

# Randwick Local Planning Panel (Public) Meeting

Thursday 14 November 2024



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

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held online via Microsoft Teams on Thursday, 14 November 2024 at 1:00 PM

### **Acknowledgement of Country**

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

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

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

*Privacy warning;*

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

### **Development Application Reports**

D90/24      129-129A Barker Street & 1 Maud Street, Randwick (DA/632/2024) ..... 1

Meryl Bishop  
**DIRECTOR CITY PLANNING**

## Development Application Report No. D90/24

**Subject:** 129-129A Barker Street & 1 Maud Street, Randwick  
(DA/632/2024)

### Executive Summary

<b>Proposal:</b>	Demolition of the existing structures to enable the construction of 6-storey co-living housing development consisting of 84 rooms with one basement level for parking, storage and services
<b>Ward:</b>	West Ward
<b>Applicant:</b>	The Trustee For 29 Barker Street Unit Trust
<b>Owner:</b>	29 Barker Street Pty Ltd & Ms M J Hope
<b>Cost of works:</b>	\$17,321,700
<b>Reason for referral:</b>	The development involves demolition of an Interim Heritage Order (IHO) at 1 Maud Street, Randwick; eighteen (18) unique submissions by way of objection were received; and the development contravenes the development standards for communal living area, communal open space, and landscape area by more than 10%, pursuant to section 68 of the Housing SEPP.

### Recommendation

That the RLPP refuse consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/632/2024 for the demolition of the existing structures to enable the construction of 6-storey co-living housing development consisting of 84 rooms with one basement level for parking, storage and services, at Nos. 129-129A Barker Street & 1 Maud Street, Randwick, for the following reasons:

- Pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives of the R3 Medium Density Residential zone in that it is not compatible with the desired future character of the area and fails to protect the amenity of residents.
- Pursuant to the provisions of section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives and controls of the Randwick Development Control Plan 2013:
  - Part B2: Heritage
  - Part B4: Landscaping and Biodiversity
  - Part B6: Recycling and Waste Management
  - Part B7: Transport, Traffic, Parking and Access
  - Part B9: Management Plan
  - Part E7: Housing Investigation Areas
- Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is inconsistent with the desired future character of development in the locality, resulting in adverse impacts on the built environment. Furthermore, the proposal will result in detrimental social or economic impacts on the locality, in terms of the management of the co-living development and the demolition of a dwelling with an Interim Heritage Order listing.

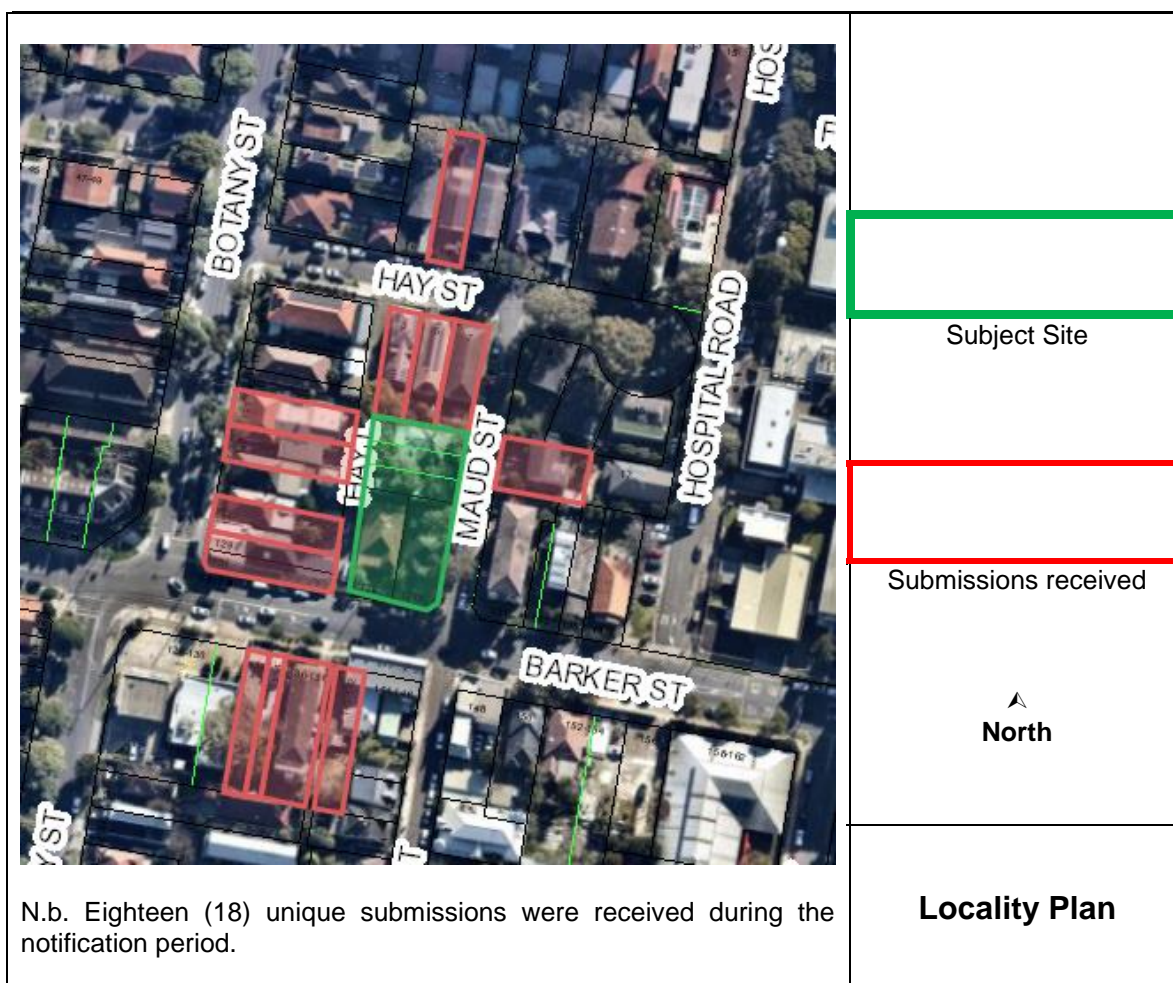
D90/24

D90/24

4. Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is considered to not be in the public interest as the proposal is inconsistent with the objectives of the zone and will result in significant adverse environmental, social or economic impacts on the locality.
5. Pursuant to section 68(2)(c) of the Housing SEPP, the proposed development fails to comply with the communal living area development standard for co-living housing.
6. Pursuant to section 68(2)(d) of the Housing SEPP, the proposed development fails to comply with the communal open space development standard for co-living housing.
7. Pursuant to section 68(2)(f) of the Housing SEPP, the proposed development fails to comply with the landscaping area development standard for co-living housing.
8. Pursuant to section 69(1)(d) of the Housing SEPP, the proposed development fails to provide an appropriate workspace for the manager of the co-living housing.
9. Pursuant to section 69(2)(a) of the Housing SEPP, the proposed development fails to comply with setback controls in accordance with relevant planning instrument, being Part E7 of RDCP 2013.
10. Pursuant to section 69(2)(b) of the Housing SEPP, the proposed development fails to demonstrate compliance with the minimum building separation distances specified in the Apartment Design Guide.
11. Pursuant to section 69(2)(f) of the Housing SEPP, the proposed development design is incompatible with the desired future character of the precinct, in accordance with Part ED of RDCP 2013.
12. Pursuant to clause 4.4 of RLEP 2012, the proposed development fails to comply with the maximum floor space ratio for development on the subject site.
13. Pursuant to clause 4.6 of RLEP 2012, the applicant has failed demonstrate that the matters of the clause have been adequately addressed and that consent should be granted to the development application, which contravenes the building height development standard in Clause 4.3 of RLEP 2012. The applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
14. Pursuant to clause 4.6 of RLEP 2012, the applicant has failed to submit a written request to vary the floor space ratio, communal living area, communal open space, and landscape area, pursuant to clause 4.4 of the RLEP 2012 and section 68 of the Housing SEPP, respectively. The applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
15. Pursuant to clause 5.10 of the RLEP 2012, the proposed development will have a detrimental impact and effect on heritage significance of a heritage item, following an Interim Heritage Order being placed upon 1 Maud Street, Randwick NSW 2031.
16. Pursuant to clause 6.11 of the RLEP 2012, the proposed development fails to exhibit design excellence.

#### **Attachment/s:**

Nil



D90/24

## 1. Executive Summary

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

- The development involves demolition of an existing building at No. 1 Maud Street, Randwick, which is subject to an Interim Heritage Order (IHO).
- Eighteen (18) unique submissions by way of objection were received.
- The development contravenes the development standards for communal living area, communal open space, and landscape area by more than 10%, pursuant to section 68 of the Housing SEPP.

The proposal seeks development consent for demolition of the existing structures to enable the construction of 6-storey co-living housing development consisting of 84 rooms with one basement level for parking, storage and services (variation to building height).

The key issues associated with the proposal relate to heritage conservation, building height, floor space ratio, design excellence, communal living area, communal open space, building separation and site isolation, setbacks, landscaping, vehicular access and the internal driveway overshadowing and solar access, visual privacy, and sustainability and building design/access.

The Key Issues section of the report provides a detailed analysis of the development against the desired future character statement and Block D control plan relevant to the subject site in Part ED of RDCP 2013. The section also details issues with the communal living area and communal open space requirements in accordance with section 68 of the Housing SEPP.

The proposed development will result in a development that is not in keeping with the desired future character detailed in Part ED of RDCP 2013 for this Magill Street Housing Investigation Area (HAI) site. Furthermore, the proposed development will result in unreasonable residential amenity impacts for future occupants of the building, and upon neighbouring properties with regard to visual amenity, privacy and solar access.

Therefore, the proposal is recommended for refusal.

## 2. Site Description and Locality

The subject site comprises of three separate sites:

- 129 Barker Street, Randwick, and is legally described as Lot 1 of DP 501835.
- 129A Barker Street, Randwick, and is legally described as Lot 2 of DP 501835
- 1 Maud Street, Randwick, and is legally described as Lots 4, 5 & 6 of DP 1221.

The site has an area of 1314.3m<sup>2</sup> and is generally rectangular in shape, with a 21.185m frontage to Barker Street (to the south), a 48.17m frontage to Maud Street (to the east), a 48.17m frontage to Maud Street (to the east), a 49.19m frontage to Hay Lane (to the west), and a 26.915m northern boundary. The site also contains a splay corner between Barker Street and Maud Street boundaries being 3.45m in length (to the south-east) and a splay corner between Barker Street and Hay Lane boundaries being 2.195m in length (to the south-west).

The site rises approximately 1m in a northerly direction from Barker Street frontage to the northern boundary.

The site is currently occupied by a single storey dwelling to each of the separate property addresses (being 129 and 129A Barker Street, Randwick and 1 Maud Street, Randwick). Single width garages are also provided to 129 and 129A Barker Street, Randwick. Deep soil zones and canopy trees are provided in the front setback area of the Barker Street properties and in the rear setback area of 1 Maud Street.

Surrounding development comprises mixed residential and commercial development, including dwelling houses, residential flat buildings, commercial premises, and mixed-use development. To the north of the site at 3, 5 and 7 Hay Street are single and two storey dwelling houses, respectively.

The subject site is located within the Magill Street Housing Investigation Area (HIA), which is defined by Magill Street/Oval Lane, Hospital Road, Barker Street and Norton Lane. Barker Street is a busy local road with local bus transport access, commercial premises and a petrol station.

The site is within the immediate locality of the Randwick Health and Education Precinct, comprising of the Prince of Wales Hospital, the Sydney Children's Hospital, and the University of NSW. The UNSW Health Translation Hub is currently under construction on Botany Street and High Street. The site is also within close proximity to Randwick Boys and Girls Public Schools, Rainbow Street Public School, and The Newmarket Randwick Development.



**Figure 1:** Photo of the primary street front of the subject site to Barker Street comprising No's 129 and 129A (Source: Randwick City Council)



**Figure 2:** Photo of the secondary street frontage of the subject site to Maud Street comprising No's 129A Barker Street and 1 Maud Street (Source: Randwick City Council)



**Figure 3:** Photo of the secondary street frontage of the subject site to Maud Street comprising No 1 Maud Street (Source: Randwick City Council)

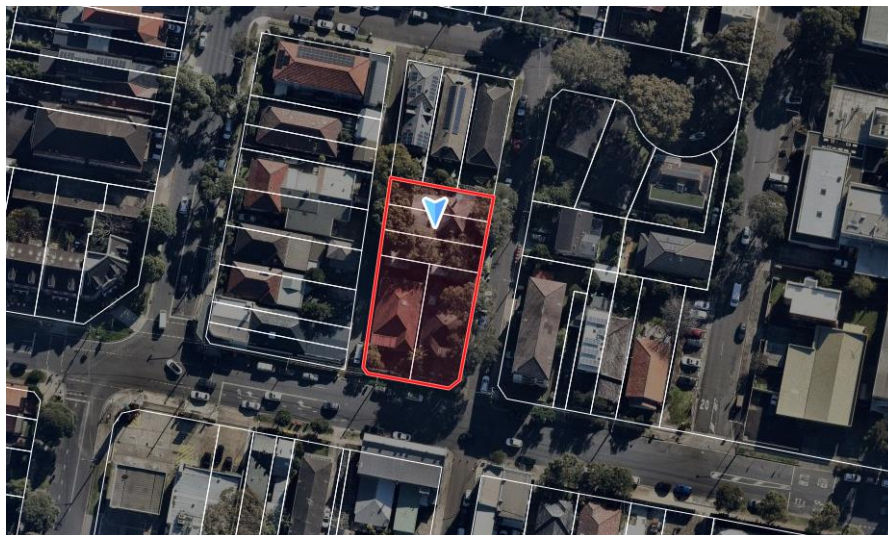


D90/24

**Figure 4:** Photo of the secondary street frontage of the subject site to Maud Street comprising No 1 Maud Street (Source: Randwick City Council)



**Figure 5:** Photo of the rear laneway of the subject site to Maud Lane comprising No 129 Barker Street (Source: Randwick City Council)



**Figure 6:** Aerial photograph of the subject site (Source: Nearmap)



D90/24

**Figure 7:** North oblique view of the subject neighbourhood (April 2024) (Source: Nearmap)

### 3. Relevant History

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

#### DA/632/2024

On 31 July 2024, Council requested a Preliminary Site Contamination Investigation (PSI) and a Detailed Site Contamination Investigation (DSI) (subject to the findings of the PSI) be provided by the applicant.

On 15 August 2024, Council received a State Heritage Register nomination form and community petition with 36 signatures, seeking to list 1 Maud Street as a Heritage Item in accordance with the *Heritage Act 1977*.

On 23 August 2024, the applicant provided a PSI.

On 26 August 2024, Council requested a revised PSI to address the Voluntary Management Proposal at 7-Eleven Randwick (being 126 Barker Street, Randwick).

On 29 August 2024, the applicant provided a revised PSI.

On 05 September 2024, the applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against Council's deemed refusal of the development application.

On 20 September 2024, Council conducted a site visit of the subject site.

On 01 October 2024, Interim Heritage Order No. 9 was gazetted for 1 Maud Street, reference number 386 – 'Planning and Heritage'.

### 4. Proposal

The proposal seeks development consent for the demolition of the existing structures to enable the construction of 6-storey co-living housing development consisting of 84 rooms with one basement level for parking, storage and services.

Specifically, the proposed development includes:

#### Demolition/Earthworks

- Demolition of all existing structures on site, including 1 Maud Street which is now the subject of an IHO.

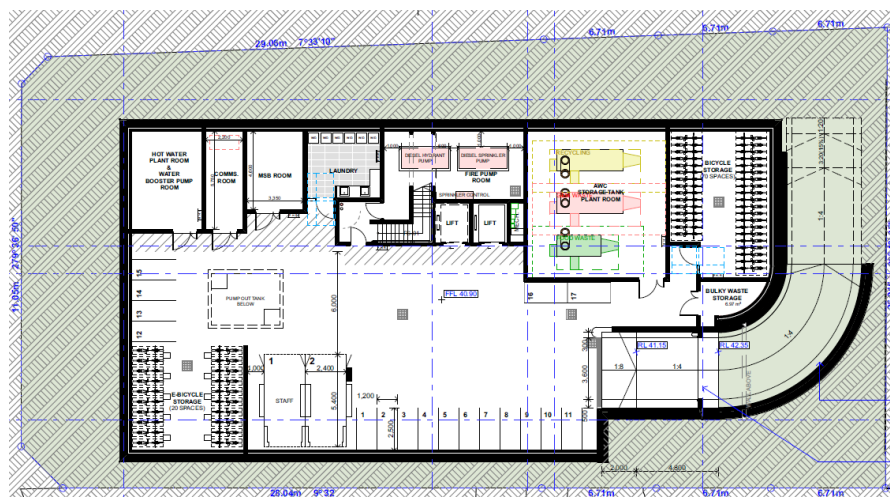
- Removal of x5 large trees within the site.
- Excavation of the site to accommodate the basement level.

#### Co-Living Building Works:

- Basement: 2x vehicle spaces, 17x motorbike spaces, 20x e-bicycle spaces, 70x bicycle storage, common laundry, waste storage, bulky waste storage, plant and pump rooms.
- Ground floor: communal living room and adjoining common outdoor terrace, 11x co-living rooms, 1x manager's room.
- First to fourth floors: 16x co-living rooms each level.
- Fifth floor: 8x co-living rooms, 2x communal living room, 1x common outdoor terrace.

The proposed development seeks consent for 84 rooms, with 9x single occupancy rooms (including the manager's room) and 75x double occupancy rooms. Therefore, the total number of occupants to the development will be 159 (including the on-site building manager). Each room is self-contained, provided with their own kitchenette, bathroom and private open space area.

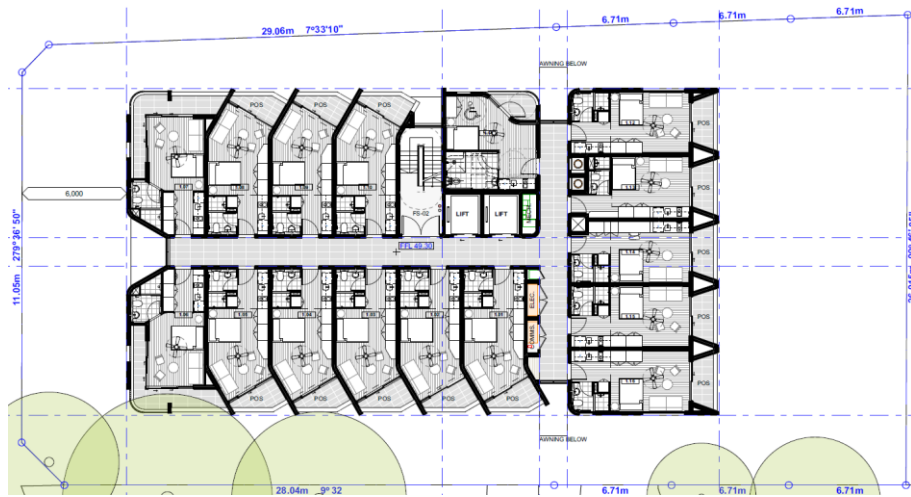
Pedestrian access to the building is provided via Barker Street, Maud Street and Hay Lane. Vehicular access to the basement level is provided via an open ramp to the northern side of the site via Hay Lane (as Maud Street is proposed to be subject to a road closure and pedestrian access only in accordance with Pat E7 of RDGP 2013).



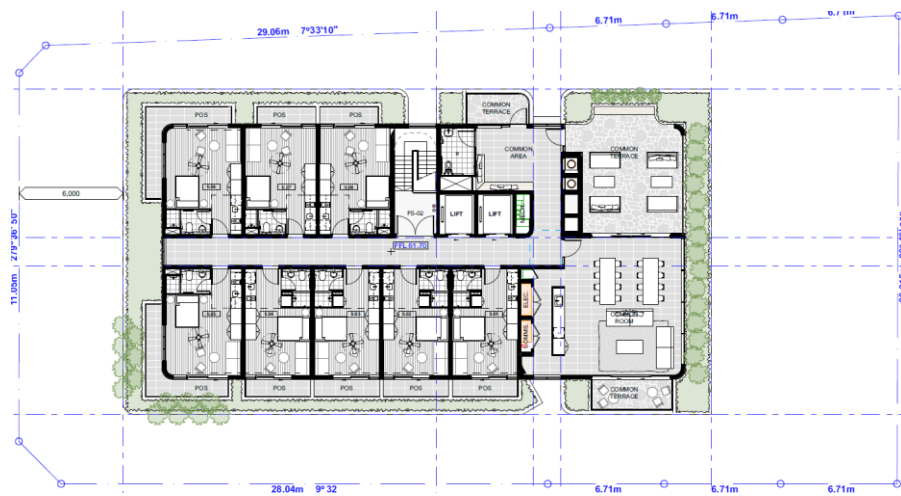
**Figure 8:** Proposed basement floor plan (Source: Mark Shapiro Architects)



**Figure 9:** Proposed ground floor plan (Source: Mark Shapiro Architects)



**Figure 10:** Proposed typical first to fourth floor plan (Source: Mark Shapiro Architects)



**Figure 11:** Proposed fifth floor plan (Source: Mark Shapiro Architects)



**Figure 12:** Proposed southern elevation (Source: Mark Shapiro Architects)



Figure 13: Proposed eastern elevation (Source: Mark Shapiro Architects)

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. The following eighteen (18) submissions were received as a result of the notification process:

- 121 Botany Street, Randwick NSW 2031.
- 123 Botany Street, Randwick NSW 2031.
- 2x from 127 Botany Street, Randwick NSW 2031.
- 2x from 129-131 Botany Street, Randwick NSW 2031.
- 4 Maud Street, Randwick NSW 2031.
- 3 Hay Street, Randwick NSW 2031.
- 5 Hay Street, Randwick NSW 2031.
- 7 Hay Street, Randwick NSW 2031.
- 2x from 14 Hay Street, Randwick NSW 2031.
- Combined submission from 132, 134 and 1/136 Barker Street, Randwick NSW 2031.
- 142 Barker Street, Randwick NSW 2031.
- Planning Consultant for 123 Botany Street, Randwick NSW 2031.
- 3x with no address provided.

The contents of the submissions have been paraphrased and summarised below:

Issue	Comment
<u>Heritage</u> -A nomination for 1 Maud Street to be heritage listed has been provided to Council. The building should be retained. -4 Hay Street is a heritage listing, which is impacted by this overdevelopment. -Will negatively impact upon the Struggletown HCA opposite.	Agreed, Council does not support demolition of 1 Maud Street which is currently subject to an IHO. However, the impact of the development on 4 Hay Street and the Struggletown HCA are considered acceptable by Council’s Heritage Planner. See Heritage Planning referral comments in Appendix 1 of this report for further details.
<u>Local Character</u> -Development/height not in keeping with existing character. -Too close proximity to neighbours. -Block is mostly single and two storey houses. -Better used for apartments at 4 storeys like others in the area.	Agreed, the proposed development does not comply with the desired future character of the HIA, in terms of the built form and lack of adequate landscaping/canopy tree coverage.
<u>Site Isolation</u> -Development varies the HIA amalgamation pattern.	Agreed, Council is not satisfied that the other sites in the HIA have been demonstrated to have sufficient development potential by the

Issue	Comment
<ul style="list-style-type: none"> <li>-Isolates the 3 northern sites to Hay Street from potential future redevelopment.</li> <li>-Request evidence of developer attempts to purchase the 3 northern Hay Street/plans showing that development potential of sites in the HIA.</li> </ul>	<p>applicant, including but not limited to 3-7 Hay Street.</p>
<p><u>Height &amp; Building Envelope</u></p> <ul style="list-style-type: none"> <li>-Visual bulks to neighbours.</li> <li>-Height breach of both the roof and roof elements. Clause 4.6 calculation incorrect.</li> <li>-DCP says 6-storeys may not be achievable if flood affected. Should be reduced to 5-storeys.</li> <li>-Design excellence considerations not met due to variations, results in bulk and scale issues.</li> <li>-Increase setbacks to reduce amenity impacts.</li> <li>-The development breaches the FSR/concerned not accurately been calculated.</li> <li>-Floor plate depth excessive.</li> <li>-Building depth/width variation to DCP controls.</li> <li>-Building setbacks do not comply with ADG separation requirements.</li> </ul>	<p>Agreed, Council is not satisfied with the proposed height and building envelope of the development, which exceeds that as depicted in the Block Plan of the subject site in Part E7 of RDCP 2013. See Key Issues and DCP Compliance Table for further details.</p>
<p><u>Building Design</u></p> <ul style="list-style-type: none"> <li>-Insufficient articulation</li> <li>-Building is a large cube shape.</li> <li>-Poor location for substation.</li> </ul>	<p>Agreed, Council is concerned that the building design is not sufficiently articulated, and the location of the substation will visually impact the streetscape.</p>
<p><u>Deep Soil/Trees/Landscaping</u></p> <ul style="list-style-type: none"> <li>-Significant variation to deep soil, results in overdevelopment of site and lack of landscaped areas.</li> <li>-Deep soil areas include substation, waste area and other paved areas.</li> <li>-Driveway in place of landscaped area.</li> <li>-Loss of trees impacts birdlife, privacy and character, can be retained.</li> <li>-Lack of sufficient canopy trees, increase urban heat island impacts.</li> <li>-Lack of nature of fauna.</li> <li>-Increase setback to Hay Lane provides potential additional deep soil area.</li> </ul>	<p>Agreed, Council is not satisfied that sufficient deep soil areas and canopy trees have been provided on the site. In addition, Council is not satisfied that sufficient measures have been taken to minimise the loss of existing established trees on the site. See Landscaping referral comments in Appendix 1 of this report for further details.</p>
<p><u>Communal Open Space</u></p> <ul style="list-style-type: none"> <li>-lack of communal open space, applicant's calculation is incorrect.</li> </ul>	<p>Agreed, the proposed development does not comply with the communal open space requirements in the Housing SEPP. See Key Issues and Clause 4.6 assessment in this report for further details.</p>
<p><u>Solar Access</u></p> <ul style="list-style-type: none"> <li>-Lack of detailed solar impact assessment.</li> <li>-Lack of solar consideration from future development of other sites in the HIA.</li> <li>-Unreasonable overshadowing of dwellings and private open space.</li> <li>-Stepping of the building to Barker Street would improve solar access.</li> </ul>	<p>Agreed, the applicant has failed to fully demonstrate the solar impact of the development on neighbouring sites. In addition, insufficient solar access is provided to the proposed rooms, in accordance with the DCP requirements. See Key Issues and DCP Compliance Table in Appendix 3 in this report for further details.</p>

D90/24

Issue	Comment
<ul style="list-style-type: none"> <li>-Set a precedent of development that will impact overshadowing properties on the southern side of Barker Street.</li> </ul>	
<p><u>Visual and Acoustic Privacy</u></p> <ul style="list-style-type: none"> <li>-The windows/balconies/common terraces to the development will result in adverse overlooking impacts directly into dwellings and private gardens.</li> <li>-Lack of privacy measures on windows/balconies.</li> <li>-Noise impacts from intensification of use of Hay Lane (including waste collection), the number of occupants, communal terraces, uncovered driveway, plant noise, substation, waste truck,</li> <li>-Acoustic report missing consideration of waste truck noise, conducted outside of peak hours and lower university traffic.</li> <li>-Roof fan and plant will result in adverse noise impacts.</li> </ul>	<p>Agreed, Council is not satisfied that the visual privacy of the neighbouring sites has been adequately addressed and protected. In terms of acoustic privacy, the proposed development is not supported due to the waste management concerns regarding the proposed layout and collection point to Hay Lane. That being said, Council's Environmental Health Officer is satisfied that the proposed development adequately addresses acoustic privacy measures (subject to conditions should the application have been supported).</p>
<p><u>Traffic/Parking</u></p> <ul style="list-style-type: none"> <li>-Existing traffic and speed issues in area.</li> <li>-Claim of no additional parking demand is unrealistic.</li> <li>-Development will result in additional traffic and congestion in an already busy area.</li> <li>-0x disabled/emergency/visitor parking spaces.</li> <li>-Insufficient parking for occupants/manager.</li> <li>-The x2 parking spaces are not required, result in unnecessary driveway and basement area, could be reserved for deep soil. Provide a double hardstand and bike lifts at grade instead.</li> <li>-The Housing SEPP parking rates are applicable as the co-living development is not proposed to be just for students.</li> </ul>	<p>Overall, the proposed development complies with the proposed parking rates in accordance with Part E7 of RDCP 2013. See DCP Compliance Table in Appendix 3 in this report for further details. In terms of parking and access, Council's Development Engineer is not satisfied that the proposed development complies with the relevant Australian Standards as no swept paths and sufficient gradient details have been provided. See detailed comments in Appendix 1 of this report.</p> <p>In terms of traffic generation, as the development complies with the parking rates for the HIA, Council is satisfied that the increased density for this development type is satisfactory in this location.</p>
<p><u>Impacts to Hay Lane</u></p> <ul style="list-style-type: none"> <li>-Hay Lane is only 4-4.6m wide, insufficient for proposed use.</li> <li>-Intensification of use of Hay Lane will result in safety and traffic congestion impacts (including from cars, bicycles and motorbikes/trucks/waste collection).</li> <li>-Evacuation onto the laneway presents a safety concern.</li> <li>-Emergency vehicle access concerns from basement.</li> <li>-Primary access to laneway is inappropriate.</li> <li>-Request to relocate driveway to Maud Street.</li> </ul>	<p>Agreed, Council is concerned regarding the use of Hay Lane, noting its narrow width. Insufficient information has been provided by the application regarding access and egress for driveway access. The lane is also not supported for the waste collection due to its narrow width. See Engineering referral comments in in Appendix 1 of this report.</p>
<p><u>Access and Safety</u></p> <ul style="list-style-type: none"> <li>-The fire hydrant should be located near the main entrance.</li> </ul>	<p>The location of the fire hydrant to Maud Street may have been acceptable, however Council is not satisfied with the access requirements to the site via Maud Street and Hay Lane, which remain unresolved.</p>

Issue	Comment
<p><u>Sustainability/Green Star Rating</u></p> <ul style="list-style-type: none"> <li>-4-star Green Star rating is not ambitious enough. Lack of ambition.</li> <li>-Sustainability report contains inaccuracies and discrepancies. The 'As Built' credential have expired and need assessment under the design construction provisions.</li> <li>-Too great a reliance on mechanical ventilation (e.g. sealing windows, shading measures).</li> <li>-lack of cross-ventilation in building/room orientation/design features will result in overheating of rooms.</li> <li>-Lack of utilisation of prevailing winds.</li> <li>-Lack of stormwater detention system information and benefits, result in potential flooding impacts</li> </ul>	<p>Council is not satisfied that the proposed development adequately addresses sustainability in accordance with the DCP requirements. In addition, Council is also concerned regarding the reliance on mechanical ventilation of the building. See Key Issues and DCP Compliance Table in Appendix 3 in this report for further details.</p> <p>In addition, the submitted Green Star Report includes a number of items that the author has determined has been met however relies upon additional information. The applicant has failed to provide the information as outlined as being met in the subject report as part of the development application, including but not limited to, P22.2 and P31.2-31.4.</p>
<p><u>Waste Management</u></p> <ul style="list-style-type: none"> <li>-Waste truck will block Hay Lane. Waste should be collected from Maud Street to reduce impact on laneway.</li> <li>-Odour impacts from waste chutes not addressed. What mitigations are in place for waste smells, system failure, weight of waste.</li> </ul>	<p>Agreed, Council is not supportive of the use of Hay Lane for the collection of waste. See Engineering referral comments in Appendix 1 of this report for further details.</p>
<p><u>Plan of Management/Use</u></p> <ul style="list-style-type: none"> <li>-Too broad, not specific enough.</li> <li>-Discrepancies in number of occupants and rooms.</li> <li>-No management of time and occupant number restrictions on the common terraces.</li> <li>-Lack of management details restricting a boarding house use/low rental dwelling offering.</li> <li>-Lack of laundry facilities for natural drying.</li> <li>-Lack of emergency and evacuation plan.</li> <li>-Hay Lane not an appropriate emergency assembly point.</li> </ul>	<p>Agreed, the proposed development lacks sufficient detail regarding the operational use of the building, including capacity and hours of use of the common areas, a clothing drying area. Other matters can be resolved by imposing conditions of consent (should the proposed development have been supported).</p>
<p><u>Social &amp; Cultural Impacts</u></p> <ul style="list-style-type: none"> <li>-The co-living model does not align with the broader HIA vision.</li> <li>-DA process lacks consideration of impacts on existing residents and their concerns.</li> <li>-Results in loss of existing sense of community in block.</li> <li>-Lack of consultation with La Perouse ALC.</li> <li>-Lack of consideration for an ageing population, focusing on students.</li> <li>-Lack of impact of multiple boarding houses in the area.</li> <li>-Fails to demonstrate CPTED principles.</li> <li>-Lack of consideration of low socio-economic/culturally diverse and children living in development</li> <li>-Cultural aspects of diverse community not addressed.</li> </ul>	<p>The site is identified as an area in transition in accordance with the HIA. Overall, Council is satisfied that a co-living development is appropriate within the HIA, in accordance with the Housing SEPP. The co-living development provides residential accommodation for certain demographics, of which Council supports.</p>

D90/24

Issue	Comment
<u>Local Amenities</u> -There is insufficient infrastructure for all the additional people and traffic (including shops, recreational areas and parks) -Lack of activation of ground floor with commercial use.	The subject site forms part of Council's Magill Street HIA, of which Council's Strategic Planning team is satisfied that uplift is appropriate in the area, which sufficient local amenities provided for the future occupants of this development.
<u>Master Planning</u> -Newmarket provides sufficient population increases and amenities, unlike this development. -The DA does not sufficiently consider subsequent development in the HIA. -There needs to be a proper plan for this area, especially given 1 Maud Street should be protected. -Development does not show solar impact from development of all HIA buildings in block. -Lack of housing for diverse household types (e.g. families).	Agreed, that the proposed development has failed to consider the impact of the development on the broader HIA as a result of non-compliance with the DCP block plan. However, the Part E7 of RDCP 2013 provides sufficient master planning of the block, of which was the subject of a public consultation process and supported by the Council for increased density.
<u>Excavation/Demolition/Construction</u> - The site has sandy soil. Lack of measures to protect neighbouring sites and buildings. -Excavation will result in flooding, vibration, noise, dust and health/comfort impacts. -Vibration concerns. -An asbestos survey is required. -Insurance information from development is required, from damage and health impacts of development.	Overall, Council is satisfied that the level of demolition, excavation and construction is appropriate on the site subject to strict conditions of consent (of which would have been imposed should the development have been supported), including but not limited to site stability and vibration management, asbestos management, and dilapidation reports.

## 6. Relevant Environment Planning Instruments

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

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

The aims of Chapter 2 are:

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

The proposed development involves the removal of vegetation. Council's Landscape Development Officer has reviewed the proposal and is not supportive of the development as the current design results in a direct, negative impact on the ability to retain numerous existing mature trees on both public and private land that are protected by the provisions of Council's DCP. See the detailed landscaping referral comments in the Appendix 1 of this report below).

Therefore, Council is not satisfied that the relevant objectives and provisions under Chapter 2 of the SEPP have been met and it is recommended that the development application be refused.

## 6.2. SEPP (Housing) 2021

The SEPP was introduced on 26 November 2021 following the consolidation of 5 former housing-related SEPPs including the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. The Housing SEPP gives incentives to supply affordable and diverse housing in the right places and for every stage of life, introducing two new housing types: co-living housing and independent living units.

### 6.2.1. Chapter 3 'Diverse housing'

Clause 67-70 relates to co-living housing.

Pursuant to clause 68 of the Housing SEPP 2021, if following non-discretionary development standards for the purposes of co-living housing are complied with, prevent the consent authority from requiring more onerous standards for the matters. An assessment against each standard has been provided below:

Clause	Standard	Proposal	Compliance
68(2)(a)	a floor space ratio that is not more than— (i) the maximum permissible floor space ratio for residential accommodation on the land, and (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,	Max FSR = 1.98:1  Applicant = 1.98:1 (or 2,597.39m <sup>2</sup> )  Council = 2:1 (or 2,637.934m <sup>2</sup> ).  Includes the x2 parking spaces/x7 bicycle parking spaces and areas within the communal living room the applicant has failed to include.	No, see Clause 4.6 assessment below.
68(2)(b)	for co-living housing containing 6 private rooms— (i) a total of at least 30m <sup>2</sup> of communal living area, and (ii) minimum dimensions of 3m for each communal living area,	N/A	N/A
68(2)(c)	for co-living housing containing more than 6 private rooms— (i) a total of at least 30m <sup>2</sup> of communal living area plus at least a further 2m <sup>2</sup> for each private room in excess of 6 private rooms, and (ii) minimum dimensions of 3m for each communal living area,	84 private rooms.  Min = 186m <sup>2</sup> of CLA.  Applicant = 186.17m <sup>2</sup>  Council = 166.26m <sup>2</sup> , which excludes areas that are not 'living areas' and areas <3m in dimension (as included by the applicant).	No, see Key Issues and Clause 4.6 assessment below.
68(2)(d)	communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	Site area = 1314.3m <sup>2</sup>  Min = 262.86m <sup>2</sup>  Applicant = 265.25m <sup>2</sup>  Council = 187.15m <sup>2</sup> (excluding areas <3m in dimension). Of the 187.15m <sup>2</sup> of COS, only 110.8m <sup>2</sup> of this area is trafficable, with the remainder including significant areas of planters.	No, see Key Issues and Clause 4.6 assessment below.

D90/24

68(2)(e)	unless a relevant planning instrument specifies a lower number— (i) for development on land in an accessible area—0.2 parking spaces for each private room, or (ii) otherwise—0.5 parking spaces for each private room,	Clause 19 in Part E7 of RDCP 2013 is the relevant planning instrument.  Min = 0 spaces for co-living development.  Proposal = 2 spaces.	Yes, complies
68(2)(f)	for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,	Clause 18 in Part E7 of RDCP 2013 is the relevant planning instrument.  Min = 35% deep soil permeable area.  Applicant = 20.6% (271.11m <sup>2</sup> )  Council = 16.3% (214m <sup>2</sup> ), which excludes paved areas and area of the substation.	No, see Clause 4.6 assessment below.
68(2)(g)	for development on land in Zone R4 High Density Residential—the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.	N/A	N/A

Pursuant to clause 69(1) of the Housing SEPP 2021, development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied of the following standards. An assessment against each standard has been provided below:

Clause	Standard	Proposal	Compliance
69(1)(a)	each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m <sup>2</sup> and not less than— (i) for a private room intended to be used by a single occupant—12m <sup>2</sup> , or (ii) otherwise—16m <sup>2</sup> ,	84 private rooms.  9x single occupancy rooms = >12m <sup>2</sup> & <25m <sup>2</sup>  75x double occupancy rooms = >16m <sup>2</sup> & <25m <sup>2</sup>	Yes, complies
69(1)(b)	the minimum lot size for the co-living housing is not less than— (i) for development on land in Zone R2 Low Density Residential—600m <sup>2</sup> , or (ii) for development on other land—800m <sup>2</sup> , and (iii) (Repealed)	Zone = R3  Site area = 1314.3m <sup>2</sup>	Yes, complies
69(1)(c)	for development on land in Zone R2 Low Density Residential or an equivalent land use zone, the co-living housing— (i) will not contain more than 12 private rooms, and (ii) will be in an accessible area,	N/A	N/A
69(1)(d)	the co-living housing will contain an appropriate workspace for the manager, either within the	The proposal includes a manager's room, which is self-contained room with a desk area for the manager's	No

	communal living area or in a separate space,	workspace. Council is not satisfied that manager's workspace being located within the manager's private room provide sufficient amenity for the future manager. A separate workspace should be provided for the manager within the development.	
69(1)(e)	for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use,	N/A	N/A
69(1)(f)	adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant,	Council is satisfied that adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, with each dwelling containing a bathroom and kitchenette. Adequate laundry services have been provided within the basement area.	Yes, complies
69(1)(g)	each private room will be used by no more than 2 occupants,	Complaint, to be conditioned if Council supported the proposed development.	Yes, subject to condition
69(1)(h)	the co-living housing will include adequate bicycle and motorcycle parking spaces.	<p>Clause 19 in Part E7 of RDCP 2013 contains the bicycle parking rates.</p> <p>Min bicycle = 92 (1x per dwelling for residents/ employees and 1x per 10 dwellings for visitors)</p> <p>Proposal = 99 spaces, mixture of bicycle and e-bicycle</p> <p>Table 3 in Clause 4.2 of Part B7 in RDCP 2013 contains the motorbike parking rates.</p> <p>Min motorbike = 17 (or 1 per 5 dwellings).</p> <p>Proposal = 17</p>	Yes, complies

Pursuant to clause 69(2) of the Housing SEPP 2021, development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers the following standards. An assessment against each standard has been provided below:

Clause	Standard	Proposal	Compliance
69(2)(a)	the front, side and rear setbacks for the co-living housing are not less than—	The proposed development generally complies with the setback controls, however there are some non-	No

D90/24

	(i) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument, (ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument, and	compliances with building width and sixth floor setback. See Key Issues and DCP Compliance Table in Appendix 1 for further details.	
69(2)(b)	if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide,	<p>The proposed development will be the first six storey building within Block D of the Magill Street HIA site, which seeks to increase the length of the building, varying the block diagrams controls in the RDCP 2013.</p> <p>The Applicant has failed to model what the Block D plan will result, should the variation to the building envelope be supported. This includes confirming that there is sufficient separation between possible future buildings in the block for future development of sites, including but not limited to, 3-7 Hay Street.</p>	Insufficient information
69(2)(c)	at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area,	The proposed communal living areas area mainly located on the northern side of the building. Based on solar diagrams modelling, the areas will receive adequate solar access in accordance with the minimum requirements in the SEPP.	Yes, complies
69(2)(d)-(e)	(Repealed)	N/A	N/A
69(2)(f)	the design of the building will be compatible with— (i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition—the desired future character of the precinct.	Council is not satisfied that the design of the building will be compatible with the desired future character of the precinct, in that it fails to provide a building size and scale that is appropriate in the area. Furthermore, the development fails to balance the design of the building with sufficient landscaping and canopy tree coverage to the site.	No

Therefore, in considering the number of non-compliances with the development standards and considerations, Council is not satisfied that Clause 68 and 69 of the Housing SEPP has been met and it is recommended that the development application be refused.

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

#### 6.3.1. Chapter 4 - Remediation of Land

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

The subject site is identified under RLEP 2012 as constituting potentially contaminated land or land that must be subject to a site audit statement. Council's Environmental Health team is concerned that the development is located opposite 7 Eleven Randwick at 126 Barker Street Randwick, a site that is under a Voluntary Management Agreement.

The applicant has provided a Preliminary Site Contamination Investigation (PSI) to address this issue. Council's Environmental Health Officer is satisfied that the PSI addresses Council's concerns regarding contamination, subject to Accredited Site Auditor on site and a further Detailed Site Contamination Investigation (DSI). See detailed comments in Appendix 1 of this report.

In this regard it is Council's position that the site will be suitable for the proposed development, subject to conditions (should the proposed development have been supported by Council). Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered to be suitable for the proposed land use.

### 6.4. SEPP (Sustainable Buildings) 2022

A BASIX certificate has not been submitted, as a co-living development is not a 'BASIX building', in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022.

That being said, the proposed development is subject to a minimum 4-star Green Star rating, in accordance with clause 20 in Part E7 of RDCP 2013. See a detailed assessment in the DCP Compliance Table of this report.

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

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

The site is zoned Residential R3 Medium Density under RLEP 2012. The proposed development is seeking consent for 'co-living housing', which has the following definition in accordance with the RLEP 2012:

***co-living housing*** means a building or place that—

- (a) has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and
- (b) provides occupants with a principal place of residence for at least 3 months, and
- (c) has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day,

*but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

Co-living housing is a permissible use pursuant to Section 67 of the Housing SEPP, which states that development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing, residential flat buildings, or shop top housing is permitted under another environmental planning instrument. 'Residential flat buildings' are permissible with consent under the R3 Zone of the RLEP. Therefore, co-living housing is permissible with consent.

The proposed development is inconsistent with the objectives of the R3 zone, in the following ways:

- The proposed development is inconsistent with the desirable elements of the existing streetscape and built form and the desired future character of the area. Pursuant to Part E7 of RDCP 2013, the desired future character of the HIA can be broadly summarised as a new residential mid-rise precinct, interspersed with landscaping and canopy trees, with a new built form that will have a consistent six storeys. The proposed development has a massing and scale that is inconsistent with the described character. Furthermore, the proposed development fails to provide sufficient landscaping and canopy trees envisioned in the HIA.
- The proposed development fails to adequately protect the amenity of residents, with respect to both residents and that manager of the co-living development, in terms of sufficient building entrances and access, communal spaces, visual privacy, overshadowing and solar access, natural ventilation, building separation, landscaping, car sharing, waste management, parking facilities and access, sustainability, and the manager's workplace (as detailed throughout this report).

Therefore, for these reasons, the proposed development is recommended for refusal.

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

Description	Standard	Proposed	Compliance (Yes/No/NA)
Clause 4.3: Height of Building (Maximum)	19.5m	Applicant = 20.831m  Council = 21m (RL65.7-RL44.7 – lift overrun) and 20.3m (RL65.0-RL44.7 – roof parapet)  N.b. as per the LEP definition, building height is measured from the existing ground level.	No, see Clause 4.6 assessment below.
Clause 4.4: Floor Space Ratio (Maximum)	1.8:1 (as per RLEP 2012)  1.98:1 (+10% as per Housing SEPP)  Site area = 1314.3sqm (as per survey) Max GFA = 2602.314sqm	Max FSR = 1.98:1  Applicant = 1.98:1 (or 2,597.39m <sup>2</sup> )  Council = 2:1 (or 2,637.934m <sup>2</sup> )  Includes the x2 parking spaces/x7 bicycle parking spaces and areas within the communal living room the applicant has failed to include.	No, see Clause 4.6 assessment below.

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

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

#### 6.5.2. *Clause 5.10 - Heritage conservation*

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

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

As noted in the Relevant History section of this report, on 01 October 2024, Interim Heritage Order No. 9 was gazetted for 1 Maud Street, reference number 386 – 'Planning and Heritage' following a petition from local residents.

Council is not supportive of the demolition of the recently interim listed dwelling. See detailed heritage referral comments in Appendix 1 below.

Therefore, Council is not satisfied that Clause 5.10 of the RLEP 2012 has been met and it is recommended that the development application be refused.

#### 6.5.3. *Clause 5.21 – Flood planning*

The objective of Clause 6.2(1) is to minimise the flood risk to life and property associated with the use of land; to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change; to avoid adverse or cumulative impacts on flood behaviour and the environment; and to enable the safe occupation and efficient evacuation of people in the event of a flood.

The proposed development within the flood planning area satisfies Clause 5.21(2), in that the development:

- Is compatible with the flood function and behaviour on the land, with an appropriate FFL of the ground floor and design/location of the basement driveway access.
- Will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, as the site only has a minor flood impact to the southern side of the site.
- Will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, as adequate access has been provided to the basement of the building.
- Incorporates adequate measures to manage risk to life in the event of a flood.
- Will not adversely affect the river banks or watercourses.

Furthermore, Council is satisfied that the proposed development addresses Clause 5.21(3), in that the development will not impact flooding matters in terms of projected changes to flood behaviour as a result of climate change, the intended design and scale of buildings, adequately minimised risk to life and evacuation of occupants, and that the building will not require further building works from potential flooding or coastal erosion (as confirmed by Council's Development Engineer, see Appendix 1 for comments).

#### 6.5.4. *Clause 6.2 – Earthworks*

The objective of Clause 6.2(1) is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The development satisfies Clause 6.2(3) in that:

- Should the proposed development have been supported, conditions of consent would have been imposed to minimise impact on drainage patterns, soil stability and adjoining structures.
- The proposed excavation area is largely contained within the building envelope, which is suitably scaled for the subject site. The size of the excavation does not have an adverse impact on the likely future use or redevelopment of the land.
- The site has been used for residential purposes for an extended period of time. Council is satisfied that contamination issues have been adequately addressed in accordance with the assessment in Chapter 4 'Remediation of Land' in the Resilience and Hazards SEPP.
- Should the proposed development have been supported, conditions of consent would have been imposed to manage demolition and waste removal.
- The proposed excavation does not have an adverse impact on the amenity of adjoining properties. The proposed excavation is largely located within the building envelope of the building. Fill is minimal, which will not impact upon the amenity of the adjoining neighbours. The raised FFL of the building is a result of the flooding impacts of the building in the area. Therefore, there is no adverse visual bulk impact.
- The proposal is unlikely to disturb relics as the site is not in a heritage conservation area nor is within the immediate vicinity of an identified Aboriginal Heritage objects (in accordance with the Aboriginal Heritage Information Management System).
- The scale and siting of the proposal minimises impact on waterways, water catchments and environmentally sensitive areas.

Therefore, Council is satisfied that Clause 6.2 of the RLEP 2012 has been met.

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

Clause 6.4(2) and (3) requires the consent authority to be satisfied that the development in residential and employment zones is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water; includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water; avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact; and incorporates, if practicable, water sensitive design principles.

Council is satisfied that the proposed development will adequately address stormwater management, subject to conditions should the application have been supported. See comments from Council's Development Engineer in Appendix 1 below.

Therefore, Council is satisfied that Clause 6.4 of the RLEP 2012 has been met.

#### 6.5.6. *Clause 6.8 – Airspace operation*

Clause 6.8(2) requires the consent authority to consult with the relevant Commonwealth body if the proposed development will penetrate the Limitation or Operations Surface. Clause 6.8(3) allows for the consent authority to grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface, but it has no objection to its construction.

The proposed development will penetrate the Limitation or Operations Surface, being 21m in height. Council referred the proposed development to Sydney Airport Corporation Limited, who confirmed that they raised no objection to the proposed development, subject to conditions. See comments from Sydney Airport Corporation Limited in Appendix 1 below.

Therefore, Council is satisfied that Clause 6.8 of the RLEP 2012 has been met.

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

Clause 6.10 requires the consent authority to be satisfied that essential services are available or that adequate arrangements have been made to make them available. These services include water

and electricity supply, sewage disposal and management, stormwater drainage or on-site conservation, and suitable vehicular access.

Council is satisfied that the proposed development will provide sufficient essential services, subject to standard conditions.

Therefore, Council is satisfied that Clause 6.10 of the RLEP 2012 has been met.

#### 6.5.8. Clause 6.11 – Design excellence

Clause 6.11(2) applies to development involving the construction of a new building or external alterations to an existing building that is, or will be, at least 15 metres in height.

The proposed development seeks consent for a building with a height of 21m. Therefore, Clause 6.11 is applicable.

Clause 6.11(3) requires the consent authority to be satisfied that the proposed development exhibits design excellence. Clause 6.11(4) requires the consent authority to have regard to matters of design excellence. These matters have been outlined below with comments against each matter:

Clause	Proposal	Complies
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	The proposed development does not exhibit design excellence as it does not provide a high standard of architectural design, materials and detailing, in that the development fails to comply with considerations relating to building design controls in terms of modulation and articulation, a lack of a mansard roof style, material choice, as well as building entrance and access in terms of a lack of sufficient and identifiable building entry points. See DCP Compliance table in Appendix 3 of this report for details.	No
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	The proposal does not exhibit design excellence as it does not have the form and external appearance that will improve the quality and amenity of the public domain, in that the development fails to comply with considerations relating to heritage conservation, building height, floor space ratio, setbacks, building design considerations, building entrances, tree protection, and landscaping. Such considerations are detailed throughout this report.	No
(c) how the proposed development responds to the environmental and built characteristics of the site and whether it achieves an acceptable relationship with other buildings on the same site and on neighbouring sites,	The proposal does not exhibit design excellence as it does not respond to the environmental and built characteristics of the site and achieve an acceptable relationship with other buildings on neighbouring sites, in that the development fails to comply with considerations relating to heritage conservation, building height, floor space ratio, building separation, site isolation, setbacks, building design considerations, tree protection, and	No

D90/24

	landscaping. Such considerations are detailed throughout this report.	
(d) whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security, resource, energy and water efficiency, renewable energy sources and urban heat island effect mitigation,	The proposal does not exhibit design excellence having regard to meeting sustainable design principles in terms of sunlight, natural ventilation, safety and security, energy efficiency and urban heat island effect mitigation, in that the development fails to comply with considerations relating to building entrances and access, tree protection, landscaping, overshadowing and solar access, natural ventilation, visual privacy, and sustainability measures and innovations. Such considerations are detailed throughout this report.	No
(e) whether the proposed development detrimentally impacts on view corridors and landmarks.	Council is satisfied that the proposed development does not detrimentally impacts on view corridors and landmarks within the locality.	Yes, complies

Therefore, Council is not satisfied that Clause 6.11 of the RLEP 2012 has been met and it is recommended that the development application be refused.

#### 6.5.9. Clause 6.27 – Affordable housing contributions for other areas

Clause 6.27(1) applies to development on land identified as “Area 3” on the Special Provisions Area Map. Clause 6.27(2) allows for the consent authority may impose a condition requiring an affordable housing contribution equivalent to 3% of the total floor area of the part of the building intended to be used for residential accommodation or serviced apartments. Clause 6.27(3) requires this condition on the consent to be a monetary contribution for a co-living development. Clause 6.27(4) requires the monetary contribution to be calculated in accordance with the *Housing Investigation Areas – Affordable Housing Plan* adopted by the Council on 20 June 2023.

The proposed development is located within “Area 3” on the Special Provisions Area Map. Therefore a 3% affordable housing contribution can be imposed on a development consent to the portion of the development identified as co-living housing as a monetary contribution (in accordance with the *Housing Investigation Areas – Affordable Housing Plan*).

Furthermore, Section 23 in Part E7 of RDCP 2013 provide the following requirements in relation to the affordable housing contribution:

- “a) All development within the HIAs must contribute towards the provision of affordable housing at a contribution rate of either 3% or 5% as stated in the Plan.*
- b) Affordable housing contributions are to be provided in accordance with the HIA Affordable Housing Plan 2023.*
- c) The affordable housing contribution rate is to apply to the total residential floor area component of the development.”*

Should Council have been in a position to recommend approval of the subject development, a condition would have been imposed for a monetary contribution of 3%, in accordance with the *Housing Investigation Areas – Affordable Housing Plan*.

## 7. Clause 4.6 Exception to a Development Standard

The proposal seeks to vary the following development standard contained in RLEP 2012 and the Housing SEPP:

Clause	Standard	Proposed	Proposed variation	Proposed variation (%)
RLEP 2012: Clause 4.3: Height of Building (Maximum)	19.5m	21m (RL65.7-RL44.7 – lift overrun) and 20.3m (RL65.0-RL44.7 – roof parapet)  N.b. as per the LEP definition, building height is measured from the existing ground level.	1.5m	7.7%
RLEP 2012: Clause 4.4: Floor Space Ratio (Maximum) & Housing SEPP: Clause 68(2)(a): Floor Space Ratio	1.8:1 (as per RLEP 2012)  1.98:1 (+10% as per Housing SEPP)  Site area = 1314.3sqm (as per survey) Max GFA = 2602.314sqm	2:1 (or 2,637.934m <sup>2</sup> )  Includes the x2 parking spaces and areas within the communal living room the applicant has failed to include.	35.62m <sup>2</sup>	1.4%
Housing SEPP: Clause 68(2)(c): Communal Living Area	186m <sup>2</sup>	166.26m <sup>2</sup> , which excludes areas that are not 'living areas' and areas <3m in dimension (as included by the applicant).	19.74m <sup>2</sup>	10.6%
Housing SEPP: Clause 68(2)(d): Communal Open Space	262.86m <sup>2</sup>	187.15m <sup>2</sup> (excluding areas <3m in dimension).	75.71m <sup>2</sup>	28.8%
Housing SEPP: Clause 68(2)(f): Landscaping	35% deep soil permeable area	16.3% (214m <sup>2</sup> ), which excludes paved areas and the area of the substation.	18.7%	53.4%

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

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

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

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

As part of the clause 4.6 reform the requirement to obtain the Planning Secretary's concurrence for a variation to a development standard was removed from the provisions of clause 4.6, and therefore the concurrence of the Planning Secretary is no longer required. Furthermore, clause 4.6 of the Standard Instrument no longer requires the consent authority to be satisfied that the proposed development shall be in the public interest and consistent with the zone objectives as consideration

of these matters are required under sections 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979*, and clause 2.3 of RLEP 2012 accordingly.

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

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

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

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

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

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

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

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

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

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

## 7.1. Height of Building

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

Council notes that the submitted clause 4.6 statement is incorrect in identifying the maximum proposed building height of the development. The applicant notes the maximum building height as 20.831m. However, Council correctly calculates the maximum building height as 21m, based on the difference in height between the lowest existing ground level as RL44.7 to the highest point of the building, being the lift overrun at RL65.7. Therefore, the clause 4.6 statement is incorrect and the variation to support the building height development standard cannot be granted by the consent authority.

Nonetheless, Council has undertaken an assessment of the arguments in the applicant's written request, as detailed below.

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

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

**Applicant's comments:**

The applicant's written justification demonstrates that this objective is satisfied by noting that the co-living development is permitted in the zone, subject to Chapter 3, Part 3, Section 67 of the Housing SEPP. Furthermore, the written justification argues that 'desired future character' is not defined in the LEP and that the meaning of 'desired future character' is derived from the text and context of the provisions of the LEP in which it is used and the other provisions of the LEP that form the urban character and built form of the area (including zone and zone objectives, land use table, and height and FSR development standards).

**Assessing officer's comments:**

Council disagrees with the applicant that the proposed development has a scale and size that is compatible with the desired future character of the locality. Pursuant to Part E7 of RDCP 2013, the desired future character of the HIA can be broadly summarised as a new residential mid-rise precinct, interspersed with landscaping and canopy trees, with a new built form that will have a consistent six storeys. The proposed development has a massing and scale that is inconsistent with this described character, with a built form that exceeds several of the building envelope controls of the DCP block plan, including but not limited to building width/depth, and setbacks. Together with the maximum building height variation, the building envelope has a size and scale of development that is incompatible with the desired future character of the locality. Furthermore, the proposed development fails to provide sufficient landscaping and canopy trees, failing to balance the built form with sufficient planting as envisioned in the HIA.

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

**Applicant's comments:**

The applicant's written justification demonstrates that this objective is satisfied by noting that the subject site is not a heritage or contributory item, is not within a heritage conservation area and is not near any items of heritage significance. Furthermore, the written justification argues that whilst the proposed is located opposite the Struggletown Heritage Conservation Area, the development is unlikely to impact on the heritage significance of the conservation area, as it has been designed to align with Council's desired future character for the site, consistent with the evolving character of the area.

Assessing officer's comments:

Council disagrees with the applicant that the proposed development has a scale and character of contributory buildings in a conservation area or near a heritage item, as the development seeks to demolish 1 Maud Street, which has been registered as an IHO. The proposed demolition of this dwelling is incompatible with the conservation of heritage buildings and a potential heritage item (subject to a future planning proposal).

- (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.*

Applicant's comments:

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposal does not unreasonably impact the amenity of adjoining and neighbouring land in terms of the following:

- Visual Bulk: The proposal is six storeys in height, which is envisaged both by the 19.5m height standard and the DCP storey height controls. The applicant further argues that the area of additional height is largely confined to the roof slab of the uppermost level, recessed from all sides of the building, which will not be readily apparent when viewed from surrounding properties or the streetscape. The applicant also argues the development complies with the FSR and building envelope controls in the DCP.
- Privacy: The variation is confined to the uppermost portion of Level 5 and the roof slab. There are no opportunities for sightlines from areas above the 19.5m height line. Therefore, the additional height does not adversely impact the privacy of residents on adjoining or neighbouring land.
- Overshadowing: The submitted solar diagrams show a compliant building envelope and proposed development, demonstrating that the additional height does not significantly affect solar access to neighbouring properties, including to Botany Street and Barker Street.
- Views: There do not appear to be any existing significant views available across the subject site from neighbouring properties or the public domain.

Assessing officer's comments:

Council disagrees with the applicant that the proposed development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views. In terms of visual bulk, the additional height contributes to a size and scale of development that is not in keeping with the desired future character. Furthermore, in terms of solar access, the applicant has failed to demonstrate the building envelope of the block as demonstrated in the DCP block plan. Furthermore, the top level is not contained within a mansard roof as required in the DCP, which would reduce solar impacts.

Assessing officer's summary:

In conclusion, the applicant's written request has incorrectly calculated the maximum building height and the variation to support the building height development standard cannot be granted by the consent authority. Furthermore, the applicant has also failed to adequately demonstrate that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case. Therefore, it is recommended that the proposed development be refused.

**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 site is flood constraint, requiring the development to be raised to comply with the flood planning levels. The DCP notes that a minor variation to the height may be supported depending on the required flood planning floor level. Should strict compliance be enforced, the topmost level would be removed, impacting the development potential of the site and desired future character of the HIA.
- The variation is minor in nature, does not result in any significant impacts on the amenity of surrounding residences and due to its recessed location, is not readily apparent when viewed from the public domain.
- The development achieves Council's desired character for the HIA which envisages a six storey built form on the site, which is as proposed. The proposed height variation ensures the development achieves a number of storeys and internal heights that are in line with the desired future character of the area.
- The proposal has a compliant FSR and setbacks. This demonstrates it is of a bulk, scale and character that is in line with what is anticipated by Council's planning controls.
- A requirement to remove the topmost storey would result in a development that is a full storey less than what is envisaged for the site by Council's planning controls, reduce the development potential of the site and its contribution to increasing housing supply, and would impact the amenity of the development for future residents from the loss of communal living areas and communal open space.
- As stated, the area of non-compliance is largely confined to the roof form and rooftop services. The proposal represents only a 6.8% variation from the development standard, attributed to the site's flood constraints.
- The proposal will increase housing stock in the locality and will contribute positively to improving housing affordability. The development will give rise to positive social, economic and community outcomes by providing high-quality and diverse housing options in a desirable location.
- The area of non-compliance is confined to the topmost level, which is recessed from the external edges of the building.
- The proposed rooftop services are centrally located on the roof. This skilful design approach minimises the appearance of the additional building height and associated amenity impacts to surrounding properties and the public domain.
- The additional height facilitates good internal amenity. It ensures that consistent internal floor levels and adequate floor to ceiling heights are provided at all levels. Given the proposal meets only the minimum required floor to ceiling heights, to enforce strict compliance with the height standard would result in a building that falls short of the floor to ceiling heights desired by Council for the site.
- The additional height also accommodates solar panels on the roof. This promotes the use of renewable energy sources and facilitates ecologically sustainable development.

Assessing officer's comment:

Council is not satisfied that the applicant's clause 4.6 statement has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as follows:

- The height variation will result in adverse visual bulk impacts to the streetscape and neighbouring sites, of which is not envisioned in the DCP.
- The proposed development fails to comply with other building envelope controls including FSR, setbacks, and building width and depth. The variation to the height further accentuates this non-compliance, in total creating a building envelope that is not envisioned in the HIA as part of the desired future character.
- The applicant has failed to adequately demonstrate the adverse solar impacts of the variation to the building height development standard, in not providing shadow diagrams showing the impact of proposed development and a compliant building height (as demonstrated in the DCP block plan for the site).
- The proposed development could lower the FFL of the ground floor level by 100mm-150mm, based on flood considerations.
- The ground floor floor-to-floor height is 3.9m, being 3.3m of floor-to-ceiling height and 600mm between the ground floor ceiling and finished floor level of the first floor. There are opportunities to reduce the height of the building without impacting upon the

amenity of the building, including reducing the ground floor floor-to-floor height by 200mm to comply with the DCP control.

- The top-most level has not been designed as a mansard floor form, as required in the DCP. Compliance with this control would reduce the amount of non-compliance with the building height development standard, which would improve visual amenity and solar impacts of the height variation.

In conclusion, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. Therefore, it is recommended that the proposed development be refused.

## Conclusion

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

### 7.2. Floor Space Ratio

The applicant has failed to provide a written request to vary the Floor Space Ratio development standard applying to the site under clause 4.4 of RLEP 2012 and section 68(2)(a) of the Housing SEPP.

The applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have not been satisfied and development consent should not be granted for development that contravenes the maximum Floor Space Ratio development standard. Therefore, it is recommended that the proposed development be refused.

### 7.3. Communal Living Area

The applicant has failed to provide a written request to vary the Communal Living Area development standard applying to the site under section 68(2)(c) of the Housing SEPP.

The applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have not been satisfied and development consent should not be granted for development that contravenes the minimum Communal Living Area development standard. Therefore, it is recommended that the proposed development be refused.

### 7.4. Communal Open Space

The applicant has failed to provide a written request to vary the Communal Open Space development standard applying to the site under section 68(2)(d) of the Housing SEPP.

The applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have not been satisfied and development consent should not be granted for development that contravenes the minimum Communal Open Space development standard. Therefore, it is recommended that the proposed development be refused.

## 7.5. Landscaping Area

The applicant has failed to provide a written request to vary the minimum Landscaping area development standard applying to the site under section 68(2)(f) of the Housing SEPP.

The applicant has failed to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the requirements of clause 4.6(3) have not been satisfied and development consent should not be granted for development that contravenes the minimum Landscaping development standard. Therefore, it is recommended that the proposed development be refused.

## 8. Development Control Plans and Policies

### 8.1. Randwick Comprehensive DCP 2013

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

Council is not satisfied that the development complies with the RDCP 2013. The relevant provisions of the DCP are addressed in the Key Issues section of the report and Appendix 3.

## 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and Key Issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the 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	<p>The relevant clauses of the Regulations have been satisfied.</p> <p><u>Housing and Productivity Contribution</u></p> <p>The proposed development is subject to a housing and productivity contribution (HPC) in accordance with section 7.28 of the <i>EP&amp;A Act 1979</i>. The Applicant lodged the development application without the imposition of the HPC. The Respondent asserts that the HPC is applicable in accordance with the Act and Regulations.</p>

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	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is inconsistent with the desired future character of development in the locality, resulting in adverse impacts on the built environment.</p> <p>Furthermore, the proposal will result in detrimental social or economic impacts on the locality, in terms of the management of the co-living development and the demolition of a dwelling with a IHO listing.</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	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal fails to promote the objectives of the zone and will result in significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

## 9.1. Discussion of Key Issues

### Desired Future Character, Building Envelope and Site Planning

Clause 9.3.1. in Part E7 of RDCP 2013 contains the following statement on the desired future character of the Magill Street HIA:

*“The future character will attract new residents through convenient access to education, health and retail services, to public transport, while building upon the landscape qualities of the precinct. Small scale health services facilities or private medical clinics may occur along Botany Street and Barker Street.*

*The future desired character of the HIA is for a new residential mid-rise precinct, interspersed with landscaping and private gardens, with generous setbacks for large trees to be established.*

*The proposed new built form will present as a consistent six storeys with a two-storey transition down to the lower scale residential neighbourhood to the west. The proposed built form will help to define the Botany Street ‘spine’, and the key residential street frontages (Barker Street, Hospital Road and Magill Street) and the street corners of the HIA.*

*Consolidation of sites will allow for communal open space within deep soil areas providing significant tree canopy for the area.*

#### Built form

*The mid-rise (maximum six storey) residential apartment buildings will generally be setback 6m from the primary and secondary street frontages to allow ground floor level apartments to have private court gardens and generally to allow landscaping to permeate the HIA.*

*The block layout will support buildings with communal gardens incorporating deep soil areas for tree planting. This will provide residents with a green, social and relaxation space and break up the scale of the HIA interspersed with landscaped gardens.*

To support the desired future character statement and the objectives of Part E7, the site is subject to the following block control plan “Block D”, reproduced as Figure 13 below.

### Block D

Figure 28: Block D control plan

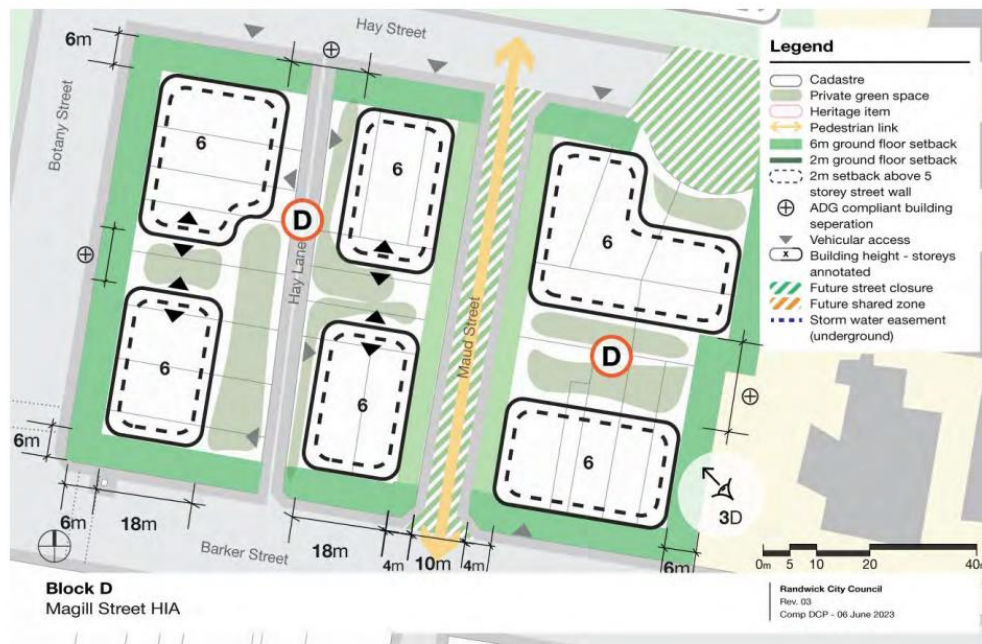


Figure 13: Block D control plan in Part E7 of RDCP 2013 (Source: Randwick City Council)

The proposed development seeks to vary the block control intended in the DCP, as depicted in Figure 14 below.

### Block D

Figure 28: Block D control plan

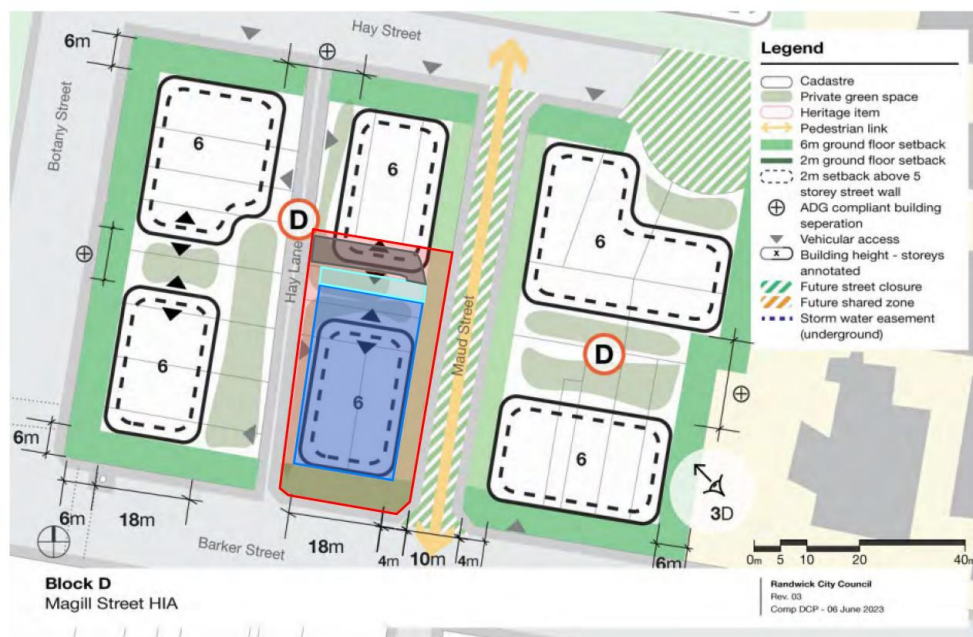


Figure 14: Proposed development overlay on the Block D control plan in Part E7 of RDCP 2013 (Source: Randwick City Council)

Figure 14 shows the following mark ups by Council:

- The proposed site is shown in red.
- The proposed building envelope is shown in blue.
- The proposed ground floor terrace is shown in light blue.
- The proposed internal driveway is shown in grey.

Overall, Council is not supportive of the proposed development in that it does not comply with the Block D control plan, seeking to vary a number of the features of the Magill Street HIA as intended for the desired future character of the site. This includes the following variations:

- Height of Building:
  - Proposed 21m in height, seeking to vary the 19.5m development standard. See section 7 for a detailed assessment of the height variation.
- Floor Space Ratio:
  - Proposed 2:1 FSR, seeking to vary the 1.98:1 development standard. The additional FSR that the applicant has failed to include is the additional x2 vehicle parking spaces and x7 bicycle parking spaces within the basement that exceed the DCP requirements.
- Setbacks:
  - Proposed 1.49m setback of northern side of the sixth floor from the five-storey, seeking to vary the 2m control.
  - Proposed 18.7m building width, seeking to vary the 18m control.
- Landscaping:
  - Proposed 16.3% or (214m<sup>2</sup>) of deep soil permeable area, seeking to vary the 35% control.
  - Proposed 20.7% (or 273m<sup>2</sup>) of tree canopy cover, seeking to vary the 25% control.
  - Removal of 2 trees being T6 and T7, varying the controls to retain trees with considered site planning.
- Driveway and Crossing:
  - Proposed driveway/basement ramp is located across the rear boundary in the northwest site corner, varying the control plan to locate the driveway integrated into the building design.

#### Building Separation and Site Isolation

Council is concerned regarding the existing and future potential building separation. The proposed development seeks to increase the length of the building, varying the block diagrams controls in the RDCP 2013. The applicant has failed to model what the Block D plan will result, should the variation to the building envelope be supported. This includes confirming that there is sufficient separation between possible future buildings in the block for future development of sites, including but not limited to, 3-7 Hay Street.

Council is also concerned regarding site isolation from the proposed development. The proposed development will result in the northern allotments of 3, 5 and 7 Hay Street being isolated for redevelopment. The applicant has failed to provide schematic diagrams and modelling demonstrating how the block of 3-7 Hay Street is capable of being redeveloped in accordance with relevant provisions of the RLEP and the DCP to achieve an appropriate urban form for the location, an acceptable level of amenity and a coherent built form outcome for the block. This includes modelling possible future massing and its shadow impacts.

#### Amenity Impacts

In terms of future character, the proposed development fails to comply with the following relevant objectives of the Block D control plan:

- *Position built form with generous setbacks to the surrounding streets, to enable well scaled streetscapes, private and communal gardens, and deep soil permeable areas.*
- *Provide variety and interest in streetscapes through buildings that are articulated within the overall permitted development envelope.*
- *Position built form to wherever possible retain existing mature trees and vegetation.*
- *Achieve an orderly consolidation of sites to realise optimum urban and building design outcomes that are ADG compliant.*

In terms of visual amenity, the proposed development will result in a poor visual and landscape quality of the site and streetscape presentation. The development will have a visually dominant presentation of the site as viewed from surrounding development and the public domain, and upon the visual privacy of adjoining neighbours. Furthermore, the development fails to enhance the quality of life and attractiveness of this HIA by providing the intended landscape space for shared amenity and green space for relief.

In terms of solar access, the applicant has failed to provide sufficient information to determine if the extended building envelope creates adverse overshadowing impacts on neighbouring sites. The submitted shadows and sun eye diagrams do not show sufficient context around the site to determine impacts. The views from the sun do not show the future built form massing intended in the Block Plan for this block which would impact the solar access of the proposal. Given the reduced site area for a future development to the north due to the different amalgamation pattern the possible future massing and its shadow impacts should be considered in assessing the solar access of the proposal.

In terms of visual privacy, the proposed development provides balconies and windows to the co-living rooms, as well as common living areas and adjoining terraces outdoor, to the northern and western sides of the building. The proposed development results in direct overlooking to living rooms and the private open space of the existing adjoining dwellings in the blocks to the north (3- 7 Hay Street) and west (115-131 Botany Road).

Therefore, it is recommended the proposed development be refused.

#### Communal Living Area

Pursuant to Section 68(2)(c) of the Housing SEPP, a minimum of 186m<sup>2</sup> of communal living area for the 84 room co-living development with minimum dimensions of 3m.

Council has calculated the communal living area as 166.26m<sup>2</sup>, which excludes areas identified by the applicant that are not 'living areas', which represents a 10.6% variation to the development standard.

The proposed development does not provide sufficient communal living area within the site, which impacts upon the sufficient amenity of the future occupants of the building.

The applicant has not submitted a written request pursuant to clause 4.6 of RLEP 2012 in relation to the contravention of the development standard. See section 7 of this report for details.

Therefore, it is recommended the proposed development be refused.

#### Communal Open Space

Pursuant to Section 68(2)(d) of the Housing SEPP, communal open spaces are required of at least 20% of the site area with minimum dimensions of 3m. This equates to 262.36m<sup>2</sup> for the subject site.

Clause 9.3.1 of Part E7 of the RDCP 2013 relevantly states:

*"Consolidation of sites will allow for communal open space within deep soil areas providing significant tree canopy for the area."*

The proposed development provides 265.25m<sup>2</sup>, according to the applicant's calculations on DA 9004. This area includes:

- 24.51m<sup>2</sup> within the 6m front setback area on Barker St over the OSD tank.
- 23.94m<sup>2</sup> is indicated adjacent to the vehicle ramp and positioned in the front setback on Maud Street.
- 25.53m<sup>2</sup> is counted in a small area off the level 5 near the communal toilet.
- A further narrow terrace is also counted on this floor to the northeast.

Council has calculated the communal open space as 187.15m<sup>2</sup>, which excludes areas <3m in dimension, which represents a 28.7% variation to the development standard. Of the 187.15m<sup>2</sup> of communal open space, only 110.8m<sup>2</sup> of this area is trafficable, with the remainder includes significant areas of planters. The proposed development lacks sufficient functional and usable communal open space for the future occupants of the site.

Furthermore, the x2 areas in the front site setbacks to Barker Street and Maud Street are not appropriate locations for communal open space. These areas not secure or private, which would offer a low quality of amenity to occupants.

- In terms of the 24.51m<sup>2</sup> fronting Barker Street, the street is a busy road and traffic noise as well as security and privacy issues would discourage use of this area.
- In terms of the 23.94m<sup>2</sup> fronting Maud St, the communal open space is located immediately next to the bike parking bay and the proximity to the driveway ramp to the basement would further discourage use of this space by residents.

Figure 28 'Block D control plan' in Part E7 of the RDCP 2013 in the relevant block diagram for the site. The diagram demonstrates that the northern side of the site shall be occupied by 'private green space'.

The proposed location of the open driveway is occupying area that the communal open space should be occupy to the rear setback of the site. Relocation of the driveway could potentially allow an increased area of communal open space within the rear boundary setback as well as greater landscape area, deep soil, and canopy tree coverage.

## 10. Conclusion

That the application for demolition of the existing structures to enable the construction of 6-storey co-living housing development consisting of 84 rooms with one basement level for parking, storage and services be refused for the following reasons:

1. Pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives of the R3 Medium Density Residential zone in that it is not compatible with the desired future character of the area and fails to protect the amenity of residents.
2. Pursuant to the provisions of section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives and controls of the Randwick Development Control Plan 2013:
  - Part B2: Heritage
  - Part B4: Landscaping and Biodiversity
  - Part B6: Recycling and Waste Management
  - Part B7: Transport, Traffic, Parking and Access
  - Part B9: Management Plan
  - Part E7: Housing Investigation Areas
3. Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is inconsistent with the desired future character of development in the locality,

resulting in adverse impacts on the built environment. Furthermore, the proposal will result in detrimental social or economic impacts on the locality, in terms of the management of the co-living development and the demolition of a dwelling with an Interim Heritage Order listing.

4. Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is considered to not be in the public interest as the proposal is inconsistent with the objectives of the zone and will result in significant adverse environmental, social or economic impacts on the locality.
5. Pursuant to section 68(2)(c) of the Housing SEPP, the proposed development fails to comply with the communal living area development standard for co-living housing.
6. Pursuant to section 68(2)(d) of the Housing SEPP, the proposed development fails to comply with the communal open space development standard for co-living housing.
7. Pursuant to section 68(2)(f) of the Housing SEPP, the proposed development fails to comply with the landscaping area development standard for co-living housing.
8. Pursuant to section 69(1)(d) of the Housing SEPP, the proposed development fails to provide an appropriate workspace for the manager of the co-living housing.
9. Pursuant to section 69(2)(a) of the Housing SEPP, the proposed development fails to comply with setback controls in accordance with relevant planning instrument, being Part E7 of RDCP 2013.
10. Pursuant to section 69(2)(b) of the Housing SEPP, the proposed development fails to demonstrate compliance with the minimum building separation distances specified in the Apartment Design Guide.
11. Pursuant to section 69(2)(f) of the Housing SEPP, the proposed development design is incompatible with the desired future character of the precinct, in accordance with Part E7 of RDCP 2013.
12. Pursuant to clause 4.4 of RLEP 2012, the proposed development fails to comply with the maximum floor space ratio for development on the subject site.
13. Pursuant to clause 4.6 of RLEP 2012, the applicant has failed demonstrate that the matters of the clause have been adequately addressed and that consent should be granted to the development application, which contravenes the building height development standard in Clause 4.3 of RLEP 2012. The applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
14. Pursuant to clause 4.6 of RLEP 2012, the applicant has failed to submit a written request to vary the floor space ratio, communal living area, communal open space, and landscape area, pursuant to clause 4.4 of the RLEP 2012 and section 68 of the Housing SEPP, respectively. The applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
15. Pursuant to clause 5.10 of the RLEP 2012, the proposed development will have a detrimental impact and effect on heritage significance of a heritage item, following an Interim Heritage Order being placed upon 1 Maud Street, Randwick NSW 2031.
16. Pursuant to clause 6.11 of the RLEP 2012, the proposed development fails to exhibit design excellence.

## Appendix 1: Referrals

### 1. External Referral Comments:

#### 1.1. Ausgrid

Ausgrid is generally supportive of the proposed development, subject to the imposition of conditions on a consent to protect existing electrical network assets.

#### 1.2. NSW Police

NSW Police is generally supportive of the proposed development, subject to the adoption of general safety measures with regard to the Crime Prevention Through Environmental Design (CPTED) principles. Should the proposed development have been supported by Council, these measures would have been required to be integrated into the development.

#### 1.3. Sydney Airport Corporation Limited

Sydney Airport Corporation Limited is generally supportive of the proposed development, raising no objection to the erection of this development to a maximum height of 65.7metres AHD.

#### 1.4. Sydney Water

Sydney Water is generally supportive of the proposed development, subject to the imposition of conditions on a consent in accordance with Section 73 of the *Sydney Water Act 1994* and Building Plan Approval requirements.

### 2. Internal Referral Comments:

#### 2.1. Heritage Planning

"The relevant objectives of Clause 5.10(1) of RLEP 2012 are provided as follows:

- (a) to conserve the environmental heritage of Randwick,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,"*

The proposal would not conserve the environmental heritage of Randwick as it involves the removal of a potential heritage item of local significance.

The proposed development will have an adverse impact on the potential heritage significance of the property at 1 Maud Street in terms of the following:

- i. Loss of building fabric;
- ii. The extensive basement excavations would pose a significant risk to the structural stability of the dwelling house
- iii. Loss of residence into apartment type accommodation
- iv. The disproportionate scale of the proposed new development
- v. The visual impact from the unsympathetic built form to the existing dwelling house will detract from its potential heritage significance.

Clause 5.10(5) of the RLEP relevantly states:

*The consent authority may, before granting consent to any development—*

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),*

*require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.”*

A Statement of Heritage Impact, prepared in accordance with Heritage Council of NSW Guidelines has not been prepared and included in the development application. This is required in accordance with Clause 5.10(5)(c) of the RLEP 2012 in order for adequate consideration to be given to the heritage impacts of the proposal.

Clause 5.10(4) of the RLEP 2012 requires the consent authority to consider the effect of the proposed development on the potential heritage significance of the property at 1 Maud Street.

The proposal will have a negative conservation outcome and the application will result in a permanent detrimental material impact to the potential heritage significance of the property at 1 Maud Street.

An IHO No. 9 under Section 25 of the Heritage Act 1977 has been placed on 1 Maud Street on Land known as Lot 4, Sec 2, DP 1221; Lot 5, Sec 2, DP 1221 and Lot 6, Sec 2, DP 1221.

Section 2.1 of the RDCP 2013 requires the consent authority to ensure that development to heritage items or properties within heritage conservation areas is sympathetic to the heritage values while achieving a reasonable balance between contemporary design expectations, environmental sustainability and protecting heritage significance.

The level of change to accommodate the proposal is excessive and implies that this use is incompatible with the potential heritage values of the property at 1 Maud Street. The development does not demonstrate how it respects the potential heritage values of the property at 1 Maud Street.”

## **2.2. Development Engineering**

### “Vehicle Access and Internal Driveway

Hay Lane is a narrow laneway (approximately 4.6 metres in width) with a single lane carriageway and no kerb on either side. The Traffic and Parking Assessment Report submitted with the application states that the vehicular crossing complies with the relevant Australian Standards however no swept path analysis has been provided demonstrating the adequacy of the crossing.

The Traffic and Parking Assessment Report submitted with the application states that the internal driveway ramp connecting Hay Lane with the proposed basement vehicular crossing complies with the relevant Australian Standards however no assessment of driveway gradients was undertaken along the inside / critical edge of the proposed ramp. As an example, along the curved section of the ramp the gradient of the centreline is shown as 1 in 4 (25%) – the inside of the ramp must therefore exceed 1 in 4 (25%). The change in grade at the proposed crest in driveway needs a detailed assessment against the relevant provision of the Australian Standards.

### Car Share

Section 19 Transport, Parking and Access, for Co-living development, (RDCP E7 HIA), permits a minimum requirement of zero parking spaces. The Co-living development contains 86 rooms and at least one car share parking space in the development for this purpose is encouraged for resident use.

### Waste Management

The Waste Management Plan (WMP) submitted with the application repeatedly refers to the Randwick City Council K2K DCP. The proposed development is part of Randwick’s Housing Investigation Areas (HIA). Reference should be made to ‘Randwick DCP (2023): E7 Housing Investigation Areas’ including (but not limited to) pages 5, 15, 18 and 26 in the WMP. ‘Randwick

City Council's Localised Automated Waste Collection Systems (LAWCS) Using Mobile Vacuum Vehicles: Design and Implementation Guidelines', also applies to Housing Investigation Developments.

The WMP requires the LAWCS collection vehicles to stand in and circulate through Hay Lane. Swept paths have not been provided and vehicles standing in Hay Lane will completely block the laneway for an extended period of time. Mobile Vacuum Collection Vehicle dimensions are length = 10.0 m, width = 2.6 m and height = 5.0 m – concerns are raised for movements at the intersection of Barker Street and Hay Lane and Hay Lane and Hay Street.

Residential waste generation rates in the WMP are inaccurate. Waste generation rates should use the Boarding Houses Rate from 'The RCC Waste Management Guidelines for Proposed Development' with a Food Organics (FO) adjustment i.e 8,3 and 1 L/occupant/day for general waste, recycling and FO respectively. A compaction rate should not be applied to the waste generated as most of the compaction happens at collection. The council collection service is a weekly collection of general waste and Food Organics (FO) and a fortnightly collection of recycling.

LAWCS system, tank room and tank sizes should be prepared and documented in accordance with 'RCC's Localised Automated Waste Collection Systems Using Mobile Vacuum Vehicles: Design and Implementation Guidelines. November 2022'. Insufficient detail is shown on the proposed piping network (including angle of pipes from tanks to the outlet and the pathway of the piping network - including chute, inlet hopper and collection chamber). No information has been provided on odour management method for FO waste.

5. The bulky waste store room is inadequate. A minimum temporary storage area of 10 m<sup>2</sup> is required for bulky waste. The proposed 6.97 m<sup>2</sup> is insufficient. 20 m<sup>2</sup> is normally required. Details of on-going management arrangements, including responsibility for transfer of bulky waste from residents to storage facilities and storage facilities to collection points has not been provided.

#### Flooding

The proposed development generally addresses the flooding impacts of the site. The submitted report makes certain assumptions on the critical 1%AEP flood level and the PMF flood level for the driveway. It is conservative based on the flood plots obtained, (i.e. it has 1% and PMF levels higher than my flood plots). Based on this, the ground floor level could be lowered a possible 100mm to 150mm based on flood considerations."

### **2.3. Development Landscaping**

#### "Tree Protection

Part B.5 of Council's Comprehensive DCP (2013), Sub-section 1.1 – Objectives, states the following aims:

To effectively protect the urban forest in Randwick City, with particular emphasis on retaining trees with cultural, heritage and natural significance.

To encourage the preservation of trees and vegetation that contribute to native flora and fauna habitat.

The eastern wall of the Basement Level is shown at an offset of 1500mm from the eastern site boundary, meaning that excavations/piling to a depth of 5 metres below surface level will be performed within the Structural Root Zones (SRZ's) and Tree Protection Zones (TPZ's), to varying degrees, of Trees 1-4, which are all located on the public verge in Maud Street.

Section 3.3.3. of AS4970-2009: 'Protection of trees on development sites' states that in such cases of major encroachment, the Arborist must demonstrate how a tree can remain viable. While the Arborist Report recommends that further detailed site investigations are required to confirm root activity and potential impacts, this has then not been followed through and performed, with Council needing a high degree of certainty of given their location out in the public domain.

The position of a piling rig on the alignment of the eastern basement wall, as well as scaffolding and similar allowances for the upper levels would also appear to necessitate heavy clearance lopping of the western aspect of their crowns, particularly T1-2, which the Arborist has not considered or assessed.

The removal of T3 to accommodate a pedestrian entrance/bicycle parking area/sub-station is not warranted and not supported, with facilities in this area needing to be suitably re-designed to ensure its retention.

T1-4 are growing in a very narrow grass verge in Maud Street, with their trunks occupying the full width of this area; however, the Ground Floor architectural plan (dwg DA2001) indicates a full width public footpath here, with clarification sought on how pedestrian movements will be dealt with in this area as they currently have to divert out onto the roadway.

A higher degree of detail relating to any proposed boundary fencing, services, changes to existing ground levels, retaining walls, footing details and similar within the TPZ's of T1-4 needs to be provided.

The location of the vehicle access and basement ramp in the northwest site corner directly conflicts with established specimens (T6-8) in this same area of the development site which currently provide visual relief, screening and amenity to adjoining properties. Relocating the crossing and ramp further south along this frontage (Hay Lane) to be clear of these trees, or alternatively, within Maud Street, between the groups of T1-2 and T3-4 will minimise tree impacts/tree loss.

An Amended Arborist Report addressing the matters detailed above needs to be submitted.

#### Landscaping

The location of the OSD tank centrally in the front setback, facing Barker Street, together with the sub-station in the southwest site corner and the bicycle parking areas in Maud Street all restrict the amount of deep soil and subsequent planting in prominent parts of the site which could be better utilised by planting that would assist with presentation of the development to the respective streetscapes.

The location of the driveway/basement ramp in a valuable area of deep soil in the northwest site corner, across the rear boundary is a poor outcome as it directly affects tree retention as well as restricting the amount of deep soil, planting and open space that could be provided here instead, and directly impacts the future amenity of both occupants and neighbours.

It is questioned whether the layout and design of the Basement is as efficient as possible, as any reduction in this footprint then directly increases and improves opportunities for deep soil, planting and tree retention.

While the Details & Specification Landscape Plan (dwg LPDA 24-111) includes generic details for 'Planter Wall on Slab', the Ground Level and Level 5 Landscape Plans need to nominate the actual soil depth that will be provided to confirm suitable soil volume will be achieved, which is particularly relevant where canopy trees are proposed on podium."

## **2.4. Environmental Health**

### "Contamination"

A PSI prepared by Environmental Consulting Services for DA/632/2024 - 129-129A Barker Street & 1 Maud Street, RANDWICK NSW 2031 dated 23:08:2024.

Further information was required including review in updated consideration by consultant considering potential contamination from site subject to VMA with NSW EPA 126 Barker Street Randwick and any potential or actual contamination that may impact the subject site.

Updated PSI received dated 23:08:2024. Considered VMA with NSW EPA and 126 Barker Street regarding contamination.

Based on history of site and identified significantly contaminated site at 126 Barker Street Randwick 7 Eleven site concerning groundwater contamination, appropriate conditions are provided in this report.

#### Acoustic

A Noise Impact Statement prepared by Koikas acoustics Pty Ltd dated 17th January 2024 considers the potential noise and vibration impacts to the proposed development as well as the noise from emissions from noise sources generated from the proposed development.

The noted that detailed mechanical plant selection and location has not been undertaken at this stage. The statement states that Satisfactory levels will be achievable through appropriate plant selection, location and if necessary, standard acoustic treatments.

The report provided recommended design building requirements/measures in sections 5,6 and 7 that are recommended to be included in acoustic design at construction certificate stage.

The report provided recommended operational requirements in section 7 and advised if all measures incorporated required acoustic criteria would be achieved.

Appropriate conditions have been included in this report.

#### Plan of Management (POM)

An amended POM has been recommended to be reviewed by the selected acoustic consultant to include all operational acoustic recommendations. Appropriate conditions have been included in this report."

## Appendix 2: Applicant's Clause 4.6 Statement regarding Height of Building

gsa planning

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

**APPLICANT'S NAME:** Charas Constructions c/o Mark Shapiro Architects  
**SITE ADDRESS:** Nos. 129-129A Barker Street and 1 Maud Street, Randwick  
**PROPOSAL:** Construction of a new co-living housing development and associated works

1.

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

Randwick Local Environmental Plan (LEP) 2012

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

R3 Medium Density Residential Zone. The objectives of the zone are stated, inter alia:

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

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

Clause 4.3 – Height of Buildings, which is stated, inter alia:

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

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

## 2. Overview

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

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

The development standard to which this request for variation relates is Clause 4.3 of the LEP – height of buildings. This Clause operates in conjunction with the Height of Buildings Map which indicates a maximum building height development standard of 19.5m applies to the subject site.

The proposed development is for the construction of a new six-storey contemporary co-living housing development, which has a flat roof and one basement level. The building height of the proposed building ranges from 20.325m measured to the Level 5 parapet at RL 65.00 to a maximum of 20.831m measured to the top of the lift overrun at RL 65.70 (see Figure 1). This represents a maximum variation of 1.331m or 6.8% from the building height development standard.

The additional height is largely confined to the roof slab over Level 5, lift overrun and mechanical plant equipment on the rooftop. The plant equipment includes photovoltaic panels by an accredited solar system designer, A/C condensers and the automated waste collection chute fan, which are all located centrally on the roof.



The height variation is driven by the following factors:

### Flood Planning Requirements

The Flood Risk Management Plan prepared by KD Stormwater Pty Ltd states:

*The 1% AEP flood level in the proximity of the site is interpolated from the 1% AEP flood contours in Figure 2 extracted from the Randwick HIAs report. The estimated highest 1% AEP flood level is 44.85 m AHD at the southwest corner of the site. Therefore, the minimum FFL for habitable areas shall be 45.35 m AHD.*

As such, the building has been raised to comply with the flood planning requirements. The proposed ground floor level is at FFL 45.40, in accordance with the recommendation of the flood report.

### Compliant Number of Storeys

The subject site is identified within the Magill Street Housing Investigation Area (HIA) under Council's newly introduced Stage 1 DCP, which commenced on 1 September 2023. Within this HIA, the site is in Block D. The Block D control plan nominates a building height of six storeys for the subject site, as shown in Figure 2 below. The proposal complies with this number of storeys.

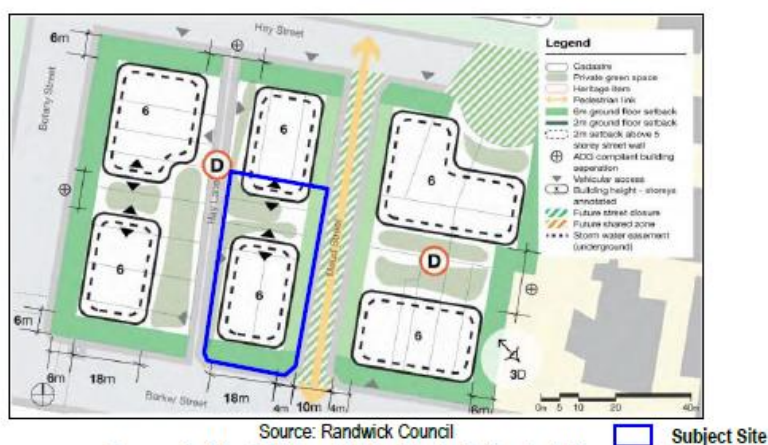


Figure 2: Magill Street HIA, Block D Control Plan

### Compliant Floor to Floor Heights

The proposal has floor to floor heights of 3.9m at the ground floor level and 3.1m at all levels above. This is to comply with the minimum requirements of Council's Development Control Plan (DCP) and the National Construction Code (NCC).

## 4. Consistency with Objectives of Clause 4.6

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

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

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

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

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. The primary reason for the height variation is the site's flood constraints. Importantly, the HIA built form controls under Part E7 Section 5(f) of the DCP states Council may consider minor exceedances to the building height development standard to comply with flood requirements, inter alia:

*Where a property is identified by Council to be subject to flooding, this may require a ground floor habitable space to be raised above the existing ground level (above the 1 in 100 year flood level, plus 0.5m freeboard). In the case of a raised ground floor level, the additional height should be absorbed into the overall height of the building, whilst continuing to meet ADG floor to ceiling standards and the required LEP maximum height of building level. In this case the full number of storeys stated in w) above may not be able to be achieved on the site. Council may at its discretion consider a minor exceedance for additional height depending on the required Floor Planning Flood Level.*

*(our emphasis)*

The height variation achieves a built form that is consistent with the desired future character of the area, as envisaged by Council's area-specific controls for the Magill Street HIA. Flexibility with the standard facilitates a six storey building with a recessed topmost level, consistent with Council's planning controls.

The proposal will promote the orderly and economic use and development of the land through the provision of high-quality housing within the health and education precinct in Randwick. The development for co-living housing contributes to the provision of diverse and affordable housing options in a desirable location with appropriate accessibility. There is an identified need for additional housing in the locality, as demonstrated by the recent uplift in Council's zoning and density controls for the site. Strict compliance with the height standard would result in a loss of housing on the site, which would be a poorer planning outcome for the site and locality.

The proposal complies with the maximum Floor Space Ratio (FSR) development standard of the LEP and the setback controls of the DCP. This achieves an overall bulk, scale and character that is appropriate for the site, despite the minor variation in height. The extent of variation will not have an unacceptable impact on neighbours' amenity when compared with a compliant envelope.

For the above reasons, flexibility with the building height development standard is considered appropriate. In this instance, flexibility achieves a better planning outcome, both for and from the development.

## 5. Justification of Variation to Development Standard

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

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

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

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

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

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

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

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

Despite the proposed departure with the height of buildings development standard, the proposal achieves the desired medium density residential character of the area. The proposal provides a height in storeys, bulk and scale that is consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the height standard are explained below.

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

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

- a) The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b) The zone objectives (Clause 2.3);
- c) The land use table; and
- d) The development standards in Part 4:
  - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 19.5m;
  - ii. Clause 4.4 Floor Space Ratio and Floor Space Ratio Map which prescribes a maximum FSR of 1.8:1 (1.98:1 pursuant to Chapter 3, Part 3, Section 68 of the Housing SEPP).

The subject site is zoned R3 Medium Density Residential. The land uses which are permissible with consent in the R3 Zone are stated, inter alia:

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Group homes; Home businesses; Hostels; Hotel or motel accommodation; Multi*

*dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shops; Tank-based aquaculture*

The proposed co-living housing development is permissible with consent in the R3 Medium Density Residential Zone. This is pursuant to Chapter 3, Part 3, Section 67 of the Housing SEPP which states that co-living housing may be carried out with consent on land in a zone where residential flat buildings is permitted.

The proposal is consistent with the relevant objectives of the R3 Medium Density Residential Zone, as addressed below:

**Objective:** *To provide for the housing needs of the community within a medium density residential environment.*

**Response:** The proposal provides eighty-four self-contained rooms within a modern co-living housing development, which significantly uplifts the existing housing density of the site. This provides for the housing needs of the community within the medium density residential environment.

**Objective:** *To provide a variety of housing types within a medium density residential environment.*

**Response:** The proposal for a co-living housing development, which is permissible with consent in the zone (pursuant to the Housing SEPP) and contributes to the variety of housing types within the medium density residential environment.

**Objective:** *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**Response:** The proposal is for a co-living housing development and incorporates private and communal facilities and services within the building, to meet the day to day needs of residents.

**Objective:** *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*

**Response:** The proposal is in a precinct that is undergoing transition, as demonstrated by the site's recent rezoning and uplift in height and density controls. The proposed development contributes positively to the desired future character of the area by replacing low density residential dwellings with a contemporary, medium-density co-living housing development. This is more consistent with the character of development envisaged by Council in the R3 Medium Density Residential Zone.

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

**Response:** The proposal has been designed to reasonably protect the amenity of residents, while supporting a greater density on the site in accordance with Council's desired future character for the area.

**Objective:** *To encourage housing affordability.*

**Response:** The proposal contributes to the increase of housing supply and diversity, which encourages housing affordability.

**Objective:** *To enable small-scale business uses in existing commercial buildings.*

**Response:** Not relevant, the subject site does not contain existing commercial buildings.

Given the flood constraints of the site, strict compliance with the LEP height standard would effectively require the removal of the topmost level of the proposed building. This would result in a loss of housing and a development that does not meet the full potential of the site. It would create a five storey building, that is a full storey lower than the scale of development anticipated by the planning control for the site.

The 19.5m building height development standard and the accompanying storey height controls under the DCP envisage a six storey built form on the subject site. The proposal is six storeys with a recessed uppermost level. It has a compliant FSR and compliant building setbacks. This demonstrates the proposal is commensurate with the size and scale of development envisaged for the locality (see Figure 3).



Barker Street



Maud Street

Source: BASE3D

**Figure 3: The Existing and Proposed Development in the Streetscape**

The subject site is located within the Magill Street Housing Investigation Areas (HIA), which is a precinct undergoing transition. It has been recently rezoned by Council from R2 Low Density Residential to R3 Medium Density Residential Zone. Council's desired character for the HIA is set out in their DCP which states:

*Magill Street HIA will attract new residents through convenient access to education, health and retail services, to public transport, while building upon the landscape qualities of the precinct. Small scale health services facilities or private medical clinics may occur along Botany Street and Barker Street.*

*The future desired character of the HIA is for a new residential mid-rise precinct, interspersed with landscaping and private gardens, with generous setbacks for large trees to be established.*

*The proposed new built form will present as a consistent six storeys with a two-storey transition down to the lower scale residential neighbourhood to the west. The proposed built form will help to define the Botany Street 'spine', and the key residential street frontages (Barker Street, Hospital Road and Magill Street) and the street corners of the HIA.*

*Consolidation of sites will allow for communal open space within deep soil areas providing significant tree canopy for the area.*

The proposed development aligns with the character envisaged for the HIA. The height variation facilitates a mid-rise residential development, which accords with the character and scale envisaged for the site. The building will be surrounded by landscaping and will define the key residential street frontage to Barker Street and the street corners.

The subject site comprises three consolidated properties, which provides an appropriate lot size to support the development, allow for communal open space, deep soil areas and tree canopy. The development is contemporary in style and presents well-articulated and modulated façades to all three street frontages. It provides a strong emphasis on verticality, appropriate solid to void ratios, a recessed uppermost storey, balconies, variety in glazing and balustrading, durable materials and finishes, planter boxes and a roof top. These features contribute to the building's articulation and ensure the apparent size and scale of the development is compatible with the locality.

Given the site's flood constraints, a variation in height is inevitable to achieve a built form of a size, scale and density that accords with the desired future character of the locality. Notwithstanding this, the extent of variation is minor in nature, the proposal will have a compliant number of storeys and compliant modest floor to ceiling heights. As such, the non-compliance will not be readily distinguishable when viewed from surrounding areas. Irrespective of the numerical departure,

Accordingly, the proposed six storey development is of a size and scale that is compatible with the desired future character of the locality. The proposal achieves objective (a) of Clause 4.3 of the LEP.

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

The subject site is not a heritage or contributory item, is not within a heritage conservation area and is not near any items of heritage significance.

The proposal is located opposite the Struggletown Heritage Conservation Area. The development is considered unlikely to impact on the heritage significance of the conservation area, as it has been designed to align with Council's desired future character for the site. The building has compliant setbacks, a compliant FSR and a compliant height of six storeys. The façade to Barker Street is well articulated, which enhances the site's appearance when viewed from the conservation area.

The overall scale and character of the proposed building is consistent with the evolving character of the area and is therefore considered compatible with the nearby contributory buildings and heritage items. Accordingly, the proposal achieves objective (b) of Clause 4.3 of the LEP.

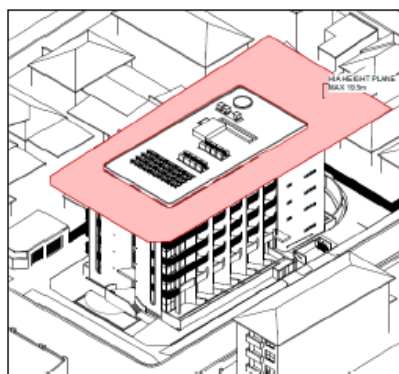
(c) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

In our opinion, the proposal does not unreasonably impact the amenity of adjoining and neighbouring land in terms of visual bulk, privacy, overshadowing or views. These aspects are discussed in further detail below.

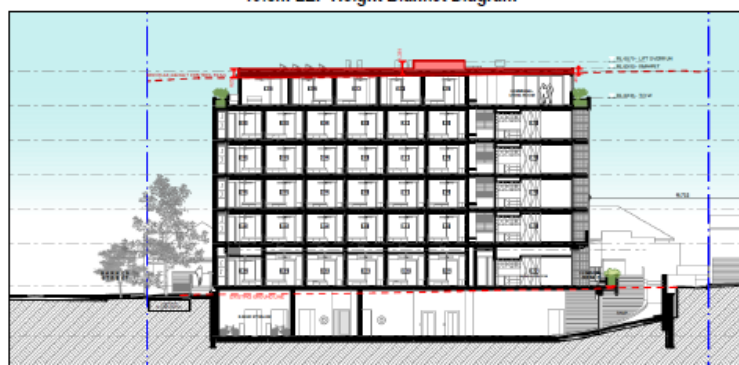
#### Visual Bulk

The proposal is six storeys in height, which is envisaged both by the 19.5m height standard and the DCP storey height controls. The area of additional height is largely confined to the roof slab of the uppermost level, which is recessed from all sides of the building (see **Figure 4**). As such, the variation will not be readily apparent when viewed from surrounding properties or the streetscape.

The proposal complies with the maximum FSR for the site and achieves compliance with the setback controls of the DCP. Therefore, it has an overall bulk consistent with what is anticipated for the site and does not adversely or unreasonably impact the amenity of adjoining and neighbouring land.



19.5m LEP Height Blanket Diagram



Section with Additional Height Shaded Red

Source: Mark Shapiro Architects

**Figure 4: Diagrams Showing Proposed Building Height**

**Privacy**

The height variation is confined to the uppermost portion of Level 5 and the roof slab. There are no opportunities for sightlines from areas above the 19.5m height line. Therefore, the additional height does not adversely impact the privacy of residents on adjoining or neighbouring land.

**Overshadowing**

To assess the effect of the proposed development in terms of solar access, half-hourly sun-eye view diagrams have been prepared between 8:00am and 4:00pm for the winter solstice (June 21). These diagrams show the extent of solar access received by neighbouring properties as a result of the proposal, and a compliant building envelope. In addition, plan form shadow diagrams have been prepared for 8:00am, 12 noon and 4:00pm for the winter solstice.

The shadow analyses demonstrate that the additional height does not significantly affect solar access to neighbouring properties. Importantly, given the minor nature of the height variation, the extent of impacts from the additional height is minimised, with most impacts arising from a compliant building envelope. A summary of the affected properties is provided below:

No. 123-131 Botany Street: Between 8:00am and 10:30am, the rear of properties on Botany Street will experience additional shadowing. This impact is entirely from a compliant building envelope and height. Since the area of the height variation is recessed from the sides of the building, it does not form part of the leading edge in terms of overshadowing (see **Figures 5-9**).

Nos. 132-136 Barker Street: Between 8:00am and 10:30am, the proposal results in additional shadowing to the semi-detached dwellings and residential flat building on these sites. This is predominantly from a compliant building envelope and the residences retaining existing levels of solar access from that time onwards.

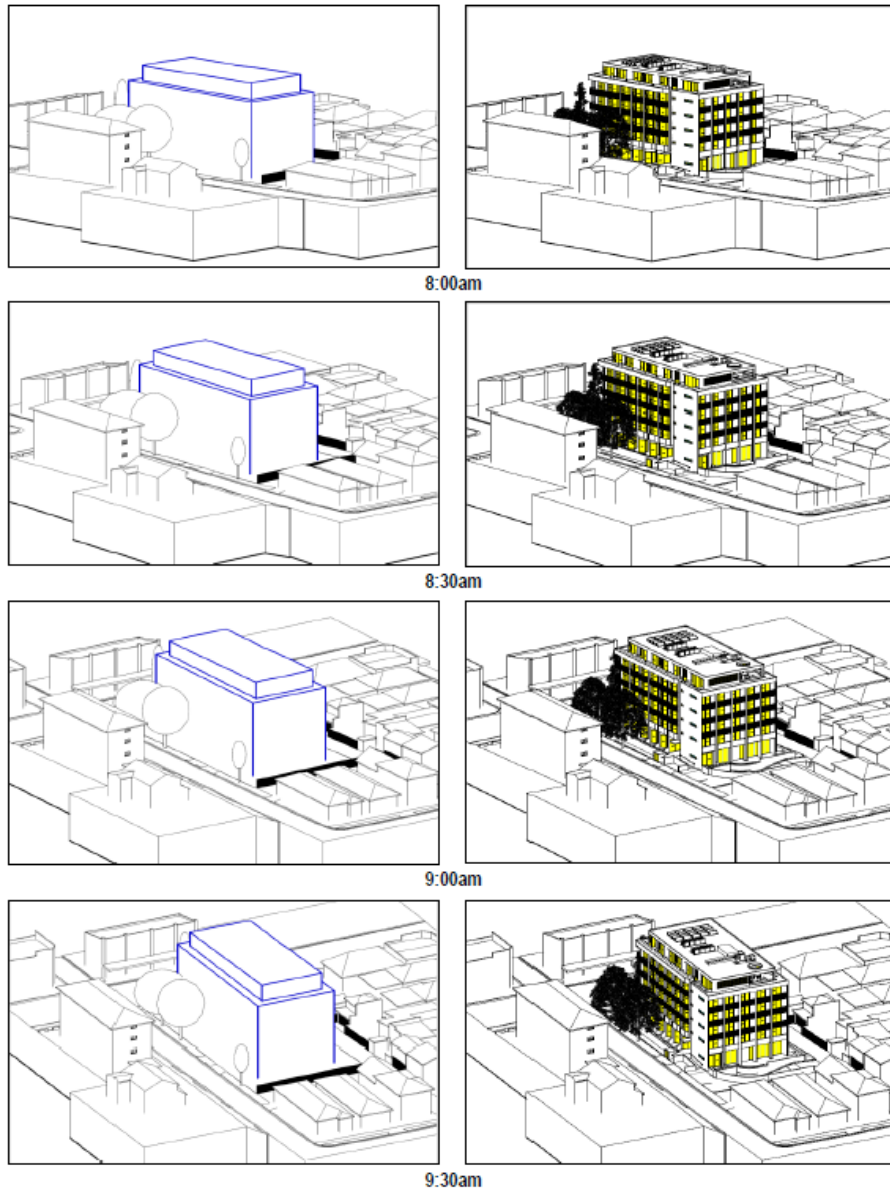
No. 146 Barker Street: Between 9:30am and 11:00am, the height variation contributes to a relatively minor degree of shadowing to the north elevation of the second storey units. These units retain full solar access to their north-facing windows after 11:00am.

No. 148 Barker Street: Between 1:30pm and 3:30pm, the height variation contributes to shadows to the north-facing openings of the veterinary clinic at this site. The north-facing windows of this building receive direct sunlight prior to 1:30pm. Given this impact is only for 2 hours and to a non-residential use, it is considered minor.

No. 131 Barker Street: The height variation only affects solar access to this property for less than an hour, between 2:00pm and 3:00pm. That impact is confined to the uppermost level west-facing windows of the residential flat building, which existing levels of solar access to a portion of their surface until 2:00pm. The extent of impact from the additional height is considered negligible.

Accordingly, the area of height non-compliance will not result in a discernible increase in overshadowing to neighbouring and nearby properties. This is because the extent of the height variation has been minimised, the building will generally be within a compliant envelope and in many areas, the height variation is not the leading edge in terms of overshadowing.

In our opinion, the area of non-compliance does not result in unreasonable adverse impacts in terms of visual bulk, privacy, overshadowing or views and achieves objective (c).

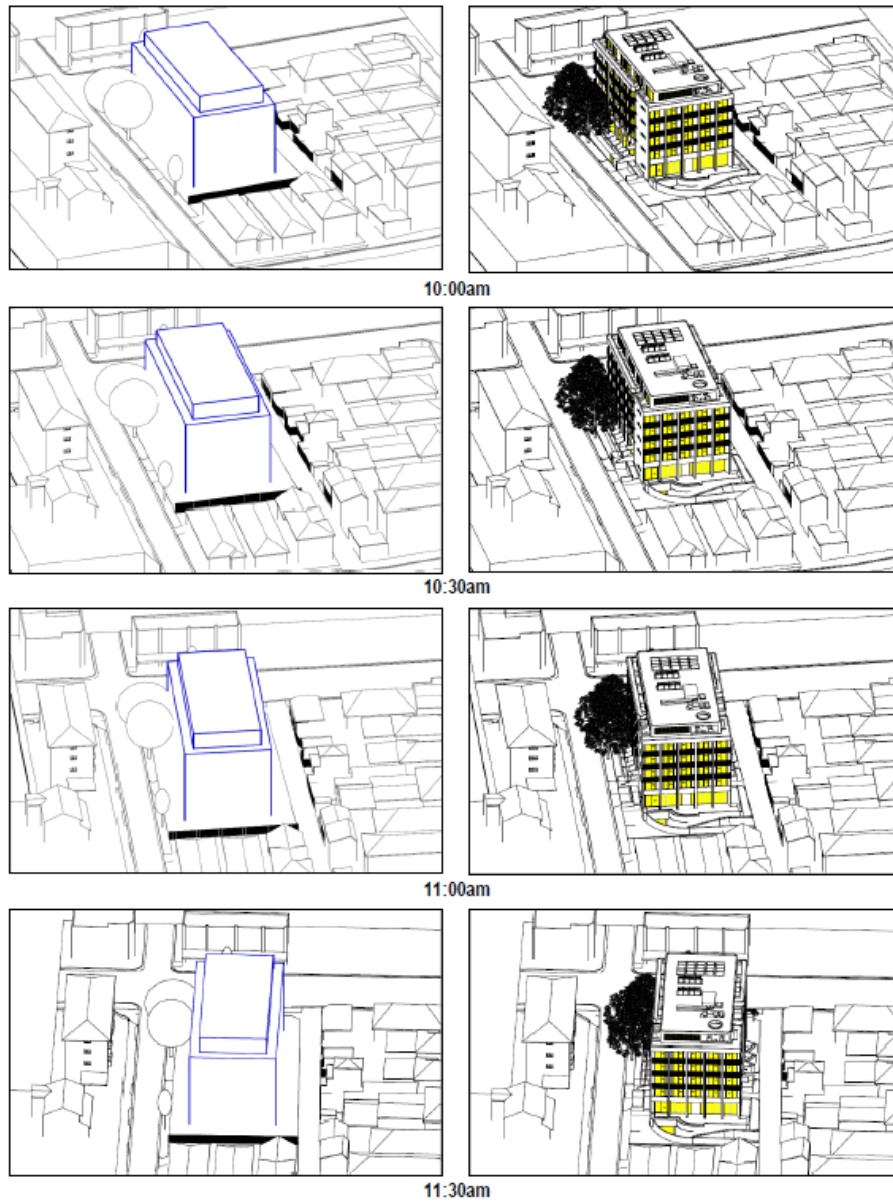


Source: Mark Shapiro Architects

**Figure 5:** Compliant (left) vs Proposed (right) Sun-Eye View Diagrams Demonstrating Solar Access Between 8:00am and 9:30am on 21 June

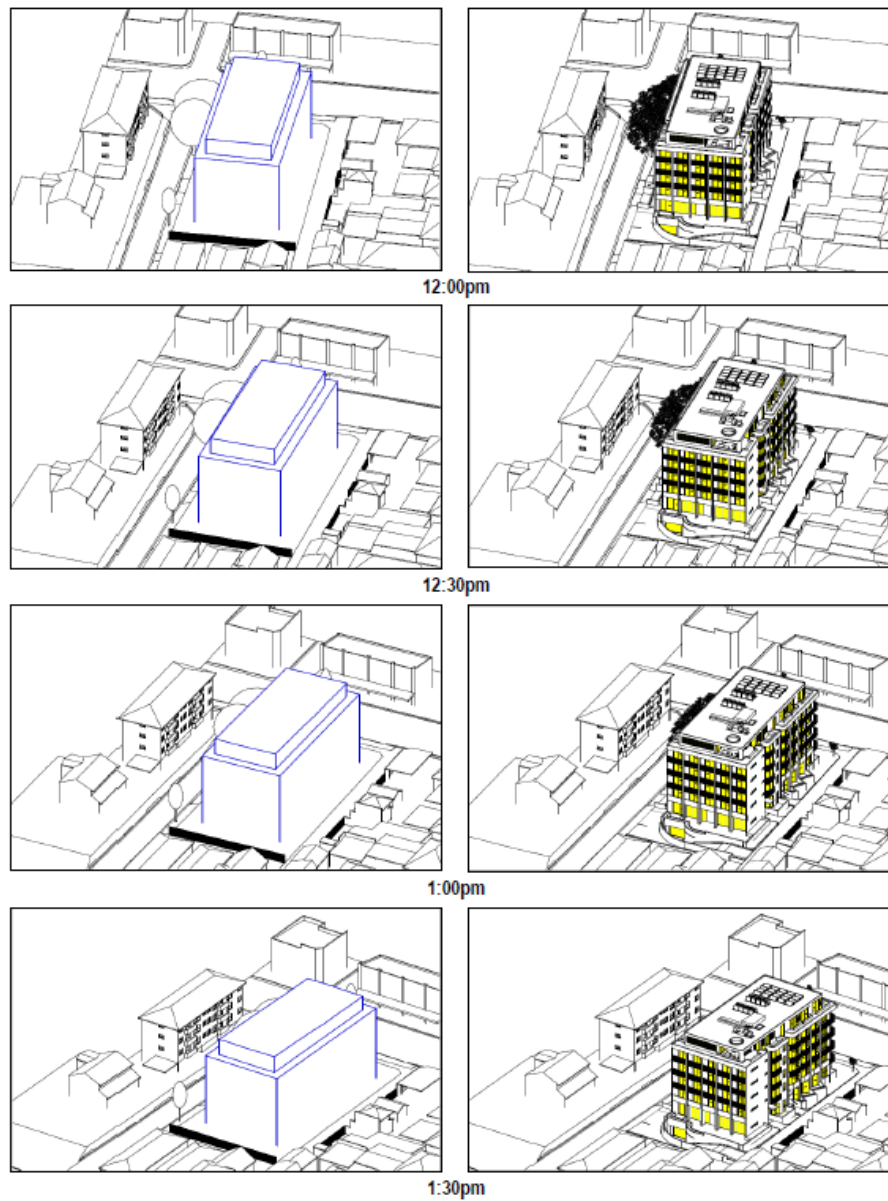
D90/24

gsa planning

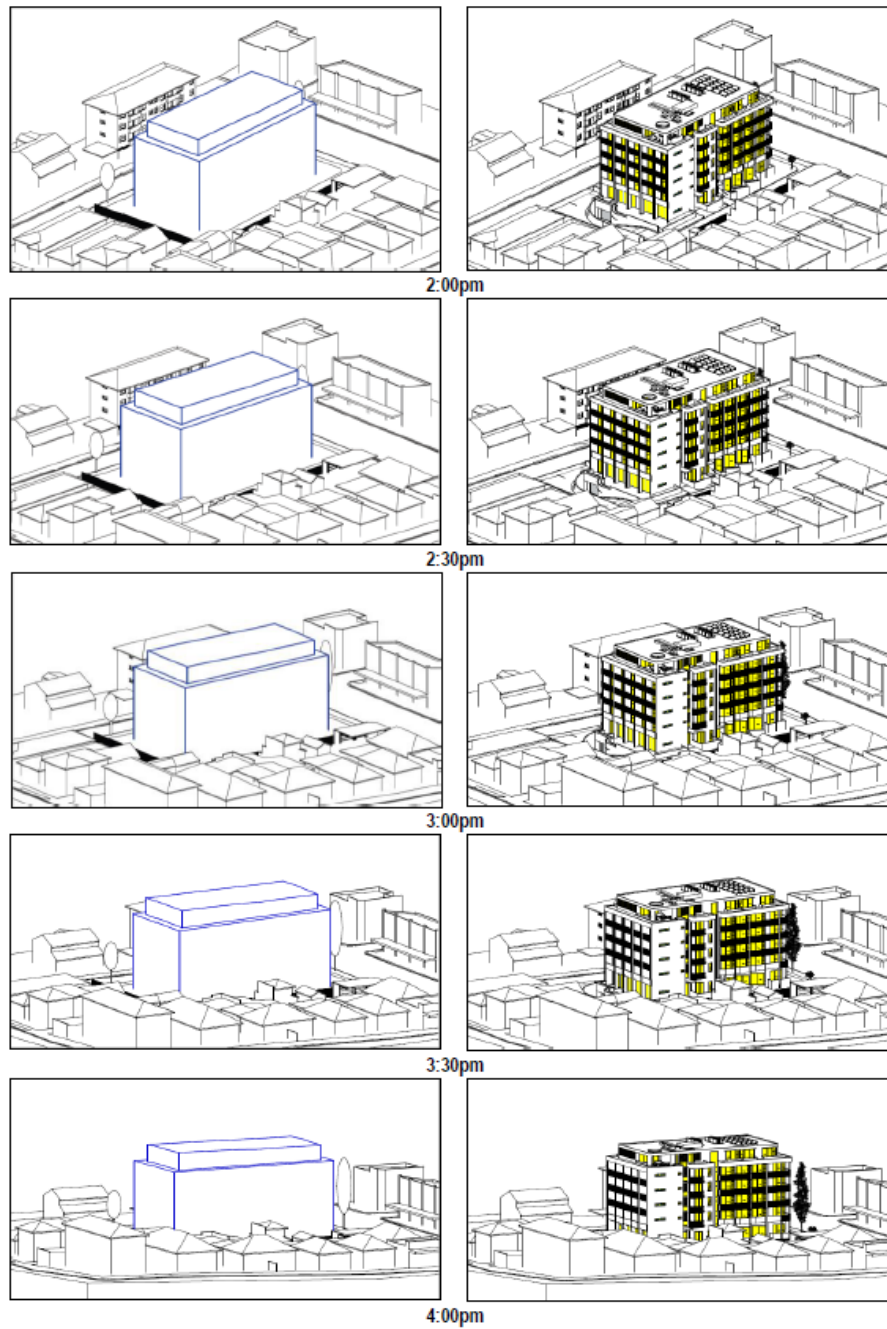


Source: Mark Shapiro Architects

**Figure 6:** Compliant (left) vs Proposed (right) Sun-Eye View Diagrams Demonstrating Solar Access Between 10:00am and 11:30am on 21 June



**Figure 7:** Compliant (left) vs Proposed (right) Sun-Eye View Diagrams Demonstrating Solar Access Between 12:00pm and 1:30pm on 21 June



Source: Mark Shapiro Architects

**Figure 8: Compliant (left) vs Proposed (right) Sun-Eye View Diagrams Demonstrating Solar Access Between 2:00pm and 4:00pm on 21 June**

**Views**

There do not appear to be any existing significant views available across the subject site from neighbouring properties or the public domain. Since the proposal has a compliant FSR, setbacks and number of storeys, it is unlikely to result in unreasonable view affectation.

**Conclusion on unreasonable or unnecessary**

In summary, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height control are achieved by the development, regardless of the proposed contravention.

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

The proposal is permissible in the R3 Medium Density Residential Zone, is consistent with the relevant zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in *Wehbe*. There are sufficient environmental planning grounds to justify the building height contravention, which will now be discussed.

**Flood Constraints**

As indicated, the proposed height variation is a consequence of the flood constraints of the site and the need to raise the building to comply with the flood planning levels. Council's planning controls provide flexibility in the building height standard in the HIA where it is a result of flooding, with Part E7 Section 5(f) of the DCP stating, inter alia:

*Where a property is identified by Council to be subject to flooding, this may require a ground floor habitable space to be raised above the existing ground level (above the 1 in 100 year flood level, plus 0.5m freeboard). In the case of a raised ground floor level, the additional height should be absorbed into the overall height of the building, whilst continuing to meet ADG floor to ceiling standards and the required LEP maximum height of building level. In this case the full number of storeys stated in w) above may not be able to be achieved on the site. Council may at its discretion consider a minor exceedance for additional height depending on the required Floor Planning Flood Level.*

*(our emphasis)*

If strict compliance with the building height development standard were enforced, the topmost level of the proposed building would have to be removed in order to maintain compliance with the flood requirements. This would significantly impact the development potential of the site and would not be consistent with the desired character of the locality.

In this instance, the proposed variation is considered acceptable as it is minor in nature, does not result in any significant impacts on the amenity of surrounding residences and due to its recessed location, is not readily apparent when viewed from the public domain. It is therefore a better planning outcome than enforcing compliance with the standard.

**Consistency with the Desired Future Character**

As addressed in Section 5.1 of this report, the proposal achieves objective (a) of the building height development standard, to ensure that the size and scale of development is compatible with the desired future character of the area.

The subject site is located within the Magill Street Housing Investigation Areas (HIA), which is a precinct undergoing transition. It has been recently rezoned by Council from R2 Low Density Residential to R3 Medium Density Residential Zone. Council's desired character for the HIA envisages a six storey built form on the site, which is as proposed. The proposed height variation ensures the development achieves a number of storeys and internal heights that are in line with the desired future character of the area.

The proposal has a compliant FSR and setbacks. This demonstrates it is of a bulk, scale and character that is in line with what is anticipated by Council's planning controls. To enforce compliance with the standard would require the removal of the topmost storey of the proposed building. This would result in a development that is a full storey less than what is envisaged for the site by Council's planning controls. It would also reduce the development potential of the site and its contribution to increasing housing supply and residential density in the area, as per Council's strategic plan for the HIA.

**Minor Nature of Non-Compliance**

As stated, the area of non-compliance is largely confined to the roof form and rooftop services. The proposal represents only a 6.8% variation from the development standard, attributed to the site's flood constraints.

**Affordable and Diverse Housing**

In *Big Property Group Pty Ltd v Randwick City Council* [2021] NSWLEC 1161, Commissioner O'Neill acknowledges that affordable housing can be properly described as an environmental planning ground at [40]:

*The applicant's written request defends the exceedance of the height of buildings development standard as a justified response to the provision of two additional affordable housing units and the accommodation of the building envelope as a result of the FSR bonus to facilitate the effective delivery of new affordable rental housing. I am satisfied that justifying the aspect of the development that contravenes the development standard in this way can be properly described as an environmental planning ground within the meaning identified by Preston CJ in Initial Action at [23].*

In this case, as was the case in *Big Property Group*, the breach of the height control is a result of the proposal to accommodate two additional affordable units on the top floor which make use of the floor space ratio bonus provisions in the Housing SEPP for such development.

The proposal will replace single dwelling houses with an eighty-four room co-living housing development which is permissible in the R3 Medium Density Zone. Co-living housing is a form of diverse housing and will meet an identified need for additional housing supply for local students, key workers, retirees or people with additional needs in a convenient and accessible location. The proposal will increase housing stock in the locality and will contribute positively to improving housing affordability.

The proposal is a residential use and therefore will not conflict with other existing and likely future land uses within the R3 Medium Density Residential Zone. The development will give rise to positive social, economic and community outcomes by providing high-quality and diverse housing options in a desirable location.

Importantly, since the proposal has a compliant FSR, it does not constitute an overdevelopment of the site. The density of the proposed building is commensurate with the planning controls for the site.

As indicated, given the flood constraints of the site, strict compliance with the LEP height standard would necessitate the removal of the topmost level of the proposed building. This would result in a loss of eight residential rooms, communal living areas and communal open space. This would detrimentally impact the provision of housing on the site and the amenity of the development for future residents. In our view, the minor variation with the height standard is considered acceptable as it facilitates a greater supply of housing on the site, within the health and education precinct of Randwick.

#### Central Location of Additional Height

The area of non-compliance is confined to the topmost level of the proposed development. This level is recessed further from the external edges of the building. Furthermore, the proposed rooftop services are centrally located on the roof. This skilful design approach minimises the appearance of the additional building height and associated amenity impacts to surrounding properties and the public domain.

#### Good Design, Amenity and Sustainability

The additional height facilitates good internal amenity. It ensures that consistent internal floor levels and adequate floor to ceiling heights are provided at all levels. The proposal complies with the floor to ceiling height requirements of the DCP, with proposed heights of 3.3m at the ground floor level and 2.7m at the first floor level and above. These heights are relatively modest. Given the proposal meets only the minimum required floor to ceiling heights, to enforce strict compliance with the height standard would result in a building that falls short of the floor to ceiling heights desired by Council for the site. In other words, the height variation ensures the proposal achieves internal heights that are in line with the desired future character of the site and promotes good design and amenity of the built environment, consistent with Object (g) of the Environmental Planning and Assessment Act 1979 (EPA Act).

The additional height also accommodates solar panels on the roof. This promotes the use of renewable energy sources and facilitates ecologically sustainable development, consistent with object (b) of the EPA Act.

Accordingly, in our opinion, the proposed height variation achieves a built form that is consistent with the desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

## 6. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

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

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D90/24

Table 1: Compliance Matrix				
Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	19.5m	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1 <sup>st</sup> Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> <li>The objectives of the standard are achieved notwithstanding the non-compliance with the standard;</li> </ul>	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> <li>The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.</li> <li>The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.</li> </ol>	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> <li>The variation is a consequence of the site's flood constraints. Council's planning controls provide flexibility in the height standard where it is a result of flooding;</li> <li>The height variation allows for a six-storey, mid-rise residential development which is consistent with the desired future character of the Magill Street HIA and achieves the planning objectives of the area;</li> <li>The non-compliance is minor (6.8%);</li> <li>The variation facilitates a greater provision of affordable, diverse housing which meets an identified need for additional residential accommodation in the area;</li> <li>The additional height has been centrally located, which minimises its visual appearance and associated amenity impacts;</li> <li>The height variation ensures the proposal has compliant floor to ceiling heights, which provides for good design and amenity;</li> <li>The additional height accommodates solar panels on the roof, which facilitates ecologically sustainable development.</li> </ul>	YES

## Appendix 3: DCP Compliance Table

### 3.1 Section B2: Heritage

The proposal includes an assessment against the Heritage Objectives and Controls of this section of the DCP. See Appendix 1 of this report for comments by Council's Heritage Planner.

### 3.2 Section B4: Landscaping and Biodiversity

The proposal includes an assessment against the Landscaping Objectives and Controls of this section of the DCP. See Appendix 1 of this report for comments by Council's Landscape Officer.

### 3.3 Section B6: Recycling and Waste Management

The proposal includes an assessment against the Waste Objectives and Controls of this section of the DCP. See Appendix 1 of this report for comments by Council's Development Engineer.

### 3.4 Section B7: Transport, Traffic, Parking and Access

The proposal includes an assessment against the Parking and Traffic Objectives and Controls of this section of the DCP. See Appendix 1 of this report for comments by Council's Development Engineer.

### 3.5 Section B9: Management Plan

The submitted plan of management fails to adequately consider the impact of the operation of the development on the future occupants and neighbouring sites. Specifically, the plan of management does not specify the maximum number of occupants to be accommodated at any one time, within each of the communal living and outdoor areas.

### 3.6 Section E7: Housing Investigation Areas

DCP Clause	Controls	Proposal	Compliance
<b>4</b>	<b>Density and land use</b>		
	a) The maximum FSR that can be achieved on a site is shown on the RLEP FSR Map	The proposed development fails to comply with the FSR development standard.	No, see RLEP 2012 and clause 4.6 assessment section of this report.
<b>5</b>	<b>Built Form</b>		
	a) The minimum dimensions of an amalgamated redevelopment site (consolidated from multiple existing individual properties) are stated in 'Part B – Site specific controls' b) When site amalgamation and redevelopment is proposed, sites between and adjacent to the proposed redevelopment site, are not to be limited in their future development potential by the redevelopment. c) Where a development proposal unavoidably results in an isolated site, the applicant must demonstrate that negotiations between the owner/s of the lot/s have commenced prior to the	The proposed development complies with 25m minimum frontage. The applicant has failed to consider the development potential of 3—7 Hay Street, which would be isolated as a result of this development. Written evidence has not been provided by the applicant regarding whether they tried to acquire these sites. The proposed	No, see Key Issues.

D90/24

	<p>lodgement of the DA and every reasonable attempt has been made to avoid the creation of an isolated site.</p> <p>d) The maximum Height of Building (HoB) that can be achieved on a site is shown on the RLEP Height of Building Map</p> <p>e) The maximum number of storeys on a site is to comply with the following:</p> <ul style="list-style-type: none"> <li>– on sites with a maximum HoB of 16.5m and 17.5m – 5 storeys</li> <li>– <b>on sites with a maximum HoB of 19.5m – 6 storeys</b></li> <li>– on sites with a maximum HoB of 24m – 7 storeys</li> <li>– on sites with a maximum HoB of 26m – 8 storeys</li> </ul> <p>f) Where a property is identified by Council to be subject to flooding, this may require a ground floor habitable space to be raised above the existing ground level (above the 1 in 100 year flood level, plus 0.5m freeboard). In the case of a raised ground floor level, the additional height should be absorbed into the overall height of the building, whilst continuing to meet ADG floor to ceiling standards and the required LEP maximum height of building level. In this case the full number of storeys stated in e) above may not be able to be achieved on the site. Council may at its discretion consider a minor exceedance for additional height depending on the required Floor Planning Flood Level.</p> <p>h) Developments are to comply with the minimum ground floor and upper-level setbacks illustrated in the relevant block diagrams in 'Part B – Site specific controls'</p> <p>i) Development that results in an exposed party wall is to incorporate architectural or vertical landscape treatments to improve the visual amenity of the wall prior to the completion of the adjoining building. Alternatively, a public art mural, to a design to Council's approval, is to be provided</p> <p>j) The residential component of a development is to have a maximum building depth of 20m, including balconies. A maximum building depth of 22m, may be permitted on merit, subject to ADG compliance.</p>	<p>development seeks to vary the maximum height of building, of which Council does not support. The proposed number of storeys is 6, which complies with the control.</p> <p>In terms of flood impacts, the site is affected. Whilst the development generally satisfies the flooding requirements, the FFL of the ground floor could be further reduced in height by 100-150mm to reduce the overall height of the building.</p> <p>The development fails to comply with the building envelope controls and setbacks, including the building depth, width and setback of the northern sixth floor setback.</p> <p>The proposed building depth is 34m.</p>	
<b>7</b>	<b>Laneway / shared way zones</b>		
	<p>a) Laneways are to be a minimum of 6 metres wide (for larger developments, a carriageway width greater than 6 metres may be required), provide sufficient width for turning and U-turn movements, and shall provide landscaping, lighting and high</p>	<p>The existing Hay Lane is only 4-4.6m wide. See comments from Council's Development Engineer in Appendix 1 of this report. To Hay</p>	<p>No, see Engineering referral comments in Appendix 1 of this report.</p>

	<p>quality materials and finishes, and opportunities for art to enhance the pedestrian environment</p> <p>b) All new development that fronts lanes shall be articulated to create visual interest and shall incorporate passive surveillance by orienting windows and balconies onto the lane</p> <p>c) Ground floor uses fronting lanes shall incorporate openings onto the lane to contribute to the enjoyment and activation of the lane including, where possible, outdoor dining.</p>	<p>Lane, the development is generally articulated with windows and balconies. Passive surveillance is provided to Hay Lane. Pedestrian access points are provided to Hay Lane.</p>	
<b>8</b>	<b>Heritage conservation</b>		
	<p>a) All development involving or in the visual catchment of heritage items are to be planned and designed in accordance with the requirements of Section B2 Heritage of the Randwick DCP</p> <p>b) All development involving heritage items and contributory buildings are required to:</p> <ul style="list-style-type: none"> <li>- Adhere to the principles of the Burra Charter</li> <li>- Include with a DA submission, a Heritage Impact Statement (HIS) or Heritage Impact Assessment (HIA) in accordance with Council's advice</li> <li>- The HIS or HIA must consider the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage item/s within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories</li> </ul>	<p>The proposed development seeks consent to demolish 1 Maud Street, which has an IHO listing. See comments from Council's Heritage Planner in Appendix 1 of this report.</p>	<p>No, see Heritage Planning referral comments in Appendix 1 of this report.</p>
<b>9.</b>	<b>Housing Investigation Areas (HIA)</b>		
<b>9.3.</b>	<b>Magill Street HIA (H3)</b>		
<b>9.3.3.</b>	<b>Built form</b>		
	<p>a) Setback buildings 6m along primary and secondary street frontages to provide for private and communal garden areas and to maintain existing mature trees and vegetation</p> <p>b) Transition from a six storey height generally throughout the precinct, down to two storeys along Norton Lane</p> <p>c) Intersperse buildings along Botany Street with gardens and pedestrian links to avoid a continuous wall of buildings</p> <p>d) Use the built form to define the primary and secondary frontages and street corners of the HIA and of surrounding streets</p>	<p>Development is setback 6m from Barker Street and Maud Street.</p> <p>Development is 6 storeys in height.</p> <p>Insufficient garden areas provided to the northern side of the site. The built form defines the primary and secondary frontages.</p>	<p>Yes, complies</p>

D90/24

	<p>e) Define street corners by including architectural corner elements and detailing including where relevant (eg. when a commercial use is incorporated) weather protection (awnings) and changes in materiality and / or finishes</p> <p>f) The minimum street frontage dimensions of an amalgamated redevelopment site within the Magill Street HIA shall be 28m, except for properties in the block between Hay and Maud Street (3, 5 and 7 Hay Street and 1 Maud Street and 129/129A Barker Street) where a minimum frontage of 25m is permitted. Properties at 32, 34, 43 and 45 Norton Street must not be isolated – they should be incorporated within a consolidated Botany Street redevelopment. For all corner sites, both frontages shall achieve this minimum length.</p>	<p>The development includes adequate architectural corner elements and articulation.</p> <p>Site frontage is 25m.</p>	
<b>9.3.5.</b>	<b>Individual city block plans</b>		
	Figure 28: Block D control plan	The proposed development seeks to vary the block control plan.	No, see Key Issues
<b>10</b>	<b>Housing Mix</b>		
	<p>a) Development is to comprise a mix of apartment types, where gardens, adaptability and accessibility are more easily achievable for elderly people, families with children, or people living with disabilities</p> <p>b) At least 30% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be one or two-bedroom dwellings, or both</p>	<p>Insufficient disability access is provided to the building via the Barker Street entrance.</p> <p>The proposed development does not provide a mix of dwellings as consent is sought for a co-living development.</p>	No.
<b>11</b>	<b>Floor to ceiling heights</b>		
	<p>a) Minimum floor-to-ceiling heights (in accordance with the ADG) are to be provided as follows:</p> <p>i) Ground Floor – 3.3m</p> <p>ii) First Floor and above – 2.7m</p> <p>b) The minimum floor-to-floor height of residential building levels should be 3.1m, unless detailed cross sections and engineering justifications are provided that establish the feasibility of a lesser height.</p>	<p>GF F2C = 3.3m 1F-6F F2C = 2.7m (except room kitchens which are 2.4m).</p> <p>GF F2F = 3.9 1F-6F F2F = 3.1m</p>	No, see Clause 4.6 assessment for building height assessment.
<b>12</b>	<b>Solar and daylight access</b>		
	<p>e) In relation to Co-Living (or student accommodation) proposals:</p> <p>i) The design is to ensure that at least 60% of rooms achieve solar access during mid-winter for sites that have a north-south orientation</p>	<p>Only 49 out of 84 rooms (58%) achieve solar access.</p> <p>Communal living areas and communal open</p>	No, see Key Issues

	<p>ii) Common spaces such as lounge rooms or communal study areas are designed with a northerly aspect where possible</p> <p>iii) Atriums, roof windows, skylights or slots in the façade are to be designed to maximise solar access to rooms.</p>	<p>spaces are provide to the northern side of the site.</p> <p>Only 1 skylight provided to the top level outdoor area.</p>	
<b>13</b>	<b>Acoustic Amenity</b>		
	<p>f) All development is to be designed to minimise noise transition between apartments by adopting general noise concepts of:</p> <p>i) Locating busy, noisy areas next to each other and quieter areas next to other quiet areas, for example, living rooms next to living rooms, bedrooms with bedrooms ii) Locating bedrooms away from busy roads and other existing or potential noise sources iii) Using storage or circulation zones within the apartment to buffer noise from adjacent apartments, mechanical services or corridors and lobby areas iv) Minimising the amount of party (shared) walls with other apartments.</p> <p>g) Noise transmission is to be reduced from common corridors by providing seals at entry doors</p> <p>h) Conflicts between noise, outlook and views are to be resolved using design measures such as double glazing, operable screening and ventilation taking into account noise targets for habitable rooms as identified in clauses b) c) and d) above being assessed inside the rooms with doors and windows closed and ventilation operating</p>	<p>The proposed development provides a layout that adequately address acoustic amenity, with mirror image room layouts, separation of common room with plant, lifts not adjoining rooms.</p> <p>See further comments from Council's Environmental Health Officer in Appendix 1 of this report regarding the submitted acoustic report.</p>	<p>Yes, see Environmental Health Officer referral comments in Appendix 1 of this report.</p>
<b>14</b>	<b>Natural ventilation</b>		
	<p>a) All buildings are to be designed to comply with the ADG to maximise opportunities for natural ventilation and solar access by providing a combination of:</p> <ul style="list-style-type: none"> <li>- corner apartments - dual aspect apartments - shallow, single-aspect apartments - openable windows and doors</li> <li>- other ventilation devices</li> </ul> <p>b) Window placement, size, glazing selection and orientation are to maximise opportunities for cross ventilation and capturing prevailing breezes in summer</p> <p>c) Internal corridors, lobbies, communal circulation spaces and communal areas shall incorporate adequate natural ventilation</p> <p>d) Basements levels, including spaces used for storage, garbage areas or commercial activities, are to be designed to include natural ventilation wherever possible</p>	<p>The proposed development provides largely single-aspect co-living rooms in a building with a 33.8m length. The development lacks sufficient natural ventilation for the internal corridors and circulation spaces.</p> <p>The proposed basement garage door is 50% open to assist with natural ventilation.</p>	<p>No.</p>

D90/24

D90/24

	f) Where mechanical ventilation is considered necessary, prioritise 'low-tech' solutions, such as ceiling fans, over more complex and high energy use air conditioning systems.	The proposed development includes ceiling fans to each room.	
<b>15</b>	<b>Articulation and modulation</b>		
	<p>a) All buildings are to provide articulation by incorporating a variety of window openings, balcony types, balustrades, fins, blade walls, parapets, sun-shade devices and louvres to add visual interest and light and shade to the façade</p> <p>b) The design of buildings should include modulation to a similar dimension as the historical subdivision pattern of the site</p> <p>c) The design of buildings are to avoid large areas of blank walls. Where blank walls are unavoidable, they must be treated and articulated to achieve an appropriate presentation to the public domain</p> <p>d) Building articulation should respect and complement the adjoining built form and contribute positively to the streetscape</p> <p>e) Corner buildings are to be expressed by giving visual prominence to elements of the façade e.g. a change in building articulation, material or colour, roof expression or increased height</p> <p>f) Corner buildings should be designed to add variety and interest to the street and mark an important junction in the urban fabric.</p>	<p>The proposed building envelope has insufficient modulation, in particular between the northern and southern wings of the building.</p> <p>The proposed development includes large areas of brick wall sections to all facades. These wall sections are sufficiently articulated which detract from the visual amenity and design of the building.</p>	No.
<b>16</b>	<b>Materials and finishes</b>		
	<p>a) External walls are to be constructed of high quality and durable materials and finishes</p> <p>b) Materials that may be subject to corrosion, degradation or high maintenance are to be avoided</p> <p>c) The architectural treatment of street facades is to provide a well-resolved composition that breaks down the building scale and expresses a clear hierarchy of architectural elements</p> <p>d) A complimentary combination of finishes, colours and materials are to be used to articulate building facades</p> <p>e) The design of windows should be such that they can be cleaned from inside the building</p> <p>f) For sites adjoining heritage and contributory buildings, materials and finishes of the new building is to compliment and respect the heritage or contributory building</p>	<p>The proposed building to Barker Street, Maud Street and Hay Lane includes wall sections that contain small window openings and a dominant brick finish. These wall section have a poor composition and interface to the street. Further architectural treatments and combinations of finishes, colours and materials are required to further articulate the building.</p> <p>The proposed roof level of the building is a full height level, not a contemporary mansard roof style.</p> <p>The external material to the façade walls of the</p>	No.

	<p>g) Roof levels of buildings should be expressed in a contemporary mansard roof style, employing sloped faces, ribbed metal finish and be of a colour that is mid-to-dark grey (ie. visually recessive). The mansard roof form should have windows and balconies that are crisp and simply detailed, and expressed as secondary elements to the overall mansard roof form</p> <p>h) The use of face brickwork is encouraged, due to its capacity to contribute scale, detail, texture and a rich colouring to the building facade</p> <p>i) Materials with low embodied energy and comprised of recycled content should be prioritised</p> <p>j) Low Volatile Organic Compound (VOC) emitting materials should be selected e.g. paints, adhesives, sealants and flooring (as per Randwick DCP Part B3 Section 2).</p> <p>k) The adaptive re-use of existing building facades, building structures and fittings should be considered</p> <p>l) FSC certified timber from plantation or sustainable managed re-growth forests, should be utilised wherever possible.</p>	sixth floor is proposed as pale green glazed ceramic tiles. This material is not appropriate in the scheme as it does not integrate well with the other materials to the building.	
<b>17</b>	<b>Building awnings, entry and circulation</b>		
	<p>a) Design building entry points to be clearly identifiable and visible from the public domain, provide shelter from elements and assist in defining public and private space</p> <p>b) Provide clear sightlines into and out of building entries (consider CPTED)</p> <p>c) Building entry points and circulation spaces should be naturally lit and have a source of natural ventilation</p> <p>d) Position stairs to provide a convenient and intuitive alternative to mechanical lifts for vertical movement throughout the building</p> <p>e) Where ground floor dwellings face street frontages, encourage individual entrances to assist in modulating of the building frontage and to improve passive surveillance</p> <p>f) Locate utility services away from building entries and main street frontages to reduce presenting blank walls to public areas</p> <p>g) Building signage should contribute to the contemporary architectural expression, rather than detract</p> <p>h) A building entrance should include a system to capture pollutants from occupants' shoes and from outdoor air which can be easily maintained e.g. entryway grills, mats and air seals.</p>	<p>The proposed development includes entrance to each of the three street/laneway frontages of the site. However, each entrance fails to provide clearly identifiable and visible building entry points, which are narrow and compromised within the building massing. Furthermore, the entrances fail to provide shelter from the elements and provide clear identification of the building entrances. Insufficient access and facilities for people with disabilities to the main building entrance to Barker Street. The proposed scheme is not sufficient in providing equal opportunities for all people to adequately access the building.</p>	No.
<b>18</b>	<b>Landscape area</b>		

	<p>a) The minimum Gross Landscape Area, Deep Soil Permeable Area and Tree Canopy Cover must be met for development proposals, as per Table 2 below.</p> <p>Table 2: Gross landscape area, Deep soil permeable area and Tree canopy cover requirements</p> <table><tr><th>HIA</th><th>Gross landscape area</th><th>Deep soil permeable area</th><th>Tree canopy cover</th></tr><tr><td>West Randwick and Kingsford South (E1)</td><td>50%</td><td>7%*</td><td></td></tr><tr><td>High Street</td><td>50%</td><td>15%</td><td></td></tr><tr><td>Magill Street and Kingsford South (R3)</td><td>60%</td><td>35%</td><td></td></tr></table> <p>d) Deep soil permeable surfaces must have a width of not less than 900mm</p> <p>e) Native species must comprise at least 50% of the plant schedule, incorporating a mix of locally indigenous trees, shrubs and groundcovers appropriate to the area</p> <p>f) Rooftops may include communal food farms and food production areas</p> <p>g) Technical, structural and ongoing maintenance arrangements of proposed roof top gardens and green walls are to be documented by a qualified Landscape Architect and incorporated into the Development Application (DA) documentation</p> <p>j) In addition to the requirements of Section B4 Landscaping and Biodiversity of the Randwick DCP, all DA for sites within the HIAs must submit a Landscape Plan.</p> <p>k) A minimum of one indigenous canopy street tree that will attain a minimum mature height of 6m, must be planted at maximum spacing of 7.5m, at a minimum distance of 600mm from the kerb and/or footpath, and/or masonry fence or retaining wall. Street trees must be selected in accordance with Council's Street Tree Masterplan.</p>	HIA	Gross landscape area	Deep soil permeable area	Tree canopy cover	West Randwick and Kingsford South (E1)	50%	7%*		High Street	50%	15%		Magill Street and Kingsford South (R3)	60%	35%		<p>Gross landscape area = 62.7% (or 824.58sqm).</p> <p>Deep soil permeable area = 16.3% (or 214sqm).</p> <p>Tree canopy cover = 20.7% (or 273sqm).</p>	<p>No, see Key Issues</p>
HIA	Gross landscape area	Deep soil permeable area	Tree canopy cover																
West Randwick and Kingsford South (E1)	50%	7%*																	
High Street	50%	15%																	
Magill Street and Kingsford South (R3)	60%	35%																	
19	<p><b>Transport, parking &amp; access</b></p> <p>a) Bicycle parking and end-of-trip facilities within the HIA are to be provided in accordance with the rates outlined in Table 3</p> <p>c) At least 25% of bicycle parking spaces should be E-bike charging capable (not elevated rack storage) with suitable power outlets.</p> <p>Table 3: HIA bicycle parking provision rate</p> <table><tr><th>Land use</th><th>Residents / Employees</th><th>Visitors / Customers</th></tr><tr><td>Multi-dwelling housing / residential building</td><td>1 bike space per unit / dwelling</td><td>1 bike space per 10 units / dwelling</td></tr></table> <p>c) Development must provide one electric vehicle charging point per five car parking spaces and demonstrate appropriate</p>	Land use	Residents / Employees	Visitors / Customers	Multi-dwelling housing / residential building	1 bike space per unit / dwelling	1 bike space per 10 units / dwelling	<p>Min bicycle = 92 (1x per dwelling for residents/ employees and 1x per 10 dwellings for visitors)</p> <p>Proposal = 99 spaces, mixture of bicycle and e-bicycle</p> <p>Table 3 in Clause 4.2 of Part B7 in RDCP 2013 contains the motorbike parking rates.</p> <p>Min motorbike = 17 (or 1 per 5 dwellings).</p>	<p>No, see Key Issues and Development Engineering referral comments in Appendix 1 of this report.</p>										
Land use	Residents / Employees	Visitors / Customers																	
Multi-dwelling housing / residential building	1 bike space per unit / dwelling	1 bike space per 10 units / dwelling																	

<p>electrical infrastructure and capacity for the remaining Lot Owners (Eligible Lot Owner) to install a vehicle charging point at a later date</p> <p>f) Car share spaces are to be provided in accordance with Section B7 Chapter 2.2 Car Share of the Randwick DCP and accessible without the need to enter through a secure car parking area</p> <p>g) A Green Travel Plan is required to accompany all DAs for new buildings and substantial alterations to existing buildings. The Green Travel Plan is to set out: i) Future travel mode share targets, specifically a reduction in car driver mode share ii) Travel demand management strategies to encourage sustainable travel iii) Initiatives to implement and monitor travel measures such as car and bike share iv) Alignment with Control i) of Section B7 Chapter 3.3 Exceptions to Parking Rates of the Randwick DCP.</p> <p>Table 4: HIA Car parking provision rate</p> <table><tr><th>Land use</th><th>Minimum requirement</th></tr><tr><td>Studio</td><td>0.2 spaces per dwelling</td></tr><tr><td>1-bedroom</td><td>0.6 spaces per dwelling</td></tr><tr><td>2-bedroom</td><td>0.8 spaces per dwelling</td></tr><tr><td>3+ bedroom</td><td>1.1 spaces per dwelling</td></tr><tr><td>Visitor</td><td>0.2 spaces per dwelling</td></tr><tr><td>Co-Living (Student accommodation)</td><td>0 spaces per room</td></tr><tr><td>Business premises</td><td>1 space per 125sqm GFA</td></tr><tr><td>Restaurants or cafes</td><td>1 space per 100sqm GFA</td></tr></table> <p>a) Where practical, parking access and / or loading is to be provided from secondary streets (as opposed to classified roads and / or major roads such as Alison Road, Anzac Parade, Botany Street and High Street)</p> <p>b) Parking access and / or loading must be setback at least 6m from an intersection or rear lane boundary to ensure all vehicles are wholly contained on site before being required to stop</p> <p>c) Parking access and / or loading areas are to be designed as recessive components of the building elevation to minimise the visual impact on the streetscape</p> <p>d) All vehicles should be able to enter and leave the site in a forward direction</p> <p>e) Parking is to be accommodated underground where possible</p> <p>f) Sub-basement car parking is to be no more than 1.2m above existing ground level</p>	Land use	Minimum requirement	Studio	0.2 spaces per dwelling	1-bedroom	0.6 spaces per dwelling	2-bedroom	0.8 spaces per dwelling	3+ bedroom	1.1 spaces per dwelling	Visitor	0.2 spaces per dwelling	Co-Living (Student accommodation)	0 spaces per room	Business premises	1 space per 125sqm GFA	Restaurants or cafes	1 space per 100sqm GFA	<p>Proposal = 17</p> <p>The proposed development fails to provide any car sharing spaces. See comments from Council's Development Engineer in Appendix 1 of this report.</p> <p>Parking access provided a driveway not integrated into the building footprint, accessible via the narrow Hay Lane. The applicant has also failed to provide turning circles demonstrating access is possible. See comments from Council's Development Engineer in Appendix 1 of this report.</p>
Land use	Minimum requirement																		
Studio	0.2 spaces per dwelling																		
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D90/24

D90/24

	g) Basement carpark access must comply with the requirements of Section B8 Water Management of the Randwick DCP.		
<b>20</b>	<b>Sustainability</b>		
	<p>a) New developments with a cost of works of \$3 million or greater are to achieve a minimum 4 Star Green Buildings certification rating</p> <p>b) All development must address the requirements of Section B3 – Ecologically Sustainable Development of the Randwick DCP</p> <p>c) New development involving the construction of a new building or external alterations to an existing building is to meet the requirements of Clause 6.11 of the RLEP relating to design excellence, particularly sustainable design principles, renewable energy sources and urban heat island effect mitigation.</p> <p>d) New developments are to sign up to a minimum three-year 100% renewable power contract with an Australian Government endorsed energy provider and evidence of the future contract provided to Council at DA stage e) New developments are encouraged to be 100% electric (no natural gas)</p> <p>f) All development is encouraged to incorporate PV rooftop solar and battery storage for the capture and use of energy for lighting, ventilation and services within communal spaces and for residential apartments</p> <p>g) Where photovoltaic (PV) panels are proposed it is desirable that the panels be parallel and incorporated into the design of the building</p> <p>h) Efficient lighting (LED), rainwater tanks and building insulation are to be included in the design of buildings.</p> <p>i) New development must provide a screened outdoor area with an appropriate orientation for the purpose of communal clothes drying</p> <p>j) All developments are to incorporate energy efficient fittings and systems for lighting including:</p> <ol style="list-style-type: none"> <li>Natural lighting where possible</li> <li>Energy efficient lights such as LEDs</li> <li>Movement and lighting level sensors and timers to ensure lighting is only used when required</li> </ol> <p>Waste</p> <p>k) All development must address the requirements of Section B6 Recycling and Waste Management of the Randwick DCP</p>	<p>A Sustainability Report has been submitted with the DA, showing compliance with the 4-Star Green Building requirements. That being said, the Applicant has failed to provide the information as outlined in the report as being met in the subject report as part of the DA, including P22.2 and P31.2-31.4.</p> <p>The applicant has failed to provide evidence of the three-year 100% renewable power contract.</p> <p>The proposed development does not provide battery storage for the capture and use of energy from the PV solar panels.</p> <p>The proposed development does not provide rainwater tanks for the capture and use of stormwater.</p> <p>The proposed development does not provide a screened outdoor area with an appropriate orientation for the purpose of communal clothes drying.</p> <p>Adequate energy efficient fittings and systems for lighting provided.</p> <p>The proposed development fails to comply with Council's waste requirements. See</p>	No.

	<p>l) All developments must provide a space for:</p> <p>i) Storage and sorting of problem waste such as E-waste, clothing, and residential hazardous waste</p> <p>ii) FOGO (Food Organics and Garden Organics) household rubbish collection bin storage and handling</p> <p>m) New developments must provide an internal bulky waste storage area of 20m<sup>2</sup> for the temporary storage of periodic bulky waste collection. The internal bulky waste storage area must:</p> <p>i) Be situated in a location that is easily accessed by external waste collection services ii) Be weatherproof and screened from public areas iii) Remain visible from general waste / bin storage areas to encourage re-use of items by other residents</p> <p>n) New development, other than development that is minor or ancillary in nature, is to incorporate a localised automated waste collection system in accordance with Council's Automated Collection System Guidelines.</p>	<p>comments from Council's Development Engineer in Appendix 1 of this report.</p>	
<b>21</b>	<b>Water Management</b>		
	<p>c) All development must address Section B8 – Water Management of the Randwick DCP in relation to water conservation, groundwater and flooding, overland flow paths, on-site detention and Water Sensitive Urban Design (WSUD)</p> <p>d) The ground level of a development is to be constructed above the stipulated 1 in 100 year flood level plus freeboard. Additional overall building height will only be considered by Council to the extent of the flood level above natural ground level for flood prone properties, and will be assessed on a site-specific merit basis</p>	<p>The proposed development complies with flooding considerations. See comments from Council's Development Engineer in Appendix 1 of this report.</p> <p>In terms of water management, should the DA have been supported, sufficient conditions would have been imposed regarding water management.</p>	Yes, subject to conditions
<b>22</b>	<b>Aircraft operations</b>		
	<p>a) Development involving the use of cranes during construction and other structures such as light poles must ensure compliance with Clause 6.8 of the Randwick LEP in relation to Airport Operations</p> <p>b) Applications for building cranes or like structures during construction must meet the requirements of Section F3 – Sydney Airport Planning and Noise Impacts of the Randwick DCP.</p>	<p>Sydney Airport Corp is supportive of the development. See comments from in Appendix 1 of this report.</p>	Yes, subject to condition
<b>23</b>	<b>Affordable housing</b>		

D90/24

	<p>a) All development within the HIAs must contribute towards the provision of affordable housing at a contribution rate of either 3% or 5% as stated in the Plan</p> <p>b) Affordable housing contributions are to be provided in accordance with the HIA Affordable Housing Plan 2023</p> <p>c) The affordable housing contribution rate is to apply to the total residential floor area component of the development</p> <p>d) Contributions towards affordable housing are to be provided through a dedication of affordable housing units on site / 'in-kind' or as a monetary contribution 'in-lieu' of affordable housing units.</p>	<p>The proposal site is mapped within the 'Area 3' special provisions area map under Clause 6.27 of the RLEP and an affordable housing contribution would be applicable to the portion of the development identified as co-living housing. Should Council have been in a position to recommend approval of the subject development, a condition would have been imposed for a monetary contribution of 3%, in accordance with the <i>Housing Investigation Areas – Affordable Housing Plan</i>.</p>	Yes, subject to condition
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### 3.7 Section F3: Sydney Airport Planning and Noise Impacts

DCP Clause	Controls	Proposal	Compliance
<b>2</b>	<b>Airspace operations</b>		
	<p>i) Submit to Council accurate and detailed drawings clearly indicating the height levels (above AHD) of various roof elements (including parapet, lift overrun, roof ridge and roof-mounted installations) for referral to SACL.</p> <p>ii) Landscaping must consider bird and obstacle hazard management and ensure trees to be planted are not capable of intruding the Obstacle Limitation Surface when mature (ie over 15 metres).</p> <p>iii) Submit to Council details on the proposed height of any crane that may be used during construction works for referral to SACL.</p>	<p>Sydney Airport Corp is supportive of the development. See comments from in Appendix 1 of this report.</p>	Yes, subject to condition

**Responsible officer:** William Joannides, Environmental Planning Officer

**File Reference:** DA/632/2024