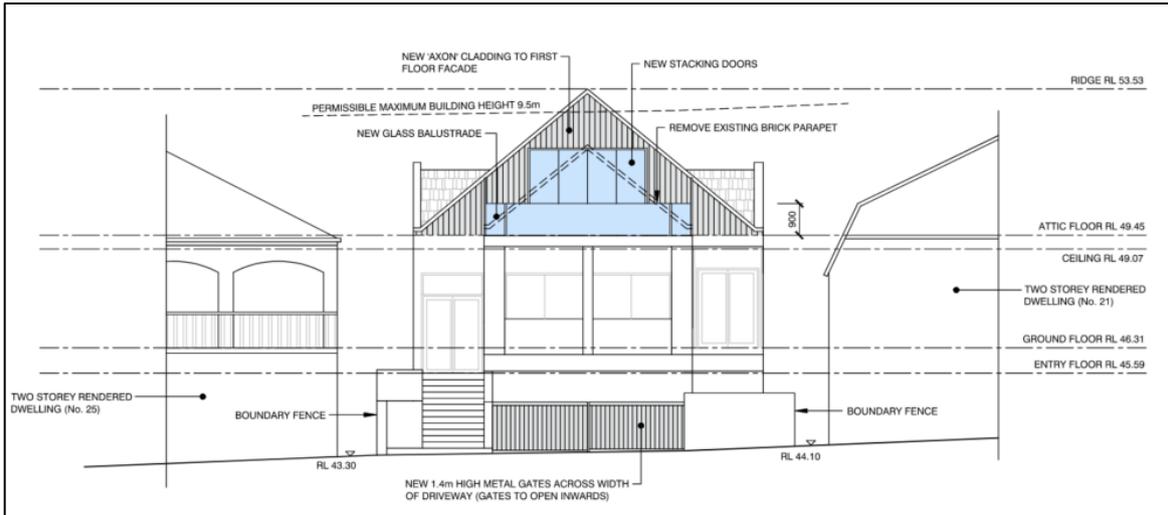


Figure 8: North-East Elevation (Source: Paterson Designs).

Figure 9: North-West Elevation (Source: Paterson Designs).

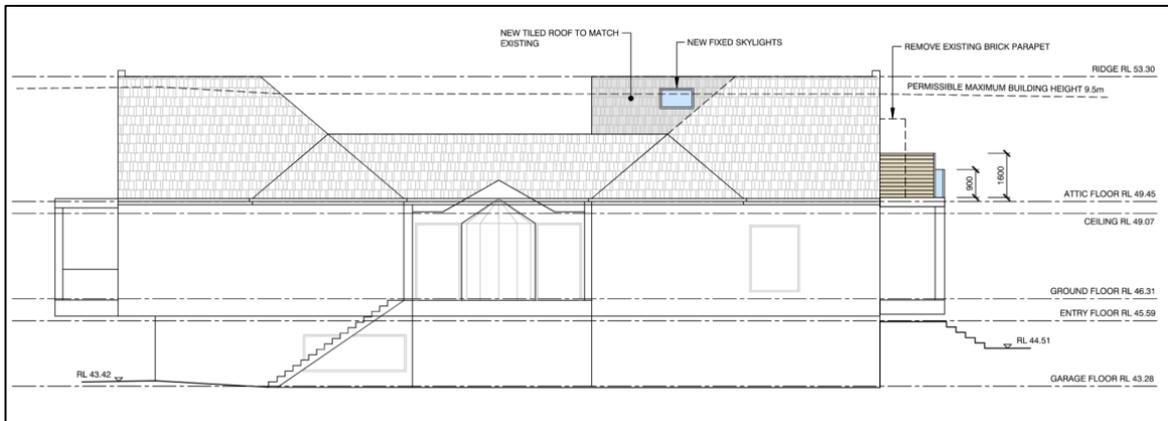


Figure 10: South-East Elevation (Source: Paterson Designs).



5. Notification

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

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policy (Sustainable Buildings) 2022

A BASIX certificate has been submitted on 11 May 2024 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. State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 of the Biodiversity and Conservation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW. The proposal does not involve the removal of any significant trees on the site, and as such, no further consideration of the SEPP is required.

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

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

The application involves an attic addition to an existing detached dwelling. Noting that the site has historically been used for residential purposes, the possibility of contamination is unlikely, and the site is considered suitable for the proposed development.

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 consistent with the specific objectives of the zone in that the proposed activity and built form will provide for additional internal space, increased usage and improved functionality for the residence whilst not impacting on the aesthetic character or compromising the amenity of local residents. Refer to the detailed assessment in Section 7 below.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.3: Building height (max)	9.5m	10.45m (RL 53.53 ridge over RL 43.28 garage floor)	No
Cl 4.4: Floor space ratio (max)	0.65:1 (302.9m ²)	0.8:1 (374.42m ²)	No

D91/24

6.4.1. Clause 4.6 - Exceptions to development standards

The non-compliances with the floor space ratio and building height development standards are discussed in Section 7 of this report below.

6.4.2. Clause 6.7 Foreshore scenic protection area

The subject site is located in the Foreshore Scenic Protection Area. Clause 6.7 of RLEP 2012 requires Council to be satisfied that the development has minimal visual impact on the coastline and contributes to the scenic quality of the foreshore.

The proposed development is consistent with the scale of surrounding development which comprises one (1) to three (2) storey dwellings. The front facade of the building and roof design minimises the visual impact of the dwelling as viewed from the public domain. The proposal is within the existing roof form and will not compromise the scenic qualities of the foreshore location. The proposed development has been designed to protect existing views of the ocean from neighbouring properties. On this basis, the development is satisfactory with regard to clause 6.7 of RLEP 2012.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	9.5m	10.45m	0.95m	10%
Cl 4.4: Floor space ratio (max)	0.65:1 (302.9m ²)	0.8:1 (374.42m ²)	71.52m ²	23.61%

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.*

The following section provides an assessment of the request to vary the development standard relating to the Floor space ratio with Clause 1.6 of Randwick LEP 2012. Consideration has been given to the following matters:

Wehbe v. Pittwater Council [2007] NSWLEC 827 establishes a number of ways in which the Applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Whilst *Wehbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6.

This Clause 4.6 variation has specifically responded to matters outlined above and demonstrates that the request meets the relevant test with regard to recent case law.

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

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

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

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

The objectives of the height of buildings development standard are set out in Clause 4.3 (1) of RLEP 2012. The Applicant has addressed each of the objectives as follows:

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that:

- The proposed extension to the roofline, which impacts the permissible height, is not visible from Torrington Road and will not impact the streetscape.

- The existing dwelling has a maximum height of 10.45m and already exceeds the permissible height. The proposed works include a minor extension to the existing roofline, maintaining a maximum overall building height of 10.45m.

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

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

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that the proposed works will not have any additional overshadowing impacts on neighbouring properties.

Assessing officer's comment: Council generally concurs with the justification provided in the Applicant's written request. The proposed attic level is primarily located centrally within the current built form with the only substantial external intrusion comprising of the rearward protrusion to occupy existing roof space and removal of the lower triangular brick parapet to facilitate a small front-facing balcony within the articulation zone. None of these components would result in any excessive mass or scale that would unreasonably intrude nor interrupt the current streetscape and development pattern of the immediate vicinity. Notably, the proposal complies with all other controls and objectives under Council policy, including those relating to setbacks, built form and roof design. The proposed works do not alter the current site coverage and deep soil permeable surfaces within the premises and as such, would generally retain the current balance of building, constructed components and soft landscaping elements onsite.

The proposal's nature and location are such that there would be minimal impacts on the streetscape and on neighbouring properties including those pertaining to overshadowing, amenity, privacy and view loss.

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

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

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

The proposed development demonstrates that there are sufficient environmental planning grounds in support of the contravention for the following reasons:

- The proposed maximum building shall not exceed the existing maximum building height.
- The existing ridgeline shall be maintained, and the roof extension shall not impact the streetscape.
- The bulk and scale of the proposal is consistent with this style of residential building which is common for residential areas.
- The proposed building form provides an appropriate height, bulk, and scale to the site.
- The proposed development will not impact on the amenity of the adjoining owners.
- The proposed development will not result in any additional privacy intrusion or loss of daylight access to adjoining properties, and maintains adjoining development views.

Assessing officer's comment: The above justification is generally concurred with. In conclusion, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the Height of Buildings development standard.

7.2. Exception to the Floor Space Ratio (FSR) development standard (Clause 4.4)

The Applicant's written justification for the departure from the floor space ratio (FSR) development standard is contained in **Appendix 2**.

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

The Applicant's written request seeks to justify the contravention of the 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 development 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*
- (b) *to ensure that buildings are well articulated and respond to environmental and energy needs*
- (c) *to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item*
- (d) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views*

The Applicant's written justification demonstrates that this objective is satisfied by noting that:

- The proposed works do not have any impact on environmental or energy needs.
- The scale of the development and its typology is appropriate for the site and the surrounding areas and meets the needs of the local residents.
- The dwelling is not located in a conservation area or near a heritage item.
- The proposal will maintain the residential amenity of the surrounding dwellings including their current levels of solar access, visual and acoustic privacy, and ventilation.
- The proposed works do not adversely impact the visual bulk, privacy, overshadowing and views of adjoining land and dwellings.

Assessing officer's comment: The justification in the Clause 4.6 and with respect to the variation to the Height of Buildings development standard are relevant and similarly, would apply to the justification for the requested contravention to the FSR development standard. As mentioned, the proposed attic level would not result in any excessive mass or scale that would unreasonably intrude nor interrupt the current streetscape and development pattern of the immediate vicinity. Much of the additional floor space is accommodated within the internal portion of the built form, and would not be visible from public domain and would not be highly discernible. The proposal also complies with all other controls and objectives under Council policy, including those relating to setbacks, built form and roof design.

The proposal's nature and location are such that there would be minimal impacts on the streetscape and on neighbouring properties including those pertaining to overshadowing, amenity, privacy and view loss.

The Applicant's written request has adequately demonstrated that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

The proposed development demonstrates that there are sufficient environmental planning grounds in support of the contravention for the following reasons:

- The proposed maximum FSR for the site of 0.80:1 is considered appropriate for an R2 Low Density Residential zone that primarily consist of residential development.
- The additional floor area is largely contained within the existing building footprint.
- The proposed building envelope is consistent with the existing building envelopes of neighbouring properties within the locality.
- The bulk and scale of the proposal is consistent with this style of residential building which is common for residential areas.
- The proposed building form provides an appropriate height, bulk, and scale to the site.
- The proposal will contribute to delivering a mix of well-designed housing that meets the needs of Sydney's growing population.
- The proposed development will not impact on the amenity of the adjoining owners.
- The proposed development will not result in any additional privacy intrusion or loss of daylight access to adjoining properties, and maintains adjoining development views.

Assessing officer's comment: The Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the FSR development standard. The overall height, bulk, and scale of the proposal is compatible with surrounding development and will not result in adverse amenity impacts to neighboring properties.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the FSR development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

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

9. Environmental Assessment

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

D91/24

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

10. Conclusion

That the application for an attic addition to an existing dwelling house be approved (subject to conditions) for the following reasons:

- Whilst the proposed development does not comply with the maximum building height and floor space ratio pursuant to clauses 4.3 and 4.4 of RLEP 2012, the proposal is generally consistent with the character and scale of surrounding built form within the site's locality.
- Compliance with the maximum height of buildings development standard is considered to be unreasonable or unnecessary in the circumstances of this case and there are environmental planning grounds that warrant variation to the development standard. As such, the written request pursuant to clause 4.6 of RLEP 2012 is well founded.
- Compliance with the maximum floor space ratio development standard is considered to be unreasonable or unnecessary in the circumstances of this case and there are environmental planning grounds that warrant variation to the development standard. As such, the written request pursuant to clause 4.6 of RLEP 2012 is well founded.
- The proposal is consistent with the specific objectives of the R2 zone in that it will provide for the housing needs of the community, enable other land uses that provide facilities or services to meet the day to day needs of residents, contribute to the desired future character of the area, protect the amenity of residents, and encourage housing affordability.
- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013 and 2023.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape

Appendix 1: Referrals

1. External referral comments:

Based on the nature and location of the proposed works no external referrals were required for the assessment of the subject application.

2. Internal referral comments:

Based on the nature and location of the proposed works no internal referrals were required for the assessment of the subject application.

D91/24

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

D91/24

EXCEPTION TO DEVELOPMENT STANDARD

**PROPOSED ATTIC EXTENSION TO EXISTING
DETACHED DWELLING**

23 TORRINGTON ROAD MAROUBRA

October 2024, Revision B

OVERVIEW

This Clause 4.6 variation request has been prepared pursuant to Clause 4.6 of Randwick Local Environment Plan 2012 (LEP 2012) in support of the development application of the proposed attic works at 23 Torrington Road Maroubra.

The request for variation of the development standard has been prepared in accordance with the requirements of Clause 4.6 of the Randwick LEP 2012 which has the following aims and objectives:

- (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.*

In summary, the following variations are proposed:

Randwick LEP 2012 Clause	LEP 2012 Development Standard	Proposed Development Non-Compliance	% of Variation
Clause 4.4 Floor space ratio	Maximum FSR 0.65:1	Proposed FSR 0.80:1	23% to LEP Standard
Clause 4.3 Height of buildings	Maximum height = 9.5M	Proposed height = 10.45m	10% to LEP Standard

In accordance with Clause 4.6 of the LEP 2012 Council is required to consider the following:

Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated:

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

NSW LAND AND ENVIRONMENT COURT: CASE

The following section provides an assessment of the request to vary the development standard relating to the Floor space ratio with Clause 4.6 of Randwick LEP 2012. Consideration has been given to the following matters:

Wehbe v. Pittwater Council [2007] NSWLEC 827 establishes a number of ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Whilst Wehbe was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6

This Clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

THE EXTENT OF VARIATION

The development standard being requested to be varied is Clause 4.4 Floor space ratio, and Clause 4.3 Height of buildings of the LEP 2012.

Clause 4.4 of the LEP 2012 states:

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

Floor space ratio (FSR) means:

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

Clause 4.3 of the LEP 2012 states:

(2) The height of a building on any land is not to exceed the maximum height shown on the Height of building map.

WILL THE PROPOSED DEVELOPMENT BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD

The objectives of Clause 4.4 FSR standard of the LEP 2012 are as follows:

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

The proposed development is consistent with these objectives as identified below:

- The proposed works do not have any impact on environmental or energy needs.
- The scale of the development and its typology is appropriate for the site and the surrounding areas and meets the needs of the local residents.
- The dwelling is not located in a conservation area or near a heritage item.
- The proposal will maintain the residential amenity of the surrounding dwellings including their current levels of solar access, visual and acoustic privacy, and ventilation.
- The proposed works do not adversely impact the visual bulk, privacy, overshadowing and views of adjoining land and dwellings.

The objectives of Clause 4.3 Height of buildings standard of the LEP 2012 are as follows:

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

The proposed development is consistent with these objectives as identified below:

- The proposed extension to the roofline, which impacts the permissible height, is not visible from Torrington Road and will not impact the streetscape
- The existing dwelling has a maximum height of 10.45m and already exceeds the permissible height. The proposed works include a minor extension to the existing roofline, maintaining a maximum overall building height of 10.45m
- The proposed works will not have any additional overshadowing impacts on neighbouring properties
- The dwelling is not located in a conservation area or near a heritage item.

ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The proposed development demonstrates that there are sufficient environmental planning grounds in support of the contravention for the following reasons:

- The proposed maximum FSR for the site of 0.80:1 is considered appropriate for an R2 Low Density Residential zone that primarily consists of residential development
- The proposed building envelope is consistent with the existing building envelopes of neighbouring properties within the locality
- The bulk and scale of the proposal is consistent with this style of residential building which is common for residential areas
- The proposed building form provides an appropriate height, bulk, and scale to the site
- The proposal will contribute to delivering a mix of well-designed housing that meets the needs of Sydney's growing population
- The proposed development will not impact on the amenity of the adjoining owners
- The proposed development will not result in any additional privacy intrusion or loss of daylight access to adjoining properties, and maintains adjoining development views
- The proposed maximum building shall not exceed the existing maximum building height

IS THERE ANY PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD?

Overall, it is considered that the strict maintenance of the standard in this instance is not in the public interest as the current proposal will result in no additional privacy, overshadowing, loss of views or visual bulk to the adjoining lands and dwellings.

CONCLUSION

It is requested that Council support the proposed variation to Clause 4.4 and Clause 4.3 of the LEP 2012 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
- There are sufficient environmental planning grounds to justify contravening the development standard
- The proposed variation allows for provision of improved residential accommodation for family housing
- No unreasonable environmental impacts are introduced as a result of the proposal
- There is no public benefit in maintaining strict compliance with the standard

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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 = 466m ²	
2.1	Minimum lot size		
	Minimum lot size LEP 2012 = 275m²	466m ²	Yes
2.2	Lot frontage		
	Dwellings & semi-detached		
	Dwelling = 24m parent lot, 12m per dwelling Semi-detached = 15m parent lot, 7.5m per dwelling	11.58m, no change to existing.	Yes
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 = 238.5m ² (approx.) = 51.18%, no change to existing.	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 = 73m ² (as noted in the SEE.) = 16%, no change to existing.	Yes, based on merit assessment.
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	Proposed = No large trees are existing on site. No change to existing.	Yes, based on merit assessment.
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 = 11.5m x 7.6m, no change to existing	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.65:1	0.8:1	No
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 10.45m	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	Proposed = 2 storey height and attic addition. Proposed = 1.8 ceiling height at lowest roof	No

D91/24

D91/24

DCP Clause	Controls	Proposal	Compliance																								
		pitch and 3.9m ceiling height at highest roof pitch.																									
3.3	Setbacks																										
3.3.1	<p>Front setbacks</p> <p>i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment.</p> <p>ii) Corner allotments: Secondary street frontage:</p> <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites <p>iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front</p>	Proposed = 7.5m, no change to existing.	Yes																								
3.3.2	<p>Side setbacks</p> <table border="1" data-bbox="352 757 912 1021"> <thead> <tr> <th colspan="4" style="background-color: #e0f2f1;">Minimum side setbacks</th> </tr> <tr> <th style="background-color: #e0f2f1;">Existing primary frontage width</th> <th style="background-color: #e0f2f1;">Building heights 0m to 4.5m</th> <th style="background-color: #e0f2f1;">Building heights >4.5m to 7m</th> <th style="background-color: #e0f2f1;">Building heights >7m</th> </tr> </thead> <tbody> <tr> <td style="background-color: #e0f2f1;">Less than 6m</td> <td colspan="3" style="background-color: #e0f2f1; text-align: center;"><i>Merit assessment</i></td> </tr> <tr> <td style="background-color: #e0f2f1;">6m to less than 9m</td> <td style="background-color: #e0f2f1;">0.9m</td> <td style="background-color: #e0f2f1;">0.9m</td> <td style="background-color: #e0f2f1;">0.9m + (building height - 7m)</td> </tr> <tr> <td style="background-color: #e0f2f1;">9m to less than 12m</td> <td style="background-color: #e0f2f1;">0.9m</td> <td style="background-color: #e0f2f1;">$0.9m + \frac{\text{building height} - 4.5m}{4}$</td> <td style="background-color: #e0f2f1;">$1.5m + 2 \times (\text{building height} - 7m)$</td> </tr> <tr> <td style="background-color: #e0f2f1;">12m and above</td> <td style="background-color: #e0f2f1;">1.2m</td> <td style="background-color: #e0f2f1;">$1.2m + \frac{\text{building height} - 4.5m}{4}$</td> <td style="background-color: #e0f2f1;">$1.8m + 2 \times (\text{building height} - 7m)$</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	<i>Merit assessment</i>			6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	<p>Proposed = 0.87m, along the north west boundary. 1.1m along the south east. Subject to existing built form. Side setbacks are reduced within the attic addition as the roof form is pitched.</p> <p>The proposed attic level maintains an established and consistent rhythm of setbacks and front gardens. Notably, the current front setback of the residence is generally retained.</p> <p>The form and massing of the development does not interrupt nor intrude on the streetscape character. The current 2-storey presentation of the dwelling is considered to be retained. The attic level will read as an attic level that is mostly captured within the high pitched roof cavity of the building.</p> <p>The proposal ensures adequate separation is provided between buildings – there are no new windows that face neighbouring properties and that would result in</p>	<p>No, demonstrates merit as per justifications provided. Noted that the proposed attic level retains existing side setback of current roof form above ground floor.</p>
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DCP Clause	Controls	Proposal	Compliance
		<p>substantial amenity and privacy impacts. Overshadowing impacts have been demonstrated to be reasonable and compliance with DCP controls.</p> <p>The proposed works do not alter the current site coverage and deep soil permeable surfaces within the premises and as such, would generally retain the current balance of building, constructed components and soft landscaping elements onsite.</p> <p>The proposal will retain the existing private open space for the residence.</p> <p>The proposal is centrally located within the current built form (footprint) and will not result in any significant view loss impacts.</p>	
3.3.3	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts 	<p>Existing dwelling = 7.6m</p> <p>Proposed attic level = more than 10m</p>	Yes
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context -	The proposed development is	Yes

D91/24

DCP Clause	Controls	Proposal	Compliance
	<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).	consistent with the characteristics of the streetscape and surrounding built natural environments. The proposed front façade is well articulated by way of stacking doors, varying materials and an appropriate sized balcony to match the ground level.	
4.5	Roof design and features		
	<i>Dormers</i> i) Dormer windows do not dominate ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. iii) Multiple dormers consistent iv) Suitable for existing <i>Clerestory windows and skylights</i> v) Sympathetic to design of dwelling <i>Mechanical equipment</i> vi) Contained within roof form and not visible from street and surrounding properties.	Proposed = Two (2) new fixed skylights along the north west side which falls above the sitting area and one (1) along the south east side which falls above the bathroom. The proposed skylights are sympathetic to the design of the dwelling and pitched roof form.	Yes
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	Proposed = Roof extension to match existing tiled material and colour with new glass balustrade and new axon cladding to first floor façade. A metal gate is proposed for the lower ground floor driveway. The proposal incorporates a suitable mix of materials and finishes.	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 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The site's north-facing living room windows and POS areas receive at least three (3) hours direct sunlight.	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.	Neighbouring north-facing living room windows and POS areas will continue to	Yes

DCP Clause	Controls	Proposal	Compliance
	iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> • Degree of meeting the FSR, height, setbacks and site coverage controls. • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. • Topography of the subject and adjoining allotments. • Location and level of the windows in question. • Shadows cast by existing buildings on the neighbouring allotments. 	receive at least three (3) hours direct sunlight.	
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: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i>	Internal habitable spaces will achieve adequate natural lighting and ventilation.	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). 	No windows are proposed. New stacking doors and glass balustrade are primarily orientated towards the front of the site to prevent direct overlooking to adjacent property windows.	Yes

D91/24

D91/24

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)		
	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.	Proposed attic addition balcony to face the street. To minimise overlooking and privacy impacts onto balcony spaces and windows at neighbouring properties including at No. 21 and 25 Torrington Road 1.6m high aluminum privacy louvers are proposed along the south-east and north-west (sides) of the balcony.	Yes
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 proposal is unlikely likely to result in adverse acoustic impacts associated with the attic level front balcony areas.	Yes
5.5	Safety and Security		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	Proposed driveway gate will increase security and safety to the front. Proposed master bedroom doors to the front elevation will increase passive surveillance of 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.	Surrounding properties are not afforded iconic or significant views. However, the attic addition will have views of the ocean to the north east. Existing views and vistas from neighbouring dwellings and the public domain will be maintained.	No

3.2 Section B7: Transport, Traffic, Parking and Access

The proposed development involves an attic addition to an existing dwelling and the change of bedrooms (from 4 bedrooms to 5 bedrooms). The additional attic space will accommodate for new stairs, a master bedroom, balcony, sitting area and bathroom as proposed in the attic floor plan at No. 23 Torrington Road Maroubra, this would not alter the required parking rates for the residence. The required parking rates relevant to the proposal are shown in Table 1 of Section 3.2, Part B7 of the DCP. The relevant rate is replicated below.

Proposed use	Vehicle	Motor cycle/scooter
RESIDENTIAL		
Dwelling houses/dual occupancies, semi-detached dwellings, attached dwellings	1 space per dwelling house with up to 2 bedrooms 2 spaces per dwelling house with 3 or more bedrooms Note: Tandem parking for 2 vehicles is allowed	

The proposal consists of 5 bedrooms, therefore, for this residency a minimum of 2 car spaces is required. The proposal demonstrates compliance by retaining the 2 existing car spaces facilitated by the double garage and driveway.

Responsible officer: Alyssa Chau, Environmental Planning Officer

File Reference: DA/565/2024

D91/24

Draft Development Consent Conditions (Alterations and Additions to Dwelling Houses)



Folder /DA No:	DA/565/2024
Property:	23 Torrington Road, MAROUBRA NSW 2035
Proposal:	Alterations and additions to the existing dwelling house including new attic level with balcony and driveway gate

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>
Ground Floor Plan – Proposed, Drawing No. 003	Paterson Designs	No date	17/10/24
Attic Floor Plan, Drawing No. 004	Paterson Designs	No date	17/10/24
North-East Elevation, Drawing No. 005	Paterson Designs	No date	17/10/24
North-West Elevation, Drawing No. 006	Paterson Designs	No date	17/10/24
South-East Elevation, Drawing No. 007	Paterson Designs	No date	17/10/24

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
A1747077	11 May 2024	12 July 2024

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

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

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

2. **Consent Requirements**

	Condition
	<p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
3.	<p>External Colours, Materials & Finishes</p> <p>The colours, materials and finishes of the external surfaces are to be compatible with the existing building and adjacent development to maintain the integrity and amenity of the building and the streetscape.</p> <p>External materials, finishes and colours of the building are required to match, as closely as possible, the existing building and any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare.</p> <p>Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by the Certifier prior to issuing a construction certificate for the development.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
4.	<p>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 \$200,000.00 the following applicable monetary levy must be paid to Council: \$1,000.00 .</p> <p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> $\text{IDC} = \text{ODC} \times \text{CP2/CP1}$ <p>Where:</p> <p>IDC = the indexed development cost ODC = the original development cost determined by the Council CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</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>

Condition	
	Condition Reason: To ensure relevant contributions are paid.
5.	<p>Sydney Water 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™ 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>
6.	<p>Building Code of Australia In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
7.	<p>Structural Adequacy Certificate of Adequacy supplied by a professional engineer shall be submitted to the Certifier (and the Council, if the Council is not the Certifier), certifying the structural adequacy of the existing structure to support the upper attic floor extension.</p>

Condition	
	Condition Reason: To ensure the structural integrity of the building is maintained.
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>A surface water/stormwater drainage system must be provided in accordance with the following requirements, to the satisfaction of the Certifier and details are to be included in the construction certificate:-</p> <ol style="list-style-type: none">Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);The surface water/stormwater must be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises;External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works. <p>Condition Reason: To control and manage stormwater run-off.</p>

BEFORE BUILDING WORK COMMENCES

Condition	
10.	<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> <ul style="list-style-type: none"> a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ul style="list-style-type: none"> b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works. <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>
11.	<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 <i>Environmental Planning and Assessment Regulation 2021</i>.</p>
12.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p>

Condition

A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.

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

13. **Public Utilities**

A *Public Utility Impact Assessment* 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.

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.

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.

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

DURING BUILDING WORK

Condition

14. **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—

Condition

- 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.

15. **Restriction on Working Hours**

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

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

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

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

16. **Public Safety & Site Management**

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

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.

Condition

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

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

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

- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.
- j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993

	Condition
	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.
17.	<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>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
18.	<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>
19.	<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>
20.	<p>Council's Infrastructure, Vehicular Crossings and Street Verge</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:</p> <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>

Condition

- (b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a *Pre-paid Works Application Form*, prior to issuing an occupation certificate, together with payment of the relevant fees.
- (c) If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee.
- (d) The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing.

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

- 21. **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.
- 22. **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.
- 23. **Plant & Equipment**
Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

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

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition

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

DURING DEMOLITION WORK

Condition

25. **Demolition Work**
Any demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard - AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a demolition work plan, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.
- Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:
- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro),
 - Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations
 - A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",
 - Council is to be given at least two days written notice of demolition works involving materials containing asbestos,
 - Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,

Condition

- 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.

D91/24

Development Application Report No. D92/24

Subject: 73 Darley Road, Randwick (DA/165/2023/A)

Executive Summary

Proposal:	Section 4.55 (2) - Modification to the approved development including minor changes to internal configurations, updated privacy screen details at first floor, modifications to the front path (non-original), relocation of the proposed pool, and adjustments to the secondary dwelling design.
Ward:	North Ward
Applicant:	Christopher Mullaney
Owner:	David Griffiths and Meagan Griffiths
Cost of works:	\$3,987,709.00
Reason for referral:	Amendments to a condition imposed by the Panel

D92/24

Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. 165/2023/A for modification to the approved development including minor changes to internal configurations, updated privacy screen details at first floor, modifications to the front path (non-original), relocation of the proposed pool, and adjustments to the secondary dwelling design, at No. 73 Darley Road, Randwick, in the following manner:

- **Amend Condition 1 to read:**

Approved Plans & Supporting Documentation

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Site Plan, DA-A01, Rev B	Muci Architects	12/09/2023	06/11/2023
Demolition Plans, DA-A04, Rev B	Muci Architects	12/09/2023	06/11/2023
Reflected Ceiling Plans, DA-A06, Rev B	Muci Architects	12/09/2023	06/11/2023
Ground & First Floor Plan, DA-D01, Rev B	Muci Architects	12/09/2023	06/11/2023
Roof Plan & BASIX Commitments, DA-D02, Rev B	Muci Architects	12/09/2023	06/11/2023
Elevations, DA-E01, Rev B	Muci Architects	12/09/2023	06/11/2023
Sections, DA-F01, Rev B	Muci Architects	12/09/2023	06/11/2023

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
A472664_02	12 September 2023	06 November 2023

D92/24

EXCEPT where amended by:

- **Other conditions of this consent; and/or**
- **the following Section 4.55 ‘A’ plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.55 ‘A’ plans and detailed in the Section 4.55 ‘A’ application:**

Plan	Drawn by	Dated	Received by Council
Site Plan A01 Rev C	Muci Architects	5 July 2024	10 September 2024
Demolition Plans A04 Rev C	Muci Architects	5 July 2024	10 September 2024
Reflective Ceiling Plans A06 Rev C	Muci Architects	5 July 2024	10 September 2024
Ground and First Floor Plan D01 Rev C	Muci Architects	5 July 2024	10 September 2024
Roof Plan and BASIX Commitments D02 Rev C	Muci Architects	5 July 2024	10 September 2024
Elevations E01 Rev C	Muci Architects	5 July 2024	10 September 2024
Sections F01 Rev C	Muci Architects	5 July 2024	10 September 2024

BASIX Certificate No.	Dated	Received by Council
1336595S_02	5 July 2024	Christopher Mullaney
A472664_03	5 July 2024	Christopher Mullaney

- **Add the following condition:**

Garden Planter

61. The first floor rear garden planter outside the master bedroom and the ensuite is to be non-trafficable and only accessed for maintenance purposes.

- **Delete the following condition:**

Amendment of Plans & Documentation

- 2a. An additional 39.6m² of deep soil permeable area, as per the definition of deep soil permeable surfaces in Council’s DCP, shall be provided at the subject site.

- **Modify the following conditions**

Amendment of Plans & Documentation

- 2b. A vertical privacy screen must be provided to the upper level rear facing window (W-03) of the Main dwelling to the following window panels:
 - X2 eastern window panels (adjacent to the corner of the building) to the southern-eastern rear elevation of the master bedroom.
 - X4 western window panels (adjacent to the corner of the building) to the southern-eastern rear elevation of the master bedroom ensuite

Privacy screen/s must be:

- constructed with vertical timber battens with individual openings not more than 30mm wide

- extend the full height of the glazing
 - positioned between the privacy fins
 - fixed and not opened other than for the purpose of cleaning and maintaining the glazing.
- 2d. The upper level windows (W101) and (W103) on the north-western elevation of the Secondary Dwelling must have a minimum sill height of 1.6m above floor level, or alternatively, the windows are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height.

Landscape Plans

16. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the scheme submitted for the Construction Certificate is substantially consistent with the Landscape Plans by Dangar Barin Smith REV D dated 30/4/2024, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.

The Landscape Plans by Dangar Barin Smith REV D dated 30/4/2024, must be amended to now comply the following requirements:

- a. If the Principal Certifier identifies that planting that is currently shown within the fenced off pool area, being between the pool and eastern site boundary, does not comply with Pool Barrier legislation/standards due to their size at maturity and being within the 'climbable zone', then the Planting Plan and Plant Schedule must be amended as necessary to now select compliant feature species in their place in this same area.

A revised scheme complying with the requirements specified above must then be submitted to, and be approved by, the Principal Certifier, prior to any Construction Certificate.

Landscape Certification

17. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Landscape Plans by Dangar Barin Smith REV D dated 30/4/2024, and any relevant conditions of consent, including those imposed in the S4.55 'A' relating to planting within the fenced off pool area.

Attachment/s:

Nil

D92/24



1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) because it is made under Section 4.55(2) of the Environmental Planning and Assessment Act (1979) and proposes amendments to a condition of development consent previously imposed by the RLPP.

The original council assessment report recommended the following condition:

2c. The privacy fins fixed to the windows in Condition 2(b) shall be deleted.

In its decision, the RLPP removed Condition 2c, allowing the subject privacy fins, which 450mm in length (as measured on the approved plans), to be retained. The proposed modification seeks to reduce the length of the privacy fins to 310mm as depicted on the architectural plans submitted with the application.

The Section 4.55(2) application is therefore required to be determined by the RLPP.

The original development application (DA) was referred to the RLPP because the site is listed as a Local Heritage Item under Randwick Local Environmental Plan (RLEP) 2012.

2. Site Description and Locality

The site is identified as Lot 16, Sect 24, DP 4589, No. 73 Darley Road, Randwick NSW 2031. The site is located on the south-eastern side of Darley Road between Evans Street to the north-east and Govett Street to the south-west.

The site is a rectangular shaped allotment with a 12.19m frontage to Darley Road, a 54.86m side boundary depth, a 12.19m rear boundary fronting Huddart Lane and a total site area of 663.9m².

Existing on site is a part one part two storey residential dwelling, with the first floor being contained within the dwelling roof cavity. Within the rear yard of the site is a swimming pool along the north-eastern boundary and a garden area to the south-western side.

At the rear of the site adjoining the rear boundary to Huddart Lane is a part one part two storey structure with a double width garage and pavilion to the ground floor and storeroom at the first floor.

The site is listed as a Heritage Item under Schedule 5 of RLEP 2012 (Item I341). The site is situated within the North Randwick Heritage Conservation Area (Item C1 within Part 2, Schedule 5 of RLEP 2012).

The surrounding area is characterised by residential development, including dwelling houses and semi-detached dwellings. Adjoining the site to the north east at 75 Darley Road is a single storey detached dwelling house and to the south-west at 71 Darley Road is a part one part two storey detached Local Heritage Item dwelling house. On the opposite side of Darley Road to the north is Centennial Parklands.

3. Details of Current Approval

On 14 December 2023, the RLPP approved a DA for alterations and additions to the existing dwelling, including internal and external demolition, an extension at the ground and first floors and associated internal works, construction of a new triple garage with a secondary dwelling above fronting Huddart Lane and a new swimming pool, associated landscaping and site works.

Condition 2 of the recommended development consent reported to the RLPP read:

Amendment of Plans & Documentation

2. *The approved plans and documents must be amended in accordance with the following requirements:*
 - a. *An additional 39.6m² of deep soil permeable area, as per the definition of deep soil permeable surfaces in Council's DCP, shall be provided at the subject site.*
 - b. *The following windows shall be deleted or have a minimum sill height of 1.6m above floor level, or alternatively, the windows are to be fixed and provided with translucent, obscured, frosted or sandblasted glazing below this specified height:*
 - *x2 eastern window panels (adjacent to the corner of the building) to the southern-eastern rear elevation of the master bedroom.*
 - *x2 western window panels (adjacent to the corner of the building) to the southern-eastern rear elevation of the master bedroom ensuite.*
 - c. *The privacy fins fixed to the windows in Condition 2(b) shall be deleted.*
 - d. *Window W-101 and the entire façade of the north-western internal elevation of the Secondary Dwelling at the first floor level shall have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height. In addition, the privacy fins fixed to these windows shall be deleted.*
 - e. *The external privacy and shading fins to the rear of the first floor dwelling windows shall be fixed, constructed with 450mm wide blades, and spaced between each window pane shown on the south-eastern rear elevation.*

- f. *The roofed pedestrian accessway along the north-eastern side of the rear building (including the planter section and rear wall/gate section) shall be deleted. Accordingly, a pedestrian gate and solid fence/wall shall be provided along the rear boundary and the north-eastern side boundary to a maximum height of 1.8m.*

Amended plans are to be submitted to and approved by Manager Development Assessment, prior to a Construction Certificate being issued for the development.

In its determination of the DA, the RLPP amended Condition 2 by deleting Condition 2c in relation to the removal of privacy fins to the master bedroom and ensuite windows at the upper level of the main dwelling.

4. Proposal

The proposed modification seeks to modify the development consent in the following manner:

Internal Design Changes

- The finish to the kitchen is proposed to be changed from tiles to timber floorboards.
- The door opening between the butler's kitchen and the new living /dining extension will be removed and infilled with brick and rendered (the lintel will be retained, and door salvaged).
- provision of a hatch and cellar/storage room under the butler's kitchen.

External Design Changes

- replacement of the concrete wall at the southwestern side of the living/dining room and the provision of timber batten screen concealing a hot water system and the AC unit behind the electric fireplace.
- re-alignment of rear living/dining room glass sliding doors.
- deletion of the roof above external entry from the laneway on northern side of the garage.

Landscaping/Pool

- relocation of the pool to northern side of the rear yard (in the shell of the existing pool) and the provision of a timber deck surrounds.
- relocation of pool equipment to underneath the stair to the secondary dwelling.
- provision of concrete alfresco area in the approved pool location.
- reconfiguration of the northwestern garage wall at ground level to accommodate a BBQ, sink and pizza oven (adjacent to the alfresco area), alterations to the stair entry (D-102) to the secondary dwelling, provision of a new sliding door entry (D-101) to the garage and internal space for a solar battery.
- deletion of the southern arm to front pathway and installation of a timber bridge over the pond and stone paving either side.

Secondary Dwelling

- internal reconfiguration of the bedroom/bathroom layout.

Windows/Privacy Measures

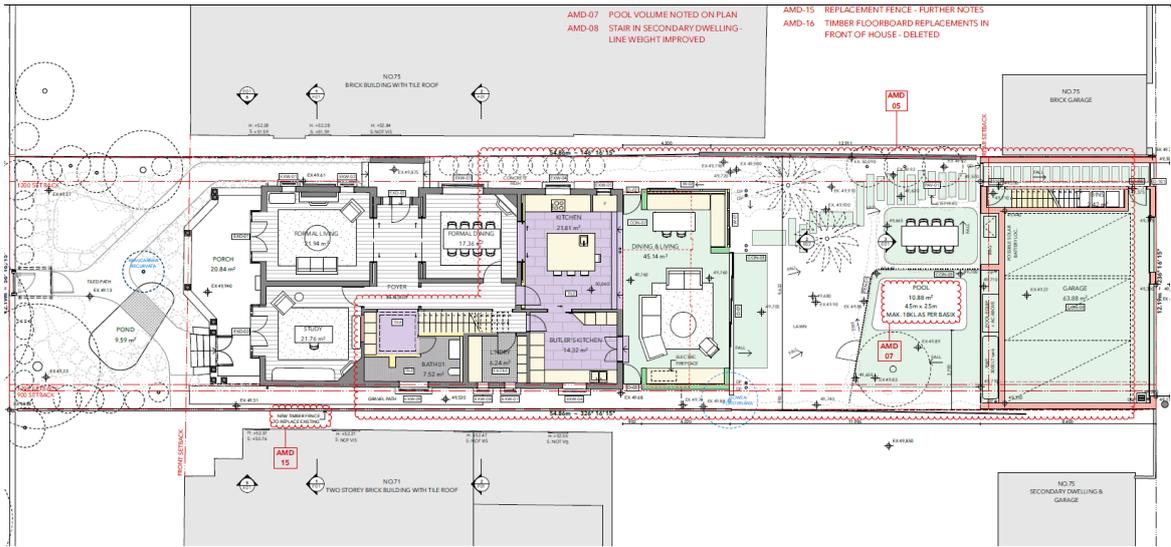
- reduction in the size of the upper level window (W101) at the northwestern elevation of the secondary dwelling and the installation of reeded/obscured glass up to 1.6m above FFL and the installation of a 200mm wide full height window (W103) to the shower.
- installation of vertical timber privacy screens at the rear upper level of the main dwelling to four window panels adjacent to the ensuite and one window panel adjacent to the master bedroom (W-03).

It should be noted that the length of the privacy fins as required to be retained by the Panel is to be reduced from 450mm to 310mm.

The proposed modifications will result in a reduction in the Floor Space Ratio (FSR) and building site coverage and an increase in the deep soil landscape area. These aspects are discussed in the report.

The proposed modification will result in no change to the approved building envelope of the main dwelling or the secondary dwelling.

Extracts of the approved and proposed modified plans are provided below.



D92/24

Figure 1 – Approved Ground Floor Layout

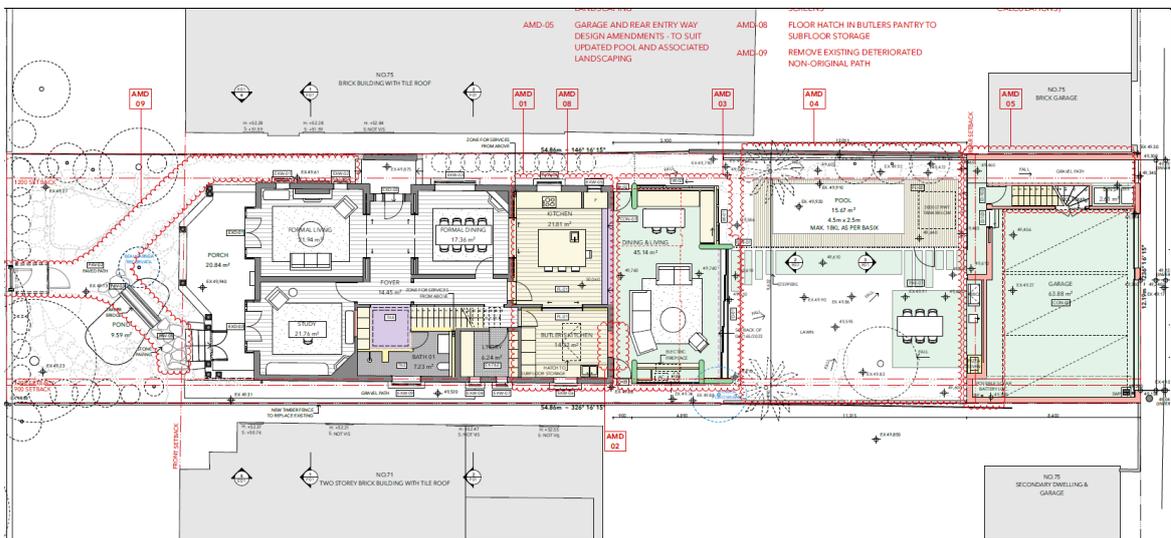


Figure 2 – Proposed Modified Ground Floor Layout

D92/24

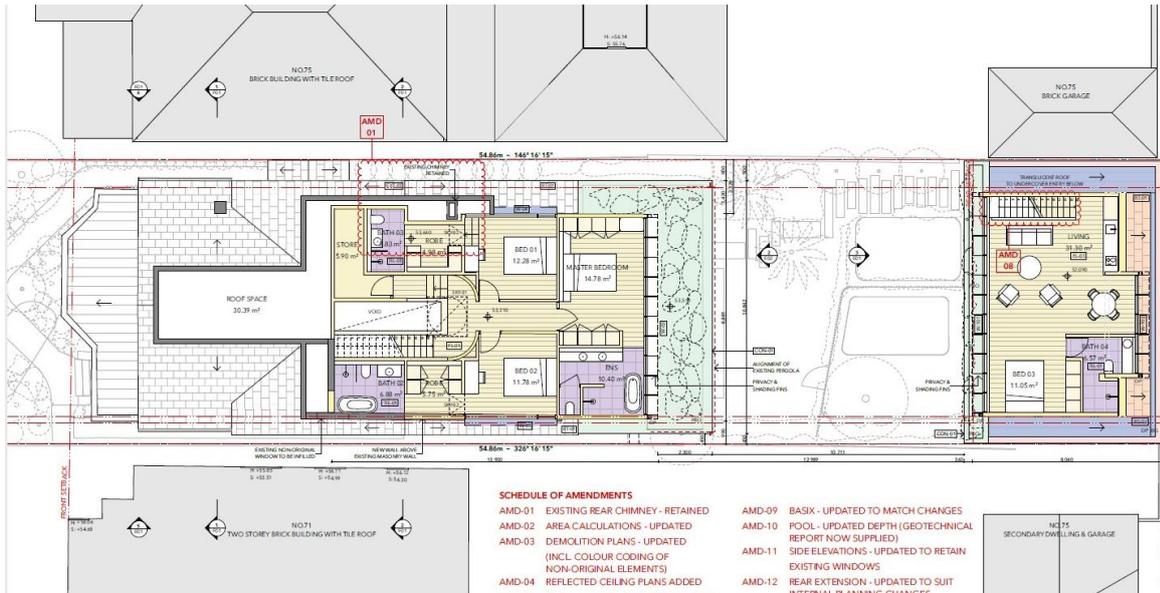


Figure 3 – Approved First Floor Layout

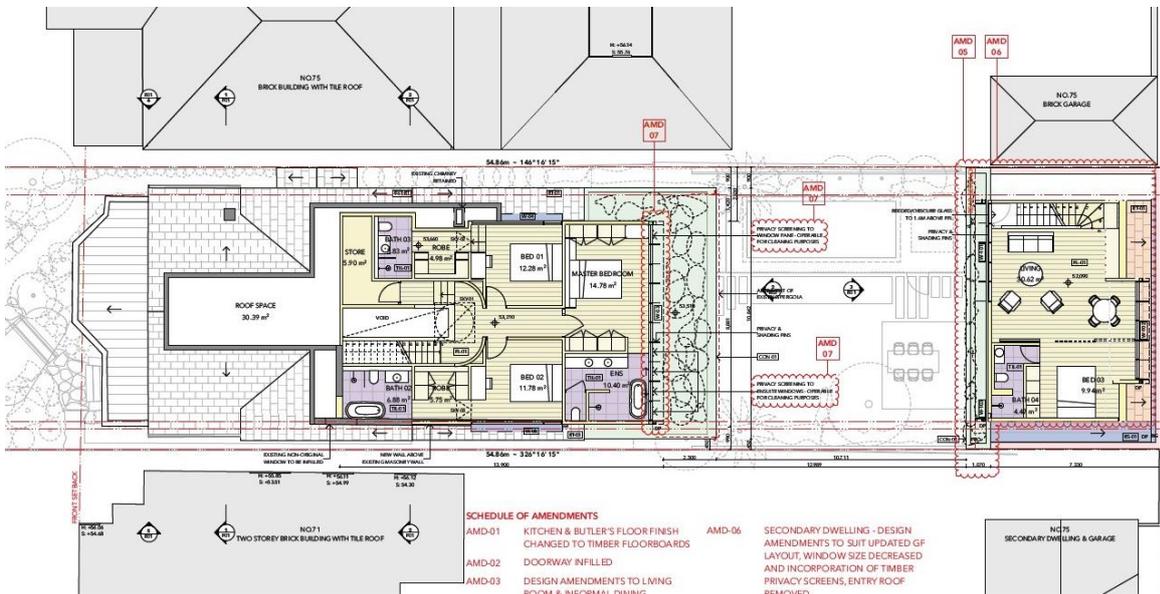


Figure 4 – Proposed Modified First Floor Layout

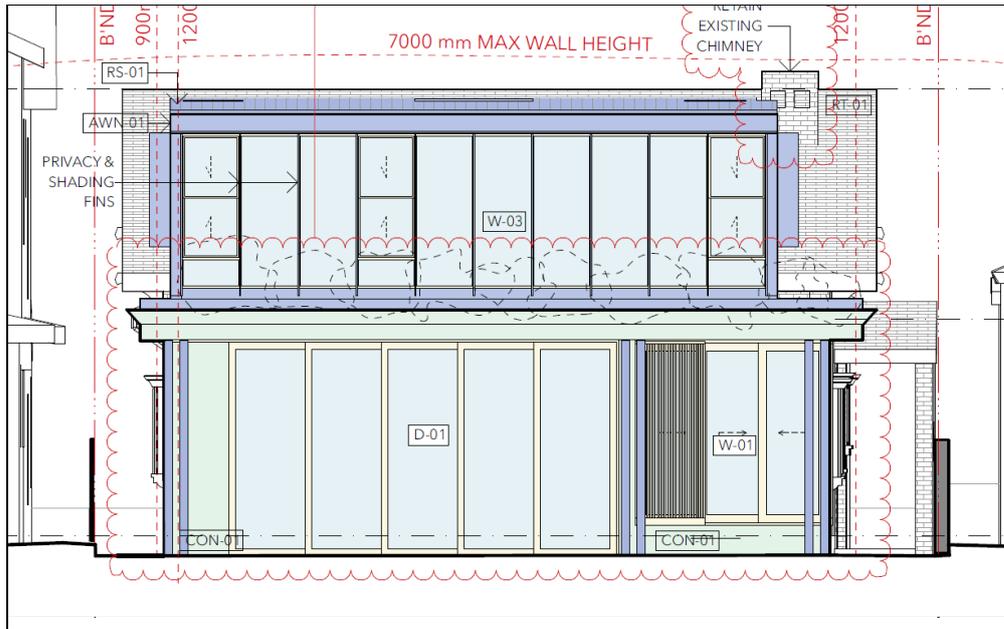


Figure 5 – Approved Southeast Elevation (rear of the main dwelling)

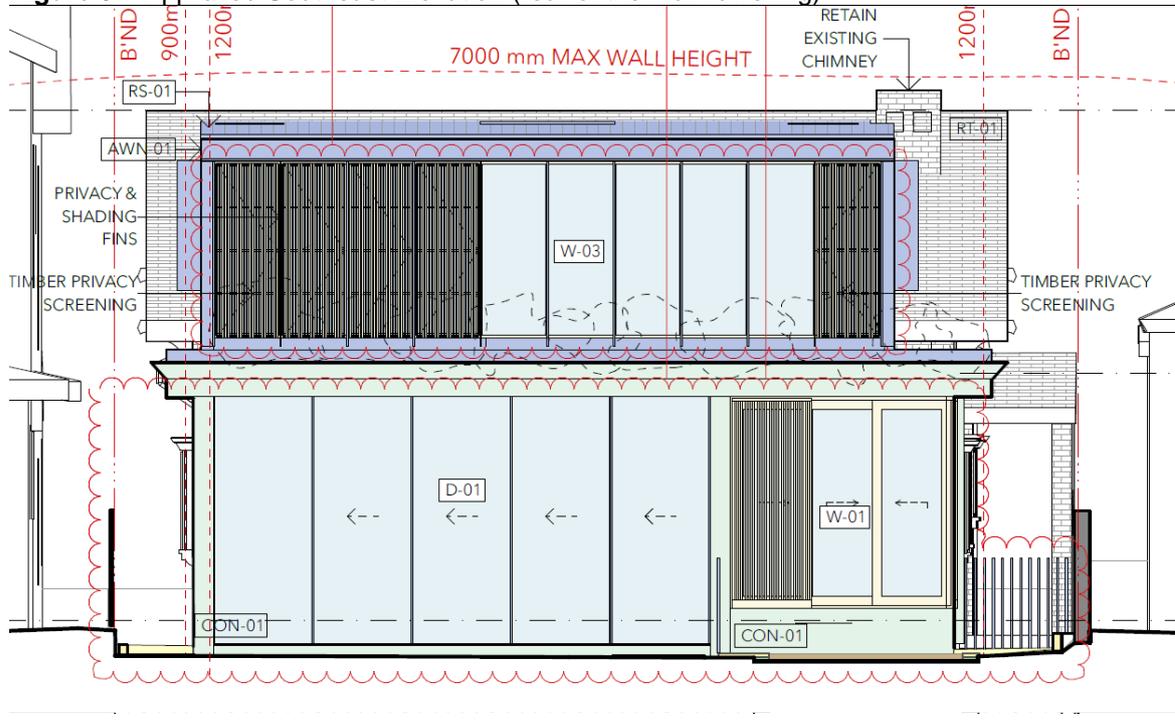


Figure 6 – Proposed Modified Southeast Elevation (rear of the main dwelling)

D92/24

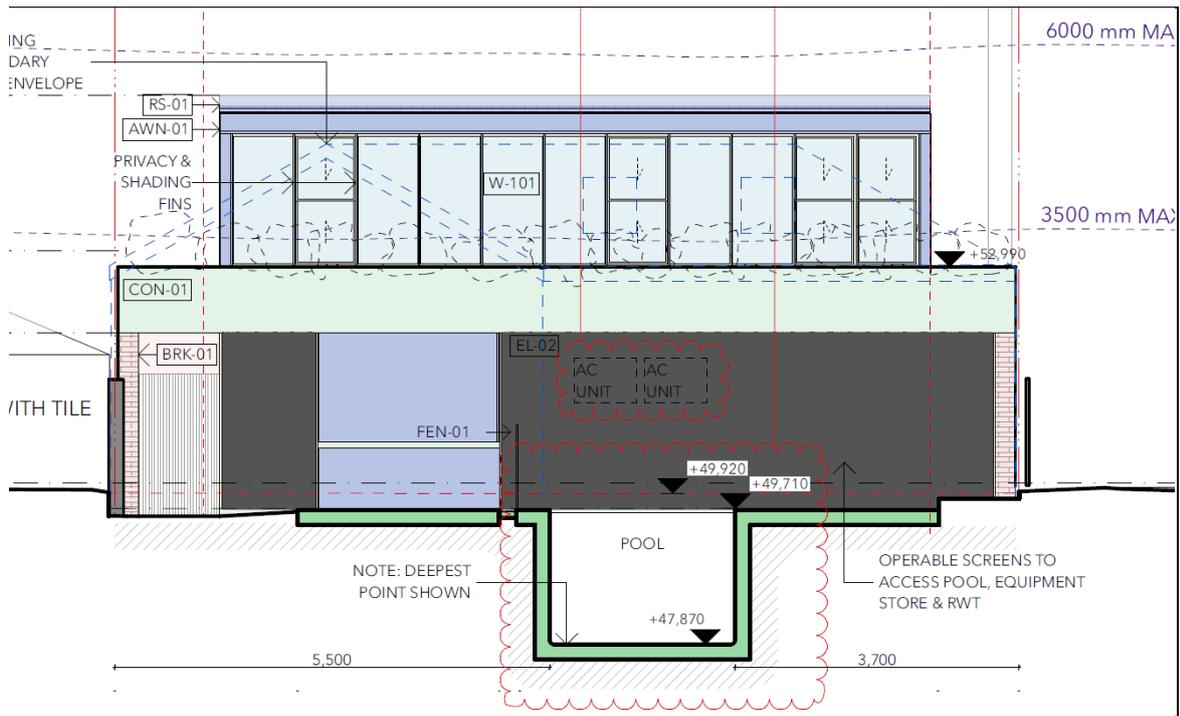


Figure 7 – Approved Northwest Elevation (rear of the secondary dwelling/garage)

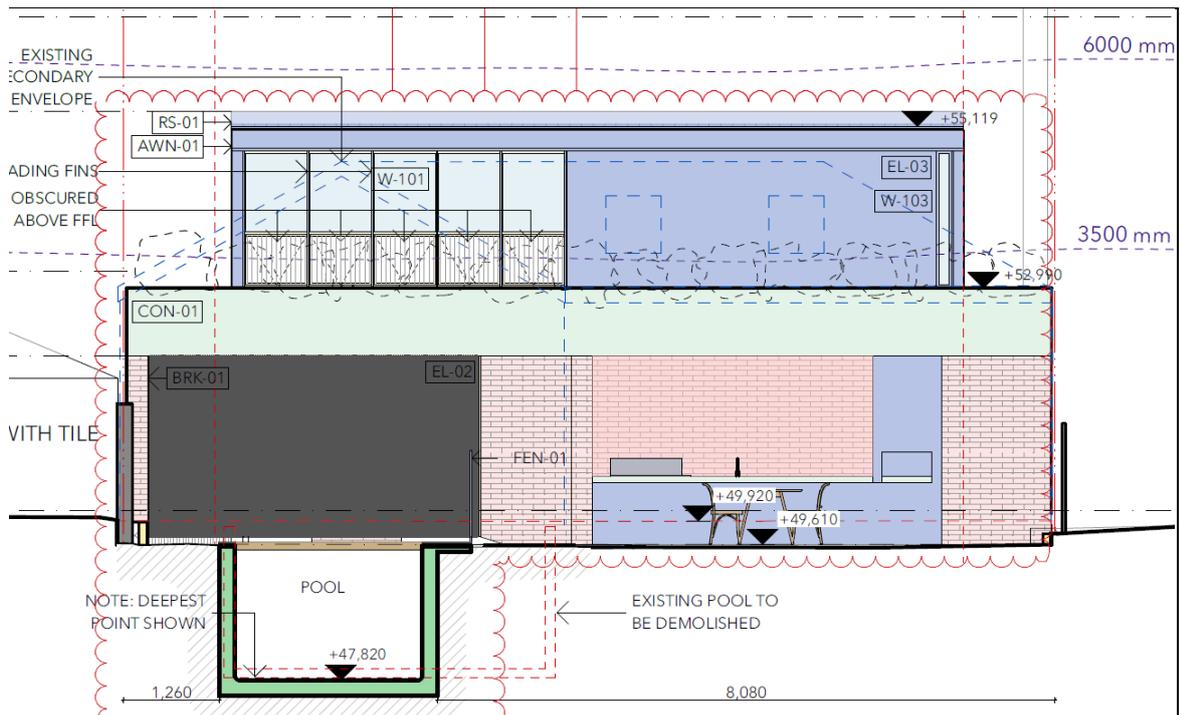


Figure 8 – Proposed Modified Northwest Elevation (rear of the secondary dwelling/garage)

5. Section 4.55 Assessment

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the Act), 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 submission was received as a result of the notification process:

- 71 Darley Street

Summary Issue	Council officer comment
<i>No opportunity was given to present concerns to the Panel regarding the originally approved development application.</i>	The approved development was determined by the RLPP at an electronic meeting as it did not trigger the requirements for a public meeting under the Ministerial Local Planning Panels Direction. Notwithstanding, the issues and concerns raised in all the submissions were considered in the original assessment report and by the RLPP at its determination meeting.
<i>Bulky, visually imposing and bulky building forms at the rear of the main dwelling and secondary dwelling above the garage when viewed from private open space.</i>	The proposed modification involves no change to the approved building envelope and there will be no increase in the height, bulk and scale beyond what has already been approved.
<i>Excessive building bulk results in a reduction in privacy and increase in overshadowing.</i>	
<i>Objection to the location of the AC units on western side of property adjacent to our outdoor dining area.</i>	Condition 59 of the existing development consent requires the use of all plant and equipment to not give rise to offensive noise in accordance with the Protection of the Environment Operations Act and Regulations. The subject AC unit will be located behind a screen at ground level.
<i>The proposal will result in loss of sunlight to the garden particularly in the morning due to excessive building bulk.</i>	The proposed modification involves no change to the approved building envelope and therefore there will be no additional overshadowing impacts beyond what has already been approved.
<i>Reduced side setback on ground floor and length of the addition increases the sense of building bulk and overshadowing.</i>	

D92/24

Summary Issue	Council officer comment
<i>The side access door D03 is unnecessary given proximity to rear doors and boundary.</i>	The door opening in question has been approved and there is no change under this modification. In any event, the future use of the approved door is not expected to result in any adverse amenity impacts to the adjoining property.
<i>The location of large window W05 relative to our house is not clear and may result in privacy impacts to first floor bedroom living room skylight and private open space. Inoperable fixed privacy screen should be installed to this window or deleted.</i>	The subject window has been approved and no changes are proposed to this window under the proposed modification.
<i>The privacy screens to the ensuite provides them with privacy but not to the rear of our property and the swimming pool.</i>	The proposed modified development includes privacy measures to mitigate the potential privacy impacts to the adjoining properties. Refer to the Key Issues section of this report.
<i>Concerned about the wraparound terrace to bedroom and bathroom.</i>	The wraparound planter at the first floor has been approved and no changes are proposed to the planter under this modification application.
<i>It is not acceptable to have the privacy screen operable for cleaning.</i>	The proposed privacy screens will be fixed to the external wall and locked to prevent them from being opened. The windows will comprise of two panels of frameless glass that slide up and down. The proposed screens will only be unlocked from time to time to enable the glass windows to be cleaned otherwise the timber screens will be required to be locked to ensure compliance with the BCA.
<i>The southeast elevation shows floor to ceiling glazing along full length of building allowing direct views to rear garden and studio.</i>	The proposed modified development includes privacy measures to mitigate the potential privacy impacts to the adjoining properties. Refer to the Key Issues section of this report.
<i>The 450mmm blades are spaced too widely apart and person standing up against the glazing will be able to see down into our rear garden.</i>	The approved privacy fins will work in conjunction with the other privacy measures to mitigate the potential privacy impacts. No changes are proposed to the approved privacy fins along the southeastern elevation to the upper level master bedroom and ensuite.
<i>The extent of glazing poses a risk of light spill at night.</i>	The extent of glazing at the upper level to the bedroom and ensuite of the main dwelling has already been approved and deemed to be acceptable in terms of light spill. It is noted that the privacy screens would offer additional protection in terms of light spill. Furthermore, the reduction in the size of the window along the northwest elevation at the upper level of the secondary dwelling will also assist in reducing light spill.
<i>The plans should state the garden planter outside the master bedroom is non-trafficable and cannot be converted to a balcony at a later stage.</i>	A condition to this effect is included in the recommended modified development consent.
<i>The modification proposes alternative dimensions to the privacy fins.</i>	The privacy fins are required to be a minimum of 450mm in accordance with Condition 2e which is to be retained on the existing development consent.

Summary Issue	Council officer comment
<i>The design of the rear garage and studio is visually bulky.</i>	There will be no change to the overall bulk and scale of the rear garage and studio under the proposed modification.
<i>No details have been provided on the proposed new boundary fence and retaining wall and timing of installation.</i>	The proposed modification application does not propose any changes to the boundary fencing.
<i>Height proposed fence is 1.8m but the existing fence is 1m lattice attached above the existing 1.6-1.8m fence.</i>	
<i>The trees to be removed are not shown on the drawings and it is not clear whether replacement planting will provide privacy.</i>	No additional trees are proposed to be removed beyond what has already been approved. The proposed modified development includes a new planting regime and screen planting in the rear yard.

6. Key Issues

Visual Privacy

A key assessment issue relates to the potential privacy impacts associated with overlooking from the approved upper level windows at the rear of the main and secondary dwelling to the adjoining properties. Conditions 2b, 2d and 2e of the development consent include measures to mitigate the potential privacy impact from the upper level windows. Condition 2 reads as follows:

Amendment of Plans & Documentation

2. *The approved plans and documents must be amended in accordance with the following requirements:*
 - a. *An additional 39.6m² of deep soil permeable area, as per the definition of deep soil permeable surfaces in Council's DCP, shall be provided at the subject site.*
 - b. *The following windows shall be deleted or have a minimum sill height of 1.6m above floor level, or alternatively, the windows are to be fixed and provided with translucent, obscured, frosted or sandblasted glazing below this specified height:*
 - *x2 eastern window panels (adjacent to the corner of the building) to the southern-eastern rear elevation of the master bedroom.*
 - *x2 western window panels (adjacent to the corner of the building) to the southern-eastern rear elevation of the master bedroom ensuite.*
 - c. *Deleted.*
 - d. *Window W-101 and the entire façade of the north-western internal elevation of the Secondary Dwelling at the first floor level shall have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height. In addition, the privacy fins fixed to these windows shall be deleted.*
 - e. *The external privacy and shading fins to the rear of the first floor dwelling windows shall be fixed, constructed with 450mm wide blades, and spaced between each window pane shown on the south-eastern rear elevation.*
 - f. *The roof of the pedestrian accessway along the north-eastern side of the rear building (including the planter section and rear wall/gate section) shall be deleted. Accordingly, a pedestrian gate and the solid wall shall be retained along the rear boundary and the north-eastern side boundary to a height matching the gutter height of the carport at 75 Darley Road.*

Amended plans are to be submitted to and approved by Manager Development Assessment, prior to a Construction Certificate being issued for the development.

The proposed modified development seeks to delete the privacy conditions 2b, 2d and 2e in lieu of the implementation of the following privacy measures:

D92/24

<i>Main Dwelling (upper level windows to bedroom and ensuite)</i>	<ul style="list-style-type: none"> • full height privacy screens to four window panes between the privacy fins adjacent to the ensuite. • full height privacy screen to one window pane between the privacy fins adjacent to the master bedroom.
<i>Secondary Dwelling (northwestern elevation)</i>	<ul style="list-style-type: none"> • reduction in the size of the window and installation of reeded/obscured windows up to 1.6m above the FFL. • provision of a 200mm wide full height window to the shower.

The adjoining neighbour at 71 Darley Road raised concerns with overlooking from the upper level master bedroom and ensuite windows to their rear private open space, studio and swimming pool. Concern was also raised that the privacy screens were operable for cleaning purposes.

Part C1 Section 5.3 of RDCP establishes visual privacy controls to minimise overlooking and maintain the amenity of the neighbouring properties. The specific design measures to minimise overlooking from habitable windows include but are not limited to setting window sills or fixed and translucent glazing at a minimum of 1.6m above FFL and the installation of fixed privacy screens.

As outlined in the table above, the proposed modified development seeks to change the privacy measures required for the upper level windows of the main dwelling by installing privacy screens in lieu of setting the window sills or providing fixed and translucent glazing at a minimum of 1.6m above the FFL. The reason for the proposed change is to achieve better natural ventilation.

The subject privacy screens are proposed to be installed between the metal privacy fins on four window panels adjacent to the ensuite and one window panel adjacent to the master bedroom. The sashless windows behind the screens comprise of 2 or 3 panels that open by moving up and down. The balance of the window panels without a privacy screen will not be operable.

The proposed screens will comprise of vertical timber battens fixed to the metal privacy fins which are attached to a beam at the top and bottom. The timber battens are typically 40mm x 20mm. Council’s standard privacy condition requires the spacing between the battens to be a maximum of 30mm.

The privacy screens will complement the privacy fins positioned between each window pane and the wraparound planter to assist in reducing any potential privacy concerns. However, the privacy fins are proposed to be reduced from 450mm to 310mm in length, which is not considered to be appropriate and the length as specified in Condition 2.e. shall be retained. The proposed screens provide an appropriate balance between the provision of natural ventilation and privacy protection. The proposed modification is consistent with the privacy controls and would maintain amenity to the adjoining properties, subject to an additional screen being added to a window pane adjacent to the master bedroom and the spacing between the timber battens being no more than 30mm. Conditions to this effect are included in the recommended development consent.

The proposed reduction in the approved window size at the northwest elevation of the secondary dwelling, from eleven window panes to five window panes, and the installation of obscure glazing up to 1.6m above the FFL is consistent with the privacy controls and would maintain amenity to the adjoining properties. The obscured glass panel will open from the top for ventilation, but this does not present a privacy risk as the viewers eye will be downwards to the adjacent planter.

Landscape Area

The originally approved development application was assessed against the controls under the previous DCP as it was lodged prior to the commencement of the Stage 1 DCP on 1 September 2023. Therefore, the proposed modification is assessed against the minimum deep soil landscape control of 35% which was applicable prior to the commencement of the new Stage 1 DCP.

The existing development has a deep soil landscape area of 144.18m² or 21.7%. Based on the Council assessment report, the approved development provides a deep soil landscape area of 27% (179.5m²). The applicant’s original deep soil landscape calculation was incorrect because it

included paved areas. On that basis, Condition 2a requiring the provision of an additional 39.6m² deep soil landscape area, which equates to 33% (219.68m²) was included in the recommended development consent. While this still represents a minor variation, it was deemed acceptable and ultimately approved by the RLPP. The proposed modification results in an increase in deep soil landscape area largely due to the proposed changes to the landscape regime and the associated reduction in hard paved area. The proposed modified development provides 33% of the site as deep soil landscape area due to the additional 39.6m² of deep soil landscape area. Refer to **Figure 7**.

The deletion of Condition 2a is therefore supported.

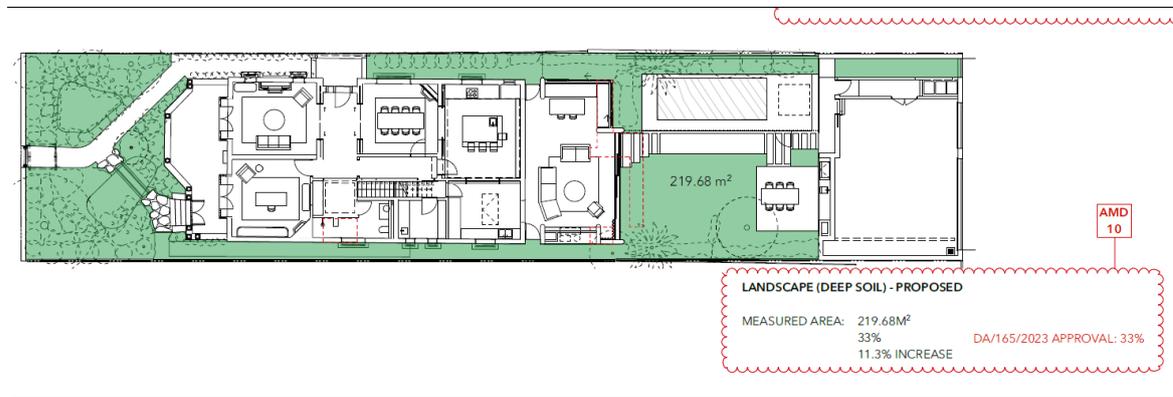


Figure 7 – Proposed modified deep soil landscape calculation

Pedestrian Access Structure (Laneway)

Condition 2f. of the existing development consent requires the roof (including the planter section and rear wall/gate section) over the pedestrian walkway at the northeastern side of the garage to be deleted (refer to Section 3 of this report).

The Council assessment report recommended deletion of the subject roof and the associated wall structure above the new entry gate because of the excessive visual bulk and scale within the laneway context and increased site coverage. The proposed modification seeks to retain the wall structure to brace the passage and provide a structural connection to the boundary wall. The applicant submitted photos showing other boundary to boundary structures on the opposite side of the laneway. Notwithstanding, the proposed modified development does not result in any change to the visual outcome sought by the condition and it would contribute to excessive bulk and scale of the building within the immediate visual context along the laneway. Refer to **Figure 8**.

The proposed modification in that regard is therefore not supported and Condition 2f remains on the existing consent.

D92/24



Figure 7 – Proposed modified laneway elevation showing the rear pedestrian entry. Note the section of wall dotted in red is required to be removed to match the adjoining garage (Condition 2f).

7. Referral comments

Landscape Officer

Council’s Landscape Officer provided the following comments:

Section 4.55 (2) - Modification has been received for the approved development including minor changes to internal configurations, updated privacy screen details at first floor, modifications to the front path (non-original), relocation of the proposed pool, and adjustments to the secondary dwelling design. Original Consent: Alterations and additions to existing two storey detached dwelling including demolition of internal and external elements of the dwelling, swimming pool, and garage structure; extension of the ground and first floors and associated internal works, construction of new triple garage with a Secondary Dwelling above fronting Huddart Lane; addition of a new swimming pool, associated landscaping and site works (Heritage Item and Heritage Conservation Area).

This report is based on the following plans and documentation:

- *Architectural Plans by Muci REV C dated 5/7/2024;*
- *Landscape Plans by Dangar Barin Smith REV D dated 30/4/2024;*
- *Statement of Environmental Effects by ABC Planning dated 9/2024;*

Condition 2a was imposed by the Assessing Officer of the original application to address a DCP non-compliance relating to deep soil/permeable area, so any determination on whether these amended plans satisfy this requirement will need to be made by the Planner assigned to this modification.

The only aspect this report assesses is the revised layout of the rear setback/private open space, with the main component being to relocate the pool from its approved location halfway across the northern face of the garage, to now be along the eastern side boundary, which is roughly where the existing pool is already sited.

While this results in a modified Planting Plan, and a slight reduction in overall plant quantities, it is regarded that this amended scheme will still maintain the intent of the originally approved design, and as it will not impact any other vegetation, no objections are raised.

It is noted that planting shown within the fenced off pool area (in the garden bed between the pool and eastern boundary) may not comply with the Pool Barrier standards and legislation due to their height/size at maturity and being within the 'climbable zone', so if the Certifier determines this is the case, then conditions simply require that alternative feature species which comply with standards be selected here in their place.

Engineering

Council's Development Engineer advised by email that had had reviewed the documentation and no changes to the original development engineering conditions are required.

Heritage

Council's Heritage Planner provided the following comments:

Proposal

Internal and external and landscape modifications to the approved DA/165/2023

Submission

D05436388 – Architectural Plans

D05436391 – Landscape Plans

D05436380 – HIS

Controls

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

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

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

Comments

The modifications appear to be of mostly minor nature and propose no significant visual or material impact. The proposal can be supported from a heritage perspective subject to the following recommendations.

Recommendation

The tree transplanting (removal and relocating) plan can be supported subject to Council landscape and tree officer advice.

Generally, concur with the review of heritage impact p.5-6 of the HIS prepared by Patrick Wilson, Touring the Past, dated 31 July 2024. For AMD-02 'Doorway Infill', however, it is recommended to retain the lentil and original brick surface unpainted; carefully remove the French-door and framing to be recycled/sold for restoration purposes i.e. at Chippendale Restorations. It is beneficial if further information can be provided on the infill, the lentil, and the proposed acknowledgment of the original opening.

D92/24

Applicant's Response

The applicant provided the following response to the issue regarding the doorway infill:

Following up on our phone call, I confirm that the doors can be salvaged and the lintel is to be retained.

Regarding the note about unpainted brick, ideally we would render or otherwise cover this wall for a number of reasons:

- *The design already makes it readily discernable that this wall is the back of the house due to the retained outline of rooms, change in levels, and visible nib walls retained, and;*
- *When considering the presentation of this opening, or a 'ghost' opening, we are also factoring in that there is a an existing unsightly joint in the brickwork for the damp proof course and when we lower the new living room floor to achieve the NCC compliant 2 steps we will expose some sandstone in poor condition and waterproofing solutions will be required - as such, in our view a new finish to this wall is better path forward for the presentation of this rear wall at a level of finish befitting the rest of the residences quality.*

Heritage Planner Response

Council's Heritage Planner reviewed the applicant's response and advised by email on 1 November 2024:

"I can confirm that the proposed works in this section of the living-butler's room is supported..."

8. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</p> <p>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 for both the main dwelling and the secondary dwelling. 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: BASIX were included in the original determination.</p> <p>SEPP (Biodiversity and Conservation) 2021</p> <p><u>Chapter 2 Vegetation in Non-rural Areas</u></p> <p>Chapter 2 of the SEPP applies to the proposal and subject site. The aims of this Chapter are:</p> <p><i>(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and</i></p>

Section 4.15 'Matters for Consideration'	Comments
	<p><i>(b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.</i></p> <p>The application was referred to council's Landscape Officer who advises the proposed modified planting regime results in a slight reduction in overall plant quantities. However, no objection is raised as it still maintains the intent of the originally approved landscape design. Refer to the detailed landscape comments under the Referral section of this report. As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.</p> <p><i>4.4 Floor Space Ratio</i> A maximum FSR of 0.6:1 applies to the site. Based on the original Council assessment report, the approved development has an FSR of 0.59:1 (392.5m²). The proposed modified development has an FSR of 0.55:1 (368.78m²), which represents a reduction of 23.72m² gross floor area (GFA). The reduction in GFA is mostly attributed to removal of the roof above the open sided walkway on the northern side of the garage and the reconfigured garage wall.</p> <p><i>5.10 Heritage Conservation</i> The subject dwelling is an individually listed heritage item under Schedule 5 (I1341). The site is also situated within the North Randwick HCA C1. The application is accompanied by a short form Heritage Impact Statement which assesses the impact of the proposed modified development on the heritage significance of the dwelling and the wider HCA. The proposed modified development was referred to Council's Heritage Planner for comment and no objection was raised from a heritage perspective. Refer to the detailed heritage comments under the 'Referral' section of this report.</p> <p><i>6.2 Earthworks</i> The proposed modified development does not involve any additional earthworks beyond what has already been approved other than a new cellar/storeroom under the kitchen. The approved pool will be relocated to the northern side of the rear yard within the shell of the existing pool minimizing any additional excavation. The existing development consent contains adequate conditions to safeguard the amenity of the adjoining properties during excavation.</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	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

D92/24

Section 4.15 'Matters for Consideration'	Comments
	<p>September 2023. As the subject application was approved before the 1 September 2023, the provisions of the new RDCP 2023 are not applicable to the proposed modification, and the proposal shall be assessed against the previous DCP.</p> <p>The following provisions are relevant to the proposed modified development:</p> <p><u>B2 Heritage</u></p> <p>The proposed modified development was referred to Council's Heritage Planner for comment and no objection was raised from a heritage perspective. Refer to the detailed heritage comments under the 'Referral' section of this report.</p> <p><u>C1 Low Density Residential</u></p> <p><i>Site Coverage</i> A maximum site coverage of 45% applies to the site. Based on the original Council assessment report, the approved development has a site coverage of 46.8% (310.55m²), which exceeds the site coverage control. The proposed modified development has a site coverage 45% (298.75m²). The reduction in site coverage is mostly attributed to the removal of the roof above the open sided walkway on the northern side of the garage and the reconfigured garage wall.</p> <p><i>Deep Soil Landscape Area</i> Refer to the discussion regarding the proposed changes to the deep soil landscape area in the Key Issues section of this report.</p> <p><i>Earthworks</i> The proposed modified development includes additional excavation to provide a cellar storage under the butler's kitchen. The proposed excavation is 2m in depth. The proposed cellar will be below the footprint of the dwelling and 600mm from external wall of the dwelling. The existing development consent contains conditions to protect the amenity of the adjoining properties during excavation.</p> <p><i>Swimming Pool</i> The proposal involves relocation of the swimming pool to the northern part of the rear yard within the shell of the existing pool. The dimension of the pool on the plans is incorrect and should read 2.5m x 6.4m. The northern edge of the pool coping will be setback 1.46m to the side boundary with a landscape zone extending the full length of the pool, which complies with the minimum 900mm setback control. The pool equipment will be located underneath the stair to secondary dwelling. The existing development consent contains sufficient conditions in relation to the swimming pool.</p>
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 'Matters for Consideration'	Comments
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore, the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9. Conclusion

The application is recommended for approval for the following reasons:

- a) The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- b) The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.

Responsible officer: Thomas Mithen, Environmental Planner

File Reference: DA/165/2023/A