BUSINESS PAPER

Randwick Local Planning Panel (Electronic) Meeting

DEFERRED ITEMS

Tuesday 17 December 2024

Randwick City Council
a sense of community

Randwick City Council
30 Frances Street
Randwick NSW 2031

1300 722 542
council@randwick.nsw.gov.au
www.randwick.nsw.gov.au

RANDWICK LOCAL PLANNING PANEL (ELECTRONIC) MEETING

(ELECTRONIC CONSIDERATION OF DEFERRED MATTERS)

The reports contained in this business paper were circulated to Panel Members to be dealt with electronically, pursurant of cl 26 of Schedule 2 of the *Environmental Planning and Assessment Act 1979*

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

D99/24 171 Darley Road, Randwick (DA/511/2024) - DEFERRED ITEM 1
D100/24 99 Fairsky Street, South Coogee (DA/555/2024) - DEFERRED ITEM 33

Meryl Bishop
DIRECTOR CITY PLANNING

D99/24

Development Application Report No. D99/24

Subject: 171 Darley Road, Randwick (DA/511/2024) - DEFERRED ITEM

Executive Summary

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

Recommendation

That the application (as amended) has addressed the reasons for deferral, as detailed in the resolution and meeting minutes of the RLPP on 10 October 2024, to enable the RLPP to grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/511/2024, for Alterations and additions to an existing attached dwelling including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works (Heritage Conservation Area – North Randwick and Heritage Item – I349) at 171 Darley Road, Randwick subject to the development consent conditions attached to the Supplementary Assessment Report.

Attachment/s:

1. RLPP Dev Consent Conditions (general) - DA/511/2024 - 171 Darley Road, RANDWICK NSW 2031 - DEV - Ahron Best Architects

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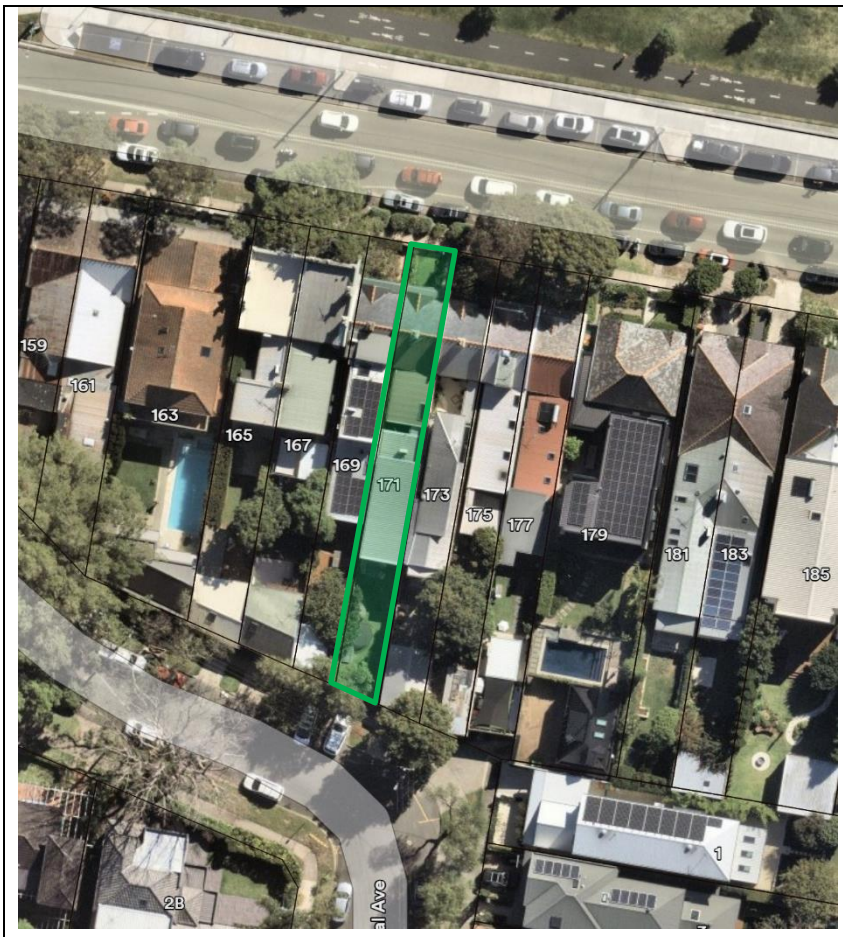

Subject Site

Submissions received

North

Locality Plan

1. Executive summary

The subject Development Application (DA) was considered at the Randwick Local Planning Panel (RLPP) Electronic meeting on 10 October 2024. At the meeting, the Panel deferred the application under the following resolution:

RESOLUTION:

A. *That the RLPP defers the determination of Development Application No. 511/2024 for alterations and additions to an existing attached dwelling including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works, at No. 171 Darley Road, for the reasons outlined below.*

B. *The Applicant submit an amended Clause 4.6 Variation Request to Council within 14 days (from receipt of notification).*

C. *That a supplementary report be submitted to the Panel for determination of the application via electronic meeting.*

REASON:

The Panel has visited the site and observed the context from Darley Road and from Centennial Avenue, considered the oral submission and reviewed the assessment report prepared by Council officers that addresses the relevant matters detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979, as amended. The Panel is inclined to support the application subject to the preparation of a revised Clause 4.6 Variation Request clarifying agreed quantum of floor space being proposed. In particular the Variation Request should address the objectives of the standard and provide sufficient environmental planning grounds relevant to the proposal.

In response to the Panel's deferral decision and meeting minutes, the following amended documentation has been prepared by the Applicant, and received by Council on 28th October 2024:

- Amended Clause 4.6 Variation Request, prepared by Chapman Planning Pty Ltd, to clarify agreed quantum of floor space being proposed. The Variation Request addresses the objectives of the standard and sufficient environmental planning grounds relevant to the proposal.

It is considered that the additional information provided by the Applicant has addressed the reasons for deferral stipulated by the Panel.

2. Response to Deferred Resolution

Amended Clause 4.6 Variation Statement

An amended Clause 4.6 Variation statement, prepared by Chapman Planning Pty Ltd, was submitted to Council to address the following matters raised by the RLPP on 10 October 2024. The Applicant's written justification for contravening the FSR development standard is contained in Appendix 1 of this report.

a. Clarification on the agreed quantum of floor space being proposed.

The original Clause 4.6 variation request calculated the GFA of the proposal to be 190sqm, equating to an FSR of 0.73:1. Council's calculations determined that GFA to be 185sqm, equating to an FSR of 0.715:1. The assessment officer determined the discrepancy between calculations to be limited to a void area above the proposed staircase, which should be omitted from floor area calculations in accordance with Gross Floor Area definition under Randwick Local Environment Plan 2012.

In the deferred resolution and meeting minutes, the Panel requested that the quantum of floor space proposed be reviewed to ensure consistency between the Applicant and Council's calculations, and clarify the true variation to the FSR development standard being sought.

An amended Clause 4.6 has been submitted to Council which clarifies that the proposed GFA achieved from the development is 185sqm, equating to an FSR of 0.715:1, presenting a 42.9% variation to the FSR development standard under Clause 4.4 of Randwick Local Environmental Plan 2012. The revised GFA calculations are consistent with Council's assessment officer's calculations.

Accordingly, it is considered that the Applicant has clarified the quantum of floor space being proposed as requested under the deferred resolution.

b. Objectives of the Floor Space Ratio Development Standard under Clause 4.4 of RLEP 2012

In the deferred resolution of the RLPP held on 10th October 2024, the Panel stipulated that the amended Clause 4.6 Variation Request should address the objectives of the FSR development standard, to demonstrate the compliance is unreasonable or unnecessary in the circumstances of the case.

The objectives of the FSR standard are set out in Clause 4.4 (1) of RLEP 2012. The Applicant's amended Clause 4.6 variation request has addressed each of the objectives in as follows:

> *The objectives of the development standard are at clause 4.4(1) of the LEP as follows:*
>
> (a) *to ensure that the size and scale of development is compatible with the desired future character of the locality,*

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

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

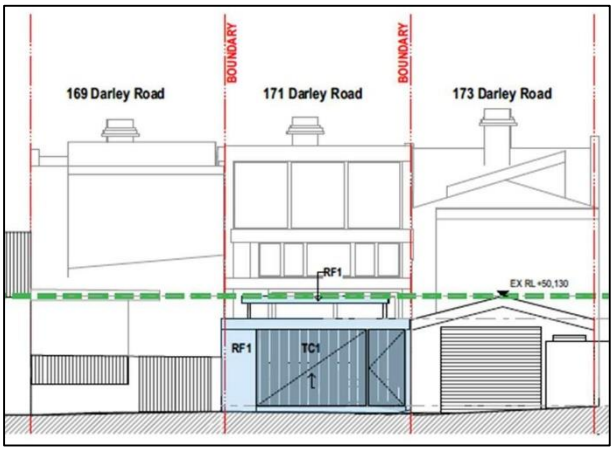
Objective (a) – The size and scale of the proposed development – resultant two storey form at the rear of the site is compatible with the desired future character of the locality, as established by the scale of surrounding development within the visual catchment of the site as viewed from Centennial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

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

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

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

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



Further, the recently approved development at 177 Darley Road – first floor addition under DA/479/2019 at the end of the row of dwellings of the heritage item and adjoining detached dwelling with larger contemporary addition at 179 Darley Road are consistent in scale and character to that proposed being a contemporary two storey development set behind the roof form creating the heritage presentation of the dwelling and row of buildings the Darley Road.

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

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

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

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

In addition to addressing the objectives of the standard, the amended variation request details further reasoning as to why compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Additional justification provided is detailed as follows:

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

- *The public benefit of maintaining the development standard is not considered significant because the proposed works to the existing building present an outcome consistent with the objectives of the development standard contained in the LEP notwithstanding the numerical contravention.*

- *The site forms part of heritage item I349 within the North Randwick Heritage Conservation area, where flexibility has been applied to the FSR standard including development at 169 Darley Road which has a GFA of 189.9m^2 – 0.73:1 and at 177 Darley Road where a gross floor area of 178.1m^2 – 0.61:1 was approved under DA/497/2019. The proposed size of the works to the dwelling, provide an appropriate built form on the site consistent with the accepted two storey scale of development within the Centennial Avenue streetscape – rear elevations of Darley Road properties, do not result in an overdevelopment of the existing dwelling, and the proposed FSR is compatible with the density of recently approved dwellings and alterations to existing dwellings within the locality.*

- *The subject site currently does not comply with the FSR standard, with the previous development of the site under DA/350/2013 being subject of the provisions of Clause 4.4A (previously 4.4[2B]) of the LEP which provided that no FSR control applies to dwelling houses on land if the lot size is less than 300m^2 in size in the R2 Low Density Residential zone. Council's preliminary assessment of the proposal has not applied the provisions of Clause 4.4A to the development as previously provided to the site under the Randwick LEP 2012. The development is not of a form and scale that is uncharacteristic of surrounding development within the conservation area, and consistent with the accepted two storey scale of development within the row of terraces which form item I349 and as such it is unnecessary to require compliance with the standard.*

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

- *The additional gross floor area is comparable with similar approved dwellings in the vicinity of the site, ensuring the building density is not inconsistent with the established character of the land use zone and the environmental capacity of the site.*

Assessment Officer Comment: The amended Clause 4.6 Variation Request has addressed the objectives of the FSR development standard in justifying why compliance with the standard is unreasonable or unnecessary in the circumstances of the case, as requested under the RLPP deferred resolution.

c. Sufficient Environmental planning grounds to justify contravening the FSR development standard

In the deferred resolution of the RLPP on 10th October 2024, the Panel detailed that an amended Clause 4.6 Variation Request should provide sufficient environmental planning grounds, relevant to the proposal, to justify contravening the development standard.

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

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

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

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

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

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

- *The subject site is located within the R2 Low Density Residential zone. While the density controls for attached dwellings within the zone anticipate a lower FSR than some other zones, importantly clause 4.4A of the LEP recognizes that smaller lots containing dwelling house or semi-detached development are not subject to FSR standards. The development is on a small site less than 300m^2 whereby another building typology – dwelling house or semi-detached dwelling would be permitted a greater density than that of the proposal. The attached dwelling on the site is a prohibited land use in the zone benefiting from existing use rights, and the proposed FSR does not result in a density that is uncharacteristic of surrounding development.*

- *The existing character of the locality is partly defined by the flexible application of the floor space ratio development standard. The proposed density is consistent with the density of approved development within the locality, including development at 169 Darley Road which has a GFA of 189.9m^2 – 0.73:1 and at 177 Darley Road where a gross floor area of 178.1m^2 – 0.61:1 approved under DA/497/2019. The additional gross floor area can be accommodated in a building form which is consistent with:*

    (a) *the established streetscape of Centennial Avenue and*
    (b) *the established character of development within the North Randwick Conservation area.*

- *The proposed first floor addition is set behind the existing roof form ensuring this component of the dwelling (additional floor area) will not be visible from Darley Road maintaining the heritage value of the dwelling and the attached row of cottages (169-177 Darley Road) as viewed from the public domain.*

- *The contravention of the FSR development standard is justified in this particular development proposal with the additional gross floor area forming part of a redevelopment of a historical built form – attached cottage on site, providing a good design and planning outcome being an object of the EPA Act. The development improves the internal amenity of the building in a form that does not present adverse amenity impacts upon surrounding properties or the public domain.*

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- *There are no adverse amenity impacts arising from the breach of the floor space ratio development standard (with regard to overshadowing, visual privacy, view loss). This is a recognised environmental planning ground. Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at 34.*

Assessment Officer Comment: The amended Clause 4.6 Variation Request has addressed sufficient environmental planning grounds relevant to the proposal, in the justification for contravening the development standard, as requested under the RLPP deferred resolution.

Conclusion

On the basis of the above, it is considered that the amended Clause 4.6 variation request has addressed the matters raised in the deferred resolution.

3. Conditions of Consent

Council's initial assessment of the proposal recommended that the application be refused for the reasons detailed in the original assessment report. In the deferred resolution of the RLPP it was determined that, subject to the matters of the resolution being sufficiently addressed, approval may be granted to the proposal, subject to conditions of consent.

Draft conditions of consent have been prepared by the Assessment Officer, which are attached to this supplementary report.

4. Conclusion

That the application (as amended) seeking alterations and additions to an existing attached dwelling including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works (Heritage Conservation Area – North Randwick and Heritage Item – I349), has addressed the reasons for deferral as stipulated in the Randwick Local Planning Panel resolution and meeting minutes on 10 October 2024 as follows:

- The amended Clause 4.6 variation request has clarified the quantum of the GFA proposed and variation to the development standard sought.

- The amended Clause 4.6 variation request has addressed the objectives of FSR develop
- ent standard and sufficient environmental planning grounds to justify contravention to the development standard.

Responsible officer: Elizabeth James, Environmental Planning Officer

File Reference: DA/511/2024

Appendix 1: Applicant's written request seeking to justify the contravention of the development standard (amended).

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Chapman Planning Pty Ltd

Suite 8/88 Mountain Street
ULTIMO NSW 2007

Phone: 9560 1718
www.chapmanplanning.com.au

28 October 2024

Amended Clause 4.6 Request to Development Standard

Property Description: 171 Darley Road, Randwick

Development: Alterations and Additions to Attached Dwelling

Development Standard: Floor Space Ratio

Introduction

The Applicant requests under clause 4.6 of Randwick Local Environmental Plan 2015 (LEP) that the Proposal for alterations and additions to the existing attached dwelling at 171 Darley Road, Randwick be granted development consent notwithstanding that the approved development will exceeds the development standard for maximum floor space ratio (FSR) of 0.5:1 applying under clause 4.4(2) of the LEP with reference to the FSR Map.

Specifically,

(a) The site has a total area of 258.9m^2.
(b) The gross floor space of the existing residence on the site approved by the consent granted to DA/350/2013 on 6 August 2013 is 140m^2 - yielding an FSR of 0.54:1.
(c) The present DA proposes alterations and additions that result in an increase of 45m^2 of gross floor area to the existing dwelling, making a total gross floor area of 185m^2, yielding an FSR of 0.715:1 (being 0.215 or 42.9% above the development standard).

Importantly, under clause 4.4A(4) an exception to the FSR standard applying under clause 4.4(2) of the LEP applies to any detached dwelling, dual occupancy, or semi-detached dwelling for sites with a site area less than 300m^2, with the permissible floorspace for such development assessed on merit.

Technically, that exception does not apply to this site because as a dwelling in a row of 5 attached terraces, it does not fall within the definitions of detached dwelling, dual occupancy, or semi-detached dwelling. Rather the group of 5 terraces together would meet the definition of “attached dwelling”.

“Attached dwellings” are not permitted use in the R2 zone in which the site is situated. Accordingly, the proposal meets the definition of an “*existing use*” within the meaning of s 4.65 of the Environmental Planning & Assessment Act 1979, because the dwelling was originally constructed as part of a row of “attached dwellings” in 1909 (as set out in the

heritage report accompanying the DA), long before development consent was ever required for houses after the commencement of the "*County of Cumberland. Planning Scheme Ordinance"* which was not gazetted until 1951.

As a consequence, s163 of the EP&A Regulation 2021, the use may be "enlarged, expanded, intensified, altered or extended" with consent (noting no change to the use of the land is proposed). The DA may thereby lawfully be approved.

While (as noted above) the exemption which applies under clause 4.4A(4) to sites under 300m^2 does not expressly apply to attached dwellings (noting they are prohibited in the zone), the reasoning behind the recognition in the LEP of allowing that exemption to the FSR controls for small sites for residential housing forms that are permissible in the zone (because the default FSR controls cannot practically be applied to small sites without unduly restricting reasonable development), would have equal force to the row of terraces at 169 – 177 Darley Road.

That reasoning can be seen to have been at work when Council approved developments on adjoining sites, particularly the development approved on No 169 Darley Road Randwick, which was approved under the same LEP and the same DCP with an FSR which can be observed to be similar to that proposed with this DA for the subject site at No 171.

Notably the row of terraces at Nos 169 to 171 Darley Road are also heritage items to which clause 5.10(10) of the LEP would apply, but the DA does not need to rely upon the incentives afforded by that clause. A heritage assessment prepared by John Oultram Heritage and Design which sets out why the heritage impacts of the proposal (taking into account the the proposed gross floor area) are acceptable.

It is on that basis that the following principal arguments are made for the variation of the FSR standard:

1) The proposal is made for a site which is less than 300m, which (as recognised by exemption applying under clause 4.4A for other forms of residential development permissible in the R2 zone) makes it difficult to accommodate a reasonable form of development without an exceedance of the default FSR control for all sites.
2) Council has approved a similar floor space on adjoining sites at both Nos 169 and 173. No 169 in particular was approved under the same instrument.
3) The proposed development is largely screened from view because of the terrace form, except from the front and rear. There is a garden at the Darley Road frontage, and significant landscaping at the rear.
4) The proposal is compliant with the height control.
5) None of the additional built form is visible from the public domain (apart from one oblique view point up the street).
6) Being similar to the adjoining terraces in terms of FSR, the proposal will sit well in its context, and accordingly will address the objectives of both the FSR control and the zoning control.

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The objectives of the FSR development standard are considered below. The following objectives of the R2 zone are met by the DA proposal:

- By allowing for the family owners to be accommodated on the site, the DA will meet the housing needs of the community within a low density residential environment.
- Because of the sensitive design which hides the additional floorspace from the public domain, the desirable elements of the existing streetscape within the heritage conservation area will be preserved, consistently with the desired future character of the area.
- It will also in that way protect the amenity of adjoining residents.

The DA and the clause 4.6 request

The application is for alterations to the internal layout of the existing ground floor of the dwelling and a first floor addition to the building. Due to the existing non-compliance of the FSR development standard on the site, the rearrangement of the ground floor internal layout, and additional gross floor area at the first floor level the proposed floor area is dispersed across the totality of the built form, including existing components of the built dwelling, with the works representing a holistic uplift to the existing dwelling on site.

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

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

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

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

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

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

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

1. Is the proposed development consistent with the objectives of the development standard which is not met?

2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a))

3. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b))

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

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

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

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

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

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

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

> **Objective (a) –** The size and scale of the proposed development – resultant two storey form at the rear of the site is compatible with the desired future character of the locality, as established by the scale of surrounding development within the visual catchment of the site as viewed from Centennial Avenue.
>
> The proposal is consistent with the two storey addition at the adjoining property at 169 Darley Road and nearby approved development at 177 Darley Road – first

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

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

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

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

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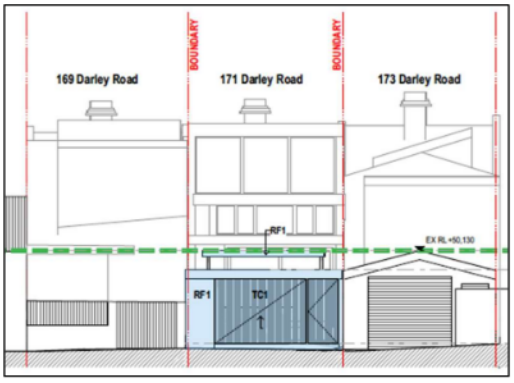

Further, the recently approved development at 177 Darley Road – first floor addition under DA/479/2019 at the end of the row of dwellings of the heritage item and adjoining detached dwelling with larger contemporary addition at 179 Darley Road are consistent in scale and character to that proposed being a contemporary two storey development set behind the roof form reating the heritage presentation of the dwelling and row of buildings the Darley Road.

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

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

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

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

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

- The public benefit of maintaining the development standard is not considered significant because the proposed works to the existing building present an outcome consistent with the objectives of the development standard contained in the LEP

notwithstanding the numerical contravention. The site forms part of heritage item I349 within the North Randwick Heritage Conservation area, where flexibility has been applied to the FSR standard including development at 169 Darley Road which has a GFA of 189.9m^2 – 0.73:1 and at 177 Darley Road where a gross floor area of 178.1m^2 – 0.61:1 was approved under DA/497/2019. The proposed size of the works to the dwelling, provide an appropriate built form on the site consistent with the accepted two storey scale of development within the Centennial Avenue streetscape – rear elevations of Darley Road properties, do not result in an overdevelopment of the existing dwelling, and the proposed FSR is compatible with the density of recently approved dwellings and alterations to existing dwellings within the locality.

- The subject site currently does not comply with the FSR standard, with the previous development of the site under DA/350/2013 being subject of the provisions of Clause 4.4A (previously 4.4[2B]) of the LEP which provided that no FSR control applies to dwelling houses on land if the lot size is less than 300m^2 in size in the R2 Low Density Residential zone. Council's preliminary assessment of the proposal has not applied the provisions of Clause 4.4A to the development as previously provided to the site under the Randwick LEP 2012. The development is not of a form and scale that is uncharacteristic of surrounding development within the conservation area, and consistent with the accepted two storey scale of development within the row of terraces which form item I349 and as such it is unnecessary to require compliance with the standard.

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

- The additional gross floor area is comparable with similar approved dwellings in the vicinity of the site, ensuring the building density is not inconsistent with the established character of the land use zone and the environmental capacity of the site.

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

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

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

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

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

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

- The subject site is located within the R2 Low Density Residential zone. While the density controls for *attached dwellings* within the zone anticipate a lower FSR than some other zones, importantly clause 4.4A of the LEP recognizes that smaller lots containing dwelling house or semi-detached development are not subject to FSR standards. The development is on a small site less than 300m^2 whereby another building typology – dwelling house or semi-detached dwelling would be permitted a greater density than that of the proposal. The *attached dwelling* on the site is a prohibited land use in the zone benefiting from existing use rights, and the proposed FSR does not result in a density that is uncharacteristic of surrounding development.

- The existing character of the locality is partly defined by the flexible application of the floor space ratio development standard. The proposed density is consistent with the density of approved development within the locality, including development at 169 Darley Road which has a GFA of 189.9m^2 – 0.73:1 and at 177 Darley Road where a gross floor area of 178.1m^2 – 0.61:1 approved under DA/497/2019. The additional gross floor area can be accommodated in a building form which is consistent with:

  (a) the established streetscape of Centennial Avenue and

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(b) the established character of development within the North Randwick Conservation area.

- The proposed first floor addition is set behind the existing roof form ensuring this component of the dwelling (additional floor area) will not be visible from Darley Road maintaining the heritage value of the dwelling and the attached row of cottages (169-177 Darley Road) as viewed from the public domain.

- The contravention of the FSR development standard is justified in this particular development proposal with the additional gross floor area forming part of a redevelopment of a historical built form – attached cottage on site, providing a good design and planning outcome being an object of the EPA Act. The development improves the internal amenity of the building in a form that does not present adverse amenity impacts upon surrounding properties or the public domain.

- There are no adverse amenity impacts arising from the breach of the floor space ratio development standard (with regard to overshadowing, visual privacy, view loss). This is a recognised environmental planning ground. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at 34.

Conclusion

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

The additional gross floor area does not attempt to affect the planning outcome for the broader locality rather the additional floor area is dispersed across the redevelopment of the site in a form that is compatible with the immediate locality and established development along the row of dwellings from 169-177 Darley Road, Randwick. The additional floor area will not impact negatively upon the heritage significance of the subject building or attached row of cottages (169-177 Darley Road) with the addition set bending the roof form and will not be visible from the public domain – Darley Road.

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

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

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

Chapman Planning Pty Ltd

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Development Consent Conditions

Folder /DA No:	DA/511/2024
Property:	171 Darley Road, RANDWICK NSW 2031
Proposal:	Alterations and additions to an existing attached dwelling including first floor addition, installation of a new in-ground swimming pool, pool pavilion and carport structure, ancillary and landscaping works (Heritage Conservation Area – North Randwick and Heritage Item – I349).
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

Condition

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

Plan	***Drawn by***	***Dated***	***Received by Council***
AD10 - Plans	Ahron Best Architects	30 August 2024	30 August 2024
AD20 - Elevations	Ahron Best Architects	30 August 2024	30 August 2024
AD30 - Sections	Ahron Best Architects	30 August 2024	30 August 2024
AD40 – Materials and Finishes Schedule	Ahron Best Architects	30 August 2024	30 August 2024
AD60 – Area Calculations	Ahron Best Architects	30 August 2024	30 August 2024

BASIX Certificate No.	***Dated***	***Received by Council***
A1749488	29 May 2024	14 June 2024

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

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

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

a) The extent of the carport roof structure is to be reduced along the eastern boundary, to enable the pedestrian footpath within the rear of the site, (from

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Condition

the Centennial Avenue boundary) to be retained as deep soil permeable area.

Amended plans must be submitted to and approved by the Principal Certifier prior to the issue of any construction certificate.
The above amendment/s must be reflected in the final construction plans and any documentation submitted as part of any construction certificate.

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

BUILDING WORK
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

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

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

4. **External Colours, Materials & Finishes**
The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.

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

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

5. **Section 7.12 Development Contributions**
In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of $1,125,000.00 the following applicable monetary levy must be paid to Council: $11,250.00.

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

IDC = ODC x CP2/CP1
Where:
IDC = the indexed development cost
ODC = the original development cost determined by the Council
CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment
CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at

Condition

www.randwick.nsw.gov.au.

Condition Reason: To ensure relevant contributions are paid.

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

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

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

7. **Security Deposits**
The following damage / civil works security deposit requirement must be complied with as security for making good any damage caused to the roadway, footway, verge or any public place; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 80A (6) of the *Environmental Planning and Assessment Act 1979*:

- **$2000.00 - Damage / Civil Works Security Deposit**

The damage/civil works security deposit may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.

The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.

To obtain a refund of relevant deposits, a *Security Deposit Refund Form* is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.

Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.

8. **Design Alignment Levels**

The design alignment level (the finished level of concrete, paving or the like) at the property boundary for driveways, access ramps and pathways or the like, shall be:

Vehicle Access

- **RL 46.90 AHD (western side of vehicle crossing)**
- **RL 46.86 AHD (eastern side of vehicle crossing)**

The design alignment levels at the property boundary as issued by Council and their relationship to the roadway/kerb/footpath must be indicated on the building plans for the construction certificate (a construction note on the plans is considered

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satisfactory). The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881.

The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of **$191**. This amount is to be paid prior to a construction certificate being issued for the development.

Condition Reason: To ensure all roadway works are designed and constructed in accordance with Council requirements.

9. **Car Space Design**

The level of the car space/ must be designed and constructed to be a minimum of RL 46.92 AHD being the level of the 5% AEP (1 in 20yr) flood as required by Part B8 of the DCP. Details of compliance are to be included in the construction certificate documentation.

The gradient of the internal car space/ must be designed and constructed to not exceed a grade of 1 in 20 (5%) and the levels of the car space/garage must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate documentation.

NOTE: Transitional grading of up to 1 in 6 (17.5%) is permitted internally on the car space/garage (within 1.2m of the Centennial Avenue boundary alignment only) to successfully transition between the car space/garage slab and the Council issued alignment levels.

Condition Reason: To ensure all roadway works are designed and constructed in accordance with Council requirements.

10. **Sydney Water**
All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

The Tap in™ service provides 24/7 access to a range of services, including:

- Building plan approvals
- Connection and disconnection approvals
- Diagrams
- Trade waste approvals
- Pressure information
- Water meter installations
- Pressure boosting and pump approvals
- Change to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's Tap in™ in online service is available at:
https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm
The Principal Certifier must ensure that the developer/owner has submitted the

	Condition
	approved plans to Sydney Water Tap in online service. Condition Reason: To ensure the development satisfies Sydney Water requirements.
11.	**Building Code of Australia** In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 69 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA). Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application. Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.
12.	**Structural Adequacy** Certificate of Adequacy supplied by a professional engineer shall be submitted to the Certifier (and the Council, if the Council is not the Certifier), certifying the structural adequacy of the existing structure to support the approved alterations and additions. Condition Reason: To ensure the structural integrity of the building is maintained.
13.	**BASIX Requirements** In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with. The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier. The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued. Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.
14.	**Stormwater Drainage** Surface water runoff from building work and structures must satisfy the following requirements (as applicable), to the satisfaction of the Certifier and details are to be included in the construction certificate: - a) Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2). b) The surface water/stormwater is to be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit. c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance. d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining

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Condition

premises, so as not to result in the entry of water into the building or cause a nuisance or damage to the adjoining premises.

e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.

Condition Reason: To control and manage stormwater run-off.

15. **Excavation Earthworks and Support of Adjoining Land**
Details of proposed excavations and support of the adjoining land and buildings are to be prepared and be included in the construction certificate, to the satisfaction of the appointed Certifier.

Condition Reason: To ensure adjoining land is adequately supported.

16. **Excavation, Earthworks and Support of Adjoining Land**
A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details the methods of support for any buildings located on the adjoining land, to the satisfaction of the Principal Certifier:

- When undertaking excavation or building work within the zone of influence of the footings of a dwelling or other building that is located on the adjoining land;
- When undertaking demolition work to a wall of a dwelling or other substantial structure that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
- When constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land; and
- As otherwise may be required by the Certifier for the development.

The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the Principal Certifier.

Condition Reason: To ensure adjoining land is adequately supported.

17. **Street Tree Protection Measures**
To ensure retention of the mature *Banksia integrifolia* (Coast Banksia) in good health, that is located on Council's verge, measuring 500mm of rear fence of subject site, centrally between the two boundaries of No 169 & 171, the following measures are to be undertaken.

a) All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk, canopy, SRZ, TPZ to be clearly and accurately shown on all plans in relation to the proposed works.

b) Prior to the commencement of any site works, the trunk of this tree is to be physically protected by wrapping layers of geo-textile, underfelt, carpet, hessian or similar, from ground level to a height of 2m, to which, 2m lengths of 50mm x 100mm hardwood timbers, spaced at 150mm centres shall be placed around its circumference, and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.

c) This protection shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are

Condition

completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "**TREE PROTECTION ZONE (TPZ), DO NOT REMOVE "**

d) Within the TPZ's there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.

e) Where major roots with a diameter of 50mm or more are encountered and Council's officer determines they must be retained, a cantilevered, pier and beam style footing must be used for these areas.

f) Where roots with a diameter of less than 50mm are found which are in direct conflict with the approved works, and permission is given for their pruning, they may be cut cleanly using hand-held tools only, with the affected area to then be backfilled with clean site soil as soon as practically possible.

g) Ground levels within the TPZ/'s must not be altered by more than 200mm, with no other structures such as continuous strip footings, planter boxes or similar to be located in this area, which is to remain as undisturbed, deep soil.

h) The applicant is not authorised to perform any other works to this public tree and must contact Council's Landscape Development Officer on 9093-6633 should clearance pruning or similar be necessary. If approval is given, it can only be performed by Council, wholly at the applicants cost, **GIVING UP TO SIX WEEKS NOTICE**, with payment to be received prior to pruning or any Occupation Certificate.

i) The Principal Certifier/and or Project Arborist must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.

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

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

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

18. **Salvage, Reuse and Recycling of Traditional Building Materials**
A salvage plan shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. The salvage plan is required to ensure that materials including fireplaces, architraves, skirtings, windows, doors and remnant components of significant heritage fabric are carefully removed and stored, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.

Condition Reason: To ensure appropriate management, treatment, and disposal of traditional building materials

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BEFORE BUILDING WORK COMMENCES

Condition

19. **Building Certification & Associated Requirements**
The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:

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

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

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

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

d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and

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

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

20. **Home Building Act 1989**
In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and *sections 69 & 71 of the Environmental Planning and Assessment Regulation 2021*, in relation to residential building work, the requirements of the *Home Building Act 1989* must be complied with.
Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

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

21. **Construction Noise & Vibration Management Plan**
Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.
A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.

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

Condition

22. **Public Utilities**
A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.

The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

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

DURING BUILDING WORK

Condition

23. **Site Signage**
It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:
a) showing the name, address and telephone number of the principal certifier for the work, and
b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and
c) stating that unauthorised entry to the work site is prohibited.

The sign must be—
a) maintained while the building work is being carried out, and
b) removed when the work has been completed.

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

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

24. **Restriction on Working Hours**
Building, demolition and associated site works must be carried out in accordance with the following requirements:

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	• Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavations in rock, sawing of rock, use of jack-hammers, driven-type	• Monday to Friday - 8.00am to 3.00pm

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Condition	
piling/shoring or the like	• (maximum) • Saturday - No work permitted • Sunday & public holidays - No work permitted

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

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

25. **Public Safety & Site Management**
Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:

a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.

b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.

c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.

d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.

e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.

f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.

g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

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

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

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Condition

h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.

i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.

j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.

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

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

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

27. **Road/Asset Opening Permit**
A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.

The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development.

For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.

Condition Reason: To ensure works are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.

28. **Neighbouring Vegetation Management**
Wholly within Neighbouring No.169 property along the western common boundary fence, south to north, insignificant Lilly Pilly hedging shrubs and small fig tree, all plotted close to the common boundary fence, the proposed pool and rear carport Store/Pool Pump area will be in close conflict with these works.

A precautionary root mapping trench along the footprint of Store/Pool Pump and pool **must be hand excavated, to a depth of 500mm**, this hand excavation will decide if any roots are within the subject site works, if any roots found within the footprint of these works, which are measuring a diameter of 50mm and below, they can be cut cleanly with sharp secateurs, then backfilled with original soil as soon as practically possible, if any roots larger than 50mm are found, **councils officer must be contacted 24 hours prior, to inspect roots**, email; peter.napier@randwick.nsw.gov.au **Ph 9093-6633, officer will then decide what action to be taken once inspection has been undertaken.**

Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.

D99/24

	Condition
29.	**Heritage Conditions – Unexpected finds** In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken and the NSW Heritage Office notified under the requirements of the Heritage Act. Condition Reason: To ensure appropriate management of archaeological remains and deposits.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
30.	**Occupation Certificate Requirements** An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.
31.	**BASIX Requirements** In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled. Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate. Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.
32.	**Council's Infrastructure, Vehicular Crossings and Street Verge** The applicant must meet the full cost for a Council approved contractor to: a) Reconstruct/extend concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site to Council's specifications and requirements. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements: a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond,

Condition

typically within 8 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.

b) Works on Council land must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.

c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

That part of the nature-strip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicant's expense.

Condition Reason: To ensure rectification of any damage to public infrastructure and that works are completed in accordance with Council's requirements with Council's approval.

33. **Stormwater Drainage**
The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development approval. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.

Condition Reason: to ensure that stormwater drainage is consistent with Australian Standards.

OCCUPATION AND ONGOING USE

Condition

34. **Use of Premises**
The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.

Condition Reason: To ensure the development is used for its intended purpose.

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

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

D99/24

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

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

DURING DEMOLITION WORK

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

Development Application Report No. D100/24

Subject: 99 Fairsky Street, South Coogee (DA/555/2024) - DEFERRED ITEM

D100/24

Executive Summary

Proposal: Alterations and additions to existing dwelling house including front extension of Bedroom 2 (first floor), rear extension of basement, installation of new skylights, deck extension, construction of a new rear pergola, outdoor BBQ area and in-ground swimming pool with outdoor shower, and re-location of rainwater tank (Variation to Floor Space Ratio development standard).

Ward: Central Ward

Applicant: Shorehouse Projects

Owner: Jennifer Upton

Cost of works: $220,000.00

Reason for referral: The development contravenes the development standard for Maximum Floor Space Ratio by more than 10%.

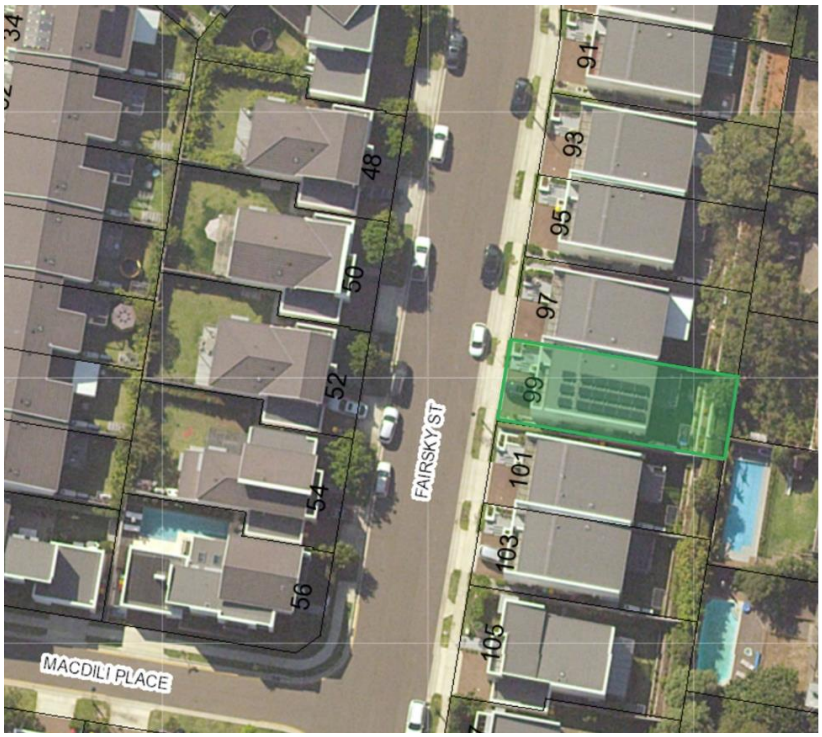
Recommendation

A. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/555/2024 for Alterations and additions to existing dwelling house including front extension of Bedroom 2 (first floor), rear extension of basement, installation of new skylights, deck extension, construction of a new rear pergola, outdoor BBQ area and in-ground swimming pool with outdoor shower, and re-location of rainwater tank (Variation to Floor Space Ratio development standard) at No. 99 Fairsky Street, South Coogee subject to the development consent conditions attached to the Supplementary Assessment Report.

Attachment/s:

1. RLPP Dev Consent Conditions (dwellings dual occ) - DA/555/2024 - 99 Fairsky Street, SOUTH COOGEE NSW 2034 - DEV - Shorehouse Projects (Nsw) Pty Ltd

D100/24



Subject Site

Submissions received

North

Locality Plan

1. Executive summary

The subject Development Application (DA) was considered at the Randwick Local Planning Panel (RLPP) Electronic meeting on 10 October 2024. At the meeting, the Panel deferred the application under the following resolution:

RESOLUTION:

A. That the RLPP defers the determination of Development Application No. DA/555/2024 for alterations and additions to existing semi-detached dwelling including variation to floor space ratio control, at No. 99 Fairsky Street, South Coogee, for the reasons outlined below.

B. The Applicant submit an amended Clause 4.6 Variation Request to Council within 14 days (from receipt of notification).

C. That a supplementary report be submitted to the Panel for determination of the application via electronic meeting.

Amended documentation has been prepared by the Applicant and received by Council on 15 October 2024.

In response to the Panel's deferral decision and meeting minutes, the Applicant has provided the following additional information and amendments to the proposed development:

- A revised, valid and competent Clause 4.6 Variation Statement has been provided that removes any inconsistencies and errors identified in the previous Clause 4.6 Variation

Statement including references to an incorrect locality. The revised statement correctly addresses the objectives of the development standard (under Clause 4.4.) and details adequate and sufficient environmental planning grounds to demonstrate that the provisions under Clause 4.6 have been satisfied.

- The proposed front extension of the first floor comprising the proposed Bed 2 / Study is revised and re-aligned to match the alignment of the existing balcony on the first floor.
- The proposed external materials, textures and colours for the exterior of the proposed front extension comprising the Bed 2 / Study have been detailed and clarified on the amended plans.

Additional Supporting Information:

1. Full set of amended architectural plans drawn by RME from sh.studio.
2. Updated Clause 4.6 Variation Statement.

It is considered that the additional information provided by the Applicant has adequately addressed the reasons for deferral by the Panel.

2. Response to Deferred Resolution

Amended Clause 4.6 Variation Statement

An amended Clause 4.6 Variation statement was submitted to Council on 15 October 2024 to address matters raised by the Randwick Local Planning Panel on 10 October 2024. A statement of the matters which the Randwick Local Planning Panel members wish to be rectified is provided below.

> *The Panel is inclined to support the application subject to additional conditions only if a valid and competent Clause 4.6 Variation Request is submitted within 14 days (from receipt of notification).*
>
> *The Panel is unable to support the Clause 4.6 Variation Request submitted. The Panel is concerned that the Variation Request does not correctly address the objectives of the standard and does not adequately provide sufficient environmental planning grounds. The Variation Request is inconsistent with the Council assessment report in its quantification of the variation. A revised Clause 4.6 Variation Request is required, which addresses properly the matters identified in the clause relative to the proposed development.*

The Clause 4.6 Variation Statement, as amended, now addresses the matters raised by the Randwick Local Planning Panel as follows:

> *The Panel is inclined to support the application subject to additional conditions only if a valid and competent Clause 4.6 Variation Request is submitted within 14 days (from receipt of notification).*

Assessment Officer Comment: The Applicant was notified about the required additional / amended information on 14 October 2024. On 15 October 2024, a valid and competent Clause 4.6 Variation Request was submitted to Council for assessment. As such, the receipt of this document was within the timeframe provided by the Panel.

A review of the Clause 4.6 Variation Request is detailed below.

The following commentary relates to specific matters mentioned by the Panel, that are to be addressed in a revised Variation Request:

> *The Panel is concerned that the Variation Request does not correctly address the objectives of the standard and does not adequately provide sufficient environmental planning grounds.*
>
> *The Variation Request is inconsistent with the Council assessment report in its quantification of the variation.*

A revised Clause 4.6 Variation Request is required, which addresses properly the matters identified in the clause relative to the proposed development.

Assessment Officer Comment: The supplied Clause 4.6 Variation Request, as amended has satisfactorily addressed the objectives of the Floor Space Ratio (FSR) Standard and has provided additional environmental planning grounds which are sufficient in justifying why exceeding the FSR development standard is justified for the proposal. The amended request has removed any mention of an incorrect locality (Connells Point).

The amended Clause 4.6 Variation Request has been assessed as adequate with regard to properly addressing the matters identified in the relevant clause.

A detailed analysis of the provided and amended Clause 4.6 Variation Request, is provided below. This document is provided in Appendix A.

In relation to the quantification of the variation, the following comments from Council's Assessment Officer applies.

Assessment Officer Comment: In the Council Assessment Report for the Local Planning Panel Electronic Meeting (10 October 2024), the variation quantification was assessed as the following:

-
- Development Standard 0.7:1 (190.40sqm)
- Existing Development 0.72:1 (196.27sqm)
- Proposal 0.81:1 (220.32sqm)
- Proposed Variation (31.1sqm)
- Proposed Variation % (11%).

It is noted that the original Clause 4.6 Variation Request was inconsistent with the above calculations associated with the proposed variation. It was also noted that the original proposed variation percentage was also incorrectly calculated by Council as referenced in the Council Assessment Report and as identified by the Panel.

The Applicant has provided an amended Clause 4.6 Variation Request that reflects the correct calculations of gross floor area, FSR and variation. The correct calculations (quantifications) are as follows:

- Development Standard 0.7:1 (190.40sqm) **(unchanged from Council Assessment Report)**
- Existing Development 0.72:1 (196.27sqm) **(unchanged from Council Assessment Report)**
- Proposal 0.81:1 (220.81sqm) **(unchanged from Council Assessment Report)**
- Proposed Variation (29.99sqm) **(corrected)**
- Proposed Variation % (15.7%) **(corrected)**

The above calculations (quantifications) have been reflected in Council's final assessment, in this Supplementary Report as well as the amended Clause 4.6 Variation Request. It is noted that there are no inconsistencies with regard to the quantification of the variation. Accordingly, the above matter is considered resolved.

<u>Assessment of the Amended Clause 4.6 Variation Statement</u>

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.

2.1. Exception to the Floor Space Ratio (FSR) development standard (Cl 4.4)

The Applicant's amended written justification for the departure from the FSR standard is contained within the appendix.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Assessment Officer Comment: In conclusion, the Applicant's written request has adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case. The objectives under Clause 4.4 have been achieved and the minor increase to gross floor area and floor space ratio (comprising 29.99sqm) would not result in an excessive and bulky built form. The proposed in-fill of the first floor (front portion) results in a built form that is compatible and consistent with the existing buildings (dwellings) within the vicinity and in the streetscape. There will be no loss of amenity to the neighbouring properties due to non-compliance with the maximum FSR control and, the proposal remains within the existing building footprint, allowing the bulk, scale and façade to remain compatible with the adjoining semi-detached dwelling at No. 97 Fairsky Street, South Coogee and wider streetscape. Therefore, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and the minor non-compliance with the FSR development standard is considered a reasonable and acceptable outcome for the subject site.

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

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

The term 'environmental planning grounds', while not defined in the EP&A Act or the Standard
Instrument – Principal Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act.

The objects of the Act are as follows—

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

• The Environmental aspects and impacts of the proposal are outlined and addressed within this Statement. The proposed development will have no detrimental impact on natural or other resources, with a Planning Use that complements the site and area and existing infrastructure.
• The proposal facilitates a reasonable extension of the first floor, providing additional space and functionality for occupants without unreasonably compromising/affecting the streetscape and residential amenity.
• The extension is wholly contained within the building envelope of the dwelling, and will not result in substantial bulk, scale, and massing. The absence of any impacts (including overshadowing, privacy, view loss, amenity) associated with the variation ensures that sufficient environmental planning grounds and merits have been demonstrated.
• The development is orderly and rational, being consistent with the applicable Randwick City Council planning controls in the R1 General Residential Zone. That is:

o To provide for the housing needs of the community.
▪ The development maintains a residential dwelling.

o To provide for a variety of housing types and densities.
▪ The development maintains a residential dwelling.

o To enable other land uses that provide facilities or services to meet the day to day needs of residents.
▪ N/A. The development maintains a residential dwelling.

o To allow the comprehensive redevelopment of land for primarily residential and open space purposes.
▪ The development maintains a residential dwelling on a residential zoned allotment.

o To protect the amenity of residents.
▪ The proposal facilitates a reasonable extension of the first floor, providing additional space and functionality for occupants without unreasonably compromising/affecting the streetscape and residential amenity being wholly contained within the building envelope of the dwelling. The absence of any impacts (including overshadowing, privacy, view loss, amenity) associated with the variation ensures that the amenity for residents and residents of adjoining developments is protected.

o To encourage housing affordability.
▪ The development maintains a residential dwelling.

o To enable small-scale business uses in existing commercial buildings.
▪ The development maintains a residential dwelling.

• The development maintains housing and the site is located in a residential area.
• There are no threatened species or the like in the area to be developed. The development will not have an environmental impact in relation to noise or air emissions. The site will be landscaped as part of the development.
• The site is not a heritage item or within proximity to a heritage item or located within a heritage conservation area.
• The proposal shows care and consideration for the existing and desired character of housing in the area. This ensures the amenity of the local area is reasonably protected.
• The proposal will utilise high quality building materials and finishes. It will be designed to meet BCA criteria and access considerations to ensure appropriate protection to the health and safety of occupants.

Ecologically Sustainable Development

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

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

Six Principles can be considered and applied:

1. Sustainable use - the aim of exploiting natural resources in a manner which is "sustainable" or "prudent" or "rational" or "wise" or "appropriate"

2. Effective integration of economic and environmental considerations in the decision making process

3. The precautionary principle (referred to in 6(2)(a) of the Protection of the Environment Administration Act)

4. Inter-generational equity - the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations

5. Conservation of biological diversity and ecologically integrity should be a fundamental consideration; and

6. Internalisation of environmental costs into decision-making for economic and other development plans, programmes and projects likely to affect the environment.

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

Assessment Officer Comment: In conclusion, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The objectives of the R1 General Residential Zone within the Randwick Local Environmental Plan have been met and there will be no adverse effects to the amenity of the

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proposed dwelling and those that neighbour it. The development is in line with the surrounding streetscape and is contained to the existing building footprint.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have been satisfied and that development consent may be granted for development that contravenes the FSR development standard. There are sufficient environmental planning grounds to grant the variation to the FSR development standard and it is deemed that in the proposed case, the FSR development standard is deemed unnecessary to comply with.

Amended Architectural Plans

The following matter was provided by the Panel in the meeting minutes on 10 October 2024:

> *The Panel requires amendment of the architectural plans to clarify details of the materials of the proposed external wall, which should be the same details as the existing wall to be relocated. The alignment of the relocated wall is to match the alignment of the existing first floor balcony.*

Assessment Officer Comment: On 15 October 2024, the Applicant provided amended architectural plans to address the above requirement. As shown in **Figures 1** and **2**, the plans now display the material, colour and texture of the proposed wall relocation / upper floor extension and, this extension is in line with the existing balcony on the first floor. It is demonstrated that the amended plans have resolved the above matter and are sufficient for approval, subject to conditions of consent.

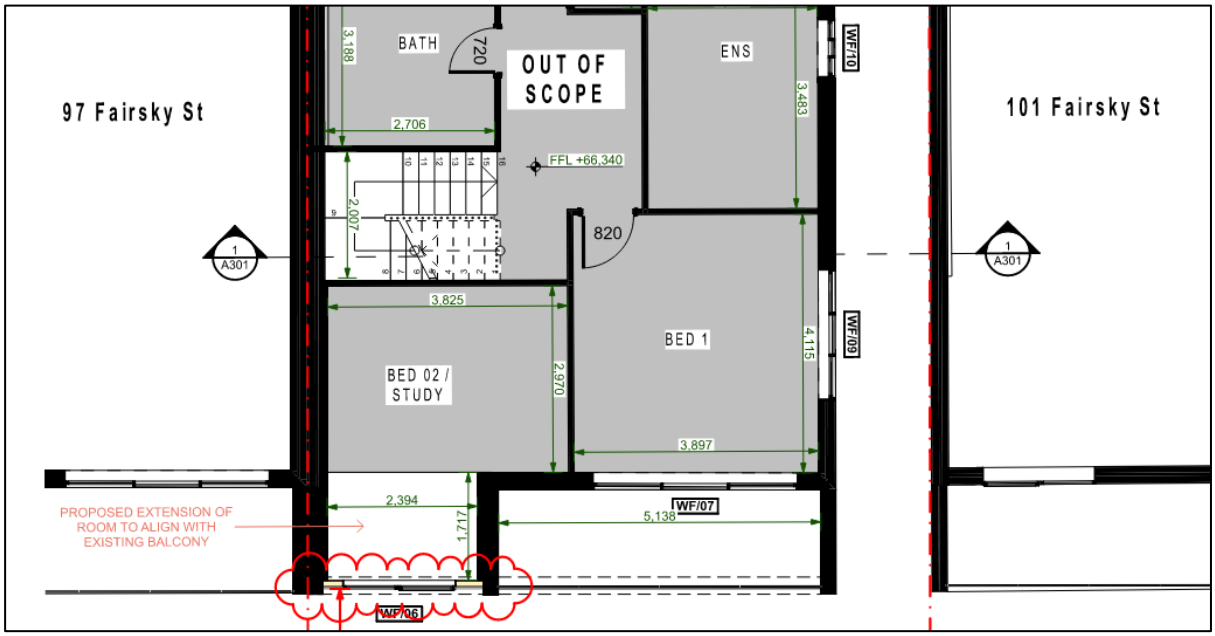

Figure 1 – Amended Floor Plan to show extension alignment with first-floor balcony. Source: Applicant's submitted amended architectural plans, 15/10/2024.

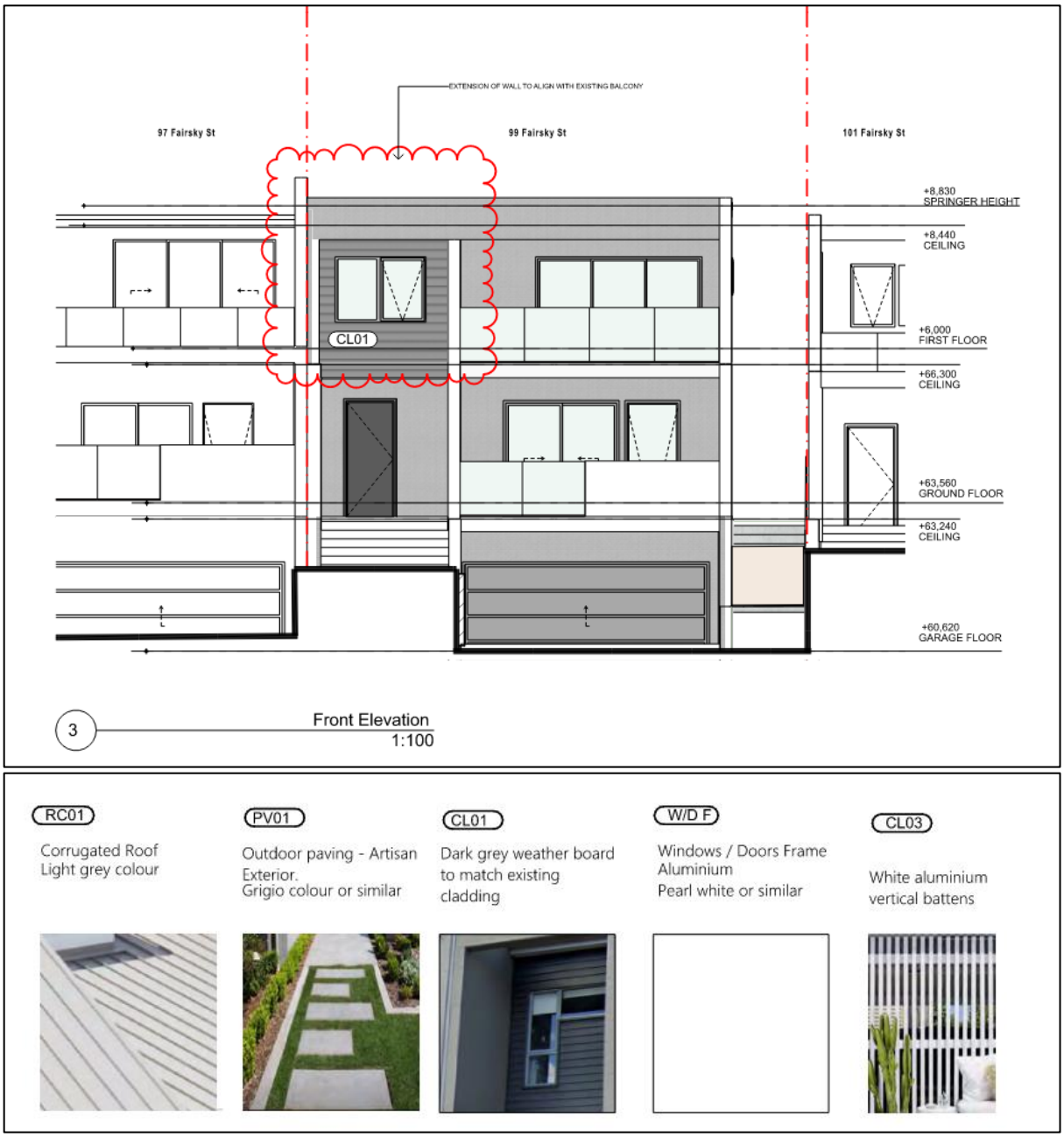

Figure 2 – Amended Front Elevation Plan to clearly demonstrate material, texture and colour of proposed first-floor extension. Source: Applicant's submitted amended architectural plans, 15/10/2024.

3. Amended Conditions

It is noted that the amended plans have resulted in a minor change to Condition 1 of the Draft Conditions of Consent to include the amended plans, which show the details of the materials of the proposed external wall and the re-alignment of the relocated wall to match the alignment of the existing first floor balcony.

A revised draft development consent has been prepared by the Assessment Officer which are attached to this Supplementary Report.

4. Conclusion

That the application (as amended) to seek development consent for alterations and additions to existing dwelling house including front extension of Bedroom 2 (first floor), rear extension of basement, installation of new skylights, deck extension, construction of a new rear pergola, outdoor

BBQ area and in-ground swimming pool with outdoor shower, and re-location of rainwater tank (Variation to Floor Space Ratio development standard), be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.

- The proposal is consistent with the specific objectives of the R1 zone in that:

    - It provides for the housing needs of the community, being a semi-detached dwelling, which is permitted with consent in the R1 zone.
    - The redesigned proposal adequately protects the amenity of the surrounding residents and has maintained appropriate acoustic levels to surrounding properties.

- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

- The development enhances the visual quality of the public domain/streetscape.

5. Appendix

Amended Clause 4.6 Variation Request

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Plan For Tomorrow

ARN: 300 016 077 755

Request to vary a development standard

Oct-24

SITE: **99 Fairsky Street, South Coogee**

PROPOSAL: **Alterations and Additions to an existing dwelling**

RE: **4.6 Variation to Clause 4.4 Floor space ratio**

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

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

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

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

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

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

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4.6 Exceptions to Development Standards

4.6 Exceptions to development standards

> *(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

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

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

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

Noted.

> *(5) (Repealed).*

Noted.

> *(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
> *(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
> *(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Not proposed.

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(7) (Repealed).

Noted.

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—
(a) a development standard for complying development,
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4,
(caa) clause 5.5,
(ca) clause 6.16(3)(b).

Not proposed.

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

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Site and proposed development

1. Describe the site.

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

Neighbourhood Scale & Streetscape

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

Site Scale

Lot 111 DP 1160306 (99 Fairsky Street, South Coogee) is a fairly regular shaped allotment with a total area of 272.6m² and a 9.894m frontage to Fairsky Street. The site has a gradient from the rear to the front of the site. The proposed site currently contains a single attached dwelling house.

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

2. Describe the proposed development.

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

Basement floor:

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

Ground floor:

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

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

1st Floor:

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

Roof:

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

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

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

4. What is the site's zoning?

The zoning of the land is R1 General Residential

5. Identify the development standard to be varied.

The development standard being varied is:

4.4 Floor space ratio

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

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

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

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

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

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

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6. Identify the type of development standard.

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

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

The standard is a numeric standard.

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

The maximum FSR permitted for the site is 0.7:1 (190.82sqm). The development proposes a non-compliant FSR of 0.81:1 (220.81sqm) which exceeds the FSR permitted by RLEP2012 and hence the reason for this variation.

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

The proposal exceeds the maximum FSR development standard by 29.99sqm, which is a percentage variation of 15.7%.

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

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

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Justification for the proposed variation

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

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

The test can be summarised as follows:

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

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

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

> *(1) The objectives of this clause are as follows—*
> *(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,*
> *(b) to ensure that buildings are well articulated and respond to environmental and energy needs,*
> *(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
> *(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

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

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Lot 111 DP 1160306 (99 Fairsky Street, South Coogee) is a fairly regular shaped allotment with a total area of 272.6m² and a 9.894m frontage to Fairsky Street. The site has a gradient from the rear to the front of the site. The proposed site currently contains a single attached dwelling house.

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

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

The maximum FSR permitted for the site is 0.7:1 (190.82sqm). The development has an existing FSR of 0.72:1 (196.27sqm) and the development proposes an increase to the GFA of 24.5sqm resulting in an FSR of 0.81:1 (220.81sqm).

The existing FSR was previously considered in accordance with the FSR development standard that was repealed 01 September 2023 that read as follows:

> *4.4 Floor space ratio*
> *(1) The objectives of this clause are as follows—*
> *(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,*
> *(b) to ensure that buildings are well articulated and respond to environmental and energy needs,*
> *(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
> *(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*
>
> *(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
>
> *(2A) Despite subclause (2), the maximum floor space ratio for a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential is not to exceed—*
> *(a) if the lot is more than 300 square metres but not more than 450 square metres—0.75:1, or*
> *(b) if the lot is more than 450 square metres but not more than 600 square metres—0.65:1, or*
> *(c) if the lot is more than 600 square metres—0.6:1.*

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

The site has an area of less than 300 square metres and the development is a semi-detached dwelling, thereby not requiring compliance with the FSR development standard. As such the existing development's FSR was merit assessed.

At the time of lodgement, the LEP has been revised such that the FSR development standard applicable to the site is as per the FSR map (i.e. 0.7:1). Accordingly, a variation of 29.99m^2 or 15 .7% is sought.

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

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

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

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

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

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

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

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

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

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

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

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

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

The term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument – Principal Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act.

The objects of the Act are as follows—

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

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

- The Environmental aspects and impacts of the proposal are outlined and addressed within this Statement. The proposed development will have no detrimental impact on natural or other resources, with a Planning Use that complements the site and area and existing infrastructure.
- The proposal facilitates a reasonable extension of the first floor, providing additional space and functionality for occupants without unreasonably compromising/affecting the streetscape and residential amenity.
- The extension is wholly contained within the building envelope of the dwelling, and will not result in substantial bulk, scale, and massing. The absence of any impacts (including overshadowing, privacy, view loss, amenity) associated with the variation ensures that sufficient environmental planning grounds and merits have been demonstrated.
- The development is orderly and rational, being consistent with the applicable Randwick City Council planning controls in the R1 General Residential Zone. That is:
    - *To provide for the housing needs of the community.*
        - The development maintains a residential dwelling.
    - *To provide for a variety of housing types and densities.*
        - The development maintains a residential dwelling.
    - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
        - N/A. The development maintains a residential dwelling.
    - *To allow the comprehensive redevelopment of land for primarily residential and open space purposes.*
        - The development maintains a residential dwelling on a residential zoned allotment.

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- *To protect the amenity of residents.*
  - The proposal facilitates a reasonable extension of the first floor, providing additional space and functionality for occupants without unreasonably compromising/affecting the streetscape and residential amenity being wholly contained within the building envelope of the dwelling. The absence of any impacts (including overshadowing, privacy, view loss, amenity) associated with the variation ensures that the amenity for residents and residents of adjoining developments is protected.

- *To encourage housing affordability.*
  - The development maintains a residential dwelling.

- *To enable small-scale business uses in existing commercial buildings.*
  - The development maintains a residential dwelling.

- The development maintains housing and the site is located in a residential area.
- There are no threatened species or the like in the area to be developed. The development will not have an environmental impact in relation to noise or air emissions. The site will be landscaped as part of the development.
- The site is not a heritage item or within proximity to a heritage item or located within a heritage conservation area.
- The proposal shows care and consideration for the existing and desired character of housing in the area. This ensures the amenity of the local area is reasonably protected.
- The proposal will utilise high quality building materials and finishes. It will be designed to meet BCA criteria and access considerations to ensure appropriate protection to the health and safety of occupants.

Ecologically Sustainable Development

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

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

Six Principles can be considered and applied:

1. Sustainable use - the aim of exploiting natural resources in a manner which is "sustainable" or "prudent" or "rational" or "wise" or "appropriate"

2. Effective integration of economic and environmental considerations in the decision making process

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3. The precautionary principle (referred to in 6(2)(a) of the Protection of the Environment Administration Act)

4. Inter-generational equity - the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations

5. Conservation of biological diversity and ecologically integrity should be a fundamental consideration; and

6. Internalisation of environmental costs into decision-making for economic and other development plans, programmes and projects likely to affect the environment.

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

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

Lot 111 DP 1160306 (99 Fairsky Street, South Coogee) is a fairly regular shaped allotment with a total area of 272.6m² and a 9.894m frontage to Fairsky Street. The site has a gradient from the rear to the front of the site. The proposed site currently contains a single attached dwelling house.

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

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

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

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

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

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Conclusion

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

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

Yours Faithfully,

Tania Hannaford
(Bach.UrbRegPlanning (MPIA), Dip.Proj.Management, Cert IV NatHERS Assessment)

Plan for Tomorrow™
M: +61 402 422 745
E: Tania@plan-for-tomorrow.com
W: www.plan-for-tomorrow.com

Design Matters National

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- Thermal Performance Assessor
- Whole of Home Assessment

DMN Accreditation Number: DMN/21/2023

NATIONWIDE HOUSE ENERGY RATING SCHEME

Plan for Tomorrow has not undertaken a site visit for the purposes of this report. This report is provided exclusively for the purposes described in this report. No liability is extended for any other use or to any other party. The report is based on conditions prevailing at the time of the report and information provided by the client. The report is only for which the land to which the report relates and only for the day it is issued. This report should be read in conjunction with submitted documents and plans relevant to the Application.

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Responsible officer: Charlotte Asbridge, Student Environmental Planning Officer

File Reference: DA/555/2024

6.

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Development Consent Conditions (Dwellings and Dual Occupancies)

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

Development Consent Conditions

GENERAL CONDITIONS

Condition

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

Plan	***Drawn by***	***Dated***	***Received by Council***
Site Plan	RME	15/10/2024	15 October 2024
Floor Plans (Basement & Ground Floor)	RME	15/10/2024	15 October 2024
Floor Plans (First Floor & Roof)	RME	15/10/2024	15 October 2024
Sections	RME	15/10/2024	15 October 2024
Elevations	RME	15/10/2024	15 October 2024
Swimming Pool Details	RME	15/10/2024	15 October 2024
Window Schedule	RME	15/10/2024	15 October 2024

BASIX Certificate No.	***Dated***	***Received by Council***
A1751635	14 June 2024	1 July 2024

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

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

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BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

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

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

3. **External Colours, Materials & Finishes**
The colours, materials and finishes of the external surfaces are to be compatible with the existing building and adjacent development to maintain the integrity and amenity of the building and the streetscape.

External materials, finishes and colours of the building are required to match, as closely as possible, the existing building and any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare.

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

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

4. **Section 7.12 Development Contributions**
In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of $220,000.00 the following applicable monetary levy must be paid to Council: $2,000.00

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

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

IDC = ODC x CP2/CP1

Where:
IDC = the indexed development cost
ODC = the original development cost determined by the Council
CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment
CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.

Condition Reason: To ensure relevant contributions are paid.

5. **Sydney Water**
All building, plumbing and drainage work must be carried out in accordance with the

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Condition

requirements of the Sydney Water Corporation.

The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

The Tap in™ service provides 24/7 access to a range of services, including:

- Building plan approvals
- Connection and disconnection approvals
- Diagrams
- Trade waste approvals
- Pressure information
- Water meter installations
- Pressure boosting and pump approvals
- Change to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's Tap in™ in online service is available at:
https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm

The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.

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

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

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

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

7. **Structural Adequacy**
Certificate of Adequacy supplied by a professional engineer shall be submitted to the Certifier (and the Council, if the Council is not the Certifier), certifying the structural adequacy of the existing structure to support the extension of the garage/ basement space below the ground floor.

Condition Reason: To ensure the structural integrity of the building is maintained.

8. **BASIX Requirements**
In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.

The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may

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	necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued. Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.
9.	**Stormwater Drainage** Surface water/stormwater (from the redeveloped portion of the site) must be drained and discharged to the street gutter in front of the site to the satisfaction of the Certifier and details of the proposed stormwater drainage system are to be included in the construction certificate details for the development. Condition Reason: To control and manage stormwater run-off.
10.	**Excavation Earthworks and Support of Adjoining Land** Details of proposed excavations and support of the adjoining land and buildings are to be prepared and be included in the construction certificate, to the satisfaction of the appointed Certifier. Condition Reason: To ensure adjoining land is adequately supported.
11.	**Excavation, Earthworks and Support of Adjoining Land** A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details the methods of support for any buildings located on the adjoining land, to the satisfaction of the Principal Certifier: • when undertaking excavation or building work within the zone of influence of the footings of a dwelling or other building that is located on the adjoining land; • when undertaking demolition work to a wall of a dwelling or other substantial structure that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling); • when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land; and • as otherwise may be required by the Certifier for the development. The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the Principal Certifier. Condition Reason: To ensure adjoining land is adequately supported.
12.	**Building Code of Australia – Swimming Pools** Swimming Pools and Spa Pools are to be designed and installed in accordance with the requirements of the *Building Code of Australia* and be provided with a child-resistant barrier in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools. Details of compliance are to be provided in the Construction Certificate. Temporary pool safety fencing is also required to be provided to swimming pools pending the completion of all building work and swimming pools must not be filled until a fencing inspection has been carried out and approved by the Principal Certifier. *Note: This development consent does not approve the design and location of swimming/spa pool safety barriers. Swimming/spa pool safety barriers are required to comply with the Swimming Pools Act 1992, Swimming Pools Regulation 2018 and*

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	Condition
	relevant Standards. Details of compliance are required to be included in the Construction Certificate, to the satisfaction of the appointed Certifier for the development. Condition Reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area.
13.	**Swimming Pool Safety** Swimming pools are to be designed, installed and operated in accordance with the following general requirements: • Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation. • Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed with a building to minimise noise emissions or result in a noise nuisance. • Water recirculation and filtrations systems are required to comply with AS 1926.3 (2010) Swimming Pool Safety – Water Recirculation and Filtration Systems. • Paving and ground surfaces adjacent to swimming pools are to be graded and so as to ensure that any pool overflow water is drained away from buildings and adjoining premises, so as not to result in a nuisance or damage to premises. Condition Reason: To minimise the impact of the pool on adjoining properties and to ensure the safety of the pool/spa area.
14.	**Site Seepage** The development must comply with the following requirements to ensure the adequate management of site seepage and sub-soil drainage: a) Seepage/ground water and subsoil drainage (from planter boxes etc) **must not** be collected & discharged directly or indirectly to Council's street gutter. b) Adequate provision is to be made for the ground water to drain around the basement garage level (to ensure the basement will not dam or slow the movement of the ground water through the development site). c) Any new walls of the extended basement garage should be suitably waterproofed or a suitable drainage system installed to restrict the entry of any seepage water into the extended basement garage level. d) Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to be fully managed within the site, without causing a nuisance to any premises and **ensuring that it does not drain or discharge (directly or indirectly) to the street gutter**. Details of any new proposed stormwater drainage system including any methods of waterproofing of the extended basement garage level should be prepared or approved by a suitably qualified and experienced Professional Engineer to the satisfaction of the Certifying Authority. Condition Reason: To ensure the basement level extension does not result in insufficient ground water drainage.
15.	**Geotechnical Report** A report prepared by an appropriately qualified Geotechnical Engineer certifying that the existing rock formations and substrate on the site is capable of:

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a) withstanding the proposed loads to be imposed;
b) withstanding the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
c) providing protection and support of adjoining properties; and
d) the provision of appropriate subsoil drainage during and upon completion of construction works

must be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate.

Recommendations made in the certified report must be complied with at all times.

Building plans and specifications submitted for approval with any construction certificate application must comply with (a), (b), (c) and (d) above and the certified report, including any recommendations made in the said certified report.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Condition Reason: To ensure the structural integrity of the subject site and associated building, and any adjoining sites during the excavation process.

BEFORE BUILDING WORK COMMENCES

	Condition

16. **Building Certification & Associated Requirements**
The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:

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

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

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

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

d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and

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

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

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

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Condition
are provided to the certifier and adhered to.

DURING BUILDING WORK

Condition

21. **Site Signage**

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

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

The sign must be—

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

This section does not apply in relation to—

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

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

22. **Restriction on Working Hours**

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	• Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	• Monday to Friday - 8.00am to 3.00pm • (maximum) • Saturday - No work permitted • Sunday & public holidays - No work permitted

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

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

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	Condition
23.	**Public Safety & Site Management** Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times: a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction. d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council. f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident. g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible. Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time. *If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.* h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land. i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines. j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council. k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public

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	Condition
	place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details. Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.
24.	**Building Encroachments** There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place. Condition Reason: To ensure no encroachment onto public land and to protect Council land.
25.	**Excavation Works – Geotechnical Report** Any excavation must be undertaken in accordance with any recommendations and methodologies outlined in the approved Geotechnical Report (refer to Condition 15). Condition Reason: To ensure the structural integrity of the subject site and associated building, and any adjoining sites during the excavation process.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

OCCUPATION AND ONGOING USE

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

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

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

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

DURING DEMOLITION WORK

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

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Condition
Removal In Progress", • Council is to be given at least two days written notice of demolition works involving materials containing asbestos, • Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request, • A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works. Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request. Condition Reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.

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