

Randwick Local Planning Panel (Electronic) Meeting

Thursday 13 February 2025



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC) MEETING

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Team on Thursday, 13 February 2025

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

| | | |
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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D4/25

Subject: 7 Hill Street, Coogee (DA/932/2024)

Executive Summary

| | |
|-----------------------------|--|
| Proposal: | Demolition of existing building and construction of a 4-storey residential flat building including basement level for 4 cars, three (3) residential dwellings, associated ancillary and landscaping works. |
| Ward: | North Ward |
| Applicant: | Byndcorp Pty Ltd |
| Owner: | Byndcorp Pty Ltd |
| Cost of works: | \$2,138,624.74 |
| Reason for referral: | Conflict of Interest as objector is a Council staff member |

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA932/2024 for demolition of existing building and construction of a 4-storey residential flat building including basement level for 4 cars, three (3) residential dwellings, associated ancillary and landscaping works, at No. 7 Hill Steet Coogee, for the following reasons:

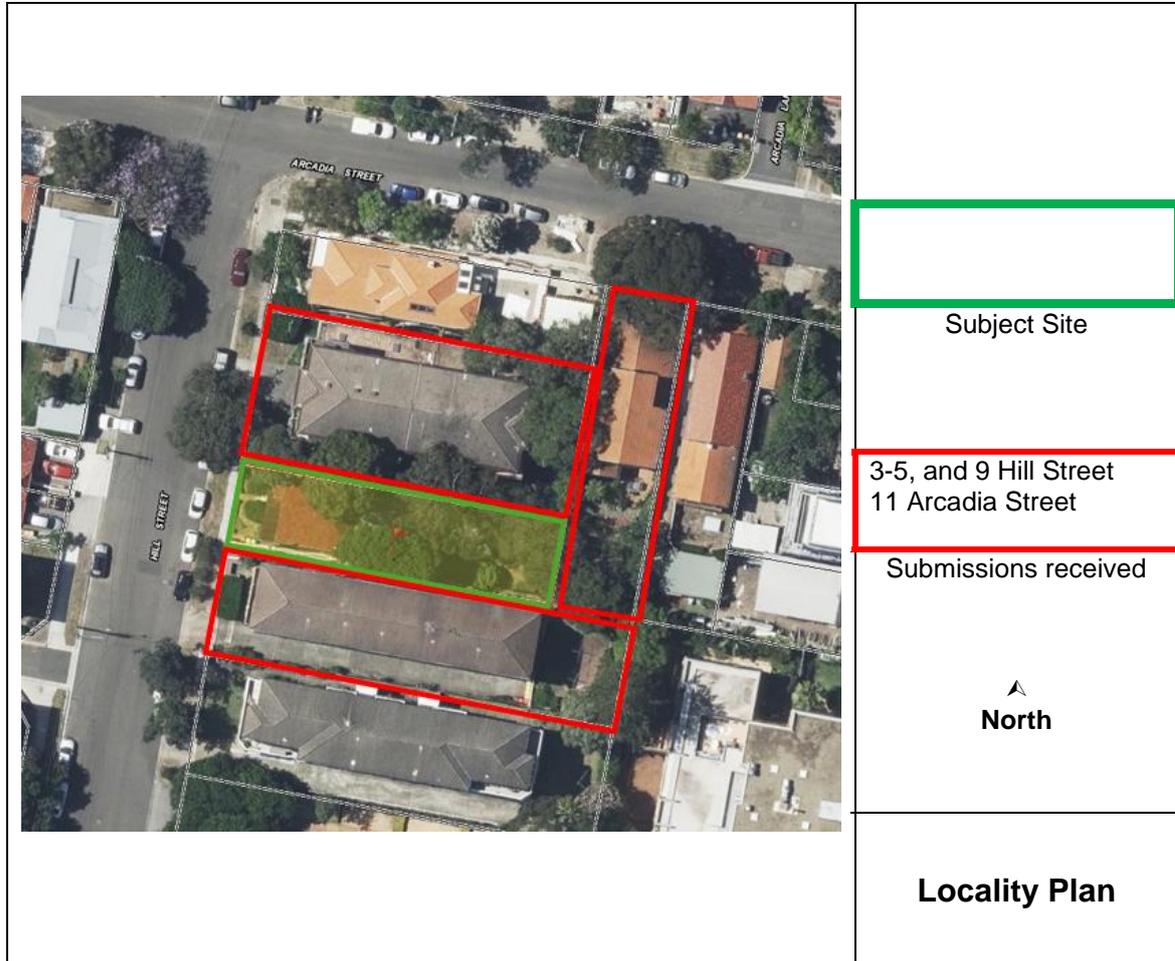
1. Pursuant to the provisions of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the proposal is inconsistent with the objectives of the R3 Medium Density Residential zone in that it is not compatible with the desired future character of the locality, it fails to recognise or reflect the desirable elements of the existing streetscape and built form, and it results in adverse amenity impacts to neighbouring residential properties in terms of visual bulk, reduction in solar access and visual and acoustic privacy impacts.
2. Pursuant to the provisions of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the proposed development is of an excessive height and is incompatible with the desired future character of the locality, resulting in non-compliance with the height of buildings development standard pursuant to clause 4.3 of RLEP. The Applicant has failed to provide a written request to vary the building height development standard pursuant to clause 4.6 of RLEP.
3. Pursuant to the provisions of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the proposed development is of an excessive bulk and scale and results in non-compliance with the floor space ratio development standard pursuant to clause 4.4 of RLEP. The Applicant has failed to provide a written request to vary the FSR development standard pursuant to clause 4.6 of RLEP.
4. Pursuant to the provisions of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the Applicant has failed to provide details of outdoor clothes drying as required by the submitted BASIX certificate pursuant to SEPP (Sustainable Buildings) 2022,
5. Pursuant to the provisions of section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the proposed development fails to comply with the objectives and controls of the Randwick Development Control Plan 2013:
 - Part B4: Landscaping and Biodiversity
 - Part B6: Recycling and Waste Management
 - Part B7: Transport, Traffic, Parking and Access
 - Part B8: Water Management
 - Part C2: Medium Density Residential

- Section 2.2 – Landscaped open space and deep soil area
 - Section 2.3 - Private and communal open space
 - Section 3.1 – Floor space ratio
 - Section 3.2 - Building height
 - Section 3.3 – Building depth
 - Section 3.4.2 – Side setback
 - Section 4.1 – Building design
 - Section 4.2 – Roof design
 - Section 4.3 – Habitable roof space
 - Section 4.4 – External wall height and ceiling height
 - Section 4.9 – Colours materials and finishes
 - Section 4.12 – Excavation
 - Section 5.1 – Solar access and overshadowing
 - Section 5.3 – Visual privacy
 - Section 5.4 – Acoustic privacy
 - Section 5.5 – View sharing
 - Section 6 – Car parking and access
 - Section 7.3 – Side fencing
 - Section 7.5 – swimming and spa pools
 - Section 7.6 – storage
 - Section 7.7 – laundry facilities and air conditioning units
6. Pursuant to section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development has not adequately demonstrated that it will not result in adverse environmental impacts on the existing neighbourhood character, the visual amenity of the street and the natural environment.
 7. Pursuant to section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development as not been adequately demonstrated as there is no consideration of the exceedance of the building height and FSR Council controls, and a failure to demonstrate that any potential impacts are acceptable and reasonable.
 8. Pursuant to section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest having regard to the non-compliances with relevant planning controls and merit based controls, the potential impacts on the amenity to residents in the immediate vicinity and the streetscape, and the objections raised in the public submissions.
 9. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to:
 - Clause 4.6 exception requests for building height and FSR
 - A preliminary acid sulfate soil investigation
 - Potential for surface flow inundation of the ground level apartment from the sunken terrace
 - BCA and fire compliance
 - Details of the lift and its overrun
 - Landscape and deep soil area calculation plans
 - Where the OSD is to be relocated to enable survival of the feature tree Tuckeroo
 - A window schedule identifying natural ventilation possibilities
 - Details of the proposed privacy screens
 - Areas and dimensions of rooms and balconies
 - Location of the air conditioning plant and clothes drying facilities
 - Cross sections demonstrating correct levels in the rear yard
 - Provision for bicycles and EV charging units
 - Location of storage in the units and basement
 - Side fencing details
 - Cross sections of the pool and steps on the level 03 balcony
 - Details of how landscaping maintenance can be achieved
 - Balustrading on the balconies to comply with the BCA
 - How the conflict between the mail boxes and landscaping is to be resolved
 - Whether ceiling heights in Level 03 comply with the BCA
 - Retaining walls and how levels at the boundaries are to be retained similar to existing levels
 - Location of communal open space

- Consideration of view loss
- Car park ventilation.

Attachment/s:

Nil



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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as a submitter lodging an objection is a member of Council planning staff.

The proposal seeks development consent for demolition of existing building and construction of a 4-storey residential flat building including basement level for 4 cars, three (3) residential dwellings, associated ancillary and landscaping works.

The key issues associated with the proposal relate to:

- Building height exceedance
- FSR exceedance
- Small side setbacks leading to excessive bulk, reduced acoustic and visual privacy and increased overshadowing
- Wall height non-compliance and ceiling height non-compliance
- Insufficient car parking, overuse of mechanical devices, lack of bicycle parking and non-compliant driveway grades
- Potential flooding by overland flows to the rear sunken terrace and ground floor unit and an unfeasible absorption trench in the rear yard.

- Amenity impacts to neighbours including by overshadowing, visual and acoustic privacy which are not assisted by the narrow side setbacks.
- Concern about occupant amenity as window operability is unclear and it is not demonstrated that natural ventilation can be achieved compliant with fire regulations.
- Landscaping where cost effective and BCA compliant maintenance can be achieved, failing which there will be impacts on the public domain and neighbour presentation. Inadequate soil depth and unsuitable plant selection in the rear yard.
- Inconsistencies within the lodged documentation and a lack of information to enable a full assessment of the application.

2. Site Description and Locality

The subject site is known as 7 Hill Street Coogee and is legally described as Lot 7 Section D in DP 619. The site is 410.9m², is regular in shape and has a 10.06m frontage to Hill Street to the west. The site contains a single storey brick residence with tile and metal roof.

The site slopes approximately 2.84m from RL23.73m at Hill Street to RL26.57 at the rear – a slope of 7% over the site.

Residential development surrounding the Site comprises a mix of low and medium density residential development. Adjacent to the north is 3-5 Hill Street – a four level residential flat building with garaging on the ground floor. To its north is 1 Hill Street which is a locally listed heritage dwelling house appearing as single storey to Hill Street and two storey to Arcadia Street. To the south of the Site are two separate four storey residential flat buildings with car parking at ground level at 9 and at 11 Hill Street. Further to their south is a driveway for a residential flat building of 166-172 Arcadia Street, and two x two storey dwelling houses.

Opposite the Site on the west side of Hill Street from north to south are: a two storey dwelling with garage at 9 Arcadia Street; semi-detached dwellings of 2 and 4 Hill Street; and then three x four storey residential flat buildings with parking at ground level at 6, 8-10, and 12 Hill Street. Each of the local residential flat buildings are dated from approximately the 1950s-1970s.

Two buildings to the north of the Site at 1 Hill Street is the locally listed heritage item I90 under RLEP 2012. The listing description is “Spanish Mission house”. The Arden Street sandstone retaining walls in the road reserve are locally heritage listed as L44 further to the east of the site. The listings are illustrated in Figure 8.



Fig 1: From left: 3-5, 7 and 9 Hill Street Coogee looking east



Fig 2: South elevation of 3-5 Hill Street looking north-west

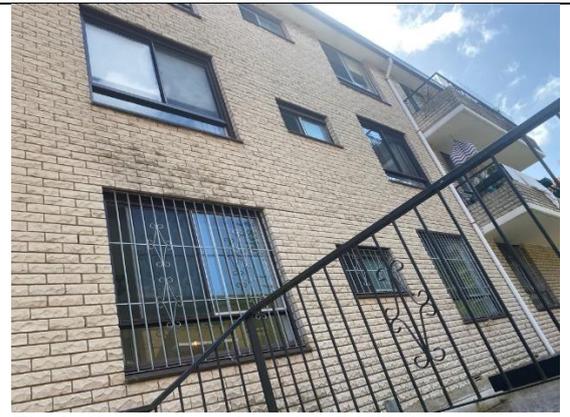


Fig 3: South elevation of 3-5 Hill Street looking north-east



Fig 4: West elevation of 3-5 Hill Street



Fig 5: North and West elevation of 9 Hill Street



Fig 6: North and east elevations of 12 (red brick at left), 8-10 and 6 (right) Hill Street



Fig 7: Left to right, 4 and 2 Hill Street, and 9 Arcadia Street garage and house

3. Relevant history

The application was lodged on 9 October 2024.

The proposal was considered by the Design Excellence Advisory Panel (DEAP) on 4 November 2024. The panel made a number of recommendations which are set out in full in Appendix 1. The issues raised include:

- Consideration of the height, setbacks, overshadowing, and privacy impacts for compatibility with the surrounding R3 zoned context
- Consideration should be given to removing the uppermost level to reduce overshadowing
- Possible height and FSR exceedances
- Further details required including lift specifications, landscape and deep soil calculations, pool clarifications, services placements, ventilation and window schedules, materials
- Removing inconsistencies and inaccuracies between the plans and supporting documents
- Issues around the planters and landscaping

On 26 November 2024 the applicant filed a Class 1 Appeal in the Land and Environment Court for a deemed refusal under proceedings number 2024/439250. The first directions hearing was held on 22 January 2025 and the section 34 conciliation conference scheduled for June 2025.

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4. Proposal

The proposal seeks development consent for demolition of existing building and construction of a 4-storey residential flat building including basement level for 4 cars, three (3) residential dwellings, associated ancillary and landscaping work. Specifically the proposal includes:

- Basement:
 - Ramp with parking for 4 cars including two x turntables, waste room, lift, stairs, storage and services
- Ground floor:
 - Entry lobby on the south side accessing lift and stairs
 - 3 bedroom unit (two with ensuite), front balcony off master bedroom, rear terrace off combined living/dining/ kitchen and rear private landscaped courtyard at the rear
 - Courtyard on northern side between bedroom 3 and the dining room
- Level 01:
 - 3 bedroom unit (two with ensuite), front balcony off two front bedrooms, rear balcony off combined living/dining/ kitchen area
 - Courtyard planter on northern side
- Level 02
 - Penthouse lower level with two bedrooms (one with ensuite) and combined living/dining/ kitchen area, front balcony off two front bedrooms, rear balcony off combined living/dining/kitchen area, internal staircase to Level 03 upper penthouse
 - Courtyard planter on northern side
- Level 03:
 - Penthouse upper level with a master bedroom with ensuite and walk-in-robe, with balcony to the rear off the bedroom
 - Large front balcony with elevated circular pool and large landscaping planter
 - Courtyard planter on northern side
- Roof:
 - Low sloped skillion roof down from north to south
- Planters are proposed along most of the side elevations and on the rear and front of each balcony.
- Landscaping proposed includes to transplant a frangipani from the southern boundary to the rear yard, to include a feature *Howea fosteriana* Kentia palm in the northern courtyard, and include a Tuckeroo in the front setback.
- The stormwater plan includes an absorption trench in the elevated rear yard and an OSD in the grassed area if the front setback in the same location as the Tuckeroo.

5. Notification

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

- Strata Plan 6623 – 9 Hill Street

| Issue | Comment |
|--|--|
| Fails to meet objectives of planning controls due to excessive height, bulk and scale. Overdevelopment | Noted. Appears to exceed height and FSR and building separation is small. |
| Height measured incorrectly – not using <i>Merman Investments v Woollahra Council</i> . Height is 13.1m. No cl 4.6 for exceedance of building height control | Note that the Geotech report indicates onsite surface levels are similar to the north and south neighbours, but the site levels on the neighbour to the east is up to 0.8m higher than the site. |
| Insufficient side setbacks | Side setback |

| Issue | Comment |
|--|---|
| <p>Landscaping:</p> <ul style="list-style-type: none"> • Inadequate pervious landscaping at ground level. • Impacts on native vegetation and habitat. • Transplant feasibility • Tree canopy to be 3m from buildings and 5m from boundaries • 4m high screen planting required on boundary to 9 Hill St • Increase deep soil garden bed widths to side setback • Planter box required along full width of deck to side boundary to be planted with native species reaching 1.8m at maturity | <ul style="list-style-type: none"> • Unclear if stated areas are correct. • Two native trees to be retained. • Agreed transplanting may impact on Tree B as well. |
| <p>Does not display design excellence. Inadequate articulation</p> | <p>The DEAP has made various suggestions. The proposal is not subject to the design excellence provisions of clause 6.11 of the RLEP 2012.</p> |
| <p>Incomplete information including cl 4.6, construction traffic management plan, height plane blanket, privacy impacts, room uses of neighbouring buildings, adequate montages, survey not transferred to the drawings, inadequate geotechnical assessment re excessive excavation, external plant and stormwater.</p> | <p>Agreed no cl 4.6. A construction traffic management plan is usually conditioned. Details of privacy screening are not provided. Agree room uses of neighbouring buildings is not provided, although it is clear that living areas adjoin the balconies of 9 Hill Street. Survey points more visible on the stormwater plans. Geotech assessment is standard for this type of application, although further details are required for acid sulfate soil possibility. Agree external plant not shown and stormwater plan is inadequate regarding the location of the OSD and absorption trench.</p> |
| <p>Loss of visual amenity from neighbours and the public domain due to bulk and scale. Inconsistent with the streetscape – it will not appear as low density</p> | <p>Note that there are many residential flat buildings in the vicinity and it is in the R3 zone for medium density. The site is between two x 4 storey RFBs.</p> |
| <p>Reference to a side boundary envelope and building height plane of 35 degrees</p> | <p>Not applicable. However, there is a wall height control with which the proposal is inconsistent.</p> |
| <p>Does not step down with the topography</p> | <p>Levels are incorrect on the plans and require amendment.</p> |
| <p>View loss – not specified. Trees interrupting view corridors</p> | <p>Details are not provided about these alleged impacts.</p> |
| <p>Traffic and parking:</p> <ul style="list-style-type: none"> • Restricted parking, swept paths need revision • Driveway width should be indicated due to minimum widths in AS. Need dimensions generally • Must comply with AS 2890 • Demolition and construction traffic management plan required | <ul style="list-style-type: none"> • Noted – see Traffic Engineer's report. • Agreed. • AS compliance can be conditioned. • Traffic management plans can be conditioned. |
| <p>Impacts on solar access.</p> <ul style="list-style-type: none"> • Non-compliance for both living and landscape area for 9 Hill St. • Non-compliance arises from poor design and non-compliance with controls. • 30 minutes solar access diagrams should be provided | <ul style="list-style-type: none"> • Agreed. • Greater consideration of solar impacts is required. • Hourly solar diagrams is sufficient. |

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| Issue | Comment |
|--|--|
| Privacy impacts: <ul style="list-style-type: none"> • Overlooking • Upper floor level and amount of glazing is excessive and lead to visual and acoustic privacy impacts • No privacy impact assessment • Habitable rooms are not orientated to avoid impacts. Screening devices are insufficient • Balconies increase impacts | Details of privacy screens are not provided. Operability of windows is not provided and a window schedule is required. Habitable rooms are generally oriented to the front and rear which is acceptable. Agreed that balconies will increase impacts but each unit should have some private open space attached to their living areas. The top level balconies are problematic however. |
| Excessive excavation and Geotech concerns: <ul style="list-style-type: none"> • Excavation should be removed from setback zones • Geotech report has not provided adequate recommendations to protect 9 Hill Street from impacts • Lack of coordination between the DA drawings to Geotech requirements • No details about implementation plan | It is unclear if the width of the proposed contiguous pile wall has been taken into account in the architectural plans. The report recommends dilapidation reports, inspections. These matters could be conditioned, save whether they have ensured sufficient space for the shoring. |
| Stormwater. Inadequate collection of stormwater along the boundaries. The pits should be increased with large pits and pipes to accord with the 1% AEP. Insufficient information to demonstrate compliance with Council's OSD requirements. A Drains model is required | See key issues regarding stormwater pooling in the rear yard and the infiltration trench in the rear yard. OSD requires relocation. |
| Dilapidation reports are required. Support for adjoining buildings required | Conditions can be imposed requiring dilapidation reports pre- and post-construction. Support is a prescribed condition. |
| Vibration thresholds should be 3mm/s for older buildings. Geotechnical monitoring and methodology required | Could be conditioned. |
| Not in the public interest | Noted. |

- Unit 6, 9 Hill Street

| Issue | Comment |
|---|---|
| Impact on quality of life by reducing living standards | Agreed that there will be reduced solar access, increased bulk and there are possible privacy impacts. |
| Acoustic privacy impacts from large noisy balconies and swimming pool and BBQ | Agreed that this is a risk from the top level front balcony. |
| Visual privacy – opposite his bedroom | It is unclear where unit 6 is in the building. Privacy screens do not extend the whole length of the balconies at 1.6m and no details are provided. Agreed privacy may be reduced. |
| Overshadowing leading to moisture retention | There will be increased overshadowing so moisture retention is agreed to be more likely. |
| Reduced ventilation to 9 Hill Street | This may well occur particularly to the lower units at 9 Hill Street. |
| Overdevelopment of the site | The height and FSR controls appear to be exceeded and side setbacks are narrow. |
| Out of character with other strata buildings in the Street | Other strata buildings are 3 levels of living about ground level parking and have a pitched (hipped) roof from the street, so yes it will be out of character. They are however from a different era. |

| Issue | Comment |
|---|---|
| Construction impacts leading to damage to the structure of neighbouring buildings | There is a prescribed condition to provide support. Conditions of consent normally deal with these matters. |

- Unit 7, 9 Hill Street

| Issue | Comment |
|--|--|
| Will take away all living room natural light, tree view and free flowing air | The shadow diagrams illustrate that there will be a reduction in sunlight for all units at 9 Hill Street, although all top level units will retain some sunlight (albeit not to the floor of the living/balconies). Natural light will continue to be experienced. As a top floor unit, natural ventilation is likely to be retained sufficiently. No evidence of the tree view is provided, however it is unlikely that such a loss would prevent consent, subject to compliance with the building height and FSR controls. |
| Will increase electricity bills, cause dampness, mould and impact health | Perhaps, however these are very wide ranging claims. |
| Parking situation will be reduced | The proposal does not comply with Council's car parking requirements. |

- 9 Hill Street

| Issue | Comment |
|--|---|
| Bulk and scale is excessive and inappropriate for the site | It appears it exceeds building height and FSR with no clause 4.6 request. |
| Side setbacks on south side are not acceptable and result in a 4m separation between the building and 9 Hill Street. Also inconsistent with the ADG setbacks | ADG setbacks would be excessive on this small width site, however it is agreed that the side setbacks are narrow. |
| Setbacks lead to impacts by loss of privacy, sunlight access and outlook | Agreed. |
| Height of building – it is 12.38m and exceeds the control and no clause 4.6 | Agreed that it appears to exceed the building height control and no clause 4.6. |
| Overshadowing leads to a significant reduction in access to sunlight. It is not compliant with setbacks | Agreed there is a large reduction in sunlight access to 9 Hill Street. Setbacks are on merit but they are narrow. |
| Traffic and Parking: shortfall of one car space under the DCP, impacting on on-street parking. | Agreed. |
| Inconsistencies between the SEE and the Traffic Impact Statement | Agreed. |

- Strata Plan 11147 – 3-5 Hill Street

| Issue | Comment |
|---|---|
| Generally supportive but there are issues | Noted. |
| Streetscape: Unclear about the extent of visibility of the top level. If it is visible it should be reduced in size and the top level further setback from the front. A 5 storey building is not compatible with the streetscape. | Agreed it is unclear if the top front balcony will be visible, particularly with the raised pool. Although there are 5 storeys, one is underground. Four levels above ground is the typical Residential flat building in this area. |
| The front terrace on the top level should be deleted as it will be visible from the street with detrimental privacy impacts to neighbours | Agreed that it is very possible that the front balcony will be visible from the street and that it could have detrimental acoustic privacy impacts to neighbours. |

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| Issue | Comment |
|--|--|
| Side setback: setback to the north boundary of 900mm is inconsistent with the DCP and should be at least 1.5m (including planter boxes). Suggests deleting planter boxes as they lead to bulk | The DCP requires a merit assessment rather than specific controls. Agreed that deleting the side planter boxes would reduce the appearance of bulk. |
| Room size dimensions not provided and should comply with ADG | Agreed, although the ADG does not apply. |
| Rear setback: Not consistent with 3-5 Hill Street and adds to visual bulk. The rear setback should match 3-5 Hill Street | The proposal exceeds the DCP rear setback control and section 4.15(3A) prevent the imposition of a more onerous standard. In any event, the rear setback of 7m is only marginally less than 3-5 Hill Street. |
| Side windows and paneling: lack of details about operability of the side windows, leading to possible privacy impacts. Full height paneling should be fixed to prevent direct overlooking | Agreed that operability of windows is not shown. A window schedule is required. |
| Terrace windows: northern courtyard allows for privacy impacts from the windows – they should be fixed and frosted to 1.6m | No window schedule is provided. Further information is required. |
| Balconies will lead to visual and acoustic privacy impacts. Full height solid walls are required to the northern side | Agreed that the privacy screens are not to 1.6m for the full length of the useable balcony which could result in privacy impacts. |
| Penthouse has 4 balconies which is excessive. The top level front balcony should be deleted as it does not adjoin a living area. | Neither top level balcony adjoins a living area and access to them is not shown in the plans. The front balcony on the top level is particularly large. |
| Side trafficable areas should be non-trafficable | Agreed |
| Survey: it is inadequate to understand the levels of the site compared to 3-5 Hill St. There is no RL height of the retaining wall on the common boundary | The survey demonstrates the window locations and heights and this can be translated to the plans. Fence RL – noted. |
| Earthworks: Impacts of excavation area unclear and further sections are required. Existing different levels are not shown nor the impacts on 3-5 Hill Street. Level of excavation is excessive | A geotechnical report is provided for excavation. Conditions can manage excavation. There is a concern about the presence of acid sulfate soils. |
| RL of ground floor upper rear private courtyard is incorrect | Agreed – clarification is required. |
| Basement: poorly laid out | Agreed – it is very tight for maneuvering. |
| Side fencing: Exceeds 1.8m in height | Agreed. |
| Fire equipment: No BCA assessment is provided. Unclear if the proposal complies with fire safety standards including lack of 2 staircases to the basement, if a fire hydrant/booster is required, fire rating of windows | Noted. |
| Construction methodology: adequate conditions of consent required to include a dilapidation report and a vibration and noise management strategy, a geotechnical strategy and construction methodology | Noted. |
| Plan errors: incorrect labelling | Agreed |
| Amended plans: Any amended plans – please notify | Noted – renotification would be in accordance with Council's policies. |

- Unit 10, 3-5 Hill Street

| Issue | Comment |
|---|---|
| Prefer to retain the existing house. Proposal will take away a lot of sun, sea breeze and privacy | Noted however the current property is dilapidated and the site is zoned R3 medium density residential. Agreed there will be a reduction in sun but as the site is south of the objector, it will not increase overshadowing for that occupant. Privacy does remain a concern, although privacy screens are provided across most windows (noting that their details are not provided). |
| Increase noise and air pollution from more cars and demolition. Increase in waste from demolition | A construction and waste management plan could be conditioned. |
| Will lower the quality of life | Noted. |

- 11 Arcadia Street Coogee

| Issue | Comment |
|---|--|
| The 2 apartment blocks each side of the site reduce sunlight received to her property and this proposal will compound the impact of sunlight loss to her property | 11 Arcadia Street is to the north-east of the site with the rear yard adjacent to the rear boundary of the site. The shadow diagrams illustrate that 3-5 Hill Street overshadows the rear yard of 11 Arcadia Street from 2pm in midwinter. The proposal will not increase overshadowing at midwinter to 11 Arcadia Street. |

6. Relevant Environment Planning Instruments

6.1. SEPP (Housing) 2021

As the proposal does not include four dwellings, the provisions of Chapter 4 of the Housing SEPP (2021) relating to residential flat buildings and the Apartment Design Guide, do not apply to the proposal.

6.2. SEPP (Sustainable Buildings) 2022

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

6.3. SEPP (Biodiversity and Conservation) 2021

No native trees are proposed for removal and the existing Frangipanni tree is proposed for translocation. The SEPP provisions are therefore not a hindrance to any consent.

6.4. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

The existing house appears to have occupied the site since at least 1943. However a change of use is proposed from a dwelling house to a residential flat building. The site is however not as listed in section 4.6(4) of the SEPP and it is therefore considered that the site is unlikely to be affected by contamination such as to require a preliminary site investigation.

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

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

The proposal is generally found not to be consistent with the specific objectives of the zone in that the proposed activity and built form will not protect the amenity of the local residents.

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

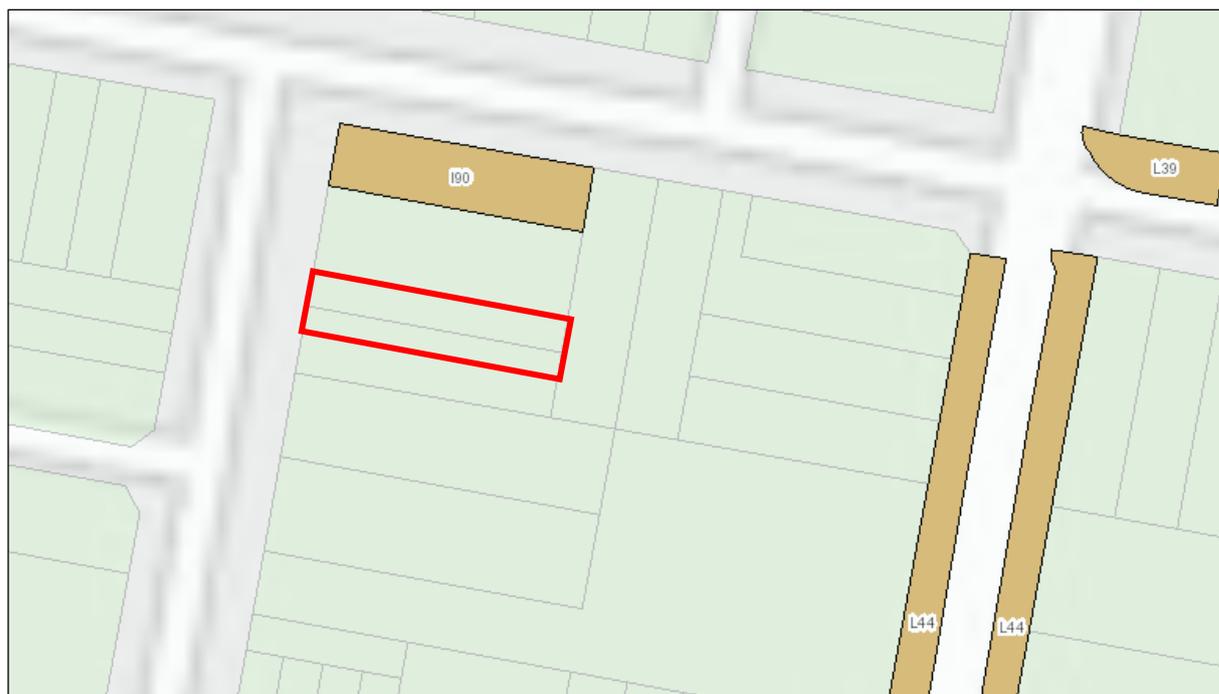
| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------------|----------------------|---|---------------------|
| Cl 4.4: Floor space ratio (max) | 0.9:1 | Stated to be 0.9:1, however one level of lift not included | No |
| Cl 4.3: Building height (max) | 12m | Stated to be 12m when measured from the FFL of the existing house. This does not include the 200mm below the floor slab | No |

6.5.1. Clause 4.6 - Exceptions to development standards

The proposal is considered to breach both the building height and the FSR development standards. No clause 4.6 exception request has been provided for either and the application must therefore be refused.

6.5.2. Clause 5.10 - Heritage conservation

Clause 5.10(5) enables the consent authority to require a heritage management document be prepared to assess the extent to which the proposed development affects a heritage item or heritage conservation area when it is in the vicinity. 1 Hill Street is a heritage item as a Spanish mission house. The site is separated from the heritage item by 3-5 Hill Street and very unlikely to impact the heritage significance of the item. The heritage listings (including the Arden Street sandstone walls are illustrated in Figure 8 below.



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Figure 8: Extract of Heritage map showing item I90 and L44 (site outlined in red) (Randwick LEP 2012)

6.5.3. Clause 6.1 Acid sulfate soils

Clause 6.1 requires a preliminary acid sulfate soil investigation should be conducted where management of acid sulfate soils may be required. The excavation is proposed to approximately 4.5m with groundwater expected approximately 1 metre below that level. There is a possibility of excavation within the groundwater table and no assessment has been conducted.

6.5.4. Clause 6.2 – Earthworks

Clause 6.2 requires the consent authority to consider various matters prior to granting consent to earthworks, including the effect of the development on the likely future use of the land, the effect on the existing and likely amenity of adjoining properties and ways to mitigate impacts. A geotechnical report has been provided. Geotechnical works can be conditioned to ensure that their implementation is suitable.

6.5.5. Clause 6.4 – Stormwater management

Clause 6.4 requires the consent authority to be satisfied that the development will maximise the use of water permeable surfaces, if possible include on site stormwater retention and avoid impacts of stormwater runoff. Stormwater plans have been submitted. They inadequately illustrate that there is a likelihood of water overflow entrapment in the sunken rear yard. The ground floor at the rear requires raising and a passageway for surface flows provided at the rear. The proposed infiltration area is impractical as it will need to be about 5m deep to drain the basement with the invert levels shown and is not supported. The OSD is located over deep soil and under the proposed feature tree and must be relocated. Levels at the rear of the proposal and inconsistently stated in the documentation.

The consent authority would not be satisfied that the development has adequately considered adverse impacts of stormwater run-off or that the permeable surfaces have been maximized.

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7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

8. Environmental Assessment

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

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument | See discussion in sections 6 & 7 and key issues below. |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | Nil. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The proposal fails to satisfy multiple of the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below. |
| Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement | Not applicable. |
| Section 4.15(1)(a)(iv) – Provisions of the regulations | The relevant clauses of the Regulations have been satisfied. |
| Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development will lead to environmental impacts on the built environment and amenity of neighbours, and the sunken terrace at the rear will lead to overland flows infiltrating the ground floor unit. The proposal is inconsistent with the dominant residential character in the locality.</p> <p>The proposal will result in detrimental social or economic impacts on the locality.</p> |
| Section 4.15(1)(c) – The suitability of the site for the development | The site is located in close proximity to local services and public transport. The proposal exceeds the height and FSR controls, includes small side setbacks and is seen as an overdevelopment of the site. Therefore, the site is considered unsuitable for the proposed development. |
| Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation | The issues raised in the submissions have been addressed in this report. |

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15(1)(e) – The public interest | The proposal will result in adverse environmental, social or economic impacts on the locality and neighbours. General good amenity for the occupants has not been demonstrated in relation to natural ventilation and overland flows. Accordingly, the proposal is not considered to be in the public interest. |

8.1. Discussion of key issues

8.1.1. Building height

The proposal appears to exceed the building height control which would require the provision of a clause 4.6 exception request as evidenced by:

- The FFL of the existing dwelling is at RL25.11. The height of the northern roof edge is RL37.15 providing a height of 12.04m.
- *Hayek v Randwick City Council* [2024] NSWLEC 1631 is a case which recently considered height calculation and concluded [at 67] that a slab of 200mm should be included. The height exceedance is therefore 240mm if taken from the finished floor level. This followed the reasoning in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.
- The geotechnical report indicates that the surface levels of 3-5 Hill Street and 9 Hill Street are roughly similar to the site. The survey indicates a spot level of RL24.04 just inside 9 Hill Street opposite the proposed internal spiral staircase, which would provide for a height of 12.75m.

During the DEAP meeting it was explained by the applicant's architect that a special lift is proposed which does not require a lift overrun – a mere 2.7m is required. No details of this lift to ensure that a height breach arising from any lift overrun have been provided.

No clause 4.6 exception request has been provided justifying the height exceedance and the application must therefore be refused.

8.1.2. Floor space ratio

The proposal appears to exceed the floor space ratio control of 0.9:1 and no clause 4.6 exception request is provided. The proposed FSR is 0.89:1. The plans indicate that the GFA is 1.84m² below the maximum GFA development standard under the LEP. The lift between Level 2 and Level 3 only services the penthouse. As it is not "common vertical circulation" within this apartment, it is not within the exclusions under the LEP definition and one level of the lift must be included in the calculation. As the lift appears to be approximately 2m x 2m this leads to an exceedance of the FSR control, therefore requiring a clause 4.6 exception request. As no clause 4.6 exception request has been provided justifying the FSR exceedance and the application must therefore be refused.

8.1.3. Side setbacks

The side planters reduce the side setbacks to a bare 1.1m to 900mm over the extent of the building, leading to increased perception of bulk for neighbours and the streetscape. They also lead somewhat to additional overshadowing of 9 Hill Street to the south. It is unclear how those planters would be maintained. A side setback of 1.5m should generally be achieved at all levels. For a lot of 10.06m wide, the DCP states that side setbacks should be judged on merit. The objectives include to ensure adequate separation between buildings for visual and acoustic privacy, solar access, air circulation and views. The 900mm wide side setbacks fail to achieve those objectives.

8.1.4. *Wall height and ceilings*

The wall height control in section 4.4 of part C2 of the DCP has not been met notwithstanding the statements in the Statement of Environmental Effects. The ceilings in the penthouse upper level do not comply with the recommended 2.7m minimum ceiling height in the DCP. Level 3 is not considered to be within a roof form and hence the wall height exceedance contributes to perceived bulk for the proposal.

8.1.5. *Car parking access and numbers*

The DCP requires a minimum of 5 car spaces for the development. Only 4 are provided and insufficient justification is provided for that non-compliance.

There is too great a reliance upon two mechanical devices (turntables) which will lead to occupants relying on on-street parking.

The internal access driveway does not comply with AS2890.1 which may impact sightlines and pedestrian safety.

Two bicycle parks are required and none are provided.

8.1.6. *Flooding and drainage*

There is a likelihood that the development will be flooded by surface flows entering the ground floor dwelling from the sunken rear yard. Modelling predicts a minor overland flow path entering the site from the north near the rear of the site with peak flood depths of about 0.1m predicted from the 1% AEP. The FFL of the ground floor is at the same level as the sunken terrace (at RL24.76). The terrace is an entrapment low point and the ground floor should be a minimum 150mm above the surrounding ground/terrace level with an escape route for surface flows from the rear terrace.

The infiltration area in the rear yard is impractical due to the depth required and there are errors in the drainage plans with the depiction of surface levels in the rear yard.

8.1.7. *Amenity*

The proposal leads to approximately 5 of the 9 units at 9 Hills Street having at least 3 hours of direct sunlight at midwinter - only 55% of the units have compliant sunlight under the RDCP 2013 controls.

As there is no window schedule it is unclear whether the apartments will obtain adequate natural ventilation, particularly given the narrow side setbacks and fire protection which will be necessary for them due to proximity to the side boundaries.

There are no details of the privacy screens to demonstrate that visual privacy can be achieved. Additionally, the privacy screens do not extend to 1.6m for the whole length of balcony. The swimming pool on the Level 03 front balcony appears to be raised and it is unclear whether visual privacy can be achieved to the neighbouring properties. There is no privacy screening to the lobby areas and courtyard areas and it is not demonstrated that adequate visual privacy can be provided to the neighbours.

The large entertaining front balcony with pool and balcony on Level 03 raise concerns for acceptable acoustic privacy for the adjacent neighbours.

8.1.8. *Landscaping*

No calculations plan is provided for landscaped area and deep soil area illustrating what is included and what is not.

There is inadequate soil depth for the suggested planting in the courtyard, above the OSD for the Tuckeroo and within the planters – all of which have a depth of approximately 400-600mm (although details are not stated).

It is not demonstrated that maintenance of the balcony landscaping can be achieved in a cost-effective manner consistent with building regulations. Failure of these to thrive will impact on the presentation to the public domain and the neighbours.

The selected plants in the rear are unlikely to achieve acceptable screening to the rear boundary fences and to provide acceptable amenity to the residents from overlooking by neighbours.

8.1.9. *Plan and documentation inconsistencies*

There are multiple inconsistencies within the submitted documentation, including:

- (a) The SEE refers to 5 car spaces and a car lift, although the plans only show 4 car spaces with no lift.
- (b) The Traffic report indicates there are 3 bike spaces although none are shown in the plans.
- (c) The elevations are incorrectly identified in the title block.
- (d) The mailboxes are shown on the ground floor plan which conflicts with the planting shown in landscape plan L-02.
- (e) The ground floor plan DA13 indicates steps to the rear courtyard. The levels of both the terrace and that courtyard are stated to both be RL24760. DA20 indicates that there is a retaining wall to the rear elevated courtyard. That section is shown to pass through the steps but the steps are not shown in the section. No details of the retaining walls are provided.
- (f) The Architectural plans state that the rear yard is all at RL24.76. The Stormwater plans show the terrace at RL24.76, the absorption trench at RL25.56 (purportedly at NGL, but NGL in that area is RL26.3 – 0.74m higher than proposed), with the upper rear yard at RL25.96. The survey in the upper courtyard area shows NGL at RL26.57. The landscape plans show the entire rear grassed courtyard at RL25.96.
- (g) Pool Level 03:
 - i. The pool on Level 03 appears from DA16 to be above ground with steps leading up to it. It is not shown in the long section DA20, nor the east, south or north elevations.
 - ii. The slatted fencing does not appear compliant with the Australian Standards for pools.
 - iii. A cross section is not provided to illustrate how this will work considering the presence of the bedroom beneath.
 - iv. Insufficient information is provided to illustrate that no privacy impacts to 9 Hill Street arise from this elevated platform. It is unclear if the pool will be visible from

the street given its elevated status as indicated in DA16, plus the required fencing to meet the Swimming Pool Act and Regulations.

- (h) The plans do not indicate the location of the air conditioning units. If they impact on landscaped area/deep soil they should be reflected in the landscaping/deep soil plans.
- (i) The Tuckeroo is shown as being planted over the OSD of 15.5m² shown in the stormwater plans which is inappropriate and will not lead to a healthy tree. From the plan "D.C.P.1 section" on sheet 2 of 4 of the stormwater plans, noting that the OSD tank area is 15.5m², there appears little room for any soil above the tank.
- (j) There is no apparent door from the windows on the western side of the upper penthouse level to provide access to the street-fronting balcony (W17). Likewise the elevations do not illustrate a door to the eastern top balcony (W20).
- (k) If page L-01 of the landscape plans are purporting to demonstrate landscaped area and deep soil for the purposes of the DCP compliance, they do not do so. The mottled green area denoted as deep soil gardens in the Legend does not appear to be 25% of the site and includes the OSD area of 15.5m². The flat green areas shown as turf in the legend in the lower site calculation plan includes the absorption trench and the OSD, both of which are clearly not deep soil, nor turfed given that there are grates shown in the plans. It is unclear whether the site complies with the deep soil and landscaped open space requirements of the DCP.

8.1.10. Lack of information

The provided documentation is lacking in many details which are required for assessment of the proposal, with those matters listed in the reasons for refusal.

9. Conclusion

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA932/2024 for demolition of existing building and construction of a 4-storey residential flat building including basement level for 4 cars, three (3) residential dwellings, associated ancillary and landscaping works, at No. 7 Hill Steet Coogee, for the following reasons:

1. Pursuant to the provisions of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the proposal is inconsistent with the objectives of the R3 Medium Density Residential zone in that it is not compatible with the desired future character of the locality, it fails to recognise or reflect the desirable elements of the existing streetscape and built form, and it results in adverse amenity impacts to neighbouring residential properties in terms of visual bulk, reduction in solar access and visual and acoustic privacy impacts.
2. Pursuant to the provisions of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the proposed development is of an excessive height and is incompatible with the desired future character of the locality, resulting in non-compliance with the height of buildings development standard pursuant to clause 4.3 of RLEP. The Applicant has failed to provide a written request to vary the building height development standard pursuant to clause 4.6 of RLEP.

3. Pursuant to the provisions of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the proposed development is of an excessive bulk and scale and results in non-compliance with the floor space ratio development standard pursuant to clause 4.4 of RLEP. The Applicant has failed to provide a written request to vary the FSR development standard pursuant to clause 4.6 of RLEP.
4. Pursuant to the provisions of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the Applicant has failed to provide details of outdoor clothes drying as required by the submitted BASIX certificate pursuant to SEPP (Sustainable Buildings) 2022,
5. Pursuant to the provisions of section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the application is considered unacceptable in that the proposed development fails to comply with the objectives and controls of the Randwick Development Control Plan 2013:
 - Part B4: Landscaping and Biodiversity
 - Part B6: Recycling and Waste Management
 - Part B7: Transport, Traffic, Parking and Access
 - Part B8: Water Management
 - Part C2: Medium Density Residential
 - Section 2.2 – Landscaped open space and deep soil area
 - Section 2.3 - Private and communal open space
 - Section 3.1 – Floor space ratio
 - Section 3.2 - Building height
 - Section 3.3 – Building depth
 - Section 3.4.2 – Side setback
 - Section 4.1 – Building design
 - Section 4.2 – Roof design
 - Section 4.3 – Habitable roof space
 - Section 4.4 – External wall height and ceiling height
 - Section 4.9 – Colours materials and finishes
 - Section 4.12 – Excavation
 - Section 5.1 – Solar access and overshadowing
 - Section 5.3 – Visual privacy
 - Section 5.4 – Acoustic privacy
 - Section 5.5 – View sharing
 - Section 6 – Car parking and access
 - Section 7.3 – Side fencing
 - Section 7.5 – swimming and spa pools
 - Section 7.6 – storage
 - Section 7.7 – laundry facilities and air conditioning units
6. Pursuant to section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development has not adequately demonstrated that it will not result in adverse environmental impacts on the existing neighbourhood character, the visual amenity of the street and the natural environment.
7. Pursuant to section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development as not been adequately demonstrated as there is no consideration of the exceedance of the building height and FSR Council controls, and a failure to demonstrate that any potential impacts are acceptable and reasonable.
8. Pursuant to section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest having regard to the non-compliances with relevant planning controls and merit based controls, the potential impacts on the amenity to residents in the immediate vicinity and the streetscape, and the objections raised in the public submissions.

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9. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to:
- Clause 4.6 exception requests for building height and FSR
 - A preliminary acid sulfate soil investigation
 - Potential for surface flow inundation of the ground level apartment from the sunken terrace
 - BCA and fire compliance
 - Details of the lift and its overrun
 - landscape and deep soil area calculation plans
 - where the OSD is to be relocated to enable survival of the feature tree Tuckeroo
 - a window schedule identifying natural ventilation possibilities
 - details of the proposed privacy screens
 - Areas and dimensions of rooms and balconies
 - Location of the air conditioning plant and clothes drying facilities
 - Cross sections demonstrating correct levels in the rear yard
 - Provision for bicycles and EV charging units
 - Location of storage in the units and basement
 - Side fencing details
 - Cross sections of the pool and steps on the level 03 balcony
 - Details of how landscaping maintenance can be achieved
 - Balustrading on the balconies to comply with the BCA
 - How the conflict between the mail boxes and landscaping is to be resolved
 - Whether ceiling heights in Level 03 comply with the BCA
 - Retaining walls and how levels at the boundaries are to be retained similar to existing levels
 - Location of communal open space
 - Consideration of view loss
 - Car park ventilation.

Appendix 1: Referrals

1. Design Excellence Advisory Panel (DEAP) Comments

PANEL COMMENTS

1. Context and Neighbourhood Character

- The site is located on Hill Street, Coogee, situated between two existing 4 storey residential flat buildings at 3-5 and 9 Hill Street.
- While the proposed typology aligns with the R3 zoned context, the proposal requires further review regarding building height, setbacks, overshadowing, and privacy impacts.
- The proposed use of pigmented concrete aligns with the predominantly brick streetscape. Specific details on the colour and texture of this material should be included in the revised drawings.

2. Built Form and Scale

- The 12m maximum building height has been measured from the finished floor level (FFL) of the existing house; however, if assessed under the Hayek v. Randwick City Council case law, it would exceed the height limit. The 12m height should be measured from 200mm below the FFL to account for slab thickness. Should this adjustment cause a height limit breach, a Clause 4.6 justification for non-compliance will be necessary.
- The Panel recommends considering the removal of the uppermost level to mitigate overshadowing impacts on 9 Hill Street. If the uppermost level is retained, compliance with BCA requirements for habitable ceiling heights (2400mm over at least two-thirds of the floor area) must be demonstrated.
- The Panel queried the lift overrun requirements due to proximity to the 12m height limit; the applicant confirmed no lift overrun is associated with the proposed lift. However, given the height sensitivity and proximity to nearby residential buildings, the lift specifications should be documented in the revised architectural plans.
- Additional details on the pool, which is located above a bedroom, are required, as it is not illustrated in the long section. Clarification is needed on whether it is above ground/balcony level; if so, the south elevation may be inaccurately represented, raising potential overlooking concerns toward 9 Hill Street.
- Further specifications for air conditioning units and service locations are required.

3. Density

- FSR is stated as 367.97m² or 0.89:1. However the Panel and Council question the exclusion of the private portion of the lift servicing the penthouse. Further justification may be required as this inclusion could result in a maximum FSR non-compliance.

4. Sustainability

- The Panel notes that the proposed rooftop could facilitate a full green roof and rooftop solar panels. Further consideration of these sustainability measures is encouraged, with input from a qualified landscape architect.

5. Landscape

- Revised plans should include the landscaped area and deep soil calculations, ensuring the on-site detention (OSD) area is excluded from these calculations.
- Provide clarification on the location of mailboxes, as the current proposal conflicts with the landscaping plan. Also check that AS compliant landings are provided in the accessible path of travel at mailboxes, entry gate and Lobby entry door.

- The ground floor's FFL is set at RL24.760, as is the rear yard according to DA13. However, DA20 shows the rear yard considerably higher, and stairs to the rear yard indicated in DA13 are absent in the long section. Additionally, the survey shows the rear yard at approximately RL25.5-26.5, making a reduction to RL24.760 inconsistent with retaining existing boundary levels.
- Based on this, it appears the ground floor drainage plan (sheet 2 of 4) may depict drainage uphill to the rear yard's absorption trench. This should be clarified in the amended documents and Stormwater Management Plan.
- An OSD is planned in the front yard near Hill Street. The landscape plans show a Tucker tree planted above the OSD, which does not appear feasible.
- The Panel recommends increasing the width of balcony planters to support meaningful gardens and potential screening.
- Soil depth for the central north-facing courtyard should be increased to a minimum of 600mm, ideally reaching 1m.
- Fencing type, height and details need to be shown, and any retaining walls at boundaries, noting the DCP height requirement for fencing in the front setback.

6. Amenity

- Overshadowing could be mitigated by removing the uppermost level and introducing a south-facing courtyard between the lift and fire stair. The ADG criteria of 70% of units at no 9 Hill St receiving 2 hours of sun on 21 June between 9am and 3pm should be the guide.
- A window schedule should be provided to demonstrate how ventilation is achieved within the restrictions of fire safety.
- The provision of car spaces is insufficient; four spaces are provided rather than the required five. No bike spaces are indicated on the plans, though the SEE specifies a car lift with five spaces and a car stacker, which conflicts with the Traffic report.
- The Traffic report mentions three bike spaces, but none are shown in the plans.
- Elevations are incorrectly labeled.
- Balcony and room areas and dimensions should be indicated, as should the Pool fence, and any air conditioning units or fire hydrant.
- Additional details on clothes-drying facilities are needed. The BASIX certificate specifies private outdoor unsheltered clothes-drying lines, but these are absent in the plans.

7. Safety

- Safety considerations were not discussed at this meeting.

8. Housing Diversity and Social Interaction

- While the development is not bound by the Apartment Design Guide (ADG), the Panel would welcome consideration of communal facilities.

9. Aesthetics

- The proposed pigmented concrete materiality is appropriate for the predominantly brick streetscape. Specific details on the colour and texture should be included in the revised drawings.
- Given the extensive use of precast paneling, further information on panel manufacturing and jointing should be included in the revised drawings.

SUMMARY AND RECOMMENDATIONS

- Consider the height, setbacks, overshadowing, and privacy impacts for compatibility with the surrounding R3 zoned context.
- Include specific colour and texture details for the pigmented concrete in revised drawings.
- Measure the 12m height limit from 200mm below FFL to account for slab thickness; if exceeded, submit a Clause 4.6 justification.
- Consider removing the uppermost level to reduce overshadowing; if retained, ensure compliance with BCA habitable ceiling heights.
- Include specific lift specifications due to the 12m height sensitivity and proximity to neighboring buildings.
- Clarify pool location and elevation in relation to privacy for 9 Hill Street, Coogee.
- Provide additional details for air conditioning and service unit placements and boundary fencing.
- Review FSR calculations, particularly the exclusion of the private lift serving the penthouse, to ensure compliance.
- Explore the possibility of a full green rooftop terrace with potential for green roofs and solar panels, with input from a landscape architect.
- Submit revised plans showing landscaped area and deep soil calculations, excluding the OSD.
- Re-evaluate mailbox location for compatibility with the landscaping plan, and review the accessible path of travel for AS compliance.
- Clarify rear yard levels and ground floor drainage plan to ensure they are consistent and effective.
- Confirm the feasibility of the Tuckeroo tree above the front yard OSD.
- Increase balcony planter widths for functional gardens and screening.
- Increase soil depth in the central north-facing courtyard to a minimum of 600mm, ideally 1m.
- Provide a window schedule to confirm ventilation methodologies.
- Provide sufficient car spaces, and indicate bike spaces in plans as per Traffic report.
- Label elevations accurately and indicate balcony and room dimensions on all drawings.
- Clarify clothes-drying facilities as specified by the BASIX certificate.
- Consider incorporating communal facilities to support resident interaction.
- Include concrete colour and texture specifications and provide details on precast panel manufacturing and jointing in the revised section and elevation drawings.

2. External referral comments:

2.1. Sydney Water

Conditions of consent should require section 73 and Building Plan Approval, including tree planting guidelines.

3. Internal referral comments:

3.1. Environmental Health

Proposed Development:

Demolition of existing building and construction of a 4-storey residential flat building including basement level for 4 cars, three (3) residential dwellings, associated ancillary and landscaping works.

Comments:

The development is found within a Class 5 acid sulfate soils zone and is within 500 meters of a Class 4 zone. The excavation for the proposed development is to a maximum depth of 4.5 metres with groundwater expected to be found from AHD 20.7m and lower – the basement level is set at 21560 RL. Given this it is entirely plausible that the excavation could enter the groundwater table.

It is advised that it is necessary to request for an acid sulfate soil preliminary investigation report was considered necessary because the property is noted on Council's Acid Sulfate Soil maps as being in Class 5. Randwick LEP refers to Class 5 as *-Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.*

If an applicant determines they do not meet the class 5- LEP requirements even though they are designated within the class 5 NSW acid sulfate soils map, they must demonstrate to Council how they have determined this. Council does not determine the AHD for surrounding properties or the water table level for a property that is designated on the NSW acid sulfate soils mapping system. This is the responsibility of the owner/ applicant to do so. Council did not receive any information from the applicant that appropriately considered acid sulfate soils and as a result, it is deemed appropriate to request a preliminary assessment to be provided to Council **prior** to the determination of the application.

However, in addition to the LEP requirements, Council has a responsibility to consider acid sulfate soils as part of the environmental assessment requirements for assessing development applications. In this regard and after consideration of the NSW Acid Sulfate Soil Guidelines, which outlines works in areas mapped as Class 5 (within 500 metres of Class 1-4 areas), acid sulfate soil investigations are recommended. Therefore, it is deemed appropriate to request a preliminary acid sulfate assessment be undertaken in accordance with the NSW Acid Sulfate Soil Assessment guidelines. Council's planning team may deem it adequate to receive this preliminary assessment prior to the construction certificate being issued for the development.

Request for further information:

1. A preliminary acid sulfate soil investigation is to be undertaken by a suitably qualified consultant to confirm that the land is not affected by acid sulfate soils. This assessment must be undertaken in accordance with the NSW Acid Sulfate Soil Assessment Guidelines.

Should the assessment determine that the land is affected by acid sulfate soils, an acid sulfate soils management plan is to be prepared for the development prior to the commencement of excavation to outline necessary management and mitigation measures to the satisfaction of Council.

3.2. Development Engineer

An application has been received for the demolition of the existing building and construction of a 4-storey residential flat building including basement level for 4 cars, three (3) residential dwellings, associated ancillary and landscaping works at the above site.

This report is based on the following plans and documentation:

- Architectural Plans by SOMA Architecture Rev 4 dated 03/09/2024;
- Statement of Environmental Effects by GSA Planning dated Sept 2024
- Detail & Level Survey by Harrison Friedman & Associates Pty Ltd
- Geotechnical Report by Precision Engineering Group dated 23rd July 2024
- Traffic Impact Report by Traffix Pty Ltd dated 18th September 2024
- Drainage Plans;
- Landscape Plans by Site Design + Studios, pages L-01 – 06, issue D dated 30/07/24
- Arboricultural Impact Assessment Report by Martin Peacock Tree Care dated 12/08/24.

GENERAL COMMENTS

For the purposes of informing L&E court proceedings and the preparation of Statement of Facts and Contentions the following Engineering and Landscape Comments have been prepared & also includes non-contentious aspects for information purposes.

Contentious aspects have also been presented in suggested SOFC format at the end of this report.

FLOODING ISSUES

The site lies within the catchment for the Council commissioned and adopted Coogee Bay Flood Study'. The study predicts a minor overland flow path entering the site from the north near the rear of the site.

Flood depths are minor being generally less than 0.1m for the 1% AEP (1 in 100yr) storm event and would normally not be of concern and it is noted the property has not been tagged as a flood control lot. Notwithstanding however the submitted plans indicate the ground floor will be the same level as the rear terrace being RL 24.76 AHD which itself is sunken below the surrounding level of the rear yard. Development Engineering therefore have significant concerns that the sunken rear terrace will be a passageway for surface flows to enter the dwelling during major storm events. The current configuration is therefore not supported by Development Engineering.

It is recommended the ground floor at the rear be raised and/pr a passageway for surface flows to flow away from the rear of the dwelling be provided.

The proposed provision of a drainage grate at the rear of the dwelling is acknowledged however this will be overwhelmed during major storm events.

DRAINAGE COMMENTS

The submitted drainage plans are generally satisfactory with the exception of the proposed infiltration trench in the rear yard. This prevents Development Engineering from fully endorsing the drainage plans at the current time.

The surface levels shown for the infiltration area are inconsistent with the finished surface levels. For example, the drainage plans show a surface grate level above the infiltration area of RL 21.50. while the landscape plan indicates a finished surface level of RL 25.96 being a difference of almost 4.5m.

The proposed infiltration area appears to be impractical as it would need to be about 5m deep to drain the basement with the invert levels shown. It is currently not supported.

When draft conditions are requested, the Development Engineer will include a number of conditions that will relate to drainage design requirements. The applicant will be required to submit detailed drainage plans to the Principal Certifier for approval prior to the issuing of a construction certificate.

The stormwater must be discharged (by gravity) Directly to the kerb and gutter in front of the subject site in Hill Street via a OSD system; or

PARKING ISSUES

Parking Provision

Under Part B7 of DCP

Parking Requirements for the proposed development have be assessed as per the following applicable parking rates specified in Part B7 of Randwick Council's Development Control Plan 2013.

- 1 space per 2 studio units
- 1 space per 1 bedroom unit
- 1.2spaces per 2-bedroom unit
- 1.5 spaces per 3 bedroom unit or greater
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

The proposed development comprises of 3 x 3-bedroom dwellings.

Parking required under DCP = (3 x 1.5)
 = 4.5
 = say 5 spaces

Parking proposed = 4 spaces

Parking Shortfall = 1 space (20%)

Motorbike Parking

Motorbike Parking is to be provided at 5% of the vehicle parking requirement.

Motorbike Parking Required = 0.05 x 4.5
 = 0.25

Motorbike Parking is not required as calculated requirement is less than 0.5

Motorbike Parking proposed = 0 (complies)

Bicycle Parking

For Flats/multi dwelling bicycle parking to be provided at 1 space per 2 units plus 1 visitor space per 10 units.

Bicycle Parking Required = 3/2 + 3/10
 = 1.8
 = say 2 spaces

Bicycle Parking proposed = 0 spaces indicated (does not comply)

Comments on parking shortfall

The 1 space shortfall in vehicle parking is not supported. The nature of the development with high end market 3-bedroom apartments including a penthouse suite is likely to attract occupiers who have 1 or more vehicles. Full compliance with or above the DCP rates is therefore expected.

The parking shortfall will be transferred to the surrounding street network which is experiencing high parking pressures, especially during the summer months, due to the sites close proximity to Coogee Beach. This is not acceptable.

The traffic report also acknowledges the shortfall in bicycle parking and suggests a condition of consent to address however it has also been included in the contentions.

Parking Layout

There is a high dependence on mechanical devices with two mechanical turntables proposed in the basement carpark. All vehicles entering the basement will be dependent on a turntable to exit the site in a forward direction which is not desirable from an engineering or planning perspective.

Even with the provision of the turntables, vehicle maneuvering in the basement will still be quite tight with relatively narrow clearances provided. Swept path analysis has been provided in Appendix B of the traffic report which indicates vehicle access is possible with the use of the turntables.

Vehicle Access Issues

The internal access driveway fails to comply with Clause 3.3 in AS 2890.1 in that the internal driveway will significantly exceed a grade of 1 in 20 within 6m of the front property alignment.

The submitted plans show a grade of 1 in 10 (10%) for the first 2 m only before steepening to a grade of 1 in 5 (20%) which continues for the next 6.6m. The ramp then shallows to 10% for 2m before entering the basement.

This configuration is not acceptable and represents a large departure from the Australian Standard and will likely lead to issues with sightlines and pedestrian safety.

Undergrounding of site feed power lines Comments

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

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

The subject **is not** located within 15m of a power pole on the same side of the street hence the above clause **is not** applicable in this instance.

Waste Management Comments

Appendix 3 in Part B6 of Council's DCP specifies a waste bin requirement rate for residential flat buildings houses of 1 x 240L bin per 2 rooms for normal garbage and 1 x 240L bin per 2 rooms for recycling.

i.e. Garbage/recycling Bins Required = Number of units/2 (rounded up to nearest whole number)

There are no specific requirements for green waste in Part B6 of the DCP however since March of 2021 Council has introduced a Garden Organic Food organic (FOGO) collection service. As some landscape areas are also proposed it is recommended that a minimum of ?? x 240L bins also be provided for FOGO.

Total Number of BINS required = 2 (normal) + 2 (recycling) + 1(FOGO)
= 5 x 240L BINS

The proposed waste storage area appears to be large enough to accommodate the required number of bins.

Flooding/Drainage reason for refusal

1. The proposed development should be refused as it will likely result in the development being flooded by surface flows entering the dwelling from the sunken rear yard. There are also inconsistencies and impractical elements depicted in the drainage plans which require revision.

Parking layout & Vehicle access reason for refusal

2. The proposed development should be refused as it is parking deficient and relies too heavily on mechanical parking devices, which will likely lead to occupants parking on-street, resulting in unacceptable impacts on the availability of kerbside street parking in the locality. The internal

access driveway also does not comply with AS 2890.1 which may impact on sightlines and pedestrian safety.

3.3. Landscape Development Officer

The site inspection of 07/01/25 revealed a mature, 4-5m tall *Callistemon viminalis* (Weeping Bottlebrush, not identified or assessed in the Arborist Report) on Council's Hill Street verge, just past the southern site boundary, in front of the adjoining property at no.9, which is automatically protected by the DCP due to its location on public property, but should not be directly impacted by any external civil works given that the new vehicle crossing and basement ramp will be provided well away on the opposite, northern side of the site, so can be easily retained by the inclusion of relevant protection conditions and a bond.

There is then a larger, mature, 10m tall *Banksia integrifolia* (Coastal Banksia, not identified or assessed in the Arborist Report) just beyond the northern site boundary, in front of the adjoining property at no.3-5, which is prominent in the street and is also protected by the DCP, with its southern aspect overhanging the common boundary, partially in front of/above this development site.

Its trunk already exhibits an acute trunk lean to the northwest, with the plans showing that the new driveway will be offset a distance of approximately 1m from the northern site boundary, and as excavations for external crossings are only shallow, in the order of 200mm in depth, this should not threaten this public tree, so can be safely retained as part of this proposal, subject to adherence to relevant protection measures.

While there is no established vegetation within the front setback of this development site that would pose a constraint to this development, beyond the northwest site corner, wholly within the adjoining private property at no.3-5, hard up against the common boundary is a mature, 7-8m tall *Melaleuca styphelioides* (Prickly Paperbark, TA in the Arborist Report), with both Council and the applicant having a common law responsibility to ensure it is not affected in any way by this proposal.

In this regard, there is an existing masonry wall/fence on the common boundary in this same area that would have already acted as a physical barrier to restrict/prevent the growth of roots into this development site, with future conditions to specify that this wall/fence be retained in-situ for as long as practically possible as a form of protection from construction impacts, and that its demolition as well as any new excavations for footings and similar in this area also be supervised by a Project Arborist.

The Basement Plan (dwg DA12) shows that excavations/piling for the northern wall of the internal ramp will be offset 765mm from this common boundary, which will maintain a strip of deep soil contiguous with its trunk for the purpose of future landscaping, and while minimal clearance pruning of its southern aspect will be required to avoid the piling rig and similar, this is minor, and not an amount that would threaten the tree, so can also be retained as part of these works.

It is noted that a separate approval to remove two established Gum trees for this property was previously granted under Tree Application 113/2024, which has already taken place given a large stump was observed in the northern side setback, close to the existing dwelling, as well as in the rear setback, along the northern boundary.

There are no significant specimens in the remainder of the rear setback of this development site, so could all be removed and replaced with the new landscape treatment as shown, including the *Frangipani* (Tree 1 in the Arborist Report) along the southern boundary, just to the southeast of the existing paved terrace area, as despite the Arborist Report and Landscape Plans nominating it for transplanting, Council will not formally require this given it is a common species that does not offer any meaningful contribution to native fauna or biodiversity, with future conditions to allow its removal and replacement with more desirable native coastal species.

Located wholly within the rear yard of the adjoining private property to the east, 11 Arcadia Street, at a higher ground level which is supported by an existing failing brick retaining wall on the common boundary between the two sites, is a mature, 12m tall *Eucalyptus species* (Tree B in the Arborist

Report) which appears in fair condition as numerous major and middle order branches from its western aspect which would have previously overhung into/above this development site were recently heavily and poorly lopped.

This tree must be safely retained in the same manner that was described for the other neighbouring tree (TA) earlier in these comments, and in this regard, the new footprint is shown as being setback well away from this part of the site and tree, and while the dilapidated existing wall/fence just to its west will need to be repaired as part of this development, this will be 'like for like', in terms of both material and location, so is not identified as posing a threat to its preservation, with relevant protection conditions able to be imposed to avoid any impacts arising from its re-construction.

IN SUMMARY – there are no Contentions relating to Vegetation/Tree Management for this application, with any relevant matters for this aspect of the proposed development able to be addressed by condition.

Landscape Plan Comments

The submitted scheme will significantly increase the amount of plant material as well as improve the quality of private open spaces at this site compared to the current situation, providing treatment between the Ground and Third Floor levels, and will include balcony planters, two new feature canopy trees and tiered perimeter planting using a combination of both native and exotic species which are mostly deemed appropriate and suitable for the site and prevailing conditions.

As detailed below, the following matters are considered 'INSUFFICIENT INFORMATION CONTENTIONS', which will require amendments to the submitted Landscape Plans:

1. While both the SEE as well as the Site Calculations diagram on the Landscape Site Plan (Page L-01) claim that numerical compliance is achieved with Section 2.2.2. of Council's DCP relating to minimum Landscape Area (50% site area required – 50% proposed) and Deep Soil (25% site area required – 25% proposed), this needs to be graphically represented on a dedicated plan to demonstrate accuracy of the calculations.
2. The Architectural Section Plans (dwg's DA20-21) indicate 600mm soil depth will be provided for the upper floor planters; however, no other construction details or notations have been provided to confirm this. The same also applies to the planter along the southern boundary of the Ground Floor Level as well as for the Kentia Palm in the courtyard along the northern side setback, with the soil depth here appearing insufficient for the species proposed. Suitable details and dimensions need to be included.
3. It also needs to be clarified how the external planters along both the northern and southern elevations will be safely accessed for the purposes of performing routine maintenance, in accordance with relevant standards and building codes.
4. It would not be physically possible to successfully plant a Tuckeroo tree directly over/above the OSD tank in the front setback as depicted given the insufficient soil depth and volume that would be provided between the tank lid and surface level. As a feature tree is strongly supported for the front setback to assist with integration of this development into the streetscape, the OSD tank should be relocated/re-designed to accommodate this planting and area of deep soil.
5. The finished levels for the deep soil Private Courtyard at the rear of the site are not consistent, as the Landscape Plan – GF (page L-02) nominates RL25.960, while the Ground Floor Architectural Plan (DA13) nominates RL24.760, which is the same level as the rear terrace, despite a set of stairs shown as providing access between the two areas. Treatment for this area needs to be clarified in the interests of consistency and accuracy.
6. Concerns are raised over the ability of the 'tropical themed' planting around the perimeter of the rear POS to provide sufficient/reliable screening of the rear retaining wall and boundary fences, as well as reasonable levels of amenity and privacy by reducing overlooking from windows and balconies of neighbouring complexes to the north and south.

An alternative, more dense and robust species would appear more suitable for this purpose/function.

3.4. Building Regulation

Proposed Development:

Demolition of existing building and construction of a 4-storey residential flat building including basement level for 4 cars, three (3) residential dwellings, associated ancillary and landscaping works.

Comments: No objection

Recommendation:

Should the application be approved, it is recommended that the following conditions be included in the consent:

NB: The recommended conditions of consent included an upgrade to the fire and safety to achieve and adequate level of safety and require a BCA report prior to Construction certificate.

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Appendix 2: DCP Compliance Table

1.1 Section B4: Landscaping and biodiversity

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|--|------------------------------------|
| 2. | Landscape Plan | | |
| | Prepare a landscape plan with all existing trees within and adjacent to the site | Provided but missing two trees on the verge which require protection | Can condition |
| 3. | Landscape design | | |
| | 3.1 Maximise retention and protection of existing vegetation | | Can be conditioned |
| | 3.2 Selection of plant species Native plants to comprise at least 50% of the plant schedule. Select plants to improve overall environmental performance and living amenity | Plants selection at rear with “tropical themed” plants will not provide adequate amenity | Can be conditioned |

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1.2 Section B6: Recycling and Waste Management

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|---|------------------------------------|
| 4. | On-Going Operation | | |
| | (i) Provide suitable and sufficient waste storage facilities for all development, in accordance with Council’s Guideline. | Provided | Yes |
| | (ii) Identify in any required Waste Management Plan: a) estimated volume of general waste, recyclables, garden waste and bulky waste likely to be generated on the premise; b) required type, size and number of bins and space for storage of bins and bulky waste; and d) details of on-going management arrangements, including responsibility for cleaning, transfer of bins between storage facilities and collection points and maintenance of the storage facilities. | See waste management plan. All identified | Yes |
| | (iii) Illustrate on the DA plans/drawings: a) storage space and layout for bins; b) storage room for bulky waste; c) waste collection point(s) for the site; d) path of access for users and collection vehicles; and e) layout and dimensions required to accommodate collection vehicles when on-site collection is required. | Shown in basement plan. No bulky waste. Collection from the verge by Council. | Yes |
| | (iv) Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street | Bins in garage | Yes |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|--|------------------------------------|
| | where possible. | | |
| | (v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties. | Yes in garage | Yes |
| | (vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain. | In garage | Yes |
| | (vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step-free and unobstructed access to the collection point(s). | In garage adjacent to lift | Yes |
| | (viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation. | Should be sufficient room in the kitchen | Yes |
| | (ix) Bin enclosures / rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply. | Can be conditioned | Yes |

1.3 Section B7: Transport, Traffic, Parking and Access

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---|---|--|------------------------------------|
| 3. Parking & Service Delivery Requirements | | | |
| 3.2iv | Minimise the use of mechanical parking devices eg turntables | 2 required in the basement | No |
| | Car parking requirements: <ul style="list-style-type: none"> • 1 space per 2 studios • 1 space per 1-bedroom unit (over 40m²) • 1.2 spaces per 2-bedroom unit • 1.5 spaces per 3 or more bedroom unit • 1 visitor space per 4 dwellings (none if less than 4) | 3 x 3 Bed apartments 5 required 4 provided | No |
| | Motor cycle requirements: 5% of car parking requirement | None | Yes |
| 4. Bicycles | | | |
| | Residents: <ul style="list-style-type: none"> • 1 bike space per 2 units Visitors: <ul style="list-style-type: none"> • 1 per 10 units | None provided 2 required | No |

1.4 Section B8: Water Management

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|--|------------------------------------|
| 3. | Stormwater management | | |
| 3.2 | (i) On-site detention and infiltration systems to be designed and constructed to comply with the requirements of Council's Private Stormwater Code | Infiltration system needs to be about 5m deep and unsatisfactory | No |
| | (ii) On site detention volumes may be reduced through the use of stormwater infiltration systems | Noted | Noted |
| 5 | Flooding | | |
| | Various controls relating to over land flows | Council's engineers have identified overland flows which will pool in the sunken rear yard and create flooding for the ground floor unit | No |

1.5 Section C2: Medium Density Residential

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--------------|--|---|---|
| 2. | Site Planning | | |
| 2.1 | Site Layout Options | | |
| | Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> • Two block / courtyard example • T-shape example • U-shape example • Conventional example | Site analysis provided | Noted |
| 2.2 | Landscaped open space and deep soil area | | |
| 2.2.1 | Landscaped open space | | |
| | A minimum of 50% of the site area (410.9m ²) is to be landscaped open space. | Required: 205.45m ² Stated to be 206m ² | Unclear – no illustrative plans. |
| 2.2.2 | Deep soil area | | |
| | (i) A minimum of 25% of the site area (410.9m ²) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting. | Required: 102.7m ² Stated to be 103m ² | Unlikely – no illustrative plans. Appears to be less than 21.3% |
| | (ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures. | Noted. | |
| | (iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting. | Landscape plan illustrates a mix, however the species in the rear are poorly selected for screening and privacy | No |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--------------|--|---|---|
| | (iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes. | Noted | |
| | (v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties. | Noted | |
| 2.3 | Private and communal open space | | |
| 2.3.1 | Private open space | | |
| | Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas. | (i) Off living area on Gnd, L1 and L2. Also off bedrooms all levels. (ii) Yes subject to privacy screens (iii) Privacy screens provided | (i) Generally yes. (ii) Northern privacy screens reduce solar access (iii) Privacy screens do not extend whole of the balconies. There is no rear common space |
| | For residential flat buildings: (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m ² and a minimum dimension of 2m. | Provided Unclear on minimum dimension as none shown. Likely satisfies | Yes |
| 2.3.2 | Communal open space | | |
| | Communal open space for residential flat buildings is to be: (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures. | None provided other than in the front setback | No |
| 3. | Building Envelope | | |
| 3.1 | Floor space ratio | | |
| | 0.9:1 = 369.81m ² max | 0.89:1 = 367.97m ² However upper level lift not included which will exceed FSR | No |
| 3.2 | Building height | | |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--------------|---|---|---|
| | 12m | Exceeds 12m if the 200mm floor slab is included or the FFL of the front part of the existing dwelling applies | No |
| 3.3 | Building depth | | |
| | For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units. | 23.05m | No, however a courtyard is provided halfway along |
| 3.4 | Setbacks | | |
| 3.4.1 | Front setback | | |
| | <p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p> | <p>Average is 4.1m. Proposal is 4.0m to external wall points.</p> <p>Free of structures.</p> <p>Landscape planting is proposed above the OSD</p> | <p>Generally yes.</p> <p>No, landscaped planting in the front setback where the Tuckeroo is proposed over the OSD</p> |
| 3.4.2 | Side setback | | |
| | <p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - Less than 12m – merit <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. | <p>Lot is less than 12m wide hence assessment is merit based.</p> <p>Setback to dwelling wall is 1.5m but setback to planters is about 1.1m and setback to southern stairs is 900mm.</p> <p>Courtyard on north side provides articulation and space for landscaping. Visual privacy provided by privacy screening in some places.</p> | <p>No</p> <p>Inadequate side setbacks result in overshadowing and visual and acoustic privacy concerns for neighbours.</p> <p>No justification for fire protection for side window close to the side boundaries</p> |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|----------------------------|--|--|--|
| | <ul style="list-style-type: none"> - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p> | <p>Solar access to building to the south (9 Hill Street) is compromised.</p> <p>Fire protection statement not provided for all windows which are within 3m of common boundaries</p> | |
| 3.4.3 | Rear setback | | |
| | For residential flat buildings, provide a minimum rear setback of 15% of allotment depth (6.127m) or 5m, whichever is the greater. | 7m | Yes |
| 4. Building Design | | | |
| 4.1 Building façade | | | |
| | <ul style="list-style-type: none"> (i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes. (vi) Conceal building services and pipes within the balcony slabs. | <ul style="list-style-type: none"> (i) Addresses front (ii) Is parallel subject to articulated elements (iii) Front balcony provides articulation. North side has courtyard articulation. South side lacks articulation. Privacy screens reduce any appearance of window articulation. (iv) Wall planes not highly articulated to south (v) Unclear | Partial. The privacy screens reduce articulation and there is insufficient articulation on the south elevation |
| 4.2 Roof design | | | |
| | <ul style="list-style-type: none"> (i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building. (ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access. | <ul style="list-style-type: none"> (i) Gently sloping skillion roof (ii) Roof is higher on the northern side (iii) Adjacent buildings have hipped roof so dissimilar (iv) Upper section is smaller than level below (v) Not used | <ul style="list-style-type: none"> (i) Perhaps (ii) Yes (iii) No (iv) Yes (v) No (vi) Yes, however further details required regarding lift overrun (vii) No |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|--|------------------------------------|
| | <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p> | <p>(vi) No services are on the roof</p> <p>(vii) Balcony spaces on the lower penthouse level. Upper front and rear balcony is opposite windows and other balconies. Size of front Level 3 balcony is large with a pool and BBQ encouraging entertainment and potential noise impacts to neighbours.</p> <p>(viii) NA</p> | <p>(viii) NA</p> |
| 4.3 | Habitable roof space | | |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|---|---|
| | Habitable roof space may be considered, provided it meets the following: <ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development. | Level 3 is 38% GFA of Level 2. Not contained within the roof space. Is a continuous flat roof | Yes for GFA No for appearance |
| 4.4 | External wall height and ceiling height | | |
| | (ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 10.5m applies. | SEE states compliance however DA21 indicates it does not | No. Approx 1.5m exceedance - a 14% variation |
| | (iii) The minimum ceiling height is to be 2.7m for all habitable rooms. | Lower levels 2.7m. Upper penthouse is 2.0-2.4m | Partial |
| 4.5 | Pedestrian Entry | | |
| | (i) Separate and clearly distinguish between pedestrian pathways and vehicular access. | Separated | Yes |
| | (ii) Present new development to the street in the following manner: <ul style="list-style-type: none"> - Locate building entries so that they relate to the pedestrian access network and desired lines. - Design the entry as a clearly identifiable element in the façade composition. - Integrate pedestrian access ramps into the overall building and landscape design. - For residential flat buildings, provide direct entries to the individual dwellings within a development from the street where possible. - Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably | Entry at side half way down block, no weather protection, separate from driveway. Mailboxes shown at entry on DA13 but landscape plan shows trees in that location | Partial Unclear |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|--|--|
| | <p>integrated into a wall adjacent to the primary entry (and at 90 degrees to the street rather than along the front boundary).</p> <ul style="list-style-type: none"> - Provide weather protection for building entries. <p>Postal services and mailboxes</p> <p>(i) Mailboxes are provided in accordance with the delivery requirements of Australia Post.</p> <p>(ii) A mailbox must clearly mark the street number of the dwelling that it serves.</p> <p>(iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.</p> | | |
| 4.6 | Internal circulation | | |
| | <p>(i) Enhance the amenity and safety of circulation spaces by:</p> <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. | <p>Lobby has a window with privacy screen. Unclear if it is operable. Distance to the boundary is not stated.</p> <p>Entry lobby ground floor is small with no meeting spaces.</p> | <p>Partial</p> |
| | <p>(ii) Use multiple access cores to:</p> <ul style="list-style-type: none"> - Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites. - Articulate the building façade. - Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units. | <p>NA</p> | <p>NA</p> |
| | <p>(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.</p> | <p>One unit off each core</p> | <p>Yes</p> |
| 4.7 | Apartment layout | | |
| | <p>(i) Maximise opportunities for natural lighting and ventilation through the following measures:</p> <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double- | <p>No window schedule, layout otherwise OK</p> | <p>Yes subject to window ventilation provision</p> |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|--|------------------------------------|
| | height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation. | | |
| | (ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements. | No room dimensions provided | More information required |
| | (iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development. | Provided – no dimensions or sizes identified | More information required |
| | (iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry. | Noted | Yes |
| 4.8 | Balconies | | |
| | (i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments. | No dimensions or areas shown | More information required |
| | (ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m ² . All ground floor apartments are to have direct access to a terrace. | Provided | Yes |
| 4.9 | Colours, materials and finishes | | |
| | (i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. (v) Avoid the following materials or treatment: | Schedule provided but lacks details of colour and texture of concrete materiality. Large areas of battens on north and south elevation | Partial – further details required |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|-------------|---|--|---|
| | <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p> | | |
| 4.12 | Earthworks Excavation and backfilling | | |
| | <p>(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification.</p> <p>(ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site.</p> <p>(iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.</p> | <p>(i) Basement excavation provided greater than 1m</p> <p>(ii) Architectural plans are wrong stating that the rear yard is all at RL24.76, Stormwater plans show terrace at RL24.76, the absorption trench at RL25.56 (purportedly at NGL, but NGL in that area is RL26.3 – 0.74m higher than proposed. Upper rear yard stormwater plans show RL25.96 but survey shows NGL at RL26.57 (0.61m higher). Hence excavation in rear yard of between 0.74-0.61m. Landscape plans show entire rear grassed courtyard at RL25.96.</p> | <p>No. Excavation in rear yard is excessive and not consistent with neighbouring sites. Also plans are contradictory as to amount of excavation. Excavation is leading to overland flow issues in the rear yard and rear of the ground floor apartment.</p> |
| | <p>Retaining walls</p> <p>(iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries.</p> <p>(v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the neighbouring properties and the public domain.</p> <p>(vi) Where it is necessary to construct retaining walls at less than 900mm</p> | <p>No retaining walls illustrated although they are required given the excavation at the rear</p> | <p>No</p> |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--|---|---|---|
| | from the side or rear boundary due to site conditions, retaining walls must be stepped with each section not exceeding a maximum height of 2200mm, as measured from the ground level (existing). | | |
| 5. Amenity | | | |
| 5.1 Solar access and overshadowing | | | |
| Solar access for proposed development | | | |
| | (i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June. | <u>Living:</u> 3 hours 1pm-4pm <u>POS</u> Achieved | Yes |
| | (ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June. | <u>Living:</u> 3 hours 1pm-4pm <u>POS:</u> all | Yes – 100% |
| | (iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building. | No single aspect | Yes |
| | (iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised. | | |
| Solar access for surrounding development | | | |
| | (i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June. | (i) Building to the south (9 Hill St) will be largely overshadowed on L1 and L2 for most of the day. | Room locations not specified. However balconies have living rooms behind. Unlikely to comply. |
| | (ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June. | (ii) Will cause additional overshadowing of rear landscaped area of 9 Hill Street between 2pm to say 3.15pm | No |
| | (iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further. | | |
| 5.2 Natural ventilation and energy efficiency | | | |
| | (i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls. | All habitable units have windows but privacy screens apply. Unsure if the middle bedroom is operable due to fire restrictions. Unclear if dining room windows are operable | Unclear, need window schedule |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|--|--|
| | (ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building. | See above | See above |
| | (iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable. | See above | See above |
| | (iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms. | See above | See above |
| | (v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required. | See above | See above |
| | (vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows. | See above | See above |
| | (vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms. | See above | See above |
| 5.3 | Visual privacy | | |
| | (i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences. (iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats | Side windows have privacy screens. Balconies at front and rear but not all to 1.6m in height or for the full width of the balcony. Top balconies are opposite living areas of neighbours | Partial, using privacy screens. Yes re Balconies at front and rear with partial privacy screens |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|--|------------------------------------|
| | <ul style="list-style-type: none"> - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection | | |
| 5.4 | Acoustic privacy | | |
| | <ul style="list-style-type: none"> (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors | <p>Likely OK internally given single units on each floor.</p> <p>Acoustic privacy to neighbouring buildings is difficult given the small setback and the large balconies, particularly on level 03</p> | <p>Yes.</p> <p>No</p> |
| 5.5 | View sharing | | |
| | <ul style="list-style-type: none"> (i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain. (vi) Clearly demonstrate any steps or measures adopted to mitigate | <p>Some district views will be lost, although views are not likely a major impact</p> | <p>Satisfactory</p> |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|---|------------------------------------|
| | potential view loss impacts in the development application. | | |
| 5.6 | Safety and security | | |
| | (i) Design buildings and spaces for safe and secure access to and within the development. | Entry set well back and not sheltered. No recesses. Direct access provided. | No Yes Yes |
| | (iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor. | Lift from garage | Yes |
| | (iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient. | Window schedule not provided | More information required |
| | (v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development. | Fences are excessively high in places | No – could be conditioned |
| | (vi) Resident car parking areas must be equipped with security grilles or doors. | Garage door provided | Yes |
| | (vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems. | CC documentation | CC |
| | (viii) Provide adequate lighting for personal safety in common and access areas of the development. | Will form part of CC | CC |
| | (ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks. | Views to communal area at front is from bedrooms | No |
| | (x) External lighting must be neither intrusive nor create a nuisance for nearby residents. | Can be conditioned | Condition |
| | (xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development. | Noted | Can be conditioned |
| 6. | Car parking and access | | |
| 6.1 | Location | | |
| | (i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available. | NA | NA |
| | (ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site. | Driveway length is minimised | Yes |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|---|--|
| | (iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas. | 1.5m from north side boundary | Yes |
| | (iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary. | NA | NA |
| | (v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage. (c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage. | (a) in basement (b) NA (c) Car park entry is recessed | (a) Yes (b) NA (c) Yes |
| 6.2 | Configuration | | |
| | (i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction. | Yes but tight and requires use of two turntables | Yes but unsatisfactory |
| | (ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible. | No dimension but less than 6m | Yes – need dimensions |
| | (iv) Provide basement or semi-basement car parking consistent with the following requirements: (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, | (a) Unclear (b) Unclear (c) They do not (d) Landscape provided (e) Safe access provided (f) Provided | (a) Further information (b) Further information (c) Yes (d) Yes (e) Yes (f) Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---|--|--|------------------------------------|
| | including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: <ul style="list-style-type: none"> - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain. | | |
| 7. Fencing and Ancillary Development | | | |
| 7.1 Fencing | | | |
| | (i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering. (ii) Sandstone fencing must not be rendered and painted. (iii) The following materials must not be used in fences: <ul style="list-style-type: none"> - Steel post and chain wire - Barbed wire or other dangerous materials (iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided. | Light batten balustrade or cladding proposed | Yes |
| 7.2 Front Fencing | | | |
| | (i) The fence must align with the front property boundary or the predominant fence setback line along the street. | No front fence proposed | NA |
| | (ii) The maximum height of front fencing is limited to 1200mm, as measured from the footpath level, with the solid portion not exceeding 600mm, except for piers. The maximum height of front fencing may be increased to 1800mm, provided the upper two-thirds are partially open, except for piers. | NA | NA |
| | (iii) Construct the non-solid portion of the fence with light weight materials that are at least 30% open and evenly distributed along the full length of the fence. | NA | NA |
| | (iv) Solid front fence of up to 1800mm in height may be permitted in the following scenarios: <ul style="list-style-type: none"> - Front fence for sites facing arterial | NA | NA |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|---|---|
| | <p>roads.</p> <ul style="list-style-type: none"> - Fence on the secondary street frontage of corner allotments, which is behind the alignment of the primary street façade. <p>Such solid fences must be articulated through a combination of materials, finishes and details, and/or incorporate landscaping, so as to avoid continuous blank walls.</p> | | |
| | (v) The fence must incorporate stepping to follow any change in level along the street boundary. The height of the fence may exceed the aforementioned numerical requirement by a maximum of 150mm adjacent to any stepping. | NA | NA |
| | (vi) The preferred materials for front fences are natural stone, face bricks and timber. | NA | NA |
| | (vii) Gates must not open over public land. | NA | NA |
| | (viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians. | NA | NA |
| 7.3 | Side and Rear Fencing | | |
| | <ul style="list-style-type: none"> (i) The maximum height of side, rear or common boundary fences is limited to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing). (ii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits. (iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment. (iv) Side or common boundary fences must be finished or treated on both sides. | <p>Up to 2.4m in some places at front of the building. Rear yard appears to be about 2m high on northside.</p> <p>Level differences require more nuance.</p> <p>No tapering of side fence to the front boundary with a height over 1.5m</p> | <p>No for Fence height.</p> |
| 7.5 | Swimming and spa pools | | |
| | <ul style="list-style-type: none"> (i) Locate behind the front alignment (ii) Minimise root system damage (iii) Minimize noise and privacy impacts to neighbouring dwellings | <ul style="list-style-type: none"> (a) Behind front alignment but on front verandah of Level 3 (b) NA (c) Pool is opposite living areas of 9 Hill Street on an entertainment balcony | <ul style="list-style-type: none"> (a) Partial (b) NA (c) No |
| 7.6 | Storage | | |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|---|------------------------------------|
| | (i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling. (ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles. (iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: (a) Studio apartments – 6m ³ (b) 1-bedroom apartments – 6m ³ (c) 2-bedroom apartments – 8m ³ (d) 3 plus bedroom apartments – 10m ³ | None in units. Communal space in basement. | No |
| 7.7 | Laundry facilities | | |
| | (i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit. | None provided | No |
| | (ii) Provide internal laundry for each dwelling unit. | In a cupboard | Yes |
| | (iii) Provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter. | None provided although the BASIX certificate says there is outdoor unsheltered lines. | No |
| 7.8 | Air conditioning units: | | |
| | <ul style="list-style-type: none"> Avoid installing within window frames. If installed in balconies, screen by suitable balustrades. Air conditioning units must not be installed within window frames. | AC placement required | Not shown |

D4/25

Responsible officer: Urban Perspectives, Town Planners

File Reference: DA/932/2024

Development Application Report No. D5/25

Subject: 357 Clovelly Road, Clovelly (DA/840/2024)

Executive Summary

| | |
|-----------------------------|---|
| Proposal: | Demolition of an existing residential flat building and construction of a 3-storey residential flat building with basement level and mezzanine basement level, five (5) residential apartments, eight (8) car spaces, communal open space at ground level, ancillary and landscaping works. |
| Ward: | North Ward |
| Applicant: | Mr J F Morgan |
| Owner: | Mr L G Morgan & Mr J F Morgan |
| Cost of works: | \$10,671,100 |
| Reason for referral: | The development contravenes the development standards for floor space ratio and building height by more than 10% and the development is subject to Chapter 4 of the Housing SEPP. |

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the building height and floor space ratio development standards in clauses 4.3 and 4.4 of Randwick Local Environmental Plan 2012.
- B. 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/840/2024 for demolition of an existing residential flat building and construction of a 3-storey residential flat building with basement level and mezzanine basement level, five (5) residential apartments, eight (8) car spaces, communal open space at ground level, ancillary and landscaping works, at No. 357 Clovelly Road, Clovelly, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  [RLPP Dev Consent Conditions \(med density res\) - DA/840/2024 - 357 Clovelly Road, CLOVELLY NSW 2031 - DEV - Randwick City Council](#)

D5/25



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standards for floor space ratio and building height by more than 10% and the development is subject to Chapter 4 of the Housing SEPP.

The proposal seeks development consent for the demolition of an existing residential flat building and construction of a three (3) storey residential flat building with basement level and mezzanine basement level, five (5) residential apartments, eight (8) car spaces, and communal open space.

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

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The subject site is known as 357 Clovelly Road, Clovelly and is legally described as Lot 6 in DP 589397 (being Lots 1-4 in SP 12110). The site has an area of 626.2m² and is generally square in shape, with a splayed corner to Keith Street and Clovelly Road. The site has a 23.14m frontage to Keith Street (to the east) and a 23.21m frontage to Clovelly Road (to the south). The site falls by approximately 1.7m from the south to the north.

As shown in Figures 1-3, the site is currently occupied by a two (2) storey residential flat building comprising four (4) units. The surrounding locality comprises a mix of residential development, ranging from single storey dwellings to four (4) storey residential flat buildings.

Directly to the north of the site, at No. 2-2A Keith Street, is a pair of single storey semi-detached dwellings (refer Figure 4).

Directly to the west of the site, at No. 59 Burnie Street, is a part three (3) and part four (4) storey residential flat building (refer Figure 5).

Development to the south of the site, on the opposite side of Clovelly Road, is zoned R3 and comprises three (3) and four (4) storey residential flat buildings (refer Figure 6).

Development to the east of the site, on the opposite side of Keith Street, comprises single storey dwellings and semi-detached dwellings (refer Figure 7).



Figure 1: Subject site, viewed to north from Clovelly Rd (Source: Council officer)



Figure 2: Subject site, viewed to north-west from Clovelly Rd (Source: Council officer)

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Figure 3: Subject site, viewed to south-west from Keith St (Source: Council officer)



Figure 4: Semi-detached dwellings to north of site, at 2-2A Keith St (Source: Council officer)



Figure 5: RFB to west of site, at 59 Burnie St (Source: Council officer)



Figure 6: RFB to south of site, at 306-312 Clovelly Rd (Source: Council officer)



Figure 7: Semi-detached dwellings to east of site, at 359-361 Clovelly Rd (Source: Council officer)

3. Relevant history

SC/55/1975 – approved 10 June 1977 for strata title subdivision of RFB into four (4) lots.

DA/560/1992 – approved 25 February 1993 for alterations and additions to existing RFB.

BA/266/1993 – approved 17 May 1993 for alterations and additions to existing RFB.

DA/98/1993 – approved 19 May 1993 for alterations and additions to existing RFB Unit 3.

DA/1082/2003 – approved 03 February 2004 for alterations and additions to the existing multi-unit building including new windows and new rear decks Units 3 & 4.

4. Proposal

The proposal seeks development consent for the demolition of an existing residential flat building and construction of a three (3) storey residential flat building with basement level and mezzanine basement level, five (5) residential apartments, eight (8) car spaces, and communal open space.

Specifically, the proposal comprises (refer Figures 8-10):

- Basement 01 – four (4) bicycle racks, eight (8) car parking spaces (accessed via car lift), bin storage room, and services.
- Basement 02 (mezzanine) – five (5) residential storage cages, and services.
- Ground floor – communal open space area, 1 x one (1) bedroom unit, and 1 x two (2) bedroom unit.
- First floor – 2 x three (3) bedroom units.
- Second floor – 1 x three (3) bedroom unit, including 2 x terraces.



Figure 8: Proposed photomontage (Source: Smart Design Studio)

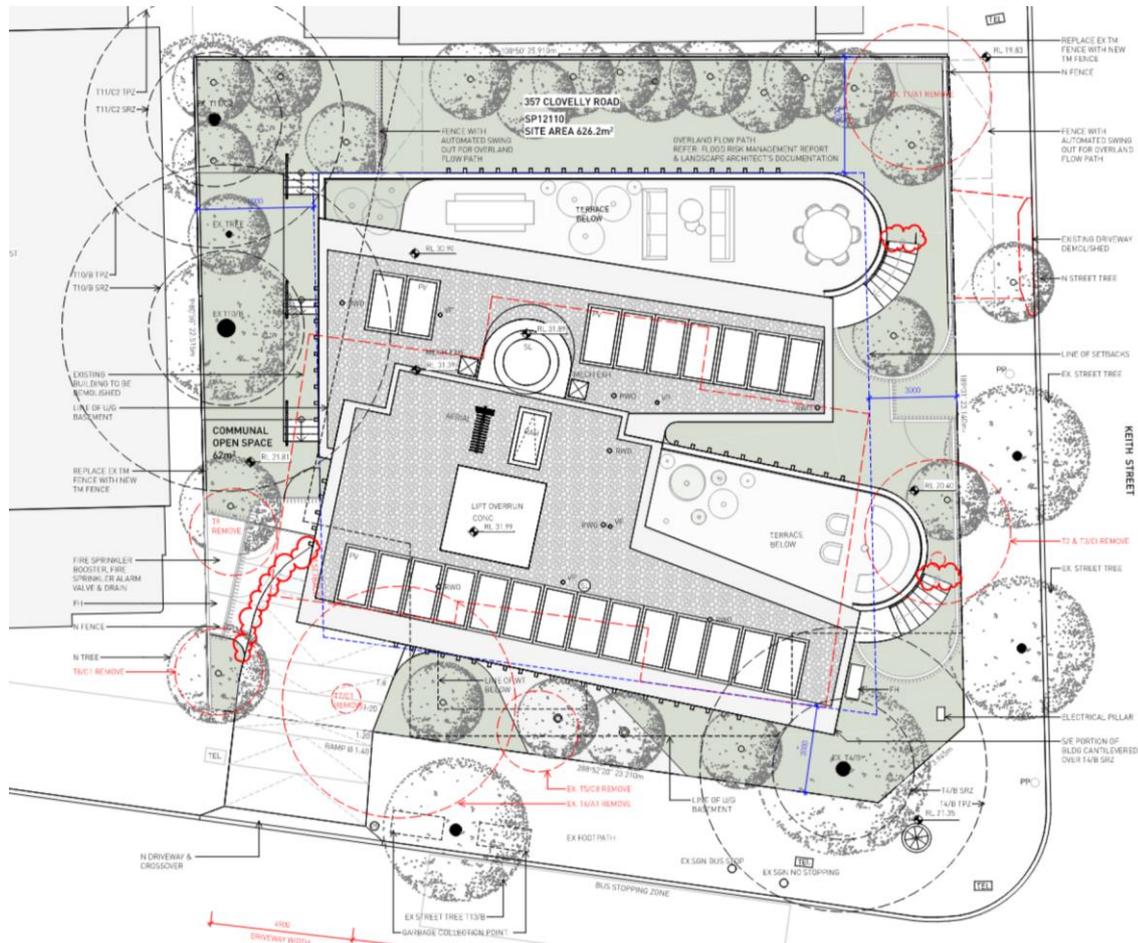


Figure 9: Proposed site plan (Source: Smart Design Studio)

| Issue | Comment |
|---|--|
| Construction impacts – noise, dust, parking, and traffic. | Suitable conditions are included to protect the stability and amenity of neighbouring properties during excavation and construction works. |
| Request that boundary fencing remains intact during construction. | No consent is granted for any removal of boundary fencing. Any works relating to boundary fencing are subject to the <i>Dividing Fences Act 1991</i> . |
| Poor condition of existing road and footpath. | Not relevant to subject DA. |
| Proposal does not exhibit design excellence. | Council's Design Excellence Advisory Panel has reviewed the proposal and is satisfied that the proposal exhibits design excellence. The Panel confirms that " <i>the design of this project is considered to be of a high standard and is generally supported</i> ". Refer to Appendix 1. |
| Non-compliant building height and FSR. | Refer to discussion at Sections 6 and 7. |
| DCP non-compliances. | Refer to discussion at Key Issues section. |
| Insufficient clause 4.6 written requests. | Council is satisfied that the submitted clause 4.6 written requests adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard. |
| Traffic and parking concerns. | Council's Development Engineer has reviewed the proposal and confirms that the proposed traffic and parking arrangements are suitable, subject to conditions. The addition of one (1) dwelling on the site (relative to existing four (4) dwellings) is unlikely to result in a substantial increase in traffic movements. |
| Noise impacts. | Council's Environmental Health Officer has reviewed the proposal and confirms that the proposal is unlikely to result in adverse noise impacts, subject to conditions. |
| View loss from balcony at 10/59 Burnie St. | Refer to discussion at Key Issues section. |
| Loss of canopy cover. | Council's Landscape Officer has reviewed the proposal and confirms that the proposed tree removal and replanting scheme is acceptable. |
| Overshadowing impacts. | Refer to discussion at Key Issues section. |
| Stormwater and flooding impacts. | Council's Development Engineer has reviewed the proposal and confirms that the stormwater arrangements are suitable. |
| Insufficient information relating to utility and infrastructure services. | Suitable conditions are included to ensure that utility and infrastructure services are upgraded, as necessary. |

| Issue | Comment |
|---|--|
| Asbestos concerns during demolition. | Suitable conditions are included, relating to demolition work and asbestos removal. |
| Request for a Construction Traffic Management Plan and Construction Noise and Vibration Management Plan are to be prepared. | Conditions are included to ensure that a Noise & Vibration Management Plan and Construction Site Management Plan (including traffic details) are prepared and implemented. |

6. Relevant Environment Planning Instruments

6.1. (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022.

6.2. SEPP (Housing) 2021

Chapter 2 – Affordable Housing

Part 3 of Chapter 2 of the Housing SEPP relates to the retention of existing affordable housing. Pursuant to clause 46(2)(a), Part 3 does not apply to a building approved for strata subdivision. Noting that SC/55/1975 was approved on 10 June 1977 for the strata subdivision of the building, Part 3 is not applicable.

Chapter 4 – Design of Residential Apartment Development

The provisions of the now-repealed SEPP 65, relating to the design of residential apartment development, have been transferred to Chapter 4 of the Housing SEPP.

Section 147 of the Housing SEPP states:

- (1) *Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—*
 - (a) *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
 - (b) *the Apartment Design Guide,*
 - (c) *any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

Assessing officer’s comment: The development was referred to Council’s Design Excellence Advisory Panel (DEAP). The comments provided by the DEAP demonstrate that the proposal achieves the design principles for residential apartment development set out in Schedule 9 of the SEPP (refer to DEAP comments at Appendix 1). The Panel concludes that “*the design of this project is considered to be of a high standard and is generally supported*”.

The Applicant has adequately responded to the DEAP recommendations, as detailed below:

Built Form and Scale

DEAP Recommendation

The 11m high rectilinear form of the northern wing could be set back further from Keith Street to ameliorate the scale difference to the Keith Street streetscape. Approximately 1m should be considered, for this wing only. The northern glass line of the top floor apartment living room could

be moved forward by approximately half a meter to compensate for this. That move would also provide a wider living space for the top floor apartment, and given that the balcony is very large, the balcony could be reduced by the half a meter and still achieve the functionality sought.

Applicant Response

The Panel suggested setting back the upper floor of the northern brick volume by an additional 1m and extending the L02 glazing line 1m towards the northern boundary. The design team have considered this suggestion, however, are of the view that the design is more appropriate in its current form for the following reasons.

- *The design is characterised by a balance of heft and gravity, solid and void. The brick volumes in question are designed as a pair and address the noisy main road by shielding the bedrooms from traffic noise and pollution. The architectural integrity of the brick volumes relies on them being paired. The suggested 1m setback to the upper portion of the northern block would undermine their legibility and ultimately weaken the architectural expression.*
- *While the brick volumes are designed as a pair, they are rotated from each other so as to reduce the perceived scale and bulk of the building and to give a distinctly residential expression to each apartment which can be read in its own right. This rotation, together with the stepped building height, provides a transition between the scales of the denser Clovelly Road and lower scale Keith Street.*
- *A 3m setback to the Keith Street elevation is set by the DCP. The current proposal sets the brick volume back by a dimension ranging from 4.15-4.25m, an additional 1.15-1.25m over what is required. This additional set back coupled with the still lower balcony form provides an appropriate step down in scale from the taller buildings of Clovelly Road. The proposed design is set a further 1m back from Keith Street than number 2 Keith Street to the immediate north of the site.*
- *The Panel's suggestion to move the glass line of L03 out by 1m would cause an adverse impact by casting additional shadow on the windows of 59 Burnie Street as well as the proposed communal open space. It would also create a more imposing relationship with the rear garden of number 2 Keith Street.*
- *The design team has adopted the Panel's recommendation regarding L02. This has been achieved via replanning without requiring an increase in building height. These improvements in planning maintain the strength of the original design concept of a pair of strong masonry volumes with a step down in scale to Keith St and at the same time improve privacy to neighbouring dwellings and minimise overshadowing.*

Accordingly, we believe that the design of the rectilinear form has addressed the intent of the Panel's request, and this is confirmed by the design philosophy from Smart Design Studio detailed above.

Landscape

DEAP Recommendation

The undercroft space landscaping will need careful consideration, implementation and maintenance, as covered and relatively difficult access undercroft spaces like these are often neglected.

Applicant Response

The proposed building is suspended approximately 1m above and over the overland flow path. The northern block (fronting the overland flow path) is supported by 5 columns set in from the edge of the facade.

In conjunction with Flood Engineers GRCHydro the design team provides the following additional information on the treatment of the under-croft (refer to DA100[B] and DA400[B]). The updated proposal provides for:

- *A permeable fixed fence under the building in line with the columns. This prevents access by residents or visitors for safety reasons. It stops the area being used as storage and also avoids build-up of debris or items that could impede water flow across the overland flow path.*

- *Two locked gates to the fenced area are provided to ensure the area can be maintained and kept clear of debris.*
- *Flood engineer GRCHydro have reviewed the permeable fixed fence and commented: "Fencing within a floodway or overland flow path shall be of permeable open type design, and be constructed to withstand the forces of floodwaters or to collapse in a controlled manner... e.g. a palisade fence would be open type design. A fixed screen is ok if the majority of the surface of it is open." Please refer to the drawings above for details of the proposed fence.*
- *To maintain a good quality appearance, ground-cover planting is proposed to continue into the under-croft by approx. 0.8m. An irrigation line will be installed in this area.*

Accordingly, this matter is resolved by way of amended plans which incorporate the Panel's comments.

DEAP Recommendation

The design of the basement results in a zero setback at the main basement level from the north side boundary and from the Keith St boundary. At the same time the amount of Deep Soil landscaped area as well as Landscape Area is low in comparison with the corresponding controls on an R3 Zoned (Medium Density) site. Deep soil achieved is 37% (Control is 50% of site area) and Landscaped Area achieved is 13.9% (Control is 25% of site area). It is acknowledged that the design achieves the 7% Deep Soil guideline of the ADG. The panel believes that by removing the northernmost parking space, there could be deep soil and a setback provided of around 3m from the northern boundary. The column to the north of the Bike Racks in the basement could then be deleted and the basement functionality could still be achieved, while providing the deep soil landscaping where it would be meaningful, between the proposed new building and the northern adjoining house.

It is noted that there are large voids in the mezzanine basement above, so further rationalization of the two basement levels could reduce excavation, increase deep soil landscaping while either not losing a car space or, in the worst-case option, reducing by one car space.

The design team has revised the basement including the extent of excavation in line with the comments of the Panel. This has been achieved in three ways:

- *North boundary: The nil-setback has been revised to provide a 0.5m deep soil zone.*
- *South: The extent of excavation to the south has been reduced through revisions to the basement parking layout.*
- *The basement mezzanine has been revised and reduced in size to reflect the reduced basement footprint below.*

The revised basement design has been reviewed by JMT Traffic for vehicle access and turn paths and is considered acceptable.

Following discussions with Council's Assessment Officer, it was noted that an increase to the northern setback of more than 0.5m would significantly compromise the car parking numbers, access and manoeuvrability. Council's Assessment Officer indicated via email that they are supportive of the basement 0.5m setback (to northern boundary). Overall, the amendments to the proposal have facilitated an increase in deep soil area from the originally proposed 87.7m² (13.9% of the site) to an amended 142m² (22.7% of the site).

In response the Panel's comments regarding the depth of the basement, the driving factor of the depth is the floodway constraint and the need for sufficient soil depth to accommodate planting in the northern setback. The mezzanine was introduced to the design to utilise the volume that was already created due to the flood response, specifically the following:

- *The northern half of the basement sits below the FPL (flood planning level) with an allowance for planting soil depth above it. This sets the RL of the basement.*
- *The southern half of the basement is bound by this RL below and the natural ground level for the entry lobby on Clovelly Road above. This means that the southern half of the basement is unavoidably higher than required for parking.*

- *The mezzanine was introduced to utilise this excess height. It provides space for storage and plant and reduces the above-ground bulk of the building without requiring additional excavation or area.*

In other words, deletion of the mezzanine level would not have any effect on the depth of the basement, because that depth is a consequence of responding to the flooding constraints of the site. The mezzanine simply provides a more efficient use of space within the basement volume, which would have to be excavated regardless.

Accordingly, this matter is resolved by way of amended plans which incorporate the Panel's comments and significantly increase deep soil area, as well as the additional clarification from the design team provided above.

DEAP Recommendation

Consideration should be given to providing easier and wider access from the two ground floor apartments to each of the private garden spaces.

Applicant Response

The Panel suggested increasing the access width of the steps from the two ground floor apartments to their private open space.

For the northern unit, the width and location of the stair is restricted by the overland flow path. The current proposal shows the stair terminating in line with the clear area of the flow path. This cannot be extended without unacceptable impact on the flood strategy, as advised by the consultant Flood Engineer. Instead, the design provides for a generous outdoor terrace which has an unobstructed connection with the living room. The stairs to the garden are curved and open out to the garden space. Clearance is also allowed to the east of the stair to provide access to the remainder of the garden.

The smaller 1-bedroom southern unit benefits from a larger than required terrace with level indoor-outdoor connection to the living room. The ground level private garden is smaller than that of the northern apartment. The design of the stairs maximises usable garden area whilst providing a natural connection between the terrace and the garden.

Amenity

DEAP Recommendation

On Level 1 - Plan, the Mechanical space on the north-west corner adjoining Bedroom 2 is large and not considered to be optimum use of above ground space. This space could be used to enlarge Bedroom 2 or to provide an ensuite bathroom for Bedroom 2. There appears to be adequate space elsewhere for mechanical use, particularly in the Mezzanine Basement void spaces. Given that this is an EUR application, there would not be an issue with excessive floor space to use this mechanical space for apartment space.

Applicant Response

The applicant has converted the Level 01 mechanical space to useable internal floor space as per the Panel's comments. Adopting the Panel's proposal to relocate mechanical plant to the lower level facilitates the replanning of the L01 apartment described above. This approach also allows for minimum ceiling heights for the bedrooms to be achieved without impacting on building height. Accordingly, this matter is resolved by way of amended plans which incorporate the Panel's comments.

As detailed in the below table, an assessment has been carried out against the Design Criteria of the Apartment Design Guide (ADG).

| Clause | Design Criteria | Proposal | Compliance |
|---------------------------------------|-----------------|----------|------------|
| Part 3: Siting the Development | | | |

| Clause | Design Criteria | Proposal | Compliance | | | | | | | | | | | | |
|-------------------------|--|--|-------------------------------|---------------------|-----------------------|----|----|-------------------------|----|------|-----------------------|-----|----|---|----------------------------|
| 3D-1 | Communal and Public Open Space | | | | | | | | | | | | | | |
| | Communal open space has a minimum area equal to 25% of the site. | Proposed = 22.8% (142.9m ²) | On merit, refer Key Issues | | | | | | | | | | | | |
| | Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter). | Direct sunlight will be provided to the communal open space area between 9am and 1pm, midwinter. | Yes | | | | | | | | | | | | |
| 3E-1 | | | | | | | | | | | | | | | |
| | Deep soil zones are to meet the following requirements: 3m dimension, 7% site area | Proposed = 19% (120.8m ²) | Yes | | | | | | | | | | | | |
| 3F-1 | Visual Privacy | | | | | | | | | | | | | | |
| | <p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="395 891 858 1263"> <thead> <tr> <th>Building Height</th> <th>Habitable Rooms and Balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p> | Building Height | Habitable Rooms and Balconies | Non-habitable rooms | Up to 12m (4 storeys) | 6m | 3m | Up to 25m (5-8 storeys) | 9m | 4.5m | Over 25m (9+ storeys) | 12m | 6m | <p>Proposed = 4m (to north) and 3.5m-4m (to west)</p> <p>Numeric non-compliance is acceptable on merit noting that suitable privacy screening is provided to the north and west elevations.</p> | On merit, refer Key Issues |
| Building Height | Habitable Rooms and Balconies | Non-habitable rooms | | | | | | | | | | | | | |
| Up to 12m (4 storeys) | 6m | 3m | | | | | | | | | | | | | |
| Up to 25m (5-8 storeys) | 9m | 4.5m | | | | | | | | | | | | | |
| Over 25m (9+ storeys) | 12m | 6m | | | | | | | | | | | | | |
| 3J-1 | Bicycle and Car Parking | | | | | | | | | | | | | | |
| | <p>For development on the following:</p> <ul style="list-style-type: none"> on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in</p> | N/A | N/A | | | | | | | | | | | | |

D5/25

| Clause | Design Criteria | Proposal | Compliance |
|---------------------------------------|--|---|------------|
| | the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. | | |
| Part 4: Designing the Building | | | |
| 4A | Solar and Daylight Access | | |
| | Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter. | All apartments will receive at least two (2) hours of direct sunlight to living rooms and private open space areas between 9am and 3pm. | Yes |
| | A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter | All apartments will receive direct sunlight between 9am and 3pm. | Yes |
| 4B | Natural Ventilation | | |
| | At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed | All apartments are naturally cross ventilated. | Yes |
| | Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. | Proposed = < 18m | Yes |
| 4C | Ceiling Heights | | |
| | Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> • Habitable Rooms – 2.7m • Non-habitable – 2.4m • Attic spaces – 1.8m at edge with min 30 degree ceiling slope • Mixed use areas – 3.3m for ground and first floor | Proposed = 2.7m | Yes |
| 4D | Apartment Size and Layout | | |
| | Apartments are required to have the following minimum internal areas: <ul style="list-style-type: none"> • Studio - 35m² • 1 bedroom - 50m² • 2 bedroom - 70m² • 3 bedroom - 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m ² each. | All proposed apartments comply with the minimum area requirements. | Yes |
| | Every habitable room must have a window in an external wall with a total minimum glass area of not less than | Complies | Yes |

| Clause | Design Criteria | Proposal | Compliance | | | | | | | | | | | | | | | |
|---------------|---|---|---------------------------|---------------|--------|------------------|---|-----------|------------------|----|-----------|-------------------|----|------------|-------------------|------|------------------|----------------------------|
| | 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. | | | | | | | | | | | | | | | | | |
| | Habitable room depths are limited to a maximum of 2.5 x the ceiling height. | Complies | Yes | | | | | | | | | | | | | | | |
| | In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. | Complies | Yes | | | | | | | | | | | | | | | |
| | Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space). | Complies | Yes | | | | | | | | | | | | | | | |
| | Bedrooms have a minimum dimension of 3m (excluding wardrobe space). | Complies | Yes | | | | | | | | | | | | | | | |
| | Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments | Complies | Yes | | | | | | | | | | | | | | | |
| | The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts. | Complies | Yes | | | | | | | | | | | | | | | |
| 4E | Private open space and balconies | | | | | | | | | | | | | | | | | |
| | All apartments are required to have primary balconies as follows: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Dwelling type</th> <th>Minimum area</th> <th>Minimum depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4 m²</td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>8 m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10 m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom</td> <td>12 m²</td> <td>2.4m</td> </tr> </tbody> </table> The minimum balcony depth to be counted as contributing to the balcony area is 1m. | Dwelling type | Minimum area | Minimum depth | Studio | 4 m ² | - | 1 bedroom | 8 m ² | 2m | 2 bedroom | 10 m ² | 2m | 3+ bedroom | 12 m ² | 2.4m | Refer Key Issues | On merit, refer Key Issues |
| Dwelling type | Minimum area | Minimum depth | | | | | | | | | | | | | | | | |
| Studio | 4 m ² | - | | | | | | | | | | | | | | | | |
| 1 bedroom | 8 m ² | 2m | | | | | | | | | | | | | | | | |
| 2 bedroom | 10 m ² | 2m | | | | | | | | | | | | | | | | |
| 3+ bedroom | 12 m ² | 2.4m | | | | | | | | | | | | | | | | |
| | For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m. | All proposed POS areas at ground level comply with the minimum area requirements. | Yes | | | | | | | | | | | | | | | |
| 4F | Common Circulation and Spaces | | | | | | | | | | | | | | | | | |
| | The maximum number of apartments off a circulation core on a single level is eight. | Complies | Yes | | | | | | | | | | | | | | | |
| | For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40. | N/A | N/A | | | | | | | | | | | | | | | |
| 4G | Storage | | | | | | | | | | | | | | | | | |
| | In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <ul style="list-style-type: none"> • Studio apartments - 4m³ • 1 bedroom apartments - 6m³ | Capable of complying, subject to condition. | Yes, subject to condition | | | | | | | | | | | | | | | |

| Clause | Design Criteria | Proposal | Compliance |
|--------|---|----------|------------|
| | <ul style="list-style-type: none"> • 2 bedroom apartments - 8m³ • 3+ bedroom apartments - 10m³ <p>At least 50% of the required storage is to be located within the apartment.</p> | | |

Section 148 of the Housing SEPP provides standards that cannot be used as grounds to refuse development consent, which include:

- (a) *the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide*

Assessing officer’s comment: The proposal provides a total of eight (8) car parking spaces, which complies with the requirements of RDCP 2013.

- (b) *the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide*

Assessing officer’s comment: The proposal complies with the minimum ADG requirements.

- (c) *the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide*

Assessing officer’s comment: The proposal complies with the minimum ADG requirements.

6.3. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development involves the removal of vegetation within the site. The proposed removal is permitted without development consent on the basis that the clearing is ancillary to the proposal and the affected vegetation does not trigger a separate permit. As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.4. SEPP (Resilience and Hazards) 2021

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

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

6.5. Randwick Local Environmental Plan 2012 (LEP)

The subject site is zoned R2 Low Density Residential under RLEP 2012. The existing development at the site is defined as a residential flat building (RFB). Pursuant to RLEP 2012, an RFB is a prohibited use in the R2 zone.

The site benefits from existing use rights pursuant to Division 4.11 of the *EP&A Act 1979*. Section 4.65 of the *EP&A Act 1979* requires that the use of a building, work or land was lawfully granted

and commenced and in existence prior to the coming into effect of RLEP 2012. Furthermore, under Section 4.66, the use is presumed to be abandoned, unless the contrary is established, if the use ceases for a continuous period of 12 months.

Council does not have any record of a consent for the construction of an RFB at the subject site. However, there are three (3) development consents granted on 25 February 1993 (DA/560/1992), 19 May 1993 (DA/98/1993), and 03 February 2004 (DA/1082/2003) for ‘alterations and additions to an existing RFB’.

Council’s Special Counsel has confirmed that, consistent with the Applicant’s legal advice (prepared by Mills Oakley dated 08 July 2024), the ‘presumption of regularity’ applies.

This principle establishes that an approval may be inferred where there is sufficient evidence of other acts having been done in reliance on such an approval, or conversely, a noticeable lack of enforcement action by Council. In this case, the granting of consents for alterations and additions to an RFB (however that building was described at the relevant time) infers that there was originally a valid consent for an RFB.

There is no evidence to suggest that the approved use has been discontinued for any period of over 12 months since its commencement.

Noting the above, it is considered that existing use rights pertain to the site under Division 4.11 of the *EP&A Act 1979* and Part 7 of the *EP&A Regulation 2021*, and the subject application therefore may be considered and determined under existing use rights provisions. Refer to discussion at Key Issues section of this report for detailed existing use rights assessment.

The proposal is consistent with the specific objectives of the R2 zone in that the proposed built form will provide for the continued use of the site for residential purposes and will not result in any unreasonable amenity impacts upon adjoining properties.

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

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------|----------------------|--|---------------------|
| Cl 4.3: Building height | 9.5m | 11.39m (RL31.89 skylight over RL20.50 existing ground) | No |
| Cl 4.4: Floor space ratio | 0.5:1 | 1.03:1 (644m ² GFA) | No |

6.5.1. *Clause 4.6 – Exceptions to development standards*

The non-compliances with the development standards are discussed in Section 7 of this report.

6.5.2. *Clause 6.2 – Earthworks*

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

The proposal involves excavation works of up to 6m in depth to accommodate a basement and mezzanine level. The basement footprint is setback 3.25m from the western boundary and 0.48m from the northern boundary. Nil setbacks are provided to the street boundaries (to east and south). As such, the proposal fails to comply with the minimum 1m depth and 900mm setbacks pursuant to Part C2, Section 4.12 of RDCP 2013.

However, the extent of excavation is considered acceptable on merit. The basement levels are necessary to accommodate on-street car parking, storage, bin storage, and mechanical services. The basement levels are located below ground, and as such, do not contribute to any additional building bulk.

It is noted that Part C2, Section 6.1(v) of RDCP 2013 requires basement/underground car parking for a residential flat building. Despite the exceedance to the depth of excavation, the proposed basement is consistent with that anticipated for medium density development within the locality.

The excavation footprint has been driven by the impact of the overland flood path that traverses the northern portion of the site, together with the requirements to maximise deep soil area and provide sufficient on-site car parking.

Due to the flood levels, access to the basement is limited to the south-west corner of the site. The basement design extends to the northern and eastern boundaries to allow for the minimum amount of functional space possible for vehicular circulation and on-site car parking requirements.

The depth of excavation is a result of accommodating the 1:100-year flood path and the provision of a suitable planting zone along the northern portion of the site. The mezzanine area was designed to make use of excess ceiling height created within the basement. By utilising the mezzanine area for storage and services, the overall building footprint has been reduced and greater area is preserved for significant trees and landscape area.

Insistence on reduced excavation depth would remove the 800mm planting zone in the floodplain, hence reducing the quality and quantity of deep soil landscaping in the northern portion of the site. Deletion of the mezzanine area would require relocation of building services and storage areas above-ground, which is not an appropriate solution. Similarly, insistence on increased excavation setbacks would inhibit the ability for compliant car parking to be provided on-site.

A condition is included to ensure that no piling or ground anchoring works are undertaken on any land outside of the development site. Construction methodology details shall be prepared prior to issue of the Construction Certificate.

The proposal satisfies clause 6.2(3) in that:

- Conditions of consent are imposed to minimise potential impacts on drainage patterns, soil stability, and adjoining structures;
- The proposed excavation is suitably scaled and does not have an adverse impact on the likely future use or redevelopment of the land;
- The site has historically been used for residential purposes and the possibility of contamination is considered unlikely;
- Conditions of consent are imposed to manage demolition and waste removal;
- The proposed excavation will not have an adverse impact on the amenity of adjoining properties;
- The proposal is unlikely to disturb relics; and
- The scale and siting of the proposal minimises impacts on waterways, water catchments, and environmentally sensitive areas.

6.5.3. *Clause 5.21 – Flood planning*

Council is satisfied that the proposal achieves the relevant matters at subclause (2):

- a) *is compatible with the flood function and behaviour on the land, and*
- b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Refer to comments by Council's Development Engineer at Appendix 1.

7. Clause 4.6 exception to a development standard

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

| Clause | Development Standard | Proposal | Proposed variation | Proposed variation (%) |
|---------------------------|------------------------------|-----------------------------|---------------------|------------------------|
| Cl 4.3: Building height | 9.5m | 11.39m | 1.89m | 19.89% |
| Cl 4.4: Floor space ratio | 0.5:1 (313.1m ²) | 1.03:1 (644m ²) | 330.9m ² | 105.68% |

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

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

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

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

As part of the clause 4.6 reform the requirement to obtain the Planning Secretary's concurrence for a variation to a development standard was removed from the provisions of clause 4.6, and therefore the concurrence of the Planning Secretary is no longer required. Furthermore, clause 4.6 of the Standard Instrument no longer requires the consent authority to be satisfied that the proposed development shall be in the public interest and consistent with the zone objectives as consideration of these matters are required under sections 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979*, and clause 2.3 of RLEP 2012 accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Assessing officer’s comment: The applicant’s written request has adequately demonstrated that compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of the case. The objectives of the development standard are achieved, as follows:

- (a) The size and scale of the proposed development is compatible with the desired future character of the locality, which comprises a mix of development types, scales, and architectural design. The proposed three (3) storey building provides a suitable transition between the four (4) storey RFBs to the south-west of the site and the single storey dwellings to the north-east of the site. The proposal is generally consistent with the size and scale of the adjacent RFB at No. 59 Burnie Street. In fact, the proposed development has a lower ridge height than this adjacent building.
- (b) The subject site is not located within a heritage conservation area and does not adjoin any items of heritage significance.

- (c) As demonstrated in this report, the proposed development will not adversely impact on the amenity of neighbouring properties in terms of visual bulk, loss of privacy, overshadowing and views. The non-compliant portion of the building does not contain any habitable spaces and is limited to the roof slab, solar panels, skylights, mechanical plant, and lift overrun.

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

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

"Flood Constraints

As indicated, the proposed height variation is a consequence of the flood constraints of the site and the need to raise the building to comply with the flood planning levels. The Flood Risk Assessment prepared by GRC Hydro States:

The potential change to flood behaviour as a result of the development is assessed via flood impact modelling. The proposed development has been schematised as a proposed case scenario in the hydraulic model, and then any change in flood level from the model run quantifies the effect or impact of the development. Impacts of more than 0.01 m on neighbouring property are considered unacceptable. Impacts occur when an overland flow path is obstructed, diverted or otherwise modified to the detriment of other properties.

The change in 1% AEP peak flood level across the site is presented on Figure 6, which shows the flood level impact. The figure shows that slightly regrading and flattening the northern portion of the site where the flow path exists results in no significant impacts to others. There are only localised flood impacts on Keith Street (~0.03m), with no change to properties to the north, west or north-west. Keith Street at this location is entirely H1 hazard in the 1% AEP and so there is not considered to be any impact on flood risk. Other localized impacts in the area are unrelated to the overland flow path and are not considered as part of the impact assessment.

A flood assessment has been made of a proposed development at 357 Clovelly Road, Clovelly. The site is located in the centre of the Clovelly catchment and is affected in the 1% AEP on the northern portion of the site. The proposed development has been schematised in a hydraulic model (TUFLOW) and assessed. The assessment found that entry levels are sufficiently raised to meet the Flood Planning Level requirements and will have no impact on existing flood behaviour. Other flood planning controls have been met by the design.

If strict compliance with the building height development standard were enforced, the topmost level of the proposed building would have to be removed in order to maintain compliance with the flood requirements and recommendations stated in the Flood Risk Assessment Report. In this instance, the proposed variation is considered acceptable as it related to the roof, does not result in any significant impacts on the amenity of surrounding residences and due to the building's articulated form, is not readily apparent when viewed from the public domain. It is therefore a better planning outcome than enforcing compliance with the standard and relates better to neighbouring development, ensuring flood impacts are adequately managed.

Compliant Floor to Ceiling Heights

The proposal has floor to ceiling heights ranging up to 2.7m, which complies with the Apartment Design Guide (ADG). The height variation ensures sufficient slab widths are provided to accommodate the structural zone between levels. Given the site's flood constraints, lowering the building to achieve the same floor to ceiling heights is not possible. Therefore, a height variation is necessary in order to soundly construct the building and comply with the relevant ADG and NCC minimum ceiling height requirements.

Contextual Compatibility and Prominent Corner Location

The height variation will maintain and improve the site’s compatibility with the context. In *Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097*, Commissioner O’Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

The proposal will continue to multi-storey residential flat building on the site. As indicated, the proposed height is consistent with the neighbouring developments along Clovelly Road and further to Burnie Street. In particular, it achieves a similar bulk, scale and height as the adjacent contemporary residential flat building at No. 59 Burnie Street, which was approved under existing use rights provisions and is also located in the R2 Low Density Residential Zone. This neighbouring building is indicative of Council’s desired future character of the area and the proposal is consistent the neighbour’s building height (see Figure 6).

The proposed building height relates to the site’s prominent corner location and steps down towards the north. The proposal replaces an outdated residential flat building with a contemporary development which affords the opportunity to uplift the appearance and architectural quality of the built form, increasing amenity for the streetscape and future residents of the site.



The new design provides a more articulated, contextual and sustainable outcome than the existing building. The appearance of the site will be softened through the introduction of additional deep soil and soft landscaping across the site. The new, architecturally designed building contributes positively to the rich and diverse architecture of the streetscape and relates better to the desired future character of the area (see Figure 7).



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The contemporary development will also increase the density of the site, which will greatly contribute to the housing stock in the area and will attract new residents to this convenient location. Compliance with the standard would result in a reduction in the number of units on the site which would reduce the availability of housing in the area

Improved Design and Amenity

The height variation will facilitate the replacement of the existing residential flat building with a more articulated and better-quality building, with greater residential amenity. The design philosophy by Smart Design Studio states:

Design References

A limited palette of quality materials and textures utilised in different ways creates a harmonious and refined architectural expression. Light-coloured brickwork as both solid surface and hit-and-miss screening responds to the natural material tones of this beach suburb location.

Design Reference - Clovelly Inter-War Brick Buildings

The design references the use of brickwork that is the dominant building material in the local context, with a modern take on the curved balconies, punched windows and rounded corners seen in many residential and commercial buildings of the inter-war period in the area.

Design Reference - Beach-side Art Deco

The Art Deco buildings of the eastern suburbs are a further precedent for the design, where curved balconies or frontages with punched and horizontal window openings are featured. Often in rendered and painted masonry, these apartment buildings can also be a combination of render and face brickwork.

Materials Board

Appealing and robust materials are selected for their longevity in light-coloured tones that respond to the coastal location.

The proposal improves the design quality of the built form on the subject site. It provides a more articulated and contextually compatible development than the existing building. The new, architecturally designed, contemporary building contributes positively to the rich and diverse architecture of the streetscape. This benefits the locality by providing a building that relates better to the desired future character of the area, compared to the existing built form. The replacement building introduces planting to the balconies and façade, which 'greens' the streetscape and softens the appearance of the building.

The proposed development significantly improves the amenity of site with the residential flat building that addresses the housing needs of the community. It appears that the current apartments are non-compliant with various ADG and DCP, which results in poor residential

amenity, lesser design quality and a poor interface with neighbours. The rebuild resolves this by enhancing compliance with the ADG and DCP and increasing the floor to ceiling heights at all levels. Additionally, an increase in height facilitates greater solar penetration, particularly to the uppermost floor of the proposal. All units will also be dual aspect to ensure compliant solar access. The variation will also facilitate solar panels on the roof, which will contribute to the environmental sustainability of the development.

Accordingly, the proposal upgrades the appearance of the site, as viewed in the streetscape and from surrounding sites (see Figure 7). The works also improve the residential amenity of the apartments, while maintaining the amenity of adjoining properties. Therefore, the proposed height variation ensures the development promotes good design and amenity of the built environment, consistent with Object (g) of the EPA Act.

Equitable Access

The existing building does not have lift access, limiting equitable access across the site. The variation allows for the lift overrun, which ensures equitable access is provided to every level of the proposed building, in accordance with the Disability Discrimination Act 1992. In other words, to ensure lift access can be provided to the proposed building, a variation to the height standard is inevitable. If strict compliance with the development standard were enforced, it would preclude lift access to Level 2 of the development. This would not facilitate equitable access and would be a detrimental planning outcome.

Positive Outcomes

The proposed development and the variation of the height standard achieves numerous positive outcomes for the subject site, the streetscape and the wider locality. By replacing an older building with lesser amenity, accessibility and streetscape appeal with a high-quality, contemporary and modulated building, the proposal achieves benefits in relation to planning, architecture, amenity, landscaping, sustainability and accessibility matters. This is consistent with the desired future character of the area.

Accordingly, in our opinion, the height variation will ensure the development remains consistent with the existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b)."

Assessing officer's comment: The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The proposal has been designed to respond to the unique site constraints, including the flood-affectation of the site. The proposed building height relates to the site's prominent corner location and steps down towards the north.

Insistence on strict compliance with the development standard would serve no substantial benefit to neighbouring properties and would result in non-compliant ceiling heights, non-compliant on-site car parking, and inequitable access.

As demonstrated in this report, the size and scale of the proposed development is compatible with the desired future character of the locality, which comprises a mix of development types, scales, and architectural design. The proposed three (3) storey building provides a suitable transition between the four (4) storey RFBs to the south-west of the site and the single storey dwellings to the north-east of the site.

The non-compliant portion of the building does not contain any habitable spaces and is limited to the roof slab, solar panels, skylights, mechanical plant, and lift overrun. As such, the proposed development will not adversely impact on the amenity of neighbouring properties in terms of visual bulk, loss of privacy, overshadowing and views.

Conclusion

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

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

The applicant's written justification for the departure from the FSR standard is contained in Appendix 3.

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 FSR standard are still achieved.

Assessing officer's comment: The applicant's written request has adequately demonstrated that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case. The objectives of the development standard are achieved, as follows:

- (a) The size and scale of the proposed development is compatible with the desired future character of the locality, which comprises a mix of development types, scales, and architectural design. The proposed three (3) storey building provides a suitable transition between the four (4) storey RFBs to the south-west of the site and the single storey dwellings to the north-east of the site. The proposal is generally consistent with the size and scale of the adjacent RFB at No. 59 Burnie Street.
- (b) The proposed building is well articulated and responds to environmental and energy needs, as demonstrated in the submitted BASIX Certificate.
- (c) The subject site is not located within a heritage conservation area and does not adjoin any items of heritage significance.
- (d) As demonstrated in this report, the proposed development will not adversely impact on the amenity of neighbouring properties in terms of visual bulk, loss of privacy, overshadowing and views.

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:

“Contextual Compatibility and Better Planning Outcome

The proposed FSR variation will maintain the site's compatibility with the context. In Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

As indicated, the proposed FSR has been revised in accordance with Council's request for information and the comments of the Randwick Design Advisory Panel. The FSR remains

compatible with the neighbouring developments, particularly that of the immediately adjacent contemporary residential flat building at No. 59 Burnie Street (DA-94/2012), which is also in the R2 Low Density Residential Zone and benefits from existing use rights. It is therefore clear that the quality and form of the immediate built environment, as demonstrated by the neighbouring approval, creates a unique opportunity to achieve a good design outcome.

The proposed FSR variation facilitates the replacement of a dated residential flat building of limited visual appeal and residential amenity with a sensitively designed new residential flat building. The proposal affords the opportunity to uplift the appearance and architectural quality of the built form, increasing amenity for future residents of the site and the site's contribution to the streetscape. The proposed design provides a more articulated, contextual and sustainable outcome than the existing building. This benefits the locality by providing a building that relates better to the desired future character of the area, compared to the existing built form.

The new, architecturally designed, contemporary residential flat building contributes positively to the rich and diverse architecture of the streetscape and relates better to the desired future character of the area, compared to the existing building. The following design philosophy prepared by Smart Design Studio demonstrates the high level of consideration that has been given to achieving design excellence in the proposed development:

Design References

A limited palette of quality materials and textures utilised in different ways creates a harmonious and refined architectural expression. Light-coloured brickwork as both solid surface and hit-and-miss screening responds to the natural material tones of this beach suburb location.

Design Reference - Clovelly Inter-War Brick Buildings

The design references the use of brickwork that is the dominant building material in the local context, with a modern take on the curved balconies, punched windows and rounded corners seen in many residential and commercial buildings of the inter-war period in the area.

Design Reference - Beach-side Art Deco

The Art Deco buildings of the eastern suburbs are a further precedent for the design, where curved balconies or frontages with punched and horizontal window openings are featured. Often in rendered and painted masonry, these apartment buildings can also be a combination of render and face brickwork.

Materials Board

Appealing and robust materials are selected for their longevity in light-coloured tones that respond to the coastal location.

Contribution to Housing Stock

The FSR variation also allows for the dwelling density of the site to be maintained and increased from the existing four units to a proposed five units. If strict compliance were enforced, it would not be possible to achieve the same number of units with the same level of residential amenity as provided in this application. A compliant FSR would reduce the number of units on the site compared to existing, thus reducing the property's contribution to housing stock in the area. This would be a poor planning outcome and would not be in the public interest.

Upgraded Residential Amenity

The FSR variation will facilitate the replacement of the existing residential flat building with a higher density and better-quality building. As outlined above, the variation facilitates the replacement of the existing building with a more articulated, skilfully designed and contextually compatible development than the existing building. It also provides for a building with greater levels of residential amenity.

The proposed development significantly improves the amenity of site for the future residents. It appears that the current apartments are small and poorly designed, which results in poor

internal amenity. The rebuild resolves this by increasing the internal layouts of each apartment, rationalising the spatial arrangement of rooms, providing greater private open space and improving the circulation routes between living areas. This improved layout directly improves the quality of living amenity, such as access to daylight and natural ventilation, and maintenance of acoustic and visual privacy.

The existing building lacks the typical amenities for multi-storey residential flat buildings. The building does not have lift access. There is no designated communal open space, which is worsened by the insufficient size of each apartment's private balcony. The rear open space is dominated by hard stand vehicle access and parking.

In contrast, the proposed development is largely consistent with the requirements of the Apartment Design Guide and Council's DCP. The proposal introduces lift access, communal indoor areas and communal open space to the site. Car parking is provided in the basement, which is easily accessible from the front of the property. The amenity and accessibility of the site is therefore greatly improved from the existing situation. These positive outcomes are generated by virtue of the variation to FSR. Given the constraints of the site, it would never be possible to maintain the existing number of dwellings on the site while simultaneously achieving good amenity for each residence, without a variation to the FSR standard.

Therefore, the proposed FSR variation ensures the development promotes good design and amenity of the built environment, consistent with Object (g) of the EPA Act.

Orderly and Economic Use and Development

The proposal proposes an appropriate FSR when compared to surrounding development. If strict compliance with the FSR standard were enforced, it would result in a lesser number of units on the subject site compared to what currently exists. Therefore, FSR compliance would prevent the orderly and economic use and development of the land, which is inconsistent with object (c) of the Environmental Planning and Assessment Act 1979 (EPA Act). Given there are no unreasonable impacts to neighbouring properties, the bulk and scale of the development is contextually compatible, and the overall visual outcome is improved by the proposal, strict compliance would serve no benefit to the locality. Accordingly, in our opinion, the proposed FSR will ensure the development remains consistent with the existing and desired future planning objectives for the locality.

Safety, Security and Crime Prevention

The proposed contemporary and revitalised residential flat building with increased floor space significantly enhances safety, security, and crime prevention measures. The proposed design will allow for passive surveillance within the development and to the streetscape. The increased floor space allows for better layout planning, ensuring clear sightlines and reduces any concealed areas where crimes could occur. This enhanced visibility will contribute to a safer living environment. Moreover, the proposed building integrates communal open space and amenities that foster social interaction among residents, promoting a sense of community vigilance and collective security. These elements will benefit future occupants of the site and the wider locality.

Positive Outcomes

The proposed development and the variation of the FSR standard achieves numerous positive outcomes for the subject site, the streetscape and the wider locality. By replacing an older building with lesser amenity, accessibility and streetscape appeal with a high-quality, contemporary and modulated building, the proposal achieves benefits in relation to planning, architecture, amenity, landscaping, sustainability and accessibility matters. This is consistent with the desired future character of the area.

It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of neighbouring development achieves the objectives of the R2 Low Density Residential Zone and the majority of DCP built form and amenity provisions; and results in an improved streetscape outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the FSR breach.

Accordingly, in our opinion, the FSR variation is consistent with the existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b)."

Assessing officer's comment: The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The proposal has been designed to uplift the architectural quality of the built form, increase amenity for future residents, contribute to housing stock, and improve the site's contribution to the streetscape.

The existing apartments are small and poorly designed, which results in poor internal amenity. The proposal seeks to increase the internal size of each apartment, rationalise the spatial arrangement of rooms, provide greater private open space, and improve circulation routes. The proposal directly improves internal amenity, including access to daylight and natural ventilation, maintenance of acoustic and visual privacy, and residential safety.

The proposed GFA allows for the dwelling density to be increased from four (4) to five (5) units. Insistence on strict compliance with the development standard would serve no substantial benefit to neighbouring properties and would result in poor residential amenity and would reduce the number of dwellings provided on-site (relative to existing), thereby reducing housing stock in the locality.

Additionally, it is noted that 45m² of the proposed GFA is located below ground, at the basement and mezzanine levels. This floor area does not contribute to any visual bulk as it will not be visual from the street or neighbouring properties.

As demonstrated in this report, the size and scale of the proposed development is compatible with the desired future character of the locality, which comprises a mix of development types, scales, and architectural design. The proposed three (3) storey building provides a suitable transition between the four (4) storey RFBs to the south-west of the site and the single storey dwellings to the north-east of the site.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in Appendix 4.

9. Environmental Assessment

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

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument | Refer Sections 6 and 7 of this report. |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | Nil. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. Refer Appendix 4 of this report. |
| Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement | Not applicable. |
| Section 4.15(1)(a)(iv) – Provisions of the regulations | The relevant clauses of the Regulations have been satisfied. |
| Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p> |
| Section 4.15(1)(c) – The suitability of the site for the development | The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development. |
| Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation | The issues raised in the submissions have been addressed in this report. |
| Section 4.15(1)(e) – The public interest | The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social, or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest. |

9.1. Discussion of key issues

Housing and Productivity Contribution

The Housing and Productivity Contribution (HPC) came into effect on 1 October 2023 by way of the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*, under section 1.4 of the *Environmental Planning and Assessment (EP&A) Act 1979*. The HPC was introduced by the NSW Government and is a state infrastructure contribution which shall support housing and productivity in key growth areas in NSW. Contributions will help deliver essential state infrastructure such as schools, hospitals, major roads, public transport infrastructure, and regional open space. The Ministerial planning order was updated on 1 July 2024, and therefore the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024* is applicable to the subject application.

The HPC applies to development for the purpose of residential development, commercial development and industrial development as defined in the updated Ministerial planning order dated 30 June 2024. In the Order, residential development is defined as follows:

Residential development means:

- (a) subdivision of land (other than strata subdivision) on which development for the purposes of residential accommodation is permitted with development consent by an environmental planning instrument applying to the land (residential subdivision),
- (b) medium or high-density residential development,
- (c) development for the purposes of a manufactured home estate.

Medium or high-density development means:

- (a) Attached dwellings,
- (b) Build-to-rent housing,
- (c) Dual occupancy;
- (d) Multi-dwelling housing,
- (e) Residential flat building,
- (f) Semi-detached dwellings,
- (g) Seniors living (independent living units),
- (h) Shop top housing.

As the proposed development involves the creation of one (1) dwelling (i.e. replacement of a four (4) unit RFB with a five (5) unit RFB), the HPC is applicable. A condition of consent requiring the payment of the relevant contribution has been imposed as a condition of consent.

Communal Open Space

Pursuant to Objective 3D-1 of the ADG, at least 25% of the site area should be provided as communal open space. The proposed development provides 142.9m² of communal open space, which equates to 22.8% of the site area.

In accordance with the ADG requirements, direct sunlight will be provided to the proposed communal open space area between 9am and 1pm (at midwinter), in excess of the minimum two (2) hours requirement.

Minor numeric non-compliance is acceptable in this instance noting that suitable open space is provided for future residents in the form of private open spaces (i.e. balconies and terraces) and nearby public open spaces (i.e. Clovelly Beach and Bundock Park).

The ADG design guidance states that where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:

- Provide communal spaces elsewhere such as a landscaped roof top terrace or a common room.
- Provide larger balconies or increased private open space for apartments.
- Demonstrate good proximity to public open space and facilities and/or provide contributions to public open space.

It is considered that a communal rooftop terrace would not be an appropriate solution due to visual and acoustic privacy impacts. Instead, the proposed development provides increased private open space for apartments. Additionally, the subject site is in proximity to various public open space facilities, including Clovelly Beach and Bundock Park, which are located approximately 350m (i.e. 5 minute walk) from the site.

In this regard, and despite minor numeric non-compliance, an adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.

Private Open Space

Pursuant to Objective 4E-1 of the ADG, apartments are required to have balconies as follows:

- 1 bedroom – minimum 8m² area with 2m depth
- 2 bedroom – minimum 10m² area with 2m depth
- 3 bedroom – minimum 12m² area with 2.4m depth

For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² with 3m depth.

All apartments except Unit L01.02 are provided with a compliant area of private open space. The 11m² balcony to Unit L01.02 falls short of the 12m² requirement. A condition is included to amend the glazing line of the living room so that a compliant 12m² balcony can be provided. There is sufficient space available for 1m² of the living room to be converted to balcony.

Existing Use Rights

The site is zoned R2 Low Density Residential under Randwick Local Environmental Plan (RLEP) 2012 and the use of the site as an RFB is not permissible within this zone. The proposal seeks to demolish and rebuild the existing RFB at the site and therefore relies upon existing use rights regulated under Division 4.11 of the *Environmental Planning and Assessment (EP&A) Act 1979*. Section 4.65 of the *EP&A Act 1979* defines existing use as follows:

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land—*
 - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

Council does not have any record of a consent for the construction of an RFB at the subject site. However, there are three (3) development consents granted on 25 February 1993 (DA/560/1992), 19 May 1993 (DA/98/1993), and 03 February 2004 (DA/1082/2003) for 'alterations and additions to an existing RFB'.

Council's Special Counsel has confirmed that, consistent with the Applicant's legal advice (prepared by Mills Oakley dated 08 July 2024), the 'presumption of regularity' applies in this instance.

This principle establishes that an approval may be inferred where there is sufficient evidence of other acts having been done in reliance on such an approval, or conversely, a noticeable lack of enforcement action by Council. In this case, the granting of consents for alterations and additions to an RFB (however that building was described at the relevant time) infers that there was originally a valid consent for an RFB.

Section 4.66 of the *EP&A Act 1979* states that the use is presumed to be abandoned, unless the contrary is established, if the use ceases for a continuous period of 12 months. In the circumstances of the subject application, there is adequate evidence to suggest that the use of the site as an RFB has been continuous.

The Applicant has submitted legal advice (prepared by Mills Oakley dated 08 July 2024) to confirm that the demolition and rebuilding of the development is permitted under existing use rights, as outlined below:

- Section 4.67(1)(a) of the *EP&A Act 1979* states that the regulations may make provision for or with respect to existing use and, in particular, for or with respect to the rebuilding of a building or work being used for an existing use.
- Section 163(1)(c) of the *Environmental Planning and Assessment (EP&A) Regulation 2021* permits an existing use to be "rebuilt". Section 166 of the *EP&A Regulation 2021* establishes that development consent may be granted for any rebuilding of a building for an existing use, provided that the rebuilding is for the same existing use and no other use, and is carried out only on the same land.

Section 4.67 of the *EP&A Act 1979* provides that any provisions in an instrument that would derogate from the “incorporated provisions” of the *EP&A Act 1979* would have no force or effect. It is noted that derogation from the incorporated provisions has been considered in recent caselaw with regard to the matters of *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made Property Group Pty Limited v North Sydney Council* [2020] NSWLEC 1332. It was determined that the provisions of an LEP do not necessarily derogate from the incorporated provisions and that the existing use right permits the permissibility and alteration of the development, however may not result in the derogation from the standards of an LEP.

In this instance, and adopting the Commissioner’s findings in the above caselaw, it is considered that the provisions of clauses 4.3 and 4.4 of RLEP 2012 read in conjunction with clause 4.6 of RLEP 2012 allow the application to be made and considered by the consent authority, and do not derogate from the incorporated provisions. Accordingly, an assessment of the development, in accordance with section 4.15 of the *EP&A Act 1979*, should be undertaken.

The Land and Environment Court has established planning principles in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71 which set out criteria for the assessment of proposals on land with existing use rights. Assessment of the subject application against the planning principles is provided below:

Principle 1 – How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

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

The subject site is located within the R2 Low Density Residential zone and is currently occupied by a two (2) storey RFB. The surrounding locality comprises a mix of residential development, ranging from single storey dwellings to four (4) storey residential flat buildings.

It is acknowledged that the proposed development will exceed the 0.5:1 FSR and 9.5m building height development standards for the R2 zone. However, given the context of existing development at the site, the bulk and scale of the proposal is not considered to be incompatible with the existing streetscape or the character of the locality within the immediate vicinity.

As shown in the table below, the proposed built form has a lesser height and greater FSR than the adjacent three (3) to four (4) storey RFB at 59 Burnie St, which was approved by Council for alterations and additions (under existing use rights) on 09 April 2013 (refer DA/94/2012). In this regard, the bulk/scale of the proposed development is generally comparable to that of the adjacent building at 59 Burnie St.

| Site Address | GFA | FSR | No. Storeys | Ridge Height |
|-------------------------|---|--------|-------------|--------------|
| 59 Burnie St | 620m ² | 0.82:1 | 4 | RL 33.09 |
| Subject site (proposed) | 644m ² (NB: including 45m ² below ground) | 1.03:1 | 3 | RL 31.99 |

Additionally, it is noted that adjoining properties on the opposite side of Clovelly Road are zoned R3 Medium Density Residential and benefit from a maximum 12m building height control and 0.9:1 FSR control. These properties are occupied by four (4) storey RFBs.

As outlined below, the bulk and scale of the proposed development is supportable when considered in the context of the site and surrounds.

Building Height

Pursuant to clause 4.3 of RLEP 2012, a maximum building height of 9.5m applies to the site. The existing building at the site exceeds the 9.5m standard and has a maximum ridge height of RL30.85. The proposed new RFB will result in a 1.14m increase to the existing ridge height, resulting in a maximum height of RL31.99 (to lift overrun).

An assessment of the proposed variation to the building height development standard pursuant to clause 4.6 of RLEP 2012 is included at Section 7 of this report.

The height variation is a result of the overland flow path that runs along the northern portion of the site. Notwithstanding the variation, the proposal is consistent with the objectives of the R2 zone and will not result in adverse amenity impacts to adjoining residents. Importantly, the non-compliant portion of the building will not be readily visible from the public domain.

As shown in the below table, the proposed building height provides a suitable transition in scale between the nearby multi-storey RFBs (to south and west of subject site) and single storey dwellings (to north and east of subject site).

| Site Address | Maximum No. Storeys | Maximum Ridge Height (RL) |
|---------------------------------------|---------------------|----------------------------|
| 306-312 Clovelly Rd (to south) | 4 | RL 36.22 |
| 304 Clovelly Rd (to south) | 4 | RL 35.82 |
| 59 Burnie St (to west) | 4 | RL 33.09 |
| 357 Clovelly Rd (subject site) | 3 (proposed) | RL 31.99 (proposed) |
| 2 Keith St (to north) | 1 | RL 26.52 |
| 359 Clovelly Rd (to east) | 1 | RL 26.34 |

External Wall Height

Pursuant to Part C2, Section 4.4 of RDCP 2013, a maximum external wall height of 8m applies to the site. The proposed development has a maximum external wall height of approximately 10.75m (to east elevation), which exceeds the DCP control.

Numeric non-compliance is acceptable in this instance noting that the proposed remains consistent with the objectives of Section 4.4 of the DCP, as follows:

- The proposed building form provides for interesting roof forms and façades and is compatible with the streetscape. The proposal provides a flat roof form, which is consistent with contemporary development and the emerging character of the immediate area. Importantly, the proposed external wall height to Clovelly Road is generally consistent with that of neighbouring development at Nos. 57-57A and 59 Burnie Street (refer Figure 11).
- Suitable ceiling heights are provided to all habitable rooms to promote natural ventilation, sunlight access, and quality interior spaces.
- The bulk and scale of the development is considered acceptable and has been designed to minimise impacts on neighbouring properties in terms of overshadowing, privacy, and visual amenity.



Figure 11: Markup of proposed photomontage (Source: Smart Design Studio with Council officer markup)

Floor Space Ratio

Pursuant to clause 4.4 of RLEP 2012, a maximum FSR of 0.5:1 applies to the site. The existing GFA of the subject site is approximately 355.3m², which results in an FSR of 0.57:1. The proposed new RFB will result in a 288.7m² increase to the existing GFA, resulting in a GFA of 644m² and FSR of 1.03:1 for the site.

An assessment of the proposed variation to the FSR development standard pursuant to clause 4.6 of RLEP 2012 is included at Section 7 of this report.

Notwithstanding the variation, the proposal is consistent with the objectives of the R2 zone and will not result in adverse amenity impacts to adjoining residents. Importantly, the non-compliant portion of the building will not be readily visible from the public domain.

Setbacks

Pursuant to Part C2, Section 3.4.1 of RDCP 2013, the front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.

As shown in Figure 12 below, the proposed front setbacks (to Clovelly Rd and Keith St) are generally consistent with the alignment of neighbouring properties (i.e. No. 59 Burnie St and No. 2 Keith St) and the minimum 3m requirement. However, a minor portion of the building (south-east corner) encroaches within the southern setback area and a minor portion of the balconies (and access stairs) encroach within the eastern setback area. These areas relate to minor portions of the building which provide articulation to the street façades.

Minor numeric non-compliance is acceptable in this instance noting that the non-compliant element does not directly result in any adverse impacts (i.e. overshadowing, overlooking, or view impacts). Insistence on strict compliance with the 3m setback control would not provide an improved outcome and would result in non-compliant bedroom dimensions and balcony sizes.

Consistent with the objectives of Part C2, Section 3.4 of RDCP 2013, a consistent rhythm of street setbacks and front gardens is provided and contributes to the character of the locality.

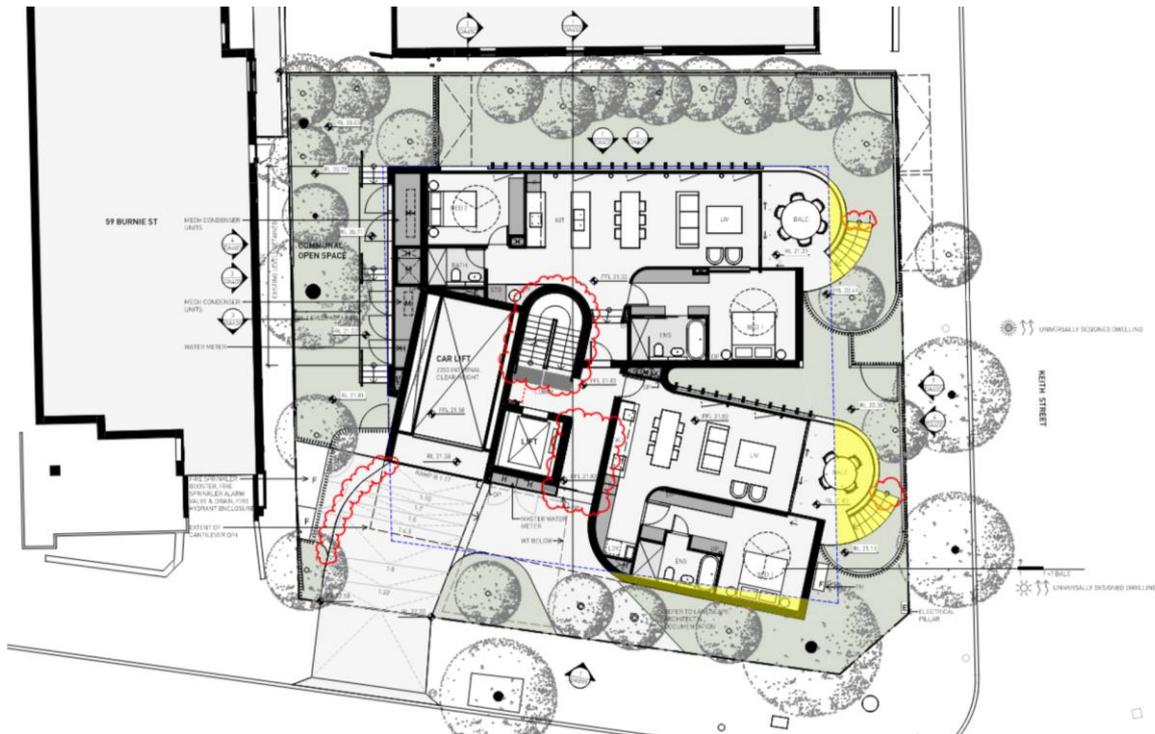


Figure 12: Markup of proposed ground floor plan (Source: Smart Design Studio with Council officer markup)

Pursuant to Part C2, Section 3.4.2 of RDCP 2013, a minimum 4m side setback applies to the site. Compliant 4m side setbacks are provided to the northern side boundary at all floor levels. However, as shown in Figure 13 below, a minor portion of the building (south-west corner) encroaches within the western side setback area.

Minor numeric non-compliance is acceptable in this instance noting that the non-compliant element does not directly result in any adverse impacts (i.e. overshadowing, overlooking, or view impacts). Insistence on strict compliance with the 4m setback control would not provide an improved outcome and would result in non-compliant bedroom dimensions.

Consistent with the objectives of Part C2, Section 3.4 of RDCP 2013, adequate separation is provided between buildings for visual and acoustic privacy, solar access, air circulation, and views. Additionally, contiguous areas are provided for open space and deep soil planting.



Figure 13: Markup of proposed Level 2 plan (Source: Smart Design Studio with Council officer markup)

Landscaped Area

Part C2, Section 2.2 RDCP 2013 prescribes requirements for landscaped and deep soil area.

The rear of the site is currently occupied by hardstand areas, with limited landscaping. The site currently provides only 212m² of landscaped area, equating to 33% of the site area.

The proposal seeks to increase the quantum of landscaped and deep soil area on the site by replacing these hardstand areas with landscaped gardens and private open space. At the front of the site, the proposal seeks to retain tree canopy coverage and soft landscaping, which appropriately soften the proposed built form.

The proposal provides for 45.8% of the site as landscaped area and 19.2% of the site as deep soil area. Whilst the proposal does not strictly comply with the minimum 50% landscaped area and 25% deep soil area controls, the proposal is consistent with the objectives of the DCP.

Sufficient landscaped open space is provided onsite to enable the space to be used for recreational activities or growing of substantial vegetation. The proposal has been designed to reduce impermeable surface cover and improve stormwater quality. The landscape design provided for a high level of amenity for future residents. Additionally, it is noted that the proposal readily complies with the minimum 7% deep soil area control pursuant to the ADG.

Principle 2 – What is the relevance of the building in which the existing use takes place?

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

The existing building is proposed to be demolished. Notwithstanding, the proposal retains the existing use of the site as an RFB and retains the character of the site and its contribution to Clovelly Road as a multi-storey development.

The proposal provides a suitable transition in scale between the nearby multi-storey RFBs (to south and west of subject site) and single storey dwellings (to north and east of subject site).

Principle 3 – What are the impacts on adjoining land?

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

Whilst the proposal seeks to increase the building envelope relative to the existing situation, the proposal has been designed to maintain the amenity of adjoining development, as detailed below.

Solar Access

Pursuant to Part C2, Section 5.1 of RDCP 2013, living areas and private open space areas should receive a minimum of three (3) hours of direct sunlight between 8am and 4pm, midwinter.

As shown in Figure 14, three (3) hours of sunlight will be provided to a portion of the living room windows and balconies of all proposed apartments between 8am and 11pm (at midwinter). Additional solar access is provided to the upper apartments in excess of the minimum three (3) hour requirement.

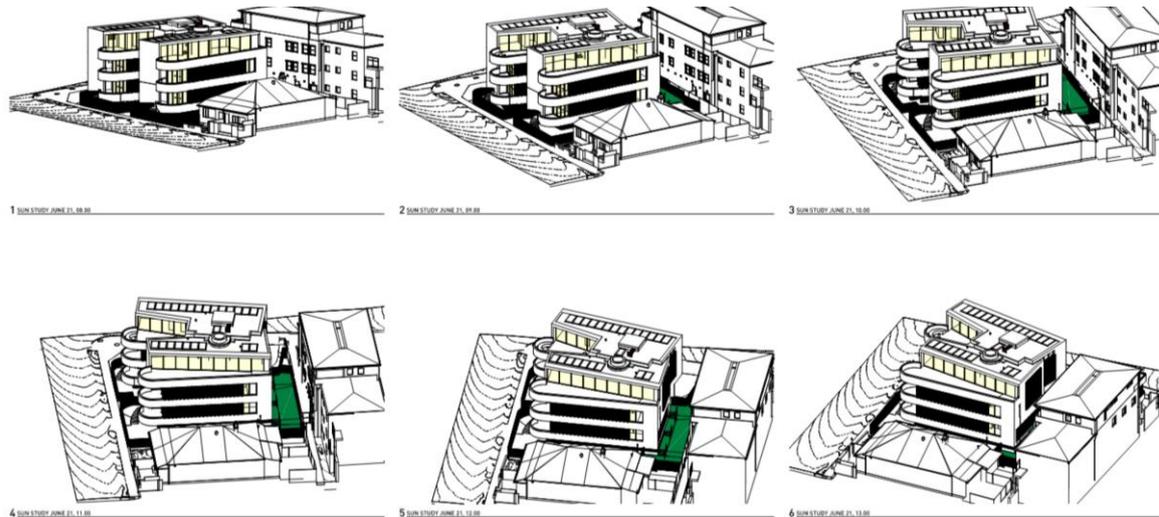


Figure 14: View from sun diagrams – 8am to 1pm (Source: Smart Design Studio)

Relative to the existing situation, the proposal will result in additional overshadowing of a living room window and a portion of the front balcony of 5/59 Burnie St at 8am. Notwithstanding, as shown in Figure 15, suitable solar access will be provided to the window and balcony for the remainder of the morning.

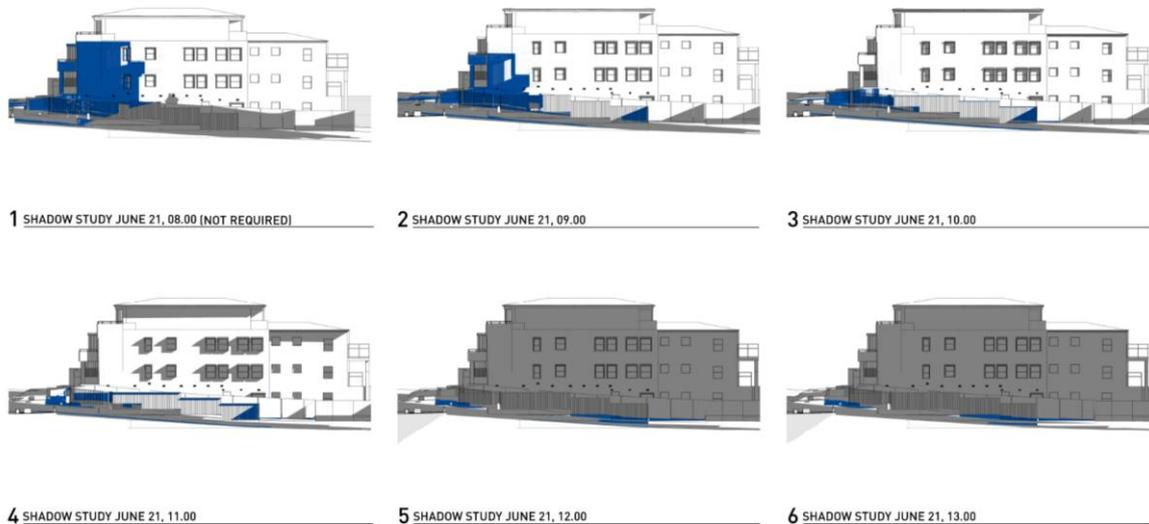


Figure 15: Elevational shadow diagrams (59 Burnie St) – 8am to 1pm (Source: Smart Design Studio)

The proposal is consistent with the objectives of Part C2, Section 5.1 of RDCP 2013, as follows:

- The design, orientation and siting of development maximises solar access to the living areas of dwellings and open spaces, as well as other areas of the development.
- The development retains reasonable levels of solar access to the neighbouring properties and the public domain.
- Adequate ambient lighting is provided to minimise the need for artificial lighting during daylight hours.

View Sharing

View sharing is to be considered where there is a potential for view loss impacts to ensure the equitable distribution of views between new development, neighbouring properties, and the public domain. The proposed development has been designed to maintain existing views from neighbouring residential properties.

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the Planning Principle for view sharing established by *Tenacity Consulting v Warringah [2004] NSWLEC 140* which establishes a four (4) step assessment of view sharing.

1. The assessment of the views affected

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The property at 10/59 Burnie Street benefits from district views only.

2. From what part of the property are views obtained?

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views from 10/59 Burnie Street are obtained from the front balcony (off a living room) and rear balcony (off a bedroom). There are no north-facing windows to this apartment.

3. What is the extent of the impact?

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

As shown in Figure 16, the northern side of the front balcony overlooks the subject site. The proposed development may result in a minor loss of district views over the side of the balcony boundary.

However, as shown in Figures 17-20, expansive district views and outlook from the front and rear balconies will be retained. These balconies are oriented towards the south and north (respectively) and do not overlook the subject site.



Figure 16: View from front balcony at 10/59 Burnie St, viewed to east (Source: Council officer)



Figure 17: View from rear balcony at 10/59 Burnie St, viewed to north (Source: Council officer)

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Figure 18: View from rear balcony at 10/59 Burnie St, viewed to north-east (*Source: Council officer*)



Figure 19: View from front balcony at 10/59 Burnie St, viewed to south (*Source: Council officer*)



Figure 20: Aerial image of subject site (in red), with 10/59 Burnie St floor plan overlay and view direction mark ups (Source: Council officer)

4. What is the reasonableness of the proposal that is causing the impact?

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The Court poses two (2) questions in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* at paragraphs 23-33. The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.

The following comments are made with regard to the reasonableness of the proposal:

- The proposal will have a minor impact on views obtained from 10/59 Burnie Street. Refer to detailed assessment at Step 3 above.
- The proposal presents as a three (3) storey residential flat building. As detailed in this report, the proposal reflects the desired future character of the locality and is compatible with the scale of neighbouring development.
- The height, bulk, and scale of the proposed built form is reasonable. As demonstrated in this report, the variations to the building height and FSR development standards are acceptable on merit, and the proposed development would not be inconsistent with the level of built form anticipated for a medium density residential development, being three (3) storeys.

- The property at 59 Burnie Street adjoins the western boundary of the subject site and the affected views are obtained across a side boundary. It has been established in the Tenacity planning principle that “*the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries*”.
- The apartment (10/59 Burnie Street) benefits from expansive district views and outlook from the front and rear balconies. Views to the north and north-east (from rear balcony) and to the south (from front balcony) will be retained in their entirety and will not be impacted by the proposal in any way.
- It is considered that the proposal represents a skilful design that minimises the impacts of the development to the neighbouring properties. A more skilful design would be unlikely to reduce view impacts without compromising the intent of the redevelopment of the site.

In conclusion, the proposal satisfies the aims and objectives for view sharing pursuant to Part C2, Section 5.5 of RDCP 2013, as well as the case law established by *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

Principle 4 – What is the internal amenity?

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

The proposal seeks to replace an outdated building with a contemporary building that achieves current building standards, including the National Construction Code (NCC) and the Apartment Design Guide (ADG).

The proposed development will provide a high standard of amenity for future occupants. 100% of apartments are naturally cross ventilated, exceeding the minimum 60% ADG requirement. Additionally, 100% of apartments receive at least two (2) hours direct sunlight to living spaces and private open spaces at midwinter, exceeding the minimum 70% ADG requirement. No apartments will receive no direct sunlight at midwinter.

The proposal has provided sufficient communal and private open space areas for future occupants. Communal open space is provided at 22.8% of the site area a portion of that area will receive more than two (2) hours direct sunlight at midwinter, in accordance with the ADG. Subject to conditions, all apartments benefit from an area of private open space which complies with the minimum ADG requirements.

Visual Privacy

The proposed development has been designed to maintain visual privacy for the subject and neighbouring properties.

All proposed window openings are suitably screened by way of hit and miss brickwork. The brickwork forms part of the architectural expression of the building and provides screening for visual privacy and for sun-shading. Every second bay of windows are hinged inwards on a stay to allow for ventilation. When the stays are unlocked, the windows can be fully opened to allow for cleaning of the outer face of the windows from within the apartments.

At ground and first floor levels, proposed balconies are oriented towards the east (i.e. Keith St), away from neighbouring properties.

At second floor level, the proposed northern balcony (RL27.81 floor level) is suitably located above the ridge height of the dwelling at No. 2 Keith St (RL26.52 roof ridge). To prevent overlooking to the adjacent window openings at No. 59 Burnie Street and to the rear POS area at No. 2 Keith Street, a condition is included to ensure that privacy screens are provided to the western edge and a portion

of the northern edge of the balcony (refer Figure 21). The proposed southern balcony is oriented towards the east (i.e. Keith St), away from neighbouring properties.

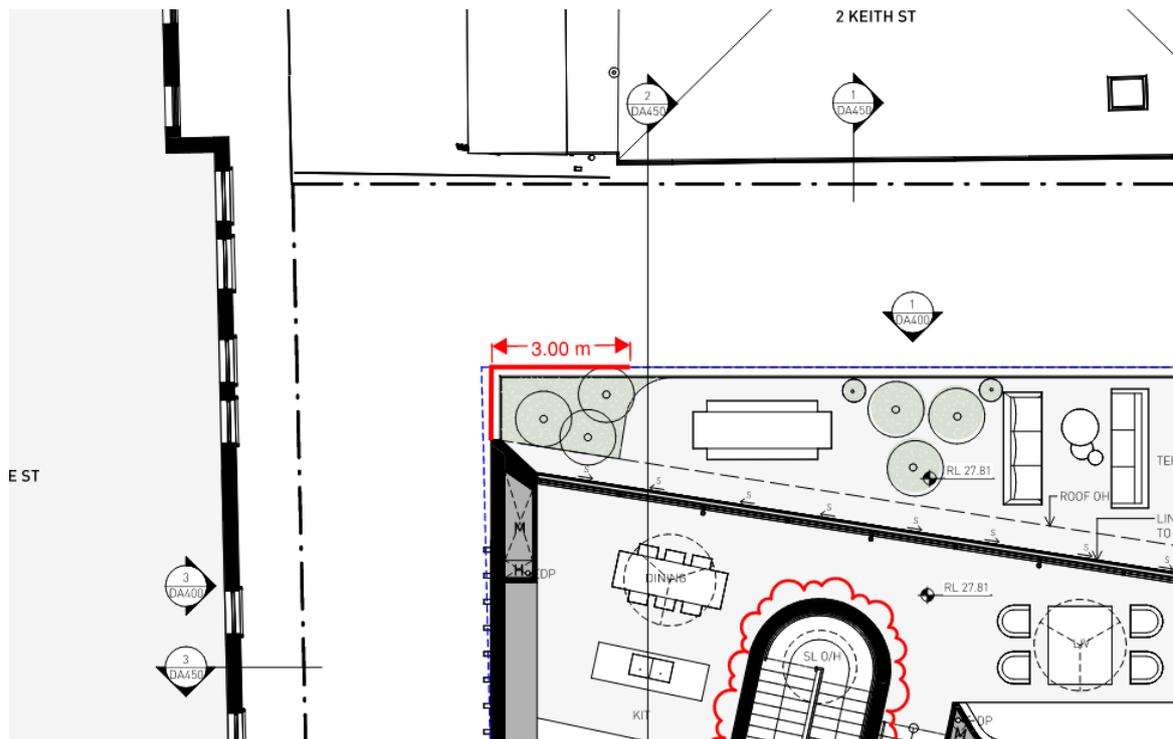


Figure 21: Markup of proposed Level 2 plan, with conditioned privacy screen shown in red (Source: Smart Design Studio with Council officer markup)

10. Conclusion

That the application for demolition of an existing residential flat building and construction of a 3-storey residential flat building with basement level and mezzanine basement level, five (5) residential apartments, eight (8) car spaces, communal open space at ground level, ancillary and landscaping works 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 benefits from existing use rights and is consistent with the specific objectives of the R2 zone in that the proposed built form will provide for the continued use of the site for residential purposes and will not result in any unreasonable amenity impacts upon adjoining 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 and streetscape.

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Appendix 1: Referrals

1. Development Engineer

Council's Development Engineer has reviewed the proposal and provides the following comments:

General Comments

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

Drainage Comments

The Planning Officer is advised that the submitted drainage plans should not be approved in conjunction with the DA, rather, the Development Engineer has included a number of conditions in this memo that relate to drainage design requirements. The applicant is required to submit detailed drainage plans to the Principal Certifier for approval prior to the issuing of a construction certificate.

The stormwater must be discharged (by gravity) either:

- i. Directly to the kerb and gutter in front of the subject site in Keith Street; or
- ii. Directly into Council's underground drainage system located in Clovelly Road or Keith Street via a new and/or existing kerb inlet or junction pit

Should the Stormwater be discharged to Council's street gutter or underground drainage system, an onsite stormwater detention (OSD) system will be required for this development.

Flooding Comments (not impacted)

The site lies within the catchment the subject of the "Draft Clovelly Bay Flood Study". The draft study shows that the site will be impacted by flooding.

A detailed flood assessment was undertaken and submitted to Council, (see D05559491). Detailed conditions of consent have been included in this report to ensure that the proposed development is suitably protected during the critical 1%AEP flood event and that adjoining properties are not adversely impacted as a result of the development.

Parking Comments

Standard assessment Under Part B7 of DCP

Parking Requirements for the future development will be assessed as per the following applicable parking rates specified in Part B7 of Randwick Council's Development Control Plan 2013.

- 0.5 spaces per studio unit
- 1.0 space per 1-bedroom unit
- 1.2 spaces per 2-bedroom dwelling
- 1.5 spaces per 3-bedroom unit
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

Parking required under DCP = $(3 \times 1.5) + (1 \times 1.2) + (1 \times 1) + 5/4$ (visitor)
= 8.0 spaces

Parking proposed = 8 spaces

Motorbike Parking

Motorbike Parking is to be provided at 5% of the vehicle parking requirement.

Motorbike Parking Required = 0.05×8
= 0.4

Motorbike Parking proposed = 0

Bicycle Parking

For Flats/multi dwelling bicycle parking to be provided at 1 space per 2 units plus 1 visitor space per 10 units.

Bicycle Parking Required = 5/2 + 5/10
= 3

Bicycle Parking proposed = 4

Carpark Layout

The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of Australian Standard 2890.1:2004.

Car Lift, Vehicular Access and Carpark Layout Comments

The proposed development requires a basement carpark to meet the required parking provision. The carpark takes up a significant portion of the site and the proposed access to the carpark is provided by a car lift with the vehicular crossing in Clovelly Road.

Whilst it is acknowledged that the existing vehicular access for the site is in Keith Street it would be difficult to position a car lift along this frontage given the stormwater overland flowpath through the northern portion of the site. The site could not accommodate internal ramps without a major reduction in the area available for parking.

The proposed vehicular crossing in Clovelly Road is greater than 12.5 metres away from the eastern extent of the existing Bus Zone in Clovelly Road (a requirement of Council's Integrated Transport team). There is no parking along the Clovelly Road frontage of the development site. The vehicle movements into and from the basement carpark are low (2-3 movements per hour in the peak). The Assessment Planner has advised that the development meets the majority of key planning considerations and is supportable.

Undergrounding of site feed power lines

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

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

The subject **is** located within 15m of a light pole in Clovelly Road on the same side of the street however the nearest power pole in Clovelly Road is on the opposite side of Clovelly Road.

There is a power pole on the same side of the street at the corner of Clovelly Road and Keith Street and another near the existing vehicular crossing in Keith Street hence the above clause **is** applicable.

Waste Management Comments

The Waste Management Plan submitted with the application shall not be approved as part of this consent as it does not meet Council requirements. Development Engineering has included waste management conditions in this report requiring a new waste management plan to be approved prior to commencement of any works.

The applicant is required to submit to Council and have approved by Council's Director Planning, a Waste Management Plan (WMP) detailing waste and recycling storage and disposal for the development site.

The plan shall detail the type and quantity of waste to be generated by the development; demolition waste; construction waste; materials to be re-used or recycled; facilities/procedures for the storage, collection recycling & disposal of waste and show how the on-going management of waste for the units will operate.

Comments on the number of Waste Bins

Appendix 3 in Part B6 of Council's DCP specifies a waste bin requirement rate for residential flat buildings houses of 1 x 240L bin per 2 units for normal garbage and 1 x 240L bin per 2 units for recycling.

i.e. Garbage/recycling Bins Required = Number of units/2 (rounded up to nearest whole number)

There are no specific requirements for green waste in Part B6 of the DCP however since March of 2021 Council has introduced a Garden Organic Food organic (FOGO) collection service. As some landscape areas are also proposed it is recommended that a minimum of 1 x 240L bins also be provided for FOGO.

Total Number of BINS required = 3 (normal) + 3 (recycling) + 1 (FOGO)
= 7 x 240L BINS

2. Landscape Officer

Council's Landscape Officer has reviewed the proposal and provides the following comments:

Street trees

Within a dedicated tree square on Council's Clovelly Road footpath, roughly halfway across the width of this frontage, and just to the east of the existing power pole is a mature, 10-12m tall Banksia integrifolia (Coastal Banksia, T13) of fair health and condition due to a combination of its competition with the canopy of T6 within the subject site just to its north, the bias of its trunk to the west and the past removal of all lower branches to a height of around 3 metres above ground level to provide a clearance off the roadway and footpath.

Regardless, it is automatically protected by the DCP due to its location on public property and also forms part of a scattered formation of this genus and species along both sides of the road, which announces entry to Clovelly Bay/Beach, as well as contributing to local biodiversity through its ability to provide a 'green-link' with remnant vegetation in Donnellan Circuit further to the east, providing a food and habitat source for native fauna along the harsh coastal zone.

The plans show the existing vehicle access being relocated from Keith Street around into Clovelly Road, along the western site boundary, to the west of this tree, which when scaled off the rev B Site Plan will be offset a distance of around 2900mm from its trunk, but as this whole public area is already covered in concrete surfacing, this should not threaten the tree given that any excavations for a new footpath and crossing would only be in the order of 100-200mm in depth, which is like-for-like, with the crossing to also be located on the compression side of its root plate, which is not as critical (as the tensile side) for its support and stability, so no major impacts are expected, with relevant protection conditions and a bond imposed.

Now around on the Keith Street verge are two mature, 4-5m tall Hibiscus tiliaceus 'Rubra' (Ruby Cottonwoods – not identified or assessed in the Arborist Report but marked as T15-16 on the Landscape Plan), in the area between the corner of Clovelly Road and the existing vehicle crossing which are also protected by the DCP and display fair condition due to repeated clearance pruning away from the roadway, footpath and overhead services wires.

Except for removing/demolishing the existing crossing that is further to their north and then replacing this area with a grassed verge, there are no other external works that would pose a direct threat to either of these trees; however, protection conditions and a bond still need to be imposed to avoid secondary impacts from trucks, deliveries and similar, so have been included in this report to ensure their retention.

Within development site - Clovelly Road frontage

Within the front/Clovelly Road setback, is from west to east, two mature, 5m tall Frangipani's, being T8 right in the southwest site corner, then T9 to its north, in the western side setback, adjacent the

southwest corner of the existing building, which are a common, exotic, insignificant species, and given their direct conflict with the new internal basement ramp in this same location, no objections are raised to their removal as shown, along with two 6m tall *Archontophoenix cunninghamiana* (Bangalow Palms, T7) which are just to the east of T8, as they are concealed beneath/between other trees in this same area, as well as being in the centre of the new driveway.

Further east again is a mature, 12m x 8m *Jacaranda mimosifolia* (Jacaranda, T6) of good health and condition which while having a landscape presence at this site and being protected by the DCP, is growing in a restricted area bounded by the front masonry wall/fence only a metre to its south as well as the footprint/foundations of the existing building around 2900mm to its north, all of which would have modified its normal radial root growth which is needed to support it into the future, and also means that removal/demolition of any of these structures would have a de-stabilising effect on the tree as it would have grown and developed with a reliance on them for stability.

Not only will the existing dwelling and all associated structures be demolished, the plans then show that significant excavations and civil works will need to be performed in this same area for the two Basement Levels and a sub-surface rainwater tank, resulting in a major encroachment of its TPZ of more than 50%, as well as its SRZ, together with the internal driveway/basement ramp which cannot be relocated to an alternative position elsewhere in the site due to a lack of space created by the restriction of the overland flow path across the rear boundary, with the driveway also unable to be reduced in width to increase the setback from T6 due to a need to allow two vehicles to pass side by side in this area, all of which means retention of T6 will not be physically possible if these works proceeded as shown due to the exclusion zones that would need to be applied both above and below ground.

As such, the relevant consent for its removal has been provided in this report, as shown and as sought, with the Landscape Plan showing that a grove of up to 4 replacement native coastal *Banksia*'s will be provided back in this same area, which is deemed a satisfactory outcome.

To the east, adjacent the existing letterboxes, is a smaller, 7m tall *Callistemon salignus* (Willow Bottlebrush, T5) which despite being a native species that is protected by the DCP, is insignificant and directly affected by the new footprint, so can be removed for the same reasons given above.

The last tree along this frontage is right at the street corner/intersection, being a mature, 10m tall *Angophora costata* (Sydney Red Gum, T4), which is a desirable endemic species of fair health and condition due to the lean of its trunk to the south and the past pruning of several mid-order lateral branches from its northern aspect to provide a clearance away from and above the existing two-story dwelling, which has affected its form and balance, and while kino was also observed being exuded from past wounds, this is not deemed to be a concern for its future status on its own.

It has a presence in the local landscape due to a combination of its size and prominent corner position and is regarded as the most significant specimen assessed for this application given its benefits to biodiversity, and while the existing brick fence and dwelling would have restricted its root growth, this tree would also be relying on these same structures for stability, in the same manner that was described earlier for T6.

However, the difference here is that while T6 was recommended for removal due to major encroachments, the plans and Arborist Report show T4 as being retained, with notations stating that the two Basement Levels have been specially re-designed to its north and west to avoid the 2.43m SRZ radius, resulting in a more manageable TPZ incursion of 8.9%.

Despite this, the footprint of all above ground parts of the building (Ground – Third Floor Level) will then extend out past this, and when scaled off the plans, would be offset a minimal distance of only 990mm from its trunk, as well as up to a height of almost 10m above ground level (RL31.390 – West Elevation, dwg DA400).

In an attempt to minimise ground disturbance and root damage, a notation on the marked up plan at page 7 of the Arborist Report states that the 's/e portion of the building will be cantilevered over its SRZ', and while this is critical in the ability to even attempt retention of the tree, no further specific details of how this will be achieved has been provided by either the Arborist or shown on the architectural plans.

Given the proximity of these works and an absence of any details which explain how this could realistically be delivered on-site, Council remains highly concerned of the impacts that would be sustained, as any roots that would have been projected to the west of the tree, which are currently in undisturbed deep soil, would need to be completely severed for the footprint of the two levels of Basement that are shown as being constructed right up onto the front boundary, so a greater encroachment than quoted will be experienced, with a higher concentration of roots also likely to be encountered in this area as they would have been deflected away from the existing masonry fence and building.

The interference of any piling rig into its crown also requires consideration, along with the need for scaffolding extending out past the building elevations during works, and again, will be a higher representation than shown on page 7 of the Arborist Report as the Basement Levels now extend right up the front boundary, and while the Addendum Arborist letter states that small scale machinery can be used, no details of this have been provided, so there remains a high degree of uncertainty around these parts of the works.

Most importantly, measurements taken during the site inspection of 09/10/24 (D05477672) confirmed that this tree is already located within a 2-metre radius of the southeast corner of the existing building (eave/wall alignment), with Part B5, Section 2, Exemptions, point iii) of the Comprehensive DCP 2013 stating that Council consent to remove trees is not necessary in the following instance:

“to any tree growing within two (2) metres of any building comprising a residential dwelling (detached, attached or multi-unit housing) or any retail, commercial, factory, warehouse or storage building (not being an out building) measured horizontally from the closest point of the trunk at one (1) metre from ground level to the closest point of the vertical alignment of the building structure which may be the eave, guttering or fixed awning of the building.”

A phone discussion on this topic was then held with the Arborist, who subsequently provided an Addendum to their original report, stating their intention was to pursue its retention based on the current plans only.

Ultimately though, as T4 is exempt from the DCP, this means it could already be removed at any time, without requiring any form of consent, even irrespective of any building works/development, so it is not possible for Council to then formally require its retention as part of a development consent as this is in direct conflict with our own policy, so consent has been reluctantly given for its removal, subject to species which are suitable for the space available being provided in its place.

Should the applicant still elect to retain this tree, despite the comments provided above, then that is a decision for them, and they will be responsible for any repercussions associated with it.

Within development site - Keith Street frontage

While the variety of plants and shrubs/small trees in the eastern side setback, adjacent the dwelling, and fronting Keith Street, assist with partial privacy and screening for occupants, they are all insignificant, including the Yucca (T3) and Bottlebrush (T2), which has been heavily lopped away from the footpath and overhead wires, and as the footprint of Basement Level 1 extends right up onto the eastern site boundary, in direct conflict, they can all be removed as shown, with the Landscape Plan nominating a range of native coastal trees, a ‘fern gully’ and mass planted mounds of coastal shrubs back in this area, which is deemed acceptable compensation in this case.

Further to their north, right in the northeast site corner is a mature, 8-9m tall *Glochidion ferdinandii* (Cheese Tree, T1) which is a desirable native species that is protected by the DCP; however, recent extreme crown lifting has seen all lower branches removed to a height of around 5-6 metres above ground level (presumably to provide a clearance off the internal carpark directly below), which has significantly affected its balance, form and condition, to the point where it can now not recover, and given also its direct conflict with Basement Level 1, could not remain as part of these works, with the relevant consent for its removal provided in this report.

The Landscape Plan nominates replacement trees and groundcovers across the rear boundary and into this same corner as part of the ‘Floodplain Garden’, which will drastically increase plant

quantities at the site as well as improve the quality of the private open spaces, and given also the ability to install new street trees on the verge in this area following removal/demolition of the existing driveway, should all combine to deliver a reasonable level of environmental amenity into the future for both occupants, neighbours and the streetscape.

Rear/northern site boundary

To the west of T1, halfway across the northern boundary is a single, mature, 7m tall *Archontophoenix alexandrae* (Alexander Palm, T12) which while protected by the DCP offers no benefit to biodiversity or native fauna, and as all aspects and levels of the development will occupy this same area, consent has been granted for its removal, as sought and as shown.

Further west again, in the northwest site corner is a mature, 10m tall *Lagunaria patersonii* (Norfolk Island Hibiscus, T11) which was noted to perform a valuable screening and privacy function as its crown prevents direct overlooking from the upper floors of the adjoining unit complex to the west, no.59, into the development sites main area of private open space.

However, after flowering, the seed pods of this species open to release 'fibreglass like hairs' which are extremely irritable to both humans and animals, and also poses a weed risk to remnant vegetation, which is why they are no longer in production/available at nurseries or planted in the public domain (streets or parks).

For these reasons, Part B5, Section 2, point i), Exemptions, of Council's Comprehensive DCP 2013 refers to a list of undesirable species which can be found at Appendix B5-1, and as this tree is included, means they can be removed at any time, without requiring any form of consent from Council, even irrespective of any building works.

So while this new footprint will be outside of its SRZ, resulting in only a very minor encroachment of its TPZ (which is presumably why the Arborist Report recommends its retention), this is not possible as part of a development application as it directly contravenes Council's own DCP controls and objectives, as we seek to remove undesirable/problematic species and replace them with more desirable natives in all instances.

This issue was discussed over the phone with the Consulting Arborist, who has since also provided an Addendum Report, stating that while they acknowledge its 'exemption', they still wish to retain it in-situ, presumably for the screening and amenity functions described earlier, and the fact it would not appear to be subject to major encroachments/impacts from these works.

But regardless of the applicant's intentions towards this tree, Council cannot formally require its retention in this case for the reasons given above, so conditions in this report grant consent for its removal, consistent with past advice, and if they do elect to retain it, that is their decision, and they will be directly responsible for it.

The last specimen assessed for this application is halfway along the western side setback, being a mature, 10m tall *Agonis flexuosa* (Willow Myrtle, T10) which when scaled off the submitted survey, is offset 2700mm from the northwest corner of the existing building (2400mm to the awning/closest part), which is a common, non-endemic native species that is protected by the DCP, and was observed to perform a valuable screening and privacy function from the units at no.59 to the west in the same manner that was described above for T11.

The plans show that while the southern half of both the Basement and Ground Floor Levels will be contained within the footprint of the existing dwelling, their northern halves will then encroach out past the current house, into an area of undisturbed deep soil, at an offset of around 3050mm from its trunk, with the Arborist calculating an overall 18.1% TPZ encroachment, which is categorised as 'major' in AS4970-2009.

While a SRZ incursion will also occur, this is attributed purely to the external access/fire stairs that will be attached to the western elevation, with the Arborist detailing that these can be specified as a lightweight construction and supported on localised pad footings which can be dug by hand, all of which will minimise the disturbance and potential for root damage, which is deemed realistic and achievable in this case.

Given a combination of the sufficient offset from the building, the retention of deep soil and the relatively minor scope of works for the stairs, it is deemed feasible to incorporate this specimen as an existing site feature into the development, with relevant protection conditions provided.

The submitted Landscape Plan contains a sufficient level of detail and treatment for a development of this size and type, as it will increase the amount of plant material, utilising mostly native coastal species, as well as improve the quality of private open spaces, so is supported, with conditions requiring its full implementation as part of any approval.

3. Regulatory Building Officer

No concerns raised, subject to standard conditions.

4. Environmental Health Officer

Council's Environmental Health Officer has reviewed the proposal and provides the following comments:

The submitted acoustic report, specifically section 5.5, presents a comparison of internal noise levels from traffic noise as assessed against the Infrastructure SEPP: Development near Rail Corridors and Busy Roads criteria and Randwick City Council's (RCC) RFI internal noise criteria. The report concludes that RCC's internal noise criteria are more stringent.

While this observation is technically accurate, it is essential to emphasise that the Infrastructure SEPP criteria is not directly applicable to this development. The subject site, located in Clovelly, is in a suburban area, far removed from the noise conditions typically associated with urban arterial roads exceeding 40,000 vehicles per day. As such, the external noise exposure for this development is significantly lower than for areas adjacent to high-traffic corridors, making the application of the Infrastructure SEPP criteria inappropriate and overly lenient in this context.

The comparison provided, while informative, does not align with the acoustic realities of a suburban environment. RCC, as the consent authority, has a responsibility to apply a merit-based assessment to ensure an adequate level of internal acoustic amenity for future residents. The RCC internal acoustic comfort criteria is more suited to suburban residential developments and align with good design principles outlined in the Housing SEPP and Apartment Design Guidelines.

Furthermore, the proposed apartments are marketed as luxury residences, warranting a higher standard of internal noise amenity. Permitting internal noise levels akin to those acceptable in urban environments would undermine the expectations for acoustic comfort in premium residential developments. Therefore, adherence to RCC's more stringent internal noise criteria is both reasonable and consistent with best practice acoustic design principles.

Section 7.2.4 Windows/Doors open noise levels discuss exceedances of RCC noise criteria but have not included any alternative methods of natural ventilation such as plenums, winter gardens etc. The consultant also suggests using borrowed ventilation this would not be supported for habitable rooms such as bedrooms.

The acoustic Consultant also suggests utilising mechanically assisted ventilation (such as centralised or individual apartment outside air fans), this is not supported by Council as natural ventilation is not permitted to be mechanically assisted. The development may implement mechanical ventilation in addition to natural ventilation, but it is not permitted to replace natural ventilation requirements under the ADG.

A detailed acoustic assessment of mechanical plant will be required at construction certificate stage of the development following plant selection, this requirement will be conditioned at CC stage.

5. Design Excellence Advisory Panel

Council's Design Excellence Advisory Panel (DEAP) has reviewed the proposal and provides the following comments:

1. Context and Neighbourhood Character

The site is on a corner, Keith Street and Clovelly Road, and the design responds to the different characteristics of the two streets. The site is Zoned R2, Low Density Residential, but since it contains an old building containing apartments, the site benefits from Existing Use Rights legislation under NSW planning controls. The Council is in the process of confirming that the existing use has been established.

The architects propose a design that draws on the scale, streetscape and character of the two street frontages. The Panel largely accepts the logic that the applicants architect has applied to the site planning subject to some comments below.

2. Built Form and Scale

The Architect outlined the step by step process by which the built form for the proposed design has been established. The response in terms of scale and form along the Clovelly Road frontage is supported by the panel. The general siting and “U” shaped form is supported, as the design places the highest and bulkiest components along the Clovelly Road (southern) frontage, and the form addressing Kieth Street is split into two wings and steps down in response to the lower built form currently found and expected to be maintained along the Keith Street (east) frontage.

The combination of curved and rectilinear forms proposed, together with the break between the two wings, contributes to a well articulated presentation to Keith Street, where a smaller, domestic scale is characteristic.

Nevertheless, it is noted that the curved balcony forms “breach” what could be considered to be the Keith Street frontage setback. This is acceptable but the 11m high rectilinear form of the northern wing could be set back further from Keith Street to ameliorate the scale difference to the Keith Street streetscape. Approximately 1m should be considered, for this wing only. The northern glass line of the top floor apartment living room could be moved forward by approximately half a meter to compensate for this. That move would also provide a wider living space for the top floor apartment, and given that the balcony is very large, the balcony could be reduced by the half a meter and still achieve the functionality sought.

The way in which the design report illustrates how the built form steps down from the box form, to the curved balcony form, creating a transition towards the northern side and the houses to the north, is supported.

The remaining setbacks seem appropriate for the corner site, and the large side setbacks to the north and west boundaries are acknowledged.

3. Density

Under EUR (Existing Use Rights) there is theoretically no FSR control, only a “character” or “compatibility” or merit based bulk and scale assessment. Given that the Panel supports the scale and presentation and “fit” of the design on the corner site, subject to the comments above, the number of dwellings proposed and the floor space proposed is acceptable, and hence the density proposed for the site is considered appropriate.

The 0.89:1 FSR Control proposed is considered appropriate in the Clovelly Road and corner context.

4. Sustainability

Consideration has been given to overland water flow in the design, hence the generous side setback from the northern boundary as well as the undercroft space adjoining this setback zone.

The roof design incorporates PV solar panels in an efficient arrangement. There is some further space available on the roof to increase the amount of PV panels.

Ceiling fans are proposed for all bedrooms.

The orientation of spaces to north and the split design layout facilitate passive solar and cooling and are considered to contribute to the sustainability of the project.

5. Landscape

The landscape design proposed for the site is considered to be of a high quality. The design is well presented and the panel supports the high quality presentation.

The Panel encourages the architect and landscape architect to give further consideration to integrating the coastal landscape characteristics of the Clovelly beach gully into the design, particularly to refer to this coastal feature in a smaller way in the way the building is setback from the north boundary and where the building splits open in a way that addresses itself in the direction of the gully and the beach.

The undercroft space landscaping will need careful consideration, implementation and maintenance, as covered and relatively difficult access undercroft spaces like these are often neglected.

The design of the basement results in a zero setback at the main basement level from the north side boundary and from the Keith St boundary. At the same time the amount of Deep Soil landscaped area as well as Landscape Area is low in comparison with the corresponding controls on an R3 Zoned (Medium Density) site. Deep soil achieved is 37% (Control is 50% of site area) and Landscaped Area achieved is 13.9% (Control is 25% of site area) It is acknowledged that the design achieves the 7% Deep Soil guideline of the ADG. The panel believes that by removing the northernmost parking space, there could be deep soil and a setback provided of around 3m from the northern boundary. The column to the north of the Bike Racks in the basement could then be deleted and the basement functionality could still be achieved, while providing the deep soil landscaping where it would be meaningful, between the proposed new building and the northern adjoining house.

It is noted that there are large voids in the mezzanine basement above, so further rationalization of the two basement levels could reduce excavation, increase deep soil landscaping while either not losing a car space or, in the worst-case option, reducing by one car space.

Consideration should be given to providing easier and wider access from the two ground floor apartments to each of the private garden spaces.

6. Amenity

The amenity of the apartments is considered to be of a high standard. All apartments have a northerly and easterly aspect. All apartments achieve cross ventilation. The layouts are planned in a sound and orderly arrangement, with good separation of living areas from bedroom areas.

On Level 1 - Plan, the Mechanical space on the north-west corner adjoining Bedroom 2 is large and not considered to be optimum use of above ground space. This space could be used to enlarge Bedroom 2 or to provide an ensuite bathroom for Bedroom 2. There appears to be adequate space elsewhere for mechanical use, particularly in the Mezzanine Basement void spaces. Given that this is an EUR application, there would not be an issue with excessive floor space to use this mechanical space for apartment space.

The floor-to-floor heights are:

| | |
|--|----------------|
| <i>Ground to First</i> | <i>3,160mm</i> |
| <i>First to 2nd</i> | <i>3,100mm</i> |
| <i>2nd to top of Roof slab/parapet</i> | <i>3,300mm</i> |

3,100mm is considered to be the minimum, and the architect should demonstrate achieving the 2,700mm ceiling height desired under the ADG.

7. Safety

An area of concern is the waterflow zone in the undercroft space. The architect should demonstrate how this will be managed.

8. Housing Diversity and Social Interaction

Even though the site is located close to Clovelly Beach and the coastal recreation areas, and also given the fact that the two ground floor apartments will have access to private garden space, there is communal open space provided, so this is considered to be a positive aspect.

The mix of 1 x 1-Bed, 1 x 2-Bed and 3 x 3-Bed accommodation provides diversity and is supported.

9. Aesthetics

The massing and distribution of the rectilinear and curved forms has been carefully considered and clearly expressed, subject to the panels recommendation regarding adjustment of bulk. The exploration of materials, including brick and the detailing of these has been well articulated in the proposal.

In broad terms, the design is sets out to, and in the opinion of the Panel, achieves a strong and appropriate response to the corner location. The form is also a successful interpretation of the tradition of corner and beachside development in Sydney's Eastern Suburbs.

SUMMARY AND RECOMMENDATIONS

The design of this project is considered to be of a high standard and is generally supported. We thank the architect and the landscape architect for a well-considered and well-presented scheme.

There are some minor areas needing further consideration, such as the basement design and deep soil areas and setbacks, and these can be presented to the Council without the need for the Panel to see this application again.

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

gsa planning

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

APPLICANT'S NAME: Luke Morgan C/- Smart Design Studio
SITE ADDRESS: No. 357 Clovelly Road, Clovelly
PROPOSAL: Demolition of the Existing Residential Flat Building and Construction of a New Residential Flat Building, Landscaping and Associated Works

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

Randwick Local Environmental Plan (LEP) 2012

(ii) The land is zoned:

R2 Low Density Residential. The residential flat building use is prohibited in the zone in accordance with the Land Use Table provided under Part 2 of the LEP. However, the site benefits from existing use rights permitting residential flat buildings. The existing use rights are further detailed in Section 4.2 of the SEE accompanying the application. The objectives of the R2 Low Density Residential Zone are stated, inter alia:

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

(iii) The number of the relevant clause therein:

Clause 4.3 – Height of Buildings which is stated as follows:

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

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

2. Overview

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

3. Background

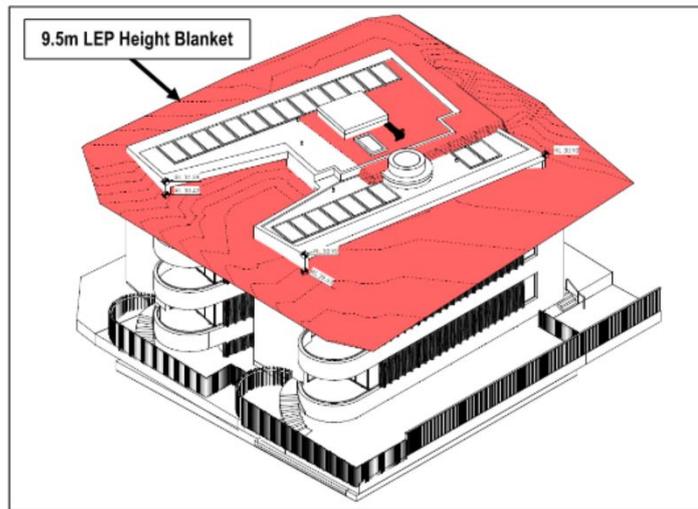
The residential flat building use is prohibited in the zone in accordance with the Land Use Table provided under Part 2 of the LEP. However, the site benefits from existing use rights permitting residential flat buildings. The existing use rights are further detailed in Section 4.2 of the SEE accompanying this application. For abundant caution, we have assessed the application in light of existing use rights in respect of *Saffioti v Kiama Municipal Council* [2018] NSWLEC 1426, as well as *Fodor Investments*, which deals with the relevant principles. Under *Saffioti*, it was recognised that the LEP and DCP should still be considered.

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

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the height Map which indicates a maximum 9.5m height applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

As indicated, the proposal seeks to demolish all existing structures and construct a new residential flat building on site. The maximum building height of the proposal is 11.39m measured from the top of the parapet at RL 31.89 to the existing ground level below. This departs the standard by 1.89m or 19.89%.

The additional height is largely confined to the roof slab over Level 2, stair skylight, lift overrun and mechanical plant equipment on the rooftop. The plant equipment includes photovoltaic panels which are recessed from the edges of the roof (see **Figures 1 & 2**).



Source: Smart Design Studio

Figure 1: 9.5m Height Blanket Diagram Over 3D Model of the Proposal



Source: Smart Design Studio

Figure 2: North/South Section 1 Demonstrating Maximum Proposed Height to be updated

The height variation is a result of the site's flood constraints and overland flow path, which results in the ground floor levels of the proposed development being raised to comply with the flood planning requirements; and to achieve compliant floor to ceiling heights of up to 2.7m. The area of the variation is exacerbated by the sloping topography of the land, which drops towards the north.

5. Applicability of Clause 4.6

The subject site enjoys the benefits of existing use rights and the provisions of Council's LEP cannot derogate from the existing use rights. The planning principles established by the NSW Land and Environment Court in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71 at [17] and *Stromness v Woollahra Municipal Council* [2006] NSWLEC 587 at [83-84] have been assessed and satisfied in the DA. Notwithstanding this, under the recent case in *Saffioti v Kiama Municipal Council* [2018] NSWLEC 1426, it was recognised that the LEP and DCP should still be considered. Accordingly, this Clause 4.6 Variation has been prepared for the height exceedance.

6. Consistency with Objectives of Clause 4.6

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

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

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

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

Flexibility is sought in the application of the height development standard to the proposal in the circumstance of this particular case. It is our opinion that the proposed building height is appropriate, particularly as the proposed three storey building is contextually appropriate, the variation is primarily due to flood constraints, and the variation is isolated to the roof form.

The primary reason for the height variation is the site's flood constraints. Council has previously accepted variations from the height standard due to flood constraints. Importantly, the height variation achieves a built form that is consistent with the desired future character of the area, as envisaged by Council's emerging density transition, approving higher scale developments on low density zoning. This is specifically exemplified at No. 59 Burnie Street, directly west of the subject site (see **Figure 3**). No. 59 Burnie Street is a three-storey rendered residential flat building with a flat roof and basement parking, which comprises 14 units and was approved in 2012 under DA No. 94/2012. Like the proposal, No. 59 Burnie Street is also located in the R2 Low Density Residential Zone and benefits from existing use rights

Flexibility with the standard facilitates a three-storey building with a flat roof, contemporary detailing, articulation and recesses, consistent with Council's planning controls and the character of the adjacent residential flat building.



Source: Smart Design Studio

Figure 3: Photomontage of the Proposal Demonstrating Compatibility with the Clovelly Road Streetscape

The proposed built form has been designed to respond to the site constraints, particularly the site's flood issues that have been exacerbated by existing hard-paved surfaces. The increase in landscaping towards the rear of the site incorporated in the proposal helps to mitigate impacts associated with the overland flow path, in addition to the raised level of the building overall.

The development for a residential flat building contributes to the provision of diverse housing options in a desirable location with appropriate accessibility. Strict compliance with the height standard would result in a loss of housing on the site, which would be a poorer planning outcome for the site and locality.

The proposed height provides a transition in scale between the two and three storey dwellings along Keith Street and the high rise apartment blocks on the southern side of Clovelly Road, utilising its position as an established corner lot.

Despite a variation from the height standard of the LEP, the proposal achieves an overall bulk, scale and character that is appropriate for the site. It is also noted that the extent of variation will not have an unacceptable impact on neighbours' amenity when compared with a compliant envelope.

The proposal significantly enhances the site's contribution to Clovelly's scenic qualities through the introduction of an elegant, architecturally designed new residential flat building. This is particularly beneficial given the site's prominent corner location and proximity to the Clovelly beachfront. Additionally, the proposed building enhances the site through the introduction of additional landscaping which complements the leafy character of the site and provides consistency with the emerging contemporary character of the streetscape.

For these reasons, a degree of flexibility with the building height development standard is considered appropriate in this circumstance and flexibility will achieve a better outcome, both for and from the development.

7. Justification of Variation to Development Standard

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

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

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

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

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

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

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

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

Despite the proposed departure with the applicable height development standard, the proposal achieves the desired future character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls and surrounding development. Reasons why the proposed development achieves the objectives of the height standard are explained below.

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

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Each of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a. *The zoning of the land (Clause 2.2 and the Land Zoning Map);*
- b. *The zone objectives (Clause 2.3);*
- c. *The land use table (at the end of Part 2); and*
- d. *The development standards in Part 4:*
 - i. *Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 9.5m.*
 - ii. *Clause 4.4 Floor Space Ratio and Floor Space Ratio Map which prescribes a maximum FSR of 0.5:1.*

The R2 Low Density Residential zoning prohibits residential flat buildings. However, the site benefits from existing use rights permitting residential flat buildings can be rebuilt with development consent. The existing use rights are further detailed in Section 4.2 of the SEE accompanying this application. The proposed residential flat building will significantly upgrade the residential amenity and appearance of the existing site. The development is consistent with the relevant zone objectives, as addressed below:

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

Response: The proposal maintains the existing residential flat building use on the site and will replace an outdated development with a new contemporary multi-unit development with increased amenity, abundant deep and soft landscaping, and communal open space. This will continue to provide for the housing needs of the community within the low-density residential environment.

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

Response: The proposal will continue to provide a residential flat building on site, which contributes to the range of uses within the R2 Low Density Residential Zone. The proposal will provide a mixture of one, two and three-bedroom units within a residential flat building, therefore allowing the proposal to continue to provide for a variety of housing types within a low-density residential environment.

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

Response: The proposal maintains the streetscape character of the site when viewed from Clovelly Road and Keith Street by continuing to provide a multi-storey residential flat building that is consistent with the architectural style, bulk and scale that is existing and emerging in the vicinity of the site. The new building will be three storeys above basement parking. The car and bicycle parking, as well as storage, will be provided underground and will not be visible from the street frontages, improving the visual appearance, bulk and safety of the site. The proposal will present a well-design contemporary building, which will also be consistent with the existing bulk and scale of the surrounding residential flat buildings.

Objective: *To protect the amenity of residents.*

Response: The proposed residential flat building has been sympathetically designed to protect the amenity of surrounding development.

Objective: *To encourage housing affordability.*

Response: The proposed residential flat building has taken into consideration the rental and housing affordability of the Clovelly area. The proposal enhances housing supply and dwelling diversity within the area, which will continue to encourage housing affordability.

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

Response: N/A – proposal is not for a commercial building.

Accordingly, in our opinion, the proposal is consistent with the objectives of the R2 Low Density Residential Zone under the LEP.

Given the flood constraints of the site, strict compliance with the LEP height standard would effectively require the removal of the topmost level of the proposed building. This would result in a loss of housing. It would create a two storey building, that is a full storey lower than the scale of development in the surrounding area, notably the adjacent residential flat building at No. 59 Burnie Street. The proposed development will present as three storeys to the street with a flat roof form. The proposed height variation facilitates an overall height which is consistent with surrounding contemporary developments in the locality (see **Figure 4**).

The proposed variation allows for consistent floor levels across the building and provides sufficient floor to ceiling heights. Therefore, it provides for good design and amenity. The additional height is primarily a function of the overland flood path at the northern portion of the site. The non-compliance is confined to the proposed roof form and a portion of the uppermost level.



Source: Google Earth

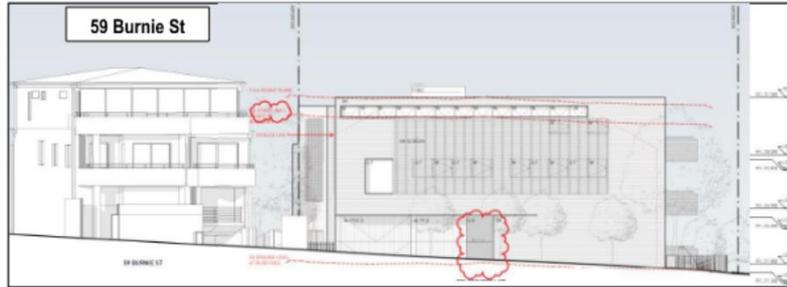
Figure 4: 3D Aerial View of the Site and Surrounding Context, Looking South

The proposal will be compatible with the character of development in the Clovelly neighbourhood. According to Council's Clause 4.6 Register and DA tracker, there are a number of recent approvals which have had departures from the building height development standard. While it is acknowledged that each development is assessed on its own merits, it is still relevant to consider nearby approvals which have been approved by Council for similar reasons as this application. Such examples include:

- **No. 170 Clovelly Road, Clovelly (DA 336/2017)** – Variation of 25%, with the primary justification including maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views. Approved on 22 March 2018.
- **No. 327 Clovelly Road, Clovelly (DA 413/2018)** – Variation of 9.15%, with the primary justification including maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views. Approved on 11 April 2019.
- **No. 3 Ahearn Avenue, South Coogee (DA 408/2021)** – Variation of 8.84%, with the primary justification including maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views. Approved on 14 February 2022.
- **No. 486 Malabar Road, South Coogee (DA 13/2021)** – Variation of 6%, with the primary justification including maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views. Approved on 12 November 2021.

All of the above examples relating to multi storey buildings in Clovelly and Coogee have comparable building height breaches which were supported by Council staff and the panel on similar arguments as those made in our submission.

The proposal is consistent with, and in fact is at a lower RL, than the neighbouring residential flat building at No. 59 Burnie Street (see **Figure 5**). As stated, that neighbouring building is also in the R2 Low Density Residential Zone and was approved utilising existing use rights. The proposal is compatible with the height of that building.



Source: Smart Design Studio

Figure 5: Streetscape Elevation Showing Compatibility with Height of Adjacent Residential Flat Building at No. 59 Burnie Street

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

The subject site is neither a heritage nor a contributory item, and does not adjoin any items of heritage significance. At a majority, the surrounding neighbourhood including the subject site is all zoned R2 Low Density Residential and R3 Medium Density Residential. The R2 zone is characterised by a mixture of single storey semi-detached dwellings to multi-storey detached dwellings and residential flat buildings of varying heights, ages and architectural styles. The proposal will present as three storeys with a flat roof in the streetscape, which will be consistent with other development in the locality.

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

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

Visual Bulk

The proposal is three storeys in height, which is consistent with neighbouring development along Clovelly Road and Burnie Street, within the vicinity of the site. The area of additional height is largely confined to the roof slab. The built form is well-articulated and achieves a recessive material through its use of varied materials, modulation and landscaping. The primary elevation to Clovelly Road will present as compliant, with the variation located towards the rear (north), where the proposed building steps down. As such, the variation will not be readily apparent when viewed from surrounding properties or the streetscape and the skilful design will minimise visual bulk impacts.

Privacy

The windows above the height blanket will be above eye-level. Therefore, there will not be any opportunities for direct sightlines to neighbouring properties as a result of the height breach. The remainder of the height variation constitutes non-trafficable rooftop areas. The windows and balconies at the eastern elevation and windows at the southern elevation will overlook the street. At the northern elevation, the habitable room windows and balcony are substantially offset from the windows and POS of No. 2 Keith Street or obscured by screening. Accordingly, the proposal will minimise loss of privacy.

Solar Access

To assess the effect of the proposed development in terms of solar access, shadow diagrams have been prepared by Smart Design Studio for 8:00 am, 12 noon and 4:00 pm for the winter solstice (June 21) (submitted separately). These diagrams indicate that the proposed development will not result in any additional impacts to the solar access received to the north-facing windows or private open space areas of adjacent properties. The area of additional height will not adversely affect solar access for neighbouring properties and their private open space

Views

In the assessment of development applications relating to view issues, the NSW Land and Environment Court rely on the principle of the *Tenacity v Warringah Council* [2004] NSWLEC 140. Our assessment of the proposal against this planning principle is included below. The four steps in assessing view affectation are considered as follows:

- *Assessment of the Views Affected*
- *From What Part of the Property are the Views Obtained?*
- *The Extent of the Impact*
- *The Reasonableness of the Proposal*

It is noted that our assessment has relied on an inspection on and around the subject site, real estate photographs, aerial photography and survey information. The DCP does not identify significant public views across the site.

Due to the topography, existing built form and landscaping in the area, there do not appear to be any existing significant views available across the subject site from adjoining neighbouring properties to the west of the site or the public domain.

Some upper-level properties on the northern side of Clovelly Road may enjoy distant water views. However, this is likely to be filtered through existing landscaping and therefore proposal it is unlikely to result in unreasonable view affectation.

Despite the partial envelope variations, given the flat roof form, stepped proposed building envelope, existing built form and vegetation on the site, there is unlikely to be additional impact on any significant views. Accordingly, the proposal is considered to achieve view sharing.

Conclusion on unreasonable or unnecessary

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

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

There are a number of environmental planning grounds that justify the additional height in this particular circumstance. In addition to the flood constraints for the site, consistency with the objectives of the zone and development standard, environmental planning grounds include contextual compatibility and prominent corner location, compliant floor to ceiling heights, improved design and amenity, equitable access, and positive outcomes for the site. These will now be discussed.

Flood Constraints

As indicated, the proposed height variation is a consequence of the flood constraints of the site and the need to raise the building to comply with the flood planning levels. The Flood Risk Assessment prepared by GRC Hydro States:

The potential change to flood behaviour as a result of the development is assessed via flood impact modelling. The proposed development has been schematised as a proposed case scenario in the hydraulic model, and then any change in flood level from the model run quantifies the effect or impact of the development. Impacts of more than 0.01 m on neighbouring property are considered unacceptable. Impacts occur when an overland flow path is obstructed, diverted or otherwise modified to the detriment of other properties.

The change in 1% AEP peak flood level across the site is presented on Figure 6, which shows the flood level impact. The figure shows that slightly regrading and flattening the northern portion of the site where the flow path exists results in no significant impacts to others. There are only localised flood impacts on Keith Street (~0.03m), with no change to properties to the north, west or north-west. Keith Street at this location is entirely H1 hazard in the 1% AEP and so there is not considered to be any impact on flood risk. Other localized impacts in the area are unrelated to the overland flow path and are not considered as part of the impact assessment.

A flood assessment has been made of a proposed development at 357 Clovelly Road, Clovelly. The site is located in the centre of the Clovelly catchment and is affected in the 1% AEP on the northern portion of the site. The proposed development has been schematised in a hydraulic model (TUFLOW) and assessed. The assessment found that entry levels are sufficiently raised to meet the Flood Planning Level requirements and will have no impact on existing flood behaviour. Other flood planning controls have been met by the design.

If strict compliance with the building height development standard were enforced, the topmost level of the proposed building would have to be removed in order to maintain compliance with the flood requirements and recommendations stated in the Flood Risk Assessment Report. In this instance, the proposed variation is considered acceptable as it related to the roof, does not result in any significant impacts on the amenity of surrounding residences and due to the building's articulated form, is not readily apparent when viewed from the public domain. It is therefore a better planning outcome than enforcing compliance with the standard and relates better to neighbouring development, ensuring flood impacts are adequately managed.

Compliant Floor to Ceiling Heights

The proposal has floor to ceiling heights ranging up to 2.7m, which complies with the Apartment Design Guide (ADG). The height variation ensures sufficient slab widths are provided to accommodate the structural zone between levels. Given the site's flood constraints, lowering the building to achieve the same floor to ceiling heights is not possible. Therefore, a height variation is necessary in order to soundly construct the building and comply with the relevant ADG and NCC minimum ceiling height requirements.

Contextual Compatibility and Prominent Corner Location

The height variation will maintain and improve the site’s compatibility with the context. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O’Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

The proposal will continue to multi-storey residential flat building on the site. As indicated, the proposed height is consistent with the neighbouring developments along Clovelly Road and further to Burnie Street. In particular, it achieves a similar bulk, scale and height as the adjacent contemporary residential flat building at No. 59 Burnie Street, which was approved under existing use rights provisions and is also located in the R2 Low Density Residential Zone. This neighbouring building is indicative of Council’s desired future character of the area and the proposal is consistent the neighbour’s building height (see **Figure 6**).

The proposed building height relates to the site’s prominent corner location and steps down towards the north. The proposal replaces an outdated residential flat building with a contemporary development which affords the opportunity to uplift the appearance and architectural quality of the built form, increasing amenity for the streetscape and future residents of the site.



Source: Smart Design Studio

Figure 6: Photomontage of The Proposal in the Clovelly Road/Burnie Street Streetscape, Demonstrating Compatibility with Neighbouring Heights

The new design provides a more articulated, contextual and sustainable outcome than the existing building. The appearance of the site will be softened through the introduction of additional deep soil and soft landscaping across the site. The new, architecturally designed building contributes positively to the rich and diverse architecture of the streetscape and relates better to the desired future character of the area (see **Figure 7**).



Source: Smart Design Studio

**Figure 7: Proposed Building In the Streetscape
(Corner of Clovelly Road and Keith Street)**

The contemporary development will also increase the density of the site, which will greatly contribute to the housing stock in the area and will attract new residents to this convenient location. Compliance with the standard would result in a reduction in the number of units on the site which would reduce the availability of housing in the area

Improved Design and Amenity

The height variation will facilitate the replacement of the existing residential flat building with a more articulated and better-quality building, with greater residential amenity. The design philosophy by Smart Design Studio states:

Design References

A limited palette of quality materials and textures utilised in different ways creates a harmonious and refined architectural expression. Light-coloured brickwork as both solid surface and hit-and-miss screening responds to the natural material tones of this beach suburb location.

Design Reference - Clovelly Inter-War Brick Buildings

The design references the use of brickwork that is the dominant building material in the local context, with a modern take on the curved balconies, punched windows and rounded corners seen in many residential and commercial buildings of the inter-war period in the area.

Design Reference - Beach-side Art Deco

The Art Deco buildings of the eastern suburbs are a further precedent for the design, where curved balconies or frontages with punched and horizontal window openings are featured. Often in rendered and painted masonry, these apartment buildings can also be a combination of render and face brickwork.

Materials Board

Appealing and robust materials are selected for their longevity in light-coloured tones that respond to the coastal location.

The proposal improves the design quality of the built form on the subject site. It provides a more articulated and contextually compatible development than the existing building. The new, architecturally designed, contemporary building contributes positively to the rich and diverse architecture of the streetscape. This benefits the locality by providing a building that relates better to the desired future character of the area, compared to the existing built form. The replacement building introduces planting to the balconies and façade, which 'greens' the streetscape and softens the appearance of the building.

The proposed development significantly improves the amenity of site with the residential flat building that addresses the housing needs of the community. It appears that the current apartments are non-compliant with various ADG and DCP, which results in poor residential amenity, lesser design quality and a poor interface with neighbours. The rebuild resolves this by enhancing compliance with the ADG and DCP and increasing the floor to ceiling heights at all levels. Additionally, an increase in height facilitates greater solar penetration, particularly to the uppermost floor of the proposal. All units will also be dual aspect to ensure compliant solar access. The variation will also facilitate solar panels on the roof, which will contribute to the environmental sustainability of the development.

Accordingly, the proposal upgrades the appearance of the site, as viewed in the streetscape and from surrounding sites (see **Figure 7**). The works also improve the residential amenity of the apartments, while maintaining the amenity of adjoining properties. Therefore, the proposed height variation ensures the development promotes good design and amenity of the built environment, consistent with Object (g) of the EPA Act.

Equitable Access

The existing building does not have lift access, limiting equitable access across the site. The variation allows for the lift overrun, which ensures equitable access is provided to every level of the proposed building, in accordance with the Disability Discrimination Act 1992. In other words, to ensure lift access can be provided to the proposed building, a variation to the height standard is inevitable. If strict compliance with the development standard were enforced, it would preclude lift access to Level 2 of the development. This would not facilitate equitable access and would be a detrimental planning outcome.

Positive Outcomes

The proposed development and the variation of the height standard achieves numerous positive outcomes for the subject site, the streetscape and the wider locality. By replacing an older building with lesser amenity, accessibility and streetscape appeal with a high-quality, contemporary and modulated building, the proposal achieves benefits in relation to planning, architecture, amenity, landscaping, sustainability and accessibility matters. This is consistent with the desired future character of the area.

Accordingly, in our opinion, the height variation will ensure the development remains consistent with the existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

8. Conclusion

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

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the development objectives of the R2 Low Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 – Height of Buildings should be upheld.

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| Table 1: Compliance Matrix | | | | |
|----------------------------|---|------------------------|---|-----------|
| Para (Initial Action) | Requirement | Section of this Report | Summary | Satisfied |
| 10 | Is it a development standard (s.1.4) | 1 | Yes | |
| 11 | What is the development standard | 1 | Clause 4.3: Height of Buildings | |
| 12 | What is the control | 1 & 2 | 9.5m | |
| 14 | First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions: | | Both positive opinions can be formed as detailed below. | YES |
| 15, 25 | 1st Positive Opinion – That the applicant’s written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement. | 5 | The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations. | YES |
| 6-22 | First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> . | 5.1 | The proposal satisfies Test 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> • The objectives of the standard are achieved notwithstanding the non-compliance with the standard; • The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable | YES |
| 23-24 | Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied that the written request has adequately addressed this matter. The environmental planning grounds must be “sufficient” in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. | 5.2 | Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> • The variation is a consequence of the site’s flood constraints; • The height variation allows for a three-storey, residential development which is consistent with the desired future character of the area and achieves the planning objectives of the area; • The variation facilitates a greater provision of housing in the area; • The additional height allows for equitable access across all the proposed floor levels by the provision of a lift; • The additional height has been well-articulated, which minimises its visual appearance and associated amenity impacts; and • The height variation ensures the proposal has compliant floor to ceiling heights, which provides for good design and amenity. | YES |

Appendix 3: Applicant's written request seeking to justify the contravention of the FSR development standard

gsa planning

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

APPLICANT'S NAME: Luke Morgan C/- Smart Design Studio

SITE ADDRESS: No.357 Clovelly Road, Clovelly

PROPOSAL: Demolition of the Existing Residential Flat Building and Construction of a New Residential Flat Building, Landscaping and Associated Works

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

Randwick Local Environmental Plan (LEP) 2012

(ii) The land is zoned:

R2 Low Density Residential. The residential flat building use is prohibited in the zone in accordance with the Land Use Table provided under Part 2 of the LEP. However, the site is subject to existing use rights permitting residential flat buildings. The existing use rights is further detailed in Section 4.2 of the SEE accompanying the application. The objectives of the R2 Low Density Residential Zone are as stated:

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

(iii) The number of the relevant clause therein:

Clause 4.4 – Floor Space Ratio which is stated as follows:

- (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.*

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

2. Overview

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

3. Background and Applicability of Clause 4.6

The residential flat building use is prohibited in the zone in accordance with the Land Use Table provided under Part 2 of the LEP. However, the site benefits from existing use rights permitting residential flat buildings. The existing use rights are further detailed in Section 4.2 of the SEE accompanying this application. For abundant caution, we have assessed the application in light of existing use rights in respect of *Saffioti v Kiama Municipal Council* [2018] NSWLEC 1426, as well as *Fodor Investments*, which deals with the relevant principles. Under *Saffioti*, it was recognised that the LEP and DCP should still be considered.

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

The development standard to which this request for variation relates is Clause 4.4 of the LEP – Floor Space Ratio (FSR). This Clause operates in conjunction with the FSR Map which indicates a maximum 0.5:1 applies to the subject site, which has an area of 626.2m². This equates to a maximum Gross Floor Area (GFA) of 313.1m² for the subject site. Clause 4.4 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

This Clause 4.6 Variation has been amended a second time to reflect the revised architectural drawings submitted for this DA. The architectural drawings have been revised to incorporate the requests of Council in their letter dated 5 November 2024 and email dated 2 January 2025. Relevantly, Council and the Randwick Design Advisory Panel requested a further increase in floor space by way of conversion of the originally proposed above-ground mechanical plant space into habitable floor space. The Council also requested that the following be included by definition: the entry lobby area at ground floor level; the lobby/horizontal circulation space between the stair and lift on all floor levels (including the two basement levels); the corner space between the living room and guest WC on Level 2; and the portion of the basement mezzanine level that is not used for storage, servicing, or as a void area. Originally, the DA had a GFA of 560m² with an FSR of 0.89:1 which was a variation of 246.9m² or 78.9% from the development standard. Council’s letter stated, *inter alia*:

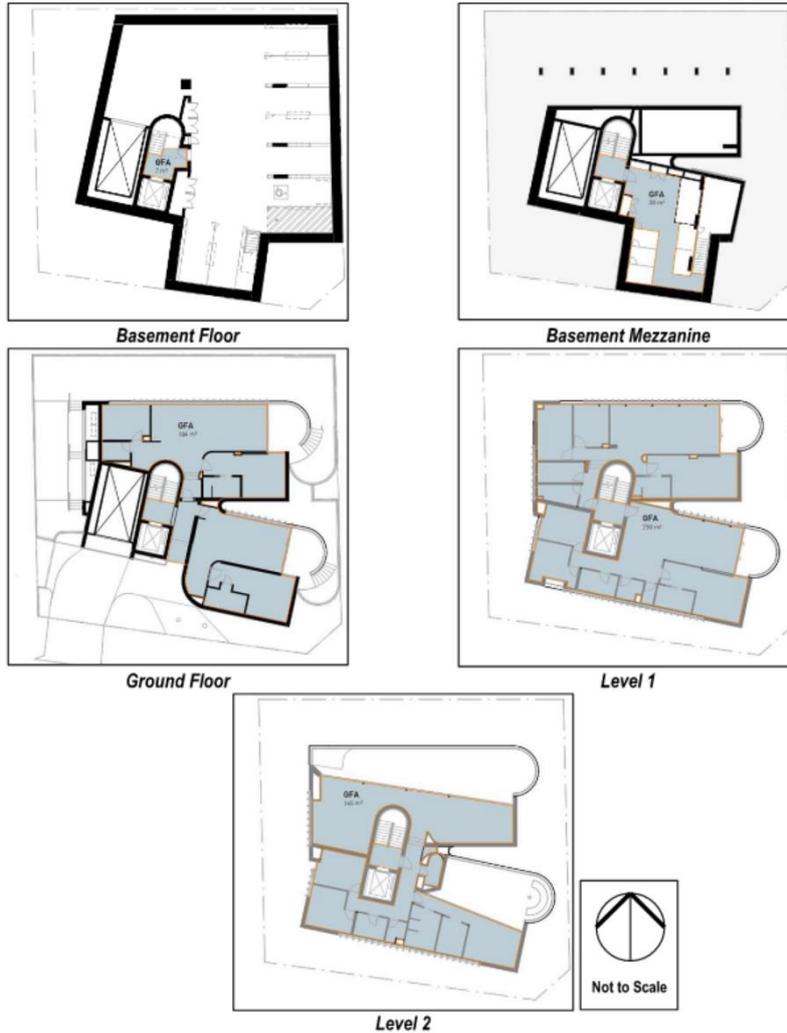
At Level 1, the mechanical space on the north-west corner adjoining Bedroom 2 is large and not considered to be optimum use of above ground space. This space could be used to enlarge Bedroom 2 or to provide an ensuite bathroom. There appears to be adequate space elsewhere for mechanical uses.

Accordingly, all plans have been amended in accordance with Council’s comments. Also, the entry door has been shifted slightly south. The proposed residential flat building now has a GFA of 644m² with an FSR of 1.03:1. This is a variation of 330.9m² or 105.7% from the development standard. A summary of the uses on each floor and GFA is described below (see **Table 1**).

Drawings prepared by Smart Design Studio and show the areas included in GFA calculations, and areas excluded by reason of the definition (see **Figure 1**).

| TABLE 1: DETAILS OF THE PROPOSAL | | |
|------------------------------------|--|--|
| Floor Level | Details by Level | Gross Floor Area |
| Basement Floor (RL 16.33) | Bicycle storage for 4 bicycles; 8 car spaces, including 2 visitor spaces and 1 disabled space; Car lift; Pedestrian lift, stair and foyer; Mezzanine stair; and Bin storage room. | 7m ² <i>(was 0m²)</i> |
| Basement Mezzanine (RL 18.73) | Plant equipment and mechanical services; foyer; and resident storage cages. | 38m ² <i>(was 0m²)</i> |
| Ground Floor (RL 21.33 – 21.83) | Unit 1, comprising Bed 1, ensuite, laundry, open plan living, dining and kitchen area; Unit 2, comprising Bed 1, 2 x bath, laundry, Bed 2, open plan living, dining and kitchen area; foyer and circulation. | 184m ² <i>(was 172m²)</i> |

| | | |
|-------------------------------|--|--|
| Level 1 (RL 24.49 – 24.99) | Unit 3, comprising Bed 1 with ensuite, WC, laundry, bath, Bed 2, Bed 3, open plan living, dining and kitchen area; Unit 4, comprising Bed 1 with ensuite, laundry, bath, Bed 2, Bed 3, open plan living, dining and kitchen area; foyer and circulation. | 250m ² <i>(was 245m²)</i> |
| Level 2 (RL 27.81 – 28.09) | Unit 5, comprising Bed 1 with ensuite and robe, laundry, bath, Bed 2, Bed 3, WC guest, open plan living, dining and kitchen area; foyer and circulation. | 165m ² <i>(was 159m²)</i> |
| TOTAL | 5 units, 8 car spaces and 4 bicycle spaces | 644m² |



Source: Smart Design Studio

Figure 1: Proposed GFA Plans

5. Consistency with Objectives of Clause 4.6

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

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

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

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

Flexibility is sought in the application of the FSR development standard in the circumstance of this particular case. The proposal has been designed to present a built form that is appropriate to development in the surrounding area, when viewed from the public domain. Development in the vicinity of the site, and Clovelly more generally, comprises an evolving mix of development.

No. 59 Burnie Street, directly west of the subject site is comparable to the proposal. No. 59 Burnie Street, a three-storey rendered residential flat building with a flat roof and basement parking. Known as "London House", this development comprises 14 units and was approved in 2012 under DA No. 94/2012. It is also located in the R2 Low Density Residential Zone and utilised existing use rights. Based on the SEE submitted with that application, No. 59 Burnie Street had an FSR of 0.82:1, which is greater than the applicable 0.5:1 FSR standard. This is indicative of Council's desired future character for the area, particularly with regard to the appropriate scale and density when rebuilding existing residential flat building in the R2 Zone. Flexibility in this circumstance will achieve a better outcome both for and from the development, by providing a contextually appropriate outcome in the form of a contemporary, three storey replacement residential flat building (see **Figure 2**).



Source: Smart Design Studio

Figure 2: Photomontage of the Proposal Demonstrating Compatibility with the Clovelly Road Streetscape

The new building will have significantly improved residential amenity and better accessibility for the future occupants and their visitors. The proposal will present an attractive and well-articulated façade to the Clovelly Road and Keith Street frontages, with all levels being modulated and within largely compliant setbacks. The skilful design of the proposal, together with the substantial new landscaping proposed on site, will minimise the proposal's bulk and scale when viewed from the public domain. Basement parking and storage will also improve the visual appearance of the site when compared to the existing situation. Overall, the development represents a better planning outcome that will revitalise the site's appearance, accessibility and liveability.

The existing building contains four units. The proposed FSR development standard will facilitate the provision of five units on the site, which will contribute to additional housing in a sought-after location. The new units will be of significantly greater amenity and have been designed in line with the current planning requirements. Given the current residential flat building use and the age of the existing building, a compliant FSR would result in a loss of housing on the property. This would be a poor planning outcome and would not be in the public interest.

Accordingly, the proposed departure from the FSR standard provides an improved planning outcome both for and from the development.

6. Justification of Variation to Development Standard

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

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

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

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

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

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

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

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

Despite the proposed departure with the FSR development standard, the proposal achieves the desired character of the area. The proposal provides a bulk and scale that is generally consistent with that envisaged by Council, particularly as established by their request for information for the subject DA, and their approval of the neighbouring residential flat building at No. 59 Burnie Street. Reasons why the proposed development achieves the objectives of the FSR standard are explained below.

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

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Each of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a. *The zoning of the land (Clause 2.2 and the Land Zoning Map);*
- b. *The zone objectives (Clause 2.3);*
- c. *The land use table (at the end of Part 2); and*
- d. *The development standards in Part 4:*
 - i. *Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 9.5m.*
 - ii. *Clause 4.4 Floor Space Ratio and Floor Space Ratio Map which prescribes a maximum FSR of 0.5:1.*

The R2 Low Density Residential zoning prohibits residential flat buildings. However, the site benefits from existing use rights permitting residential flat buildings can be rebuilt with development consent. The existing use rights are further detailed in Section 4.2 of the SEE accompanying this application. The proposed residential flat building will significantly upgrade the residential amenity and appearance of the existing site. The development is consistent with the relevant zone objectives, as addressed below:

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

Response: The proposal maintains the existing residential flat building use on the site and will replace an outdated development with a new contemporary multi-unit development with increased amenity, abundant deep and soft landscaping, and communal open space. This will continue to provide for the housing needs of the community within the low-density residential environment.

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

Response: The proposal will continue to provide a residential flat building on site, which contributes to the range of uses within the R2 Low Density Residential Zone. The proposal will provide a mixture of one, two and three-bedroom units within a residential flat building, therefore allowing the proposal to continue to provide for a variety of housing types within a low-density residential environment.

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

Response: The proposal maintains the streetscape character of the site when viewed from Clovelly Road and Keith Street by continuing to provide a multi-storey residential flat building that is consistent with the architectural style, bulk and scale that is existing and emerging in the vicinity of the site. The new building will be three storeys above basement parking. The car and bicycle parking, as well as storage, will be provided underground and will not be visible from the street frontages, improving the visual appearance, bulk and safety of the site. The proposal will present a well-design contemporary building, which will also be consistent with the existing bulk and scale of the surrounding residential flat buildings.

Objective: *To protect the amenity of residents.*

Response: The proposed residential flat building has been sympathetically designed to protect the amenity of surrounding development.

Objective: *To encourage housing affordability.*

Response: The proposed residential flat building has taken into consideration the rental and housing affordability of the Clovelly area. The proposal enhances housing supply and dwelling diversity within the area, which will continue to encourage housing affordability.

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

Response: N/A – proposal is not for a commercial building.

Accordingly, in our opinion, the proposal is consistent with the objectives of the R2 Low Density Residential Zone under the LEP. In its consistency with the objectives of the zone, the proposal can be appropriately considered as a development that is appropriate for the R2 Zone. It will maintain the sites use as a residential flat building under existing use rights and accordingly will not result in any conflicts in land uses. In fact, by replacing an outdated development with a revitalised, contemporary building, the proposal increases the vitality and visual appearance of the site. Through its stepped form, the building provides an appropriate transition from the higher density apartments on Clovelly Road to the lower density residences along Keith Street, providing an FSR that is comparable to the adjacent property at No. 59 Burnie Street and compatible with the desired future character.

The proposed development will provide a floor space that compatible with buildings. According to Council's Clause 4.6 Register and DA tracker, a number of these buildings have been approved by Council with FSR Variations for similar reasons as this application. Such examples include:

- **No. 59 Burnie Street (DA-94/2012)** for a new three-storey residential flat building, containing 14 residential units approved under existing use rights in the R2 Low Density Residential Zone, with an FSR of 0.82:1. However, when this application was approved on 9 April 2013, no FSR control applied to the site. When measured against the current controls, the proposal would represent a variation of 64%.
- **Nos. 57 & 57A Burnie Street (DA-1053/2007)** for alterations to the existing residential flat building and conversion to an attached dual occupancy, addition of a second floor, garage and a hard stand car park space for each dwelling and Torrens title subdivision into two and associated site works. Approved on 15 May 2008 with a variation of 42% with the primary justification being a compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.

- **No. 23 Melrose Parade (DA-162/2019)** for alterations and additions to the existing a residential flat building including internal and external changes, approved on 28 November 2019 with a variation of 12.2%. The primary justification was maintaining compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.

The variation is similar to recent approvals in the locality, and the overall bulk and scale is consistent with the surrounding context (see **Figure 3**). Therefore, the bulk and scale is consistent with the desired future character of the area, as per the Court judgement of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112.



Source: Google Earth

Figure 3: 3D Aerial View of the Site and Surrounding Context, Looking South

Accordingly, although the proposal will exceed the FSR control, this will not be readily discernible from the public domain, considering the proposal involves existing use rights and is a contextually fit with regard to the neighbouring development. Additionally, the skilful design of the development partnered with deep and soft landscaping, creates a softer and more articulated outcome than the existing situation. This ensures the bulk and scale is more compatible with the desired future character of the locality which achieves objective (a).

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

The FSR variation facilitates the replacement of the dated existing residential flat building with a sensitively designed new residential flat building. The reconstruction affords the opportunity to uplift the appearance and architectural quality of the built form. The proposal provides a more articulated and contextually compatible building than the existing built form. The new, architecturally designed, contemporary building contributes positively to the rich and diverse architecture of the streetscape. This benefits the locality by providing a building that relates better to the desired future character of the area, compared to the existing built form.

The proposed variation also enables a more sustainable development outcome. The proposal achieves compliance with the relevant sustainability targets of BASIX. In addition, it incorporates ESD elements, such as internal arrangements which maximise natural light and cross ventilation, solar panels, additional deep soil zones, new trees and electric vehicle charging points. These elements promote sustainability, passive heating and cooling, and the usage of renewable energy sources.

Accordingly, the proposal will achieve the objective of providing a building that is well articulated and responds to environmental energy needs.

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

The subject site is neither a heritage nor a contributory item, and does not adjoin any items of heritage significance. At a majority, the surrounding neighbourhood including the subject site is all zoned R2 Low Density Residential and R3 Medium Density Residential. The R2 zone is characterised by a mixture of single storey semi-detached dwellings to multi-storey detached dwellings and residential flat buildings of varying heights, ages and architectural styles. The proposal will present as three storeys with a flat roof in the streetscape, which will be consistent with other development in the locality.

The building has generally compliant setbacks, ADG compliant deep soil landscaping and a bulk and scale in keeping with the emerging character of the area. The façades are well articulated, which enhances the site's appearance when viewed from the public domain.

(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.

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

Visual Bulk

The proposal is three storeys in height, which is consistent with neighbouring development along Clovelly Road and Burnie Street, within the vicinity of the site (see **Figure 4**). As stated, the proposed FSR is consistent with that of the adjacent contemporary residential flat building, which is also in the R2 Low Density Residential Zone. As such, it can be reasonably concluded that the overall bulk of the proposal is compatible with the surrounding context and does not unreasonably impact adjoining or neighbouring land.



Source: Smart Design Studio

Figure 4: Photomontage of The Proposal in the Clovelly Road/Burnie Street Streetscape, Demonstrating Compatibility with Neighbouring Buildings

Notably, the proposed development steps down towards the rear northern side, which facilitates an appropriate transition in bulk and interface with the dwelling houses on Keith Street. The building presents as two storeys at the north elevation, with the uppermost level considerably recessed. Moreover, the built form employs a high degree of modulation and has the appearance of two forms from Keith Street, which minimises its visual bulk (see **Figure 5**).



Source: Smart Design Studio

Figure 5: Photomontage of The Proposal in the Keith Street Streetscape

Accordingly, the skilful design of the proposal and its consistency with the FSR and scale of the adjacent buildings ensures the development does not adversely impact adjoining and neighbouring land in terms of visual bulk. An increase in GFA on this site will enhance the aesthetic appeal of the property through the provision of a contemporary building of greater architectural and landscaping design quality.

Privacy

As stated, the proposal is consistent with the FSR of the adjacent residential flat building at No. 59 Burnie Street. This demonstrates that the scale, form and density of the proposal is compatible with the surrounding context. Moreover, the proposal comprises five units, which is only an increase of one unit compared to the existing residential flat building on the site. As such, there will not be any unreasonable increase in privacy impacts to neighbouring properties, compared to existing.

Notwithstanding the FSR variation, the proposal will maintain appropriate levels of aural and visual privacy for residents of neighbouring sites and the proposed development. For all units, windows and private open space (POS) areas are provided to the rear of the site or to the street elevations along Clovelly Road and Keith Street.

At the ground floor level, open space is predominantly located to the northern, eastern and western portions of the site in the form of private and communal landscaped areas. At this level, the northern unit has a single private balcony oriented to the north east towards the rear of the site and Keith Street, away from neighbouring development. The northern habitable room windows to this unit are screened to obscure direct sightlines to the adjoining property at No. 2 Keith Street.

The southern unit at the ground floor level has a private balcony of a similar configuration and is oriented towards Keith Street away from neighbouring development. The northern habitable room windows to this unit are also screened as well as proposed built form. In any case, this level sits at a similar elevation to neighbouring development with compliant boundary fencing preventing any direct sightlines to adjoining properties.

At the first floor level, the northern unit exemplifies a similar configuration to the unit situated directly below, consisting of one balcony facing towards the rear of the site and Keith Street. Habitable room windows to the unit are directed to the rear and screened to prevent overlooking. The southern unit at this level has a single balcony of the same configuration to the unit situated directly below which is oriented to Keith Street, away from neighbouring development. The northern habitable room windows to this unit are also screened by hit and miss bricking as well as proposed built form.

The second floor level is occupied by a single unit with two terraces. The northern terrace is predominantly oriented towards the rear of the site and screened along the northern elevation to prevent overlooking to No. 2 Keith Street. The terrace has planter boxes at the western elevation to increase the buffer to No. 59 Burnie Street. The southern terrace at this level is also oriented to Keith Street, away from neighbouring development. The habitable room windows to this unit are orientated to the rear and to the east of the site, substantially separated from neighbouring development.

Landscaping surrounding the dwelling provides a further visual and aural buffer. Given the continuing residential flat building use, it is unlikely that there would be significant additional noise generation associated with the proposal. In any case, an Acoustic Report has been prepared by Acoustic Logic (separately submitted) which has undertaken an assessment of the noise emissions from the proposed development and is supportive of the proposal. Accordingly, the sensible design is appropriate in terms of aural or visual privacy and minimises adverse impacts.

Solar Access

To assess the effect of the proposed development in terms of solar access, shadow diagrams have been prepared in accordance with Randwick Council's requirements for the winter solstice (June 21). These diagrams indicate that the proposed development will maintain compliant solar access to neighbouring development and to the subject site.

At 8:00am, any additional overshadowing as a result of the proposal falls to a minor portion of Clovelly Road and the front setback at Nos. 304 and 304 Clovelly Road only. In any case, this front setback area is occupied by hard-paved parking areas (see **Figure 6**).

At 12:00pm (noon), any additional overshadowing as a result of the proposal falls to a minor portion of Clovelly Road only (see **Figure 7**).

At 4:00pm, any additional overshadowing as a result of the proposal falls to a minor portion of the roof form of No. 359 Clovelly Road and portion of Clovelly Road (see **Figure 8**).

Overall, it is noted that between 8am and 10am, No. 59 Burnie Street will continue to receive 3 hours of solar access to their living area windows. They will also continue to receive compliant solar access to rear ground-level landscaped areas.

All units across the subject site will receive a minimum of three hours sunlight to their living areas and private open space areas between 8am and 4pm. This is demonstrated by the Sun Eye Views, prepared by Smart Design Studio, separately submitted.

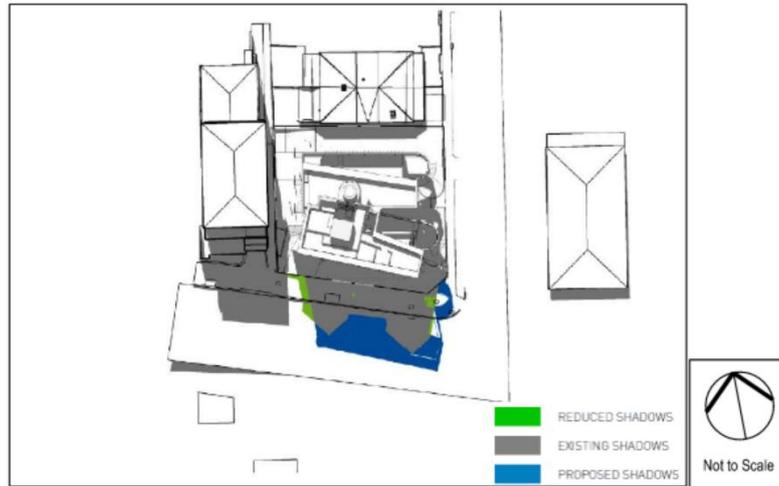
Between 8am and 3pm, No. 359 Clovelly will continue to receive 3 hours of solar access to their living area window and landscaped areas.

Accordingly, the proposed development complies with Council's solar access controls and additional shadowing is minor in nature. On this basis, the proposal is considered appropriate.



Source: Smart Design Studio

Figure 6: 8:00am 21 June Shadow Diagram



Source: Smart Design Studio

Figure 7: 12:00pm (noon) 21 June Shadow Diagram



Source: Smart Design Studio

Figure 8: 4:00pm 21 June Shadow Diagram

Views

In the assessment of development applications relating to view issues, the NSW Land and Environment Court rely on the principle of the *Tenacity v Warringah Council* [2004] NSWLEC 140. Our assessment of the proposal against this planning principle is included below. The four steps in assessing view affectation are considered as follows:

- *Assessment of the Views Affected*
- *From What Part of the Property are the Views Obtained?*
- *The Extent of the Impact*
- *The Reasonableness of the Proposal*

It is noted that our assessment has relied on an inspection on and around the subject site, real estate photographs, aerial photography and survey information. The DCP does not identify significant public views across the site.

Due to the topography, existing built form and landscaping in the area, there do not appear to be any existing significant views available across the subject site from adjoining neighbouring properties to the west of the site or the public domain.

Some upper-level properties on the northern side of Clovelly Road may enjoy distant water views. However, this is likely to be filtered through existing landscaping and therefore proposal it is unlikely to result in unreasonable view affectation.

Despite the FSR variation, given the flat roof form, stepped proposed building envelope, existing built form and vegetation on the site, there is unlikely to be additional impact on any significant views. Accordingly, the proposal is considered to be consistent with the principles set out in *Tenacity* and established by the Court

Accordingly, although the proposal will depart from the FSR control, it will be consistent with the surrounding context, will maintain the amenity of surrounding properties, and will achieve the objectives of the development standard.

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

There are a number of environmental planning grounds that justify the additional FSR in this particular circumstance. In addition to consistency with the objectives of the zone and development standard; environmental planning grounds include contextual compatibility, improved residential amenity, and safety, security and crime prevention. These will now be discussed.

Contextual Compatibility and Better Planning Outcome

The proposed FSR variation will maintain the site's compatibility with the context. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

As indicated, the proposed FSR has been revised in accordance with Council's request for information and the comments of the Randwick Design Advisory Panel. The FSR remains compatible with the neighbouring developments, particularly that of the immediately adjacent contemporary residential flat building at No. 59 Burnie Street (DA-94/2012), which is also in the R2 Low Density Residential Zone and benefits from existing use rights. It is therefore clear that the quality and form of the immediate built environment, as demonstrated by the neighbouring approval, creates a unique opportunity to achieve a good design outcome.

The proposed FSR variation facilitates the replacement of a dated residential flat building of limited visual appeal and residential amenity with a sensitively designed new residential flat building. The proposal affords the opportunity to uplift the appearance and architectural quality of the built form, increasing amenity for future residents of the site and the site's contribution to the streetscape. The proposed design provides a more articulated, contextual and sustainable outcome than the existing building. This benefits the locality by providing a building that relates better to the desired future character of the area, compared to the existing built form.

The new, architecturally designed, contemporary residential flat building contributes positively to the rich and diverse architecture of the streetscape and relates better to the desired future character of the area, compared to the existing building. The following design philosophy prepared by Smart Design Studio demonstrates the high level of consideration that has been given to achieving design excellence in the proposed development:

Design References

A limited palette of quality materials and textures utilised in different ways creates a harmonious and refined architectural expression. Light-coloured brickwork as both solid surface and hit-and-miss screening responds to the natural material tones of this beach suburb location.

Design Reference - Clovelly Inter-War Brick Buildings

The design references the use of brickwork that is the dominant building material in the local context, with a modern take on the curved balconies, punched windows and rounded corners seen in many residential and commercial buildings of the inter-war period in the area.

Design Reference - Beach-side Art Deco

The Art Deco buildings of the eastern suburbs are a further precedent for the design, where curved balconies or frontages with punched and horizontal window openings are featured. Often in rendered and painted masonry, these apartment buildings can also be a combination of render and face brickwork.

Materials Board

Appealing and robust materials are selected for their longevity in light-coloured tones that respond to the coastal location.

Contribution to Housing Stock

The FSR variation also allows for the dwelling density of the site to be maintained and increased from the existing four units to a proposed five units. If strict compliance were enforced, it would not be possible to achieve the same number of units with the same level of residential amenity as provided in this application. A compliant FSR would reduce the number of units on the site compared to existing, thus reducing the property's contribution to housing stock in the area. This would be a poor planning outcome and would not be in the public interest.

Upgraded Residential Amenity

The FSR variation will facilitate the replacement of the existing residential flat building with a higher density and better-quality building. As outlined above, the variation facilitates the replacement of the existing building with a more articulated, skilfully designed and contextually compatible development than the existing building. It also provides for a building with greater levels of residential amenity.

The proposed development significantly improves the amenity of site for the future residents. It appears that the current apartments are small and poorly designed, which results in poor internal amenity. The rebuild resolves this by increasing the internal layouts of each apartment, rationalising the spatial arrangement of rooms, providing greater private open space and improving the circulation routes between living areas. This improved layout directly improves the quality of living amenity, such as access to daylight and natural ventilation, and maintenance of acoustic and visual privacy.

The existing building lacks the typical amenities for multi-storey residential flat buildings. The building does not have lift access. There is no designated communal open space, which is worsened by the insufficient size of each apartment's private balcony. The rear open space is dominated by hard stand vehicle access and parking.

In contrast, the proposed development is largely consistent with the requirements of the Apartment Design Guide and Council's DCP. The proposal introduces lift access, communal indoor areas and communal open space to the site. Car parking is provided in the basement, which is easily accessible from the front of the property. The amenity and accessibility of the site is therefore greatly improved from the existing situation. These positive outcomes are generated by virtue of the variation to FSR. Given the constraints of the site, it would never be possible to maintain the existing number of dwellings on the site while simultaneously achieving good amenity for each residence, without a variation to the FSR standard.

Therefore, the proposed FSR variation ensures the development promotes good design and amenity of the built environment, consistent with Object (g) of the EPA Act.

Orderly and Economic Use and Development

The proposal proposes an appropriate FSR when compared to surrounding development. If strict compliance with the FSR standard were enforced, it would result in a lesser number of units on the subject site compared to what currently exists. Therefore, FSR compliance would prevent the orderly and economic use and development of the land, which is inconsistent with object (c) of the Environmental Planning and Assessment Act 1979 (EPA Act). Given there are no unreasonable impacts to neighbouring properties, the bulk and scale of the development is contextually compatible, and the overall visual outcome is improved by the proposal, strict compliance would serve no benefit to the locality. Accordingly, in our opinion, the proposed FSR will ensure the development remains consistent with the existing and desired future planning objectives for the locality.

Safety, Security and Crime Prevention

The proposed contemporary and revitalised residential flat building with increased floor space significantly enhances safety, security, and crime prevention measures. The proposed design will allow for passive surveillance within the development and to the streetscape. The increased floor space allows for better layout planning, ensuring clear sightlines and reduces any concealed areas where crimes could occur. This enhanced visibility will contribute to a safer living environment. Moreover, the proposed building integrates communal open space and amenities that foster social interaction among residents, promoting a sense of community vigilance and collective security. These elements will benefit future occupants of the site and the wider locality.

Positive Outcomes

The proposed development and the variation of the FSR standard achieves numerous positive outcomes for the subject site, the streetscape and the wider locality. By replacing an older building with lesser amenity, accessibility and streetscape appeal with a high-quality, contemporary and modulated building, the proposal achieves benefits in relation to planning, architecture, amenity, landscaping, sustainability and accessibility matters. This is consistent with the desired future character of the area.

It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of neighbouring development achieves the objectives of the R2 Low Density Residential Zone and the majority of DCP built form and amenity provisions; and results in an improved streetscape outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the FSR breach.

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

7. Conclusion

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

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the development objectives of the R2 Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

| Table 1: Compliance Matrix | | | | |
|----------------------------|---|------------------------|--|-----------|
| Para (Initial Action) | Requirement | Section of this Report | Summary | Satisfied |
| 10 | Is it a development standard (s.1.4) | 1 | Yes | |
| 11 | What is the development standard | 1 | Clause 4.4: FSR | |
| 12 | What is the control | 1 & 2 | 0.5:1 | |
| 14 | First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions: | | Both positive opinions can be formed as detailed below. | YES |
| 15, 25 | 1st Positive Opinion – That the applicant’s written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement. | 5 | The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations. | YES |
| 16-22 | First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> . | 5.1 | The proposal satisfies Test 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard. | YES |
| 23-24 | Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied that the written request has adequately addressed this matter. The environmental planning grounds must be “sufficient” in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. | 5.2 | Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The FSR variation allows for a three-storey, contemporary residential development which is consistent with the desired future character of the area, is contextually compatible and is a better planning outcome for the site; The variation facilitates a greater provision of housing on the site; The proposed FSR facilitates upgraded residential amenity on the site, and an improved outcome in terms of safety, security and crime prevention. The proposed FSR variation ensures the development promotes good design and amenity of the built environment, consistent with Object (g) of the EPA Act. The proposed FSR allows for the orderly and economic use and development of the land; The proposal and FSR variation achieves positive outcomes for the site, the streetscape and the wider locality. | YES |

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Clause 4.6 Exceptions to Development Standards – FSR
No. 357 Clovelly Road, Clovelly - Job No. 22504

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Appendix 4: DCP Compliance Table

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--------------|--|---|------------------------------------|
| 2. | Site Planning | | |
| 2.2 | Landscaped open space and deep soil area | | |
| 2.2.1 | Landscaped open space | | |
| | A minimum of 50% of the site area is to be landscaped open space. | Proposed = 45.8% (286.8m ²) | On merit, refer Key Issues |
| 2.2.2 | Deep soil area | | |
| | (i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting. | Proposed = 19% (120m ²) | On merit, refer Key Issues |
| | (ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures. | Complies | Yes |
| | (iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting. | Complies | Yes |
| | (iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes. | Complies | Yes |
| | (v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties. | Complies | Yes |
| 2.3 | Private and communal open space | | |
| 2.3.1 | Private open space | | |
| | Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas. | Complies | Yes |
| | For residential flat buildings: (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. | Complies | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|-----------------------------|--|------------------|------------------------------------|
| | (vii) Private open space for apartments has a minimum area of 8m ² and a minimum dimension of 2m. | | |
| 2.3.2 | Communal open space | | |
| | Communal open space for residential flat buildings is to be: <ul style="list-style-type: none"> (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures. | Complies | Yes |
| 3. Building Envelope | | | |
| 3.3 | Building depth | | |
| | For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units. | Complies | Yes |
| 3.4 | Setbacks | | |
| 3.4.1 | Front setback | | |
| | <ul style="list-style-type: none"> (i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries. (ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways. | Refer Key Issues | On merit, refer Key Issues |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---------------------------|---|--|------------------------------------|
| 3.4.2 | Side setback | | |
| | <p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - >20m site frontage width: 4m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p> | Refer Key Issues | On merit, refer Key Issues |
| 3.4.3 | Rear setback | | |
| | For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater. | Not applicable to corner allotment. | N/A |
| 4. Building Design | | | |
| 4.1 | Building façade | | |
| | <p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the</p> | Complies – refer Design Excellence Advisory Panel comments | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|---|------------------------------------|
| | <p>proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p> <p>(vi) Conceal building services and pipes within the balcony slabs.</p> | | |
| 4.2 | Roof design | | |
| | <p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining | <p>Complies – refer Design Excellence Advisory Panel comments</p> | <p>Yes</p> |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|-----------------------------------|------------------------------------|
| | <p>residences.</p> <ul style="list-style-type: none"> - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p> | | |
| 4.3 | Habitable roof space | | |
| | <p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development. | No habitable roof space proposed. | N/A |
| 4.4 | External wall height and ceiling height | | |
| | (ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies. | Refer Key Issues | On merit, refer Key Issues |
| | (iii) The minimum ceiling height is to be 2.7m for all habitable rooms. | Complies | Yes |
| 4.5 | Pedestrian Entry | | |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|---------------------------------|------------------------------------|
| | <p>(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.</p> <p>(ii) Present new development to the street in the following manner:</p> <ul style="list-style-type: none"> - Locate building entries so that they relate to the pedestrian access network and desired lines. - Design the entry as a clearly identifiable element in the façade composition. - Integrate pedestrian access ramps into the overall building and landscape design. - For residential flat buildings, provide direct entries to the individual dwellings within a development from the street where possible. - Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably integrated into a wall adjacent to the primary entry (and at 90 degrees to the street rather than along the front boundary). - Provide weather protection for building entries. <p>Postal services and mailboxes</p> <p>(i) Mailboxes are provided in accordance with the delivery requirements of Australia Post.</p> <p>(ii) A mailbox must clearly mark the street number of the dwelling that it serves.</p> <p>(iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.</p> | <p>Complies</p> <p>Complies</p> | <p>Yes</p> <p>Yes</p> |
| 4.6 | Internal circulation | | |
| | <p>(i) Enhance the amenity and safety of circulation spaces by:</p> <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. | <p>Complies</p> | <p>Yes</p> |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|---|------------------------------------|
| | <ul style="list-style-type: none"> - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. | | |
| | (ii) Use multiple access cores to: <ul style="list-style-type: none"> - Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites. - Articulate the building façade. - Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units. | Complies | Yes |
| | (iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units. | Complies | Yes |
| 4.7 | Apartment layout | | |
| | (i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation. | Complies | Yes |
| | (ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements. | Complies | Yes |
| | (iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development. | Complies | Yes |
| | (iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry. | Complies | Yes |
| 4.8 | Balconies | | |
| | (i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary balconies or terraces | All proposed balconies exceed the minimum 8m ² area and 2m dimension requirements. | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|-------------|---|--|--|
| | <p>in larger apartments.</p> <p>(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m². All ground floor apartments are to have direct access to a terrace.</p> | <p>All proposed ground floor apartments are provided with POS area which exceeds the minimum 12m² area and 4m dimension requirements.</p> | <p>Yes</p> |
| 4.9 | Colours, materials and finishes | | |
| | <p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p> | <p>Complies – refer Design Excellence Advisory Panel comments</p> | <p>Yes</p> |
| 4.12 | Earthworks Excavation and backfilling | | |
| | <p>(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably</p> | <p>Refer Section 6.5 of this report (LEP assessment).</p> | <p>On merit – refer LEP assessment</p> |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--|---|---|------------------------------------|
| | construct a building within this extent of site modification. (ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site. (iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling. | | |
| | Retaining walls (iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries. (v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the neighbouring properties and the public domain. (vi) Where it is necessary to construct retaining walls at less than 900mm from the side or rear boundary due to site conditions, retaining walls must be stepped with each section not exceeding a maximum height of 2200mm, as measured from the ground level (existing). | Refer Section 6.5 of this report (LEP assessment). | On merit – refer LEP assessment |
| 5. Amenity | | | |
| 5.1 Solar access and overshadowing | | | |
| Solar access for proposed development | | | |
| | (i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June. | All apartments will receive at least three (3) hours of direct sunlight to living areas and POS areas between 8am and 4pm, midwinter. | Yes |
| | (ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June. | All apartments will receive at least three (3) hours of direct sunlight to living areas and POS areas between 8am and 4pm, midwinter. | Yes |
| | (iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building. | There are no single-aspect apartments with a southerly aspect. | Yes |
| | (iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate | Complies | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---|--|------------------|------------------------------------|
| | <p>how solar access and energy efficiency is maximised.</p> | | |
| Solar access for surrounding development | | | |
| | <p>(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.</p> | Refer Key Issues | On merit – refer Key Issues |
| 5.2 | Natural ventilation and energy efficiency | | |
| | (i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls. | Complies | Yes |
| | (ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building. | Complies | Yes |
| | (iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable. | Complies | Yes |
| | (iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms. | Complies | Yes |
| | (v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required. | Complies | Yes |
| | (vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows. | Complies | Yes |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|------------------|------------------------------------|
| | (vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms. | Complies | Yes |
| 5.3 | Visual privacy | | |
| | (i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences. (iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection. | Refer Key Issues | On merit – refer Key Issues |
| 5.4 | Acoustic privacy | | |
| | (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors. | Complies | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|------------------|------------------------------------|
| 5.5 | View sharing | | |
| | <p>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</p> <p>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p> | Refer Key Issues | On merit – refer Key Issues |
| 5.6 | Safety and security | | |
| | (i) Design buildings and spaces for safe and secure access to and within the development. | Complies | Yes |
| | (iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor. | Complies | Yes |
| | (iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient. | Complies | Yes |
| | (v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development. | Complies | Yes |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|----------------------------------|---|---|------------------------------------|
| | (vi) Resident car parking areas must be equipped with security grilles or doors. | Complies | Yes |
| | (vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems. | Complies | Yes |
| | (viii) Provide adequate lighting for personal safety in common and access areas of the development. | Complies | Yes |
| | (ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks. | Complies | Yes |
| | (x) External lighting must be neither intrusive nor create a nuisance for nearby residents. | Complies | Yes |
| | (xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development. | Complies | Yes |
| 6. Car parking and access | | | |
| 6.1 | Location | | |
| | (i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available. | Due to the flood constraints of the site, car parking facilities can only be provided from Clovelly Road. | Yes |
| | (ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site. | Complies | Yes |
| | (iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas. | Complies | Yes |
| | (iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary. | N/A | N/A |
| | (v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of | Complies | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|---------------------------|------------------------------------|
| | <p>(c) the allotment away from the primary street frontage. Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.</p> | | |
| 6.2 | Configuration | | |
| | <p>(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.</p> | Complies | Yes |
| | <p>(ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible.</p> | Proposed = 4.8m (approx.) | Yes |
| | <p>(iv) Provide basement or semi-basement car parking consistent with the following requirements:</p> <ul style="list-style-type: none"> (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a ‘back-of-house’ appearance by measures such as: <ul style="list-style-type: none"> - Installing security doors to avoid ‘black holes’ in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those | Complies | Yes |

D5/25

D5/25

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---|--|--|------------------------------------|
| | areas of the car park that are visible from the public domain. | | |
| 7. Fencing and Ancillary Development | | | |
| 7.1 Fencing | | | |
| | (i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering. (ii) Sandstone fencing must not be rendered and painted. (iii) The following materials must not be used in fences: - Steel post and chain wire - Barbed wire or other dangerous materials (iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided. | The proposal seeks to replace existing timber fencing with new timber palling fencing. | Yes |
| 7.3 Side and Rear Fencing | | | |
| | (i) The maximum height of side, rear or common boundary fences is limited to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing). (ii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits. (iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment. (iv) Side or common boundary fences must be finished or treated on both sides. | Capable of complying | Yes, subject to condition |
| 7.6 Storage | | | |
| | (i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling. (ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles. | Capable of complying | Yes, subject to condition |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|----------------------|------------------------------------|
| | (iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: (a) Studio apartments – 6m ³ (b) 1-bedroom apartments – 6m ³ (c) 2-bedroom apartments – 8m ³ (d) 3 plus bedroom apartments – 10m ³ | | |
| 7.7 | Laundry facilities | | |
| | (i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit. | Capable of complying | Yes |
| | (ii) Provide internal laundry for each dwelling unit. | Complies | Yes |

D5/25

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/840/2024

Development Consent Conditions (Medium Density Residential)



| | |
|------------------------|---|
| Folder /DA No: | DA/840/2024 |
| Property: | 357 Clovelly Road, CLOVELLY NSW 2031 |
| Proposal: | Demolition of an existing residential flat building and construction of a 3-storey residential flat building with basement level and mezzanine basement level, five (5) residential apartments, eight (8) car spaces, communal open space at ground level, ancillary and landscaping works. |
| 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:

| <i>Plan</i> | <i>Drawn by</i> | <i>Dated</i> | <i>Received by Council</i> |
|---------------------------------------|---------------------|--------------|----------------------------|
| DA010, Rev. B – Site Plan | Smart Design Studio | 06/12/2024 | 15/01/2025 |
| DA020, Rev. A – Demolition Plan | Smart Design Studio | 14/06/2024 | 15/01/2025 |
| DA099, Rev. B – B01 + BMZ Plan | Smart Design Studio | 06/12/2024 | 15/01/2025 |
| DA100, Rev. B – L00 Plan | Smart Design Studio | 06/12/2024 | 15/01/2025 |
| DA101, Rev. B – L01 Plan | Smart Design Studio | 06/12/2024 | 15/01/2025 |
| DA102, Rev. B – L02 Plan | Smart Design Studio | 06/12/2024 | 15/01/2025 |
| DA103, Rev. B – RF Plan | Smart Design Studio | 06/12/2024 | 15/01/2025 |
| DA400, Rev. B – Elevations | Smart Design Studio | 06/12/2024 | 15/01/2025 |
| DA450, Rev. B – Sections | Smart Design Studio | 06/12/2024 | 15/01/2025 |
| DA780, Rev. A – Schedule of Materials | Smart Design Studio | 14/06/2024 | 15/01/2025 |

| <i>BASIX Certificate No.</i> | <i>Dated</i> | <i>Received by Council</i> |
|------------------------------|--------------|----------------------------|
| 1743156M_03 | 13/01/2025 | 15/01/2025 |

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

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

2. **Amendment of Plans & Documentation**

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

| Condition |
|--|
| a. The glazing line of the living room to Unit L01.02 shall be revised so that the balcony has a minimum area of 12m ² . |
| b. Privacy screens shall be provided to the western edge and a 3m long portion of the northern edge (as measured from north-west corner of balcony) of the northern balcony at Level 2. |
| c. Privacy screen/s must be constructed with either: <ul style="list-style-type: none">• Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable).• Fixed lattice/slats with individual openings not more than 30mm wide.• Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings. |
| d. The maximum height of side, rear, or common boundary fences shall be limited to 1800mm, as measured from the ground level (existing). |

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

3. **Storage**
In addition to storage in kitchens, bathrooms and bedrooms, the following storage shall be provided for each apartment, with at least 50% of the storage located within the apartment:
- 1 bedroom apartments – 6m³
 - 2 bedroom apartments – 8m³
 - 3 bedroom apartments – 10m³

Condition Reason: To ensure compliance with ADG requirements.

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

| Condition |
|--|
| 4. 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. |
| 5. 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. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape. Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development. |
| 6. Housing and Productivity Contribution |

Condition

Before the issue of the first Construction Certificate, the housing and productivity contribution (HPC) set out in the table below is required to be made.

| <i>Housing and productivity contribution</i> | <i>Amount</i> |
|--|----------------------|
| Housing and productivity contribution (base component) | \$10,623.63 |
| Transport project component | Nil |
| Total housing and productivity contribution | \$10,623.63 |

The HPC must be paid using the NSW planning portal.

At the time of payment, the amount of the HPC is to be adjusted in accordance with the *Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024 (HPC Order)*.

The HPC may be made wholly or partly as a non-monetary contribution (apart from any transport project component) if the Minister administering the Environmental Planning and Assessment Act 1979 agrees.

The HPC is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the HPC Order exempts the development from the contribution.

The amount of the contribution may be reduced under the HPC Order, including if payment is made before 1 July 2025.

Condition Reason: To require contributions towards the provision of regional infrastructure, and to ensure the housing and productivity contribution is paid.

7. **Section 7.12 Development Contributions**

Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$10,671,100 the following applicable monetary levy must be paid to Council: \$106,711.00.

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:

$$\text{IDC} = \text{ODC} \times \text{CP2/CP1}$$

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.

| Condition | |
|-----------|--|
| 8. | <p>Long Service Levy Payments</p> <p>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 <i>Environmental Planning and Assessment Act 1979</i>.</p> <p><i>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.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p> |
| 9. | <p>Security Deposits</p> <p>The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none">• \$10,000.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p> |
| 10. | <p>Electricity Substation</p> <p>The applicant must liaise with Ausgrid prior to obtaining a construction certificate (for any above ground works), to determine whether or not an electricity substation is required for the development. Any electricity substation required for the site as a consequence of this development shall be located within the site and shall be screened from view. The proposed location and elevation shall be shown on relevant construction certificate and landscape plans.</p> <p>Condition Reason: To ensure the development satisfies Ausgrid's requirements.</p> |
| 11. | <p>Car Lift</p> <p>Prior to lodging any construction certificate for the proposed development the applicant must submit to Council for approval, and have approved, full design details and specifications for the proposed car lift. The applicant must liaise with Council's Development Engineer Coordinator to obtain Council's requirements for the required car lift. All Construction Certificate applications must demonstrate compliance with the approved car lift.</p> <p>Condition Reason: To ensure the car lift is designed to all relevant standards and functions to an acceptable and reliable level of service.</p> |

| | Condition |
|-----|---|
| 12. | <p>Parking Allocation Prior to lodging a Construction Certificate the applicant must submit to council for approval, and have approved a detailed parking layout and allocation plan.</p> <p>Condition Reason: to ensure that the parking allocation is consistent with the relevant parking requirements found in Council's Comprehensive DCP 2013.</p> |
| 13. | <p>Driveway Gradients The gradient of the internal access driveway off Clovelly Road must be designed and constructed in accordance with AS 2890.1 (2004) – Off Street Car Parking and the levels of the driveway must match the alignment levels at the property boundary (as specified by Council). Prior to lodging a Construction Certificate the applicant must submit to Council for approval, and have approved full design details for the internal driveway. The applicant must liaise with Council's Development Engineer Coordinator to obtain Council's requirements for the internal driveway design. All Construction Certificate applications must demonstrate compliance with the approved internal driveway design.</p> <p>The height of the building must not be increased to satisfy the required driveway gradients.</p> <p>Condition Reason: To ensure all driveway & footpath works are designed and constructed in accordance with Council requirements and Australian Standards</p> |
| 14. | <p>Sydney Water All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p> |
| 15. | <p>Survey Infrastructure Prior to the issue of any Construction Certificate, documentary evidence must be prepared by a Registered Surveyor and submitted to the appointed Certifying Authority and the Council that includes and addresses the following:</p> <p>(a) A letter, signed by a current NSW Registered Land Surveyor and including</p> |

Condition

his or her Board of Surveying and Spatial Information (BOSSI) identification number, stating that all investigations required under Surveyor-General's Direction No.11 have been made for the subject site.

- (b) The above letter is required to confirm if any survey infrastructure will be affected or impacted upon by the proposal. If no impact is identified this must be detailed by the Registered Land Surveyor.
- (c) In the event that survey infrastructure is identified as vulnerable or will be affected or impacted upon by the approved development, a copy of any Surveyor-General's Approval for Survey Mark Removal granted by NSW Spatial Services for the subject site, including all documentation submitted as part of that application (for example the survey mark audit schedule, strategy plan and strategy report) is required.

The applicant must, where possible, ensure the preservation of existing survey infrastructure undisturbed and in its original state or else provide evidence of the Surveyor-General's authorisation to remove or replace marks.

Note: Under Section 24 of the Surveying and Spatial Information Act 2002, it is an offence to remove, damage, destroy, displace, obliterate or deface any [survey mark](#) unless authorised to do so by the [Surveyor-General](#).

Condition Reason: To ensure the development satisfies requirements with regards to the Preservation of Survey Infrastructure (POSI) under Section 24 of the Surveying and Spatial Information Act 2002.

16. **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.

17. **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.

18. **Site stability, Excavation and Construction work**

A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed

Condition

Certifier for the development:

- (a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties.
- (b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
- (c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
- (d) Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work.
- (e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate.

Condition Reason: To ensure the subject site/development and adjoining land is adequately supported and protected during any works.

19. **New Contamination Evidence**

Council's Planning Manager and the Principal Certifier must be notified of any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination.

Condition Reason: To ensure that Council is notified of any new contamination evidence.

20. **Noise Criteria**

Residential dwellings are to be designed and constructed to satisfy the following acoustic criteria:

In naturally ventilated spaces – the repeatable maximum L_{Aeq} (1 hour) should not exceed:

- 35 dB(A) between 10.00pm and 7.00am in sleeping areas when windows are closed; and/or an alternative means of passive ventilation has been provided; (Plenums, wintergardens, louvers, attenuated ducting etc.)
- 40 dB(A) in sleeping areas when windows are open (24 hours),
- 40 - 45 dB(A) in living areas when windows are closed (24 hours); and/or an alternative means of passive ventilation has been provided; (Plenums, wintergardens, louvers, attenuated ducting etc.)
- 50 dB(A) in living areas when windows are open (24 hours).

If the windows open noise criteria cannot be achieved, an alternative passive natural ventilation solution must be provided; to allow for windows to be closed while concurrently achieving natural ventilation to habitable rooms.

Mechanically assisted ventilation is permitted as a supplementary measure to natural ventilation requirements, but it is not permitted to replace natural ventilation requirements.

Condition Reason: To ensure residential amenity.

Condition

21. **Acoustic Report**

All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report prepared by Alex Washer of Acoustic Logic, dated 18 December 2024, Ref: 20240549.1 Revision 3, titled 357 Clovelly Road, Clovelly Noise Impact Assessment, Council Ref: D05558914 must be implemented in the development prior to the commencement of its use.

All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.

Condition Reason: To ensure residential amenity.

22. **Acoustic Validation Report**

Noise from the development must not cause an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and must not exceed maximum noise level as detailed in relevant conditions of this consent.

A report prepared by a qualified Acoustic Consultant, must be submitted to and approved by Council, prior to the issue of a Construction Certificate, which provides details of compliance with the abovementioned noise criteria. Any recommendations and requirements included in the acoustic report or as may be specified by Council are to be included in the Construction Certificate accordingly.

Prior to the issue of any relevant Construction Certificate, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the above 'Acoustic Report' condition and relevant conditions of this consent. This must be done by a Suitably Qualified Acoustic Consultant* (see definition below). This work will be to the satisfaction of the accredited certifier.

Should lightweight construction be proposed, this must be reviewed by the project acoustic consultant to ensure internal noise levels can be achieved.

Noise level attenuation must be calculated on first principles taking into consideration the size and location of the opening, room volume, façade orientation and other relevant parameters.

Mechanical plant noise must be assessed to comply with 'Section 8 Operational noise emission assessment' of the approved acoustic report, Council Ref: D05558914.

Inaudibility should be taken as the existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) minus 10dB in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive) inside a habitable room of any affected residential accommodation.

Note: *Suitably Qualified Acoustic Consultant* means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member firm.

Condition Reason: To ensure residential amenity.

23. **Waste Rooms**

To ensure the adequate storage and collection of waste from the occupation of the building, all garbage and recyclable materials emanating from the premises must

Condition

be stored in the designated waste storage area. The waste storage area must be designed and constructed in accordance with the following requirements to minimise odours, deter vermin, and protect surrounding areas:

- (a) Provided with a hose tap connected to the water supply.
- (b) Paved with impervious floor materials.
- (c) Coved at the intersection of the floor and walls.
- (d) Graded and drained to a waste disposal system in accordance with the relevant regulatory authority (Sydney Water).
- (e) Adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour as defined by the *Protection of the Environment Operations Act 1997*.
- (f) An adequate lighting system must be provided (natural or artificial) to the waste room to aid with cleaning and the detection of pest activity.
- (g) Fitted with appropriate interventions to meet fire safety standards in accordance with the *Building Code of Australia*.
- (h) Detailed plans and specifications for the construction of the waste storage area are to be submitted to the Certifying Authority with the Construction Certificate.

Condition Reason: To ensure adequate storage and collection of waste.

24. **Car Park Ventilation**

The car park must be ventilated in accordance with the Building Code of Australia and, where necessary, Australian Standard AS1668, Parts 1 and 2. Ventilation must be controlled by carbon monoxide monitoring sensors to ensure compliance with occupant health requirements.

Condition Reason: To ensure adequate ventilation.

25. **Street Tree Management**

The applicant must submit a payment of **\$214.50** (GST inclusive) to cover the costs for Council to supply, plant and maintain 2 x 25 litre *Hibiscus tiliaceus 'Rubra'* (Ruby Hibiscus) on the Keith Street nature strip, spaced equally between the existing power pole and northern site boundary.

This fee must be paid into **Tree Amenity Income** via Council's Customer Service Centre, **prior to a Construction Certificate being issued for the development**.

The applicant must then contact Council's Landscape Development Officer on 9093-6613 (quoting the receipt number) AND GIVING UP TO SIX WEEKS NOTICE to arrange for planting upon the completion of all works.

After advising of the receipt number, any further enquiries regarding scheduling/timing or completion of tree works are to be directed to Council's North Area Tree Preservation & Maintenance Coordinator on 9093-6964.

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

26. **Street Tree Protection**

To ensure retention of the mature *Banksia integrifolia* (Coastal Banksia, T13 in the Arboricultural Impact Assessment Report by Koala Arbor, ver 1 dated 18/06/24, *'the Arborist Report'*) that is located on Council's Clovelly Road footpath, halfway across the width of this frontage, and just east of the existing power pole, then around on the Keith Street verge, two *Hibiscus tiliaceus 'Rubra'* (Ruby Cottonwoods – not identified or assessed in the Arborist Report but marked as T15-16 on the Landscape Plan), in the area between the corner of Clovelly Road and the existing vehicle crossing in good health, the following measures are to be undertaken:

Condition

- (a) All documentation submitted for the Construction Certificate application must note them for retention, with the position and diameter of their trunks, canopies, SRZ's, TPZ's and Tree Identification Numbers as taken from 'the Arborist Report' to be clearly and accurately shown on all plans in relation to the site and new works.
- (b) All Construction Certificate plans must show that the existing vehicle crossing in Keith Street, towards the northern site boundary, will be removed/demolished and this area then returned to a grassed verge and footpath, with the new vehicle crossing and basement ramp in Clovelly Road to be provided along the western site boundary, consistent with what is shown on the AMENDED Architectural Plans by Smart Design Studio, rev A dated 14/06/24 & rev B dated 06/12/24, with the offset in millimetres between the new crossing and T13 to now be included.
- (c) Any excavations associated with the installation of new services, pipes, stormwater systems or similar over public property must be setback outside each of their SRZ's, with the Principal Certifier to ensure that all Services Plans are both prepared and then installed on-site to comply with this requirement.
- (d) Prior to the commencement of any site works, their trunks must be physically protected by wrapping layers of geo-textile, underfelt, carpet, hessian or similar, from ground level to a minimum 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.
- (e) This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION, DO NOT REMOVE".
- (f) The applicant is not authorised to perform any other works to these trees and must contact Council's Landscape Development Officer on 9093-6613 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.
- (g) 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.
- (h) The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during works and prior to any Occupation Certificate.
- (i) A refundable deposit in the form of cash, credit card or cheque for an amount of **\$5,000.00** must be paid into via Council's Customer Service Centre, **prior to a Construction Certificate being issued for the development** to ensure compliance with the conditions listed in this consent, and preservation of the trees.
- (j) 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 (9093-6613).

Condition

Any contravention of Council's conditions relating to the trees 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.

27. **Tree Protection Measures**

To also ensure retention of the *Agonis flexuosa* (Willow Myrtle, T10) that is located within this development site, halfway along the western side setback in good health, the following measures are to be undertaken:

- (a) All documentation submitted for the Construction Certificate application must note it for retention, with the position and diameter of its trunk, canopy, SRZ, TPZ and Tree Identification Number as taken from 'the Arborist Report' to be clearly and accurately shown on all plans in relation to the site and new works.
- (b) Prior to the commencement of any site works, the Principal Certifier must ensure that an AQF Level 5 Consulting Arborist (who is eligible for membership with a nationally recognized organization/association) has been engaged as 'the Project Arborist' for the duration of works and will be responsible for both implementing and monitoring these conditions of development consent, Section 11 of the Arborist Report – Tree Protection Plan/Specifications, and any other instructions issued on-site.
- (c) The Project Arborist must be present on-site at the relevant stages of works and must keep a log of the dates of attendance and the works performed, which is to be presented as a 'Final Compliance Report' for the approval of the Principal Certifier, prior to any Occupation Certificate.
- (d) All Construction Certificate plans must show that the footprint of the Basement (dwg B01 + BMZ Plan) and Ground Floor Levels (dwg L00), will remain consistent with those by Smart Design Studio, rev B dated 06/12/24, with the western side setback for the extent of its TPZ to be retained as undisturbed deep soil, at existing grades, for the purpose of landscaping only.
- (e) Measurements in millimetres must also be included showing that a minimum offset of 3000mm will be provided from the centre of its trunk to the western wall of the Basement, with the stairs to also be offset a minimum distance of 2747mm from the western site boundary.
- (f) The access stairs shown attached to the western elevation of the new building must follow existing grades where possible; be a lightweight construction; use a permeable/porous material, and where excavations are required for footings or similar, these must only be localised pad footings, with details confirming compliance to be submitted to, and be approved in writing by, the Project Arborist, prior to their use on site.
- (g) Any excavations associated with the installation of new services, pipes, stormwater systems or similar in the western side setback must be positioned as close as possible to the footprint of the building, and where they are performed within its TPZ, must be directly supervised by the Project Arborist, with time stamped photos to be taken to confirm their attendance.
- (h) This tree must be physically protected by the installation of 1.8 metre high

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| steel mesh/chainwire fencing panels to the extent shown on page 14 of the Arborist Report, to completely/exclude it for the duration of works. |
| (i) This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER". |
| (j) Its trunk must also be physically protected by wrapping layers of geotextile, 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. |
| (k) Ground protection comprising strapped together rumble boards, sheets of plywood or similar shall also be provided to the extent shown at page 14 of the Arborist Report, for the area between the TPZ described in point 'j' above and the new development, until such time as the approved landscaping is being installed. |
| (l) To prevent soil/sediment being washed over its root system, erosion control measures must be provided at ground level around the perimeter of the TPZ. |
| (m) 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. |
| (n) Demolition/removal of any existing surfacing and structures, as well as all initial excavations for footings and similar within its 5.4m TPZ radius must be directly supervised by the Project Arborist, and be performed by hand wherever possible, not machinery, with the Project Arborist to take time stamped photos to confirm their attendance at this critical stage. |
| (o) Where minor roots with a diameter of less than 40mm 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. |
| (p) Any new common boundary fencing within its TPZ can only be a system which is supported on localised pads, not continuous strip footings, with details confirming compliance to be shown on the Construction Certificate plans. |
| (q) The Principal Certifier and 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. |

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

28. **Amended Landscape Plan**

The Landscape Plan by Spirit Level Design Pty Ltd, dwg L100, rev F dated 24/06/24 must be amended to now include the following requirements:

- (a) Be revised where necessary to now be consistent with all elements of the AMENDED Architectural Plans by Smart Design Studio, rev A dated

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14/06/24 & rev B dated 06/12/24.

- (b) A revised Planting Plan and Plant Schedule which now nominates exactly what will be planted where, including quantities/densities and similar.
- (c) Any planting adjacent either side of the vehicle crossing must use only those species which will not exceed 600mm in height at maturity (and cannot be limited by pruning/maintenance and similar) so as to maintain a clear line of sight of pedestrian and vehicular traffic approaching from the west when occupants are exiting the site, with any mounding as a landscape feature in these areas needing to consider this requirement.
- (d) Suitable replacement planting in the areas of T4 & T11, to maintain future amenity, refer also to Tree Removal condition later in this report.
- (e) Demonstrate how the selected materials, species, finished levels and similar comply with the requirements specified in the Flood Risk Management Report relating to not obstructing the Overland Flowpath across the rear boundary of the site.

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

Condition Reason: To ensure residential amenity and that appropriate landscaping is provided.

29. **Traffic conditions**

Adequate provisions are to be made to provide pedestrian visibility and safety. All new walls (and/or landscaping) adjacent to vehicular crossings should not exceed a height of 600mm above the internal driveway level for a distance of 1.5m within the site or new walls (including landscaping) should splayed 1.5 metres by 1.5 metres. Details of compliance, to the satisfaction of the Principal Certifier, are to be included in the construction certificate documentation.

The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with these requirements.

Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.

30. **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:

Clovelly Road

- Match the back of the existing footpath along the full Clovelly Road site frontage.

Keith Street

- Match the back of the existing footpath along the full Keith Street site frontage.

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

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| | <p>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.</p> <p>Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881/9093-6924.</p> <p>Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.</p> |
| 31. | <p>Design Alignment levels</p> <p>The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of \$1527 calculated at \$63.00 (as of 1st July 2024) per metre of site frontage to Clovelly Road. This amount is to be paid prior to a construction certificate being issued for the development.</p> <p>Condition Reason: To ensure all driveway & footpath works are designed and constructed in accordance with Council requirements and Australian Standards</p> |
| 32. | <p>Stormwater Drainage & Flood Management</p> <p>Prior to lodging a Construction Certificate the applicant shall submit to Council for approval, and have approved a plot of the critical 1%AEP (1 in 100 year) flood levels across the entire development site. Particular emphasis shall be the area north of the proposed building and the area proposed for the internal driveway.</p> <p>The floor level of all habitable areas (excluding those in the basement carpark) shall be at a minimum of 500mm above the approved critical 1%AEP flood levels or be suitably waterproofed up to this same level. Details demonstrating compliance with this condition are to be included in the Construction Certificate documentation.</p> <p>The plot of the critical 1%AEP flood levels must be prepared in full consultation with Council's Development Engineer Coordinator.</p> <p>Prior to lodging a Construction Certificate the applicant shall submit to Council for approval, and have approved a detailed plot of the stormwater overland flowpath along the northern side of the development site. The plot of the stormwater overland flowpath must be prepared in full consultation with Council's Development Engineer Coordinator and no works must be carried out in the overland flowpath that will block or divert the stormwater overland flowpath. Any fencing across the overland flowpath must be of a free and open form to Council's satisfaction.</p> <p>The proposed internal driveway shall be designed with a high point at least 300 mm above determined 1%AEP flood level (or be suitably waterproofed up to this same level) unless it can be demonstrated that the internal driveway is not flood affected.</p> <p>Windows, vents and other openings into the basement carpark (excluding the driveway opening) are to be located at least 300 mm above the determined 1%AEP (1 in 100) year flood level. Details demonstrating compliance with this condition are to be included in the construction certificate documentation.</p> <p>The proposed development must not create increases to the predevelopment flood levels external to the site for all storm events up to the critical 1%AEP storm event. Modelling must be produced to show the predeveloped and post developed flood levels for a range of storm events up to the critical 1%AEP flood event. The modelling must be submitted to Council for approval and be approved prior to the issuing of a Construction Certificate for the proposed development. The applicant must liaise with Council's Development Engineer Coordinator prior to undertaking the modelling.</p> <p>The ground floor level located shall be designed to <i>structurally</i> withstand</p> |

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hydrostatic pressure/stormwater inundation from floodwater during the probable maximum flood (PMF) event as defined in the Floodplain Management Manual (New South Wales Government, January 2001). Structural Engineering certification confirming that this condition has been complied with shall be submitted to the Principal Certifier with the construction certificate.

This requirement does not necessitate the development being flood proof/water tight up to the PMF event, rather the requirement is to ensure that the development will not be *structurally* damaged in manner that could endanger lives during the PMF event.

Condition Reason: To ensure floor levels are adequately protected from flooding during major storm events.

33. **Stormwater Management**

Stormwater drainage plans have not been approved as part of this development consent. Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the Principal Certifier. The drawings and details shall include the following information:

- (a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
- (b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
- (c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
 - i. Roof areas
 - ii. Paved areas
 - iii. Grassed areas
 - iv. Garden areas
- (d) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
- (e) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
- (f) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.

Condition Reason: To control and manage stormwater run-off so as not to adversely impact the development, neighbouring properties and Council's stormwater assets.

34. **Internal Drainage**

The site stormwater drainage system is to be provided in accordance with the following requirements;

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| <p>(a) The stormwater drainage system must be provided in accordance with the relevant requirements of Building Code of Australia and the conditions of this consent, to the satisfaction of the Principal Certifier and details are to be included in the construction certificate.</p> |
| <p>(b) The stormwater must be discharged (by gravity) either:</p> <ul style="list-style-type: none">i. Directly to the kerb and gutter <u>in front</u> of the subject site in in Keith Street; orii. Directly into Council's underground drainage system located in Clovelly Road or Keith Street via a new and/or existing kerb inlet or junction pit. |
| <p>(c) Should stormwater be discharged to Council's street drainage system, an on-site stormwater detention system must be provided to ensure that the maximum discharge from the site does not exceed that which would occur during a 10% AEP (1 in 10 year) storm of one hour duration for existing site conditions. All other stormwater run-off from the site for all storms up to the 5% AEP (1 in 20 year) storm is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the Principal Certifier. If discharging to the street gutter the PSD shall be restricted to the above or 25 L/S, whichever the lesser.</p> <p>An overland escape route or overflow system (to Council's street drainage system) must be provided for storms having an annual exceedance probability (AEP) of 1% (1 in 100 year storm), or, alternatively the stormwater detention system is to be provided to accommodate the 1% AEP (1 in 100 year) storm.</p> |
| <p>(d) Determination of the required cumulative storage (in the on-site detention and/or infiltration system) must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.</p> <p>Where possible any detention tanks should have an open base to infiltrate stormwater into the ground. Infiltration should not be used if ground water and/or any rock stratum is within 2.0 metres of the base of the tank.</p> |
| <p>(e) Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1% AEP (1 in 100 year), 2 hour storm assuming both pumps are not working.</p> |
| <p>(f) The pump system must also be designed and installed strictly in accordance with Randwick City Council's Private Stormwater Code.</p> |
| <p>(g) Should a charged system be required to drain any portion of the site, the charged system must be designed such that;</p> <ul style="list-style-type: none">i. There are suitable clear-outs/inspection points at pipe bends and junctions.ii. The maximum depth of the charged line does not exceed 1m below the gutter outlet. |
| <p>(h) Generally all internal pipelines must be capable of discharging a 1 in 20 year storm flow. However the minimum pipe size for pipes that accept</p> |

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| <p>stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.</p> <p>(i) A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.</p> <p style="padding-left: 40px;">Sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements:</p> <ul style="list-style-type: none"> • The base of the pit being located a minimum 300mm under the invert level of the outlet pipe. • The pit being constructed from cast in-situ concrete, precast concrete or double brick. • A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes. • A galvanised heavy-duty screen being provided over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent). • The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system. • A child proof and corrosion resistant fastening system being provided for the access grate (e.g. spring loaded j-bolts or similar). • Provision of a sign adjacent to the pit stating, "This sediment/silt arrestor pit shall be regularly inspected and cleaned". <p style="padding-left: 40px;"><i>Sketch details of a standard sediment/silt arrestor pit may be obtained from Council's Drainage Engineer.</i></p> <p>(j) The floor level of all habitable, retail, commercial and storage areas located adjacent to any detention and/or infiltration systems with above ground storage must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be provided.</p> <p style="padding-left: 40px;"><i>(In this regard, it must be noted that this condition must not result in any increase in the heights or levels of the building. Any variations to the heights or levels of the building will require a new or amended development consent from the Council prior to a construction certificate being issued for the development).</i></p> <p>(k) The maximum depth of ponding in any above ground detention areas and/or infiltration systems with above ground storage shall be as follows (as applicable):</p> <ol style="list-style-type: none"> i. 150mm in uncovered open car parking areas (with an isolated maximum depth of 200mm permissible at the low point pit within the detention area) ii. 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10) iii. 600mm in landscaped areas where the side slopes of the |

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| <p>detention area have a maximum grade of 1 in 10</p> <p>iv. 1200mm in landscaped areas where a safety fence is provided around the outside of the detention area</p> <p>v. Above ground stormwater detention areas must be suitably signposted where required, warning people of the maximum flood level.</p> <p><i>Note: Above ground storage of stormwater is not permitted within basement car parks or store rooms.</i></p> <p>(l) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.</p> <p>(m) A 'V' drain (or equally effective provisions) are to be provided to the perimeter of the property, where necessary, to direct all stormwater to the detention/infiltration area.</p> <p>(n) Mulch or bark is not to be used in on-site detention areas.</p> <p>(o) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.</p> <p>(p) Any onsite detention systems shall be located in areas to be dedicated as common property / areas accessible by residents of all units.</p> <p>Condition Reason: To control and manage stormwater run-off so as not to adversely impact the development, neighbouring properties and Council's stormwater assets.</p> |

35. **Site seepage & Dewatering**
 An amended geotechnical report must be obtained from a qualified, experienced Hydrogeological/geotechnical Engineer, which provides an assessment of the site and the presence of and groundwater/seepage flows by undertaking borehole investigation to the minimum depth of the basement excavation plus 1m. The report must also investigate the potential impact of groundwater and the water table upon the development, prior to issuing a Construction Certificate, to the satisfaction of the Principal Certifier.

The report must confirm whether or not the site is or may be affected by groundwater, seepage water or fluctuating water table and the report must include details of the measures to be implemented to effectively manage any groundwater.

Where the site is affected by dry weather seepage flows, 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 or underground drainage system
- b) Adequate provision is to be made for the ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site).
- c) The walls of the basement level/s of the building are to be waterproofed/tanked to restrict the entry of any seepage water and

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| <p>subsoil drainage into the basement level/s of the building and the stormwater drainage system for the development.</p> <p>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.</p> <p>e) Details of the proposed stormwater drainage system including methods of tanking the basement levels and any sub-soil drainage systems (as applicable) must be prepared or approved by a suitably qualified and experienced Professional Engineer to the satisfaction of the Principal Certifier and details are to be included in the construction certificate. A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Principal Certifier.</p> |

Condition Reason: To control and manage any seepage/groundwater so as not to adversely impact neighbouring properties and Council's stormwater assets.

36. **Waste Management**

A Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, is required to be submitted to and approved by Council's Lead Specialist Strategic Waste.

The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):

- The use of the premises and the number and size of occupancies.
- The type and quantity of waste to be generated by the development.
- Demolition and construction waste, including materials to be re-used or recycled.
- Details of the proposed recycling and waste disposal contractors.
- Waste storage facilities and equipment.
- Access and traffic arrangements.
- The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials.

Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's website at: https://www.randwick.nsw.gov.au/_data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf

The garbage room shall be sized to contain a total of 7 x 240 litre bins (comprising 3 garbage bins, 3 recycle bins and 1 FOGO bin) and with adequate provisions for access to all bins. Details showing compliance are to be included in the construction certificate.

The waste storage areas are to be provided with a tap and hose and the floor is to be graded and drained to the sewer to the requirements of Sydney Water.

Condition Reason: To ensure the development effectively manages its waste during construction and operational phases.

37. **Public Utilities**

A *Public Utility Impact Assessment* must be carried out to identify all public utility

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| | <p>services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the building works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p> |
| 38. | <p>Undergrounding of Site Power</p> <p>Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Keith Street. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.</p> <p>Condition Reason: To minimise the use of private poles in accordance with Council's resolution and protect street amenity.</p> |
| 39. | <p>Excavation Methodology</p> <p>No piling or ground anchoring works (or the like) are to be undertaken on any land outside of the development site. Construction methodology details for the basement excavation works shall be submitted to, and be approved by, the Principal Certifier prior to any Construction Certificate.</p> <p>Condition Reason: To ensure no encroachment onto any other private or public land and to protect Council land.</p> |

BEFORE BUILDING WORK COMMENCES

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| 40. | <p>Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <ol style="list-style-type: none">a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ol style="list-style-type: none">a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; anda principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); andthe principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the |

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| | 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. |
| 41. | <p>Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p> |
| 42. | <p>Dilapidation Reports</p> <p>A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a Professional Engineer, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site, and any other property or public land which may be affected by the works, to the satisfaction of the <i>Principal Certifier</i> for the development.</p> <p>The dilapidation report must be submitted to the Principal Certifier, Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).</p> <p>Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p> |
| 43. | <p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.</p> <p>A <i>Construction Noise & Vibration Management Plan</i> must be developed and implemented throughout demolition and construction work.</p> <p>(a) The <i>Construction Noise & Vibration Management Plan</i> must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority <i>Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline</i> (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.</p> <p>(b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.</p> <p>(c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as</p> |

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| practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the <i>Construction Noise & Vibration Management Plan</i> and which demonstrates compliance with relevant criteria. |
| (d) Any recommendations and requirements contained in the <i>Construction Noise & Vibration Management Plan</i> and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council. A copy of the Construction Noise & Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works. |
| (e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly. |

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

44. **Construction Site Management Plan**

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

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

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

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

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

45. **Construction Site Management Plan**

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

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| | <p>provided to the Principal Certifier and Council.</p> <p>Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.</p> |
| 46. | <p>Public Liability</p> <p>The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p> |
| 47. | <p>Construction Traffic Management</p> <p>An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Keith Street for the duration of the demolition & construction works.</p> <p>The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.</p> <p>The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.</p> <p>A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.</p> <p>The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:</p> <ul style="list-style-type: none"> • A description of the demolition, excavation and construction works • A site plan/s showing the site, roads, footpaths, site access points and vehicular movements • Any proposed road and/or footpath closures • Proposed site access locations for personnel, deliveries and materials • Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site) • Provision for loading and unloading of goods and materials • Impacts of the work and vehicular movements on the road network, traffic and pedestrians • Proposed hours of construction related activities and vehicular movements to and from the site • Current/proposed approvals from other Agencies and Authorities |

| Condition |
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| <p>(including NSW Roads & Maritime Services, Police and State Transit Authority)</p> <ul style="list-style-type: none"> • Any activities proposed to be located or impact upon Council's road, footways or any public place • Measures to maintain public safety and convenience <p><i>The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.</i></p> <p>Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.</p> <p>All conditions and requirements of the NSW Police, Roads & Maritime Services, State Transit Authority and Council must be complied with at all times.</p> <p>Condition Reason: To ensure construction traffic is appropriately managed and there is sufficient on-street space for construction and delivery vehicles as required.</p> |

48. **Public Utilities**
 Documentary evidence from the relevant public utility authorities confirming they have agreed to the proposed works and that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any demolition, excavation or building works.

The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other service authorities to adjust, repair or relocate their services as required.

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

DURING BUILDING WORK

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| <p>49. Site Signage</p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> 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. <p>The sign must be—</p> <ol style="list-style-type: none"> a) maintained while the building work is being carried out, and b) removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> 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 |

Condition

under the Act, Part 6.

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

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

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

51. **Noise & Vibration**
Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the *Construction Noise & Vibration Management Plan*, prepared for the development and as specified in the conditions of consent.

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

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

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

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

Condition

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

Notes:

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

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

53. **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.

Condition

- i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- j) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

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

54. **Dust Control**

Dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.

Dust control measures and practices may include:

- *Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).*
- *Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.*
- *Installation of water sprinkling system or provision hoses or the like.*
- *Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.*
- *Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.*
- *Landscaping and revegetation of disturbed areas.*

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

55. **Site Accessway**

A temporary timber, concrete crossing or other approved stabilised access is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council throughout the works, unless access is via an existing suitable concrete crossover.

Any damage caused to the road, footpath, vehicular crossing or nature strip during construction work must be repaired or stabilised immediately to Council's satisfaction.

Condition reason: To minimise and prevent damage to public infrastructure.

56. **Excavations and Support of Adjoining Land**

In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 74 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

Condition Reason: Prescribed condition under section 74 of the *Environmental Planning and Assessment Regulation 2021*.

57. **Complaints Register**

A Complaints Management System must be implemented during the course of

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| | <p>construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.</p> <p>Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigated, actioned and responded to and documented in a Complaints Register accordingly.</p> <p>Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.</p> <p>Condition reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.</p> |
| 58. | <p>Building Encroachments</p> <p>There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p> |
| 59. | <p>Survey Report</p> <p>A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</p> <ul style="list-style-type: none">• prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,• prior to construction (pouring of concrete) of new floor levels,• prior to issuing an Occupation Certificate, and• as otherwise may be required by the Principal Certifier. <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p> <p>Condition Reason: To ensure compliance with approved plans.</p> |
| 60. | <p>Geotechnical Report</p> <p>The recommendations and requirements in the submitted Geotechnical Report prepared by Morrow Geotechnics Pty Ltd and dated 31 January 2024 shall be implemented and monitored during construction works.</p> <p>Condition Reason: To ensure the development and works are undertaken in accordance with relevant technical reports.</p> |
| 61. | <p>Tree Removal</p> <p>Approval is granted for removal of the following vegetation from within this development site, subject to full implementation of the AMENDED Landscape Plan:</p> <ol style="list-style-type: none">Within the front/Clovelly Road setback, from west to east, two mature <i>Frangipani's</i>, being T8 right in the southwest site corner, then T9 to its north, in the western side setback, as both are a common, insignificant species that are also in direct conflict with the new internal basement ramp in this same location;Two <i>Archontophoenix cunninghamiana</i> (Bangalow Palms, T7) to the east of T8 described above, as they are mostly concealed beneath/between other tree canopies in this same area, as well as in the centre of the new driveway;Further east again, a mature <i>Jacaranda mimosifolia</i> (Jacaranda, |

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| | T6) as the significant excavations and civil works associated with the Basement Levels, sub-surface rainwater tank and internal driveway/ramp in this same area results in a major encroachment of its TPZ of 50% or more, as well as within its SRZ, with there also being a lack of space elsewhere within the site to re-design these elements due to the restriction of the Overland Flow Path across the rear boundary; |
| d. | The smaller <i>Callistemon salignus</i> (Weeping Bottlebrush, T5) just to its east as despite being a native species, is insignificant and directly affected by the basement and associated civil works; |
| e. | The <i>Angophora costata</i> (Sydney Red Gum, T4) in the southeast site corner, as while listed and shown for retention in the Arborist Report and on the plans respectively, was already measured on-site to be within a 2 metre radius of the existing dwelling, making it exempt from Council's DCP, meaning it could already be removed at any time, without requiring any form of consent, even irrespective of these works. Further, the footprint of the Basement Levels will occupy a larger area than what was assessed by the Arborist, now extending right up onto the front boundary, with all above grounds parts of the new development to also be sited within 1 metre of its trunk, with there being insufficient space for a re-design given the restriction of the Overland Flow Path across the rear boundary; |
| f. | The variety of plantings in the eastern side setback, adjacent the dwelling, fronting Keith Street, as despite assisting with partial privacy and screening, are all insignificant, including a <i>Yucca</i> (T3) and a <i>Bottlebrush</i> (T2), which has already been heavily lopped away from the footpath and overhead wires, with Basement Level 1 shown as extending right up onto the eastern site boundary; |
| g. | Further to their north, right in the northeast site corner, a mature <i>Glochidion ferdinandii</i> (Cheese Tree, T1) as recent extreme crown lifting has significantly and permanently affected its balance, form and condition, to the point where it could now not recover, with Basement Level 1 to occupy this same area, so cannot remain; |
| h. | To the west of T1, halfway across the northern boundary, a single, mature <i>Archontophoenix alexandrae</i> (Alexander Palm, T12) as it offers no benefit to biodiversity or native fauna, and is also directly impacted by all aspects and levels of the development; |
| i. | Further west again, in the northwest site corner, a mature <i>Lagunaria patersonii</i> (Norfolk Island Hibiscus, T11) as despite being shown for retention, is listed as an exempt species in Council's DCP due to its undesirable properties (seed pods are highly allergenic to both humans and animals), meaning it can already be removed at any time, without consent, irrespective of any building works/development, so Council is unable to formally require its preservation as this would directly contravene our own policy. If the applicant wishes to retain it then that is a decision for themselves, and they will assume all responsibility for that. |

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

62. **Pruning**
Permission is granted for the minimal and selective pruning of only those lower growing, lower order branches from the *Agonis flexuosa* (Willow Myrtle, T10) that is

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| | <p>located within this development site, halfway along the western side setback, only where needed to avoid damage to the tree or interference with the approved works.</p> <p>All pruning can only be undertaken by a Practising Arborist who holds a minimum of AQF Level III in Arboriculture and to the requirements of Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and NSW Work Cover Code of Practice for the Amenity Tree Industry (1998).</p> <p>Condition Reason: To ensure the protection and longevity of existing significant trees.</p> |
| 63. | <p>Site Seepage & Stormwater</p> <p>Details of the proposed connection and or disposal of any site seepage, groundwater or construction site stormwater to Council's stormwater drainage system must be submitted to and approved by Council's Development Engineering Coordinator, prior to commencing these works, in accordance with section 138 of the <i>Roads Act 1993</i>.</p> <p>Details must include the following information:</p> <ul style="list-style-type: none">• Stormwater/De-Watering Management Plan (prepared by a suitably qualified Environmental Consultant);• Detailed plans and specifications;• Hydraulic engineering details of the proposed disposal/connection of groundwater or site stormwater to Council/s drainage system• Volume of water to be discharged• Location and size of drainage pipes• Duration, dates and time/s for the proposed works and disposal• Details of water quality and compliance with the requirements of the Protection of the Environment Act 1997• Details of associated plant and equipment, including noise levels from the plant and equipment and compliance with the requirements of the Protection of the Environment Act 1997 and associated Regulations and Guidelines• Copy of any required approvals and licences from other Authorities (e.g. A water licence from the Department of Planning/Department of Water & Energy).• Details of compliance with any relevant approvals and licences <p>Condition Reason: To control and manage any seepage/groundwater so as not to adversely impact neighbouring properties, public health, and Council's stormwater assets.</p> |
| 64. | <p>Road/Asset Opening Permit</p> <p>Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:</p> <ol style="list-style-type: none">a) A <i>Road / Asset Opening Permit</i> 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 <i>Roads Act 1993</i> and all of the conditions and requirements contained in the <i>Road / Asset Opening Permit</i> must be complied with.b) Council's Road / Asset Opening Officer must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out. |

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| c) | Relevant <i>Road / Asset Opening Permit</i> fees, construction fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place, |
| d) | The owner/developer 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 <i>final occupation certificate</i> or occupation of the development (whichever is sooner). |
| e) | Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U. |
| f) | Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date. |
| g) | Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf. |
| h) | The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each days activities and upon completion. |
| i) | The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand. |
| j) | Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident. |
| k) | The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place. |

Condition Reason: To ensure protection and/or repair of Council's Road & footpath assets and ensure public safety.

65. **Roadway**

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

Condition Reason: To ensure excavation works are undertaken in accordance with the relevant requirements.

66. **Traffic Management**

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.

All work, including the provision of barricades, fencing, lighting, signage and traffic

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| | <p>control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 – Traffic Control Devices for Works on Roads, at all times.</p> <p>All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.</p> <p>Condition Reason: To ensure construction traffic is appropriately managed and any requirements of relevant external agencies are met.</p> |
| 67. | <p>Stormwater Drainage</p> <p>Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.</p> <p>The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.</p> <p>Condition Reason: To control and manage stormwater run-off during excavation/construction so as not to adversely impact neighbouring properties and Council's stormwater assets.</p> |
| 68. | <p>Groundwater</p> <p>A separate written approval from Council is required to be obtained in relation to any proposed discharge of groundwater / seepage water into Council's drainage system external to the site, in accordance with the requirements of Section 138 of the Roads Act 1993.</p> <p>Condition Reason: To control and manage any seepage/groundwater during excavation/construction so as not to adversely impact neighbouring properties and Council's stormwater assets.</p> |

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

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| 69. | <p>Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition reason: Statutory requirement. To ensure the site is authorised for occupation.</p> |
| 70. | <p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p> |
| 71. | <p>Post-construction Dilapidation Report</p> <p>A post-construction Dilapidation Report is to be prepared by a professional</p> |

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engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.

The dilapidation report shall detail whether:

- (a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and
- (b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent.

The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.

Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.

72. **Fire Safety Certificate**

A single and complete *Fire Safety Certificate*, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy of the *Fire Safety Certificate* and *Fire Safety Schedule* must also be forwarded to Fire and Rescue NSW.

Condition Reason: Statutory requirement. To ensure compliance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, and that adequate provision is made for fire safety in the premises for building occupant safety.

73. **Structural Certification**

A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifier*. A copy of which is to be provided to Council.

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

74. **Sydney Water Certification**

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

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

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

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| | whichever the sooner. |
| | Condition Reason: To ensure the development satisfies Sydney Water requirements. |
| 75. | <p>Noise Control Requirements & Certification</p> <p>The operation of plant and equipment shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>.</p> <p>A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from any plant and equipment (e.g. mechanical ventilation systems and air-conditioners) satisfies the relevant provisions of the <i>Protection of the Environment Operations Act 1997</i>, NSW Environment Protection Authority (EPA) Noise Policy for Industry and Council's development consent.</p> <p>A copy of the report must be provided to the <i>Principal Certifier</i> and Council prior to an occupation certificate being issued.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p> |
| 76. | <p>Noise Level Validation</p> <p>Prior to the issue of an Occupational Certificate a report, prepared by a suitably qualified and experienced consultant in acoustics, shall be submitted to the Principal Certifier and Council, which demonstrates and certifies that noise and vibration from the development satisfies the relevant provisions of the <i>Protection of the Environment Operations Act 1997</i>, and conditions of this development consent (including any relevant approved acoustic report and recommendations), to the satisfaction of Council. The assessment and report must include all relevant fixed and operational noise sources.</p> <p>Note: <i>Suitably Qualified Acoustic Consultant</i> means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member firm.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p> |
| 77. | <p>Council's Infrastructure, Vehicular Crossings, street verge</p> <p>The owner/developer must meet the full cost for a Council approved contractor to:</p> <ol style="list-style-type: none">Construct a full width concrete heavy duty vehicular crossing and layback at kerb opposite the vehicular entrance to the premises in Clovelly Road to Council's specifications and requirements.Remove any redundant concrete vehicular crossing and layback and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specification.Remove the existing stone kerb in Keith street and to construct new kerb and gutter for the full Keith Street site frontage to Council's specifications and requirements.Reconstruct the damaged pram ramp at the corner of Keith Street and Clovelly Road to Council's specification.Carry out a full depth road construction in front of the new kerb and gutter along the full Keith Street site frontage, to Council's specifications and requirements.Reconstruct the concrete footpath along the full Clovelly Road site frontage |

Condition

excluding those areas of footpath that have been recently reconstructed. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.

Prior to issuing a final occupation certificate or occupation of the development (whichever is sooner), the owner/developer 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, typically within 4 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.

The naturestrip upon Council's footway 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 installed prior to the issue of a final Occupation Certificate.

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

78. Street and/or Sub-Address Numbering

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

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

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

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

| Condition | |
|-----------|--|
| 79. | <p>Landscape Certification</p> <p>Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with AMENDED Landscape Plan by Spirit Level Design Pty Ltd, dwg L100, rev F dated 24/06/24, and any relevant conditions of consent.</p> <p>Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.</p> <p>Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.</p> |
| 80. | <p>Project Arborist Certification</p> <p>Prior to any Occupation Certificate, the Project Arborist must submit to, and have approved by, the Principal Certifier, a written, Final Compliance Report, which confirms compliance with the conditions of consent, Section 11 of the Arborist Report – Tree Protection Plan/Specifications, as well as the dates of attendance and works performed/supervised relating to retention of T10, and must also include time stamped photos to demonstrate attendance on-site at relevant critical stages.</p> <p>Condition Reason: To ensure that community assets are presented in accordance with reasonable community expectations.</p> |
| 81. | <p>Nature Strip</p> <p>The nature-strip upon Council's Keith Street footway shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.</p> <p>Condition Reason: To ensure that community assets are presented in accordance with reasonable community expectations.</p> |
| 82. | <p>Survey Infrastructure – Restoration</p> <p>Where a Surveyor-General's Approval for Survey Mark Removal has been granted by NSW Spatial Services, documentary evidence of restoration of the removed survey mark must be prepared by a Registered Surveyor and submitted to the appointed certifying authority and the Council prior to the issue of an occupation certificate.</p> <p>The documentary evidence is to consist of a letter Signed by a Registered Land Surveyor confirming that all requirements requested under the Surveyor-General's Approval for Survey Mark Removal under condition "Survey Infrastructure – Identification and Recovery" have been complied with.</p> <p>Condition Reason: To ensure the development satisfies requirements with regards to the Preservation of Survey Infrastructure (POSI) under Section 24 of the Surveying and Spatial Information Act 2002.</p> |
| 83. | <p>Sydney Water</p> <p>A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required, will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).</p> <p>Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.</p> |

Condition

The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to the issuing of an Occupation Certificate.

Condition Reason: To ensure the development satisfies Sydney Water requirements with regards to any upgrade/adjustment of Sydney Water's assets.

84. **Traffic signal system**

A traffic signalling system shall be installed for this development within and at the entrance to the basement carpark at a suitable location to the satisfaction of the Principal Certifier.

The traffic signalling system must comply with the following minimum requirements;

- The traffic signalling system shall be set default to green for vehicles entering the carpark
- The traffic system must display when the carpark is full to avoid vehicles entering the carpark and then reversing back out of the development (since no turning bay is provided).
- The traffic signalling system must be installed and operational prior to occupation of the development.

Condition Reason: To minimise the potential for queuing extending onto the street and ensure the completed carpark is fit for purpose and ready for occupation.

85. **Carparking**

The proposed carpark shall be finished in a manner fit for its intended use. The car spaces shall be formalised with line-marking and numbering/labelling with such works completed prior to the issuing of an occupation certificate.

Condition Reason: To ensure the completed carpark is fit for purpose and ready for occupation.

86. **Undergrounding of Power**

The Principal Certifier shall ensure that power supply to the completed development has been provided as an underground (UGOH) connection from the nearest mains distribution pole in Keith Street. All work is to be to the requirements and satisfaction of Ausgrid and at no cost to Council.

NOTE : Any private poles must be removed prior to the issuing of an occupation certificate.

Condition Reason: To minimise the use of private poles in accordance with Council's resolution and protect street amenity

87. **Car Lift**

A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the approved Car Lift is maintained to a suitable standard and functions as designed. The applicant must liaise with Council's Development Engineer Coordinator to obtain Council's requirements for the "restriction on the use of land" and "positive covenant" for the Car Lift.

The applicant shall submit to the Principal Certifier and Council a statement from the manufacturer, confirming that the car Lift has been installed in accordance with manufacturers specifications and they are capable of functioning in accordance with the design intent. Should flood gates not be required, this condition does not apply.

Condition reason: To ensure that the Car Lift is maintained and correctly installed.

Condition

88. **Stormwater Drainage**

A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the stormwater overland flowpath through the northern portion of the development site is maintained and that no works which could affect the design function of the stormwater overland flowpath are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

The applicant must contact Council's Development Engineer Coordinator to obtain the wording for the restriction and positive covenant.

A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration system is maintained and that no works which could affect the design function of the detention/infiltration system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a) The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- b) The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.
- c) Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.

A works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):

- Finished site contours at 0.2 metre intervals;
- The location of any detention basins/tanks with finished surface/invert levels;
- Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
- Volume of storage available in any detention areas;
- The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
- Details of any infiltration/absorption systems; and
- Details of any pumping systems installed (including wet well volumes).

The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.

The applicant shall submit to the Principal Certifier and Council certification from a suitably qualified and experienced professional engineer, confirming that the walls

Condition

of the basement have been fully tanked and waterproofed to prevent the entry of all groundwater in the basement level/s and that any required sub-soil drainage systems have been provided in accordance with the conditions of this consent. There must be no dry weather seepage/groundwater flows discharging to Council's street gutter or underground drainage system.

Condition Reason: To control and manage any seepage/groundwater so as not to adversely impact neighbouring properties and Council's stormwater assets.

89. **Waste Management**

Prior to the occupation of the development, the owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services for the premises.

The waste storage areas shall be clearly signposted.

Condition Reason: To ensure adequate waste management for the life of the development.

OCCUPATION AND ONGOING USE

Condition
90. **Use of parking spaces**

The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.

Condition Reason: To ensure that adequate parking facilities to service the development are provided on site, and to prevent leasing out of car spaces to non-residents.

91. **Management of Strata parking on-site**

A *Strata Parking Management Plan* must be developed and implemented for the development, which includes strategies and measures to 'self-manage' resident and visitor parking within the development.

Strategies and measures may include:

- Adoption of parking by-laws;
- Installation of suitable barriers, bollards, low-height fencing and gates;
- Installation of signage and notices;
- Intercom or key card systems;
- Security systems and security personnel;
- Enforcement processes and provisions to be implemented by the Owners Corporation/Strata Management

Condition Reason: To ensure that on-site parking is managed appropriately, and is for the use of occupants or visitors of the development only.

92. **Fire Safety Statement**

A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* at least on an annual basis each year following the issue of the *Fire Safety Certificate*, and in accordance with the *Fire Safety Schedule* for the building.

The *Fire Safety Statement* is required to confirm that all the fire safety measures have been assessed by a registered fire safety practitioner and are operating in accordance with the standards of performance specified in the *Fire Safety*

| | Condition |
|-----|--|
| | <p><i>Schedule.</i></p> <p>A copy of the <i>Fire Safety Statement</i> must be displayed within the building entrance or foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, and that adequate provision is made for fire safety in the premises for building occupant safety.</p> |
| 93. | <p>External Lighting</p> <p>External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p> |
| 94. | <p>Air Conditioning Plant</p> <p>The air conditioning plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:</p> <ul style="list-style-type: none"> • before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or • before 7.00am or after 10.00pm on any other day. <p>Condition reason: To protect the amenity of the surrounding area and residents.</p> |
| 95. | <p>Stormwater Detention/Infiltration System</p> <p>The detention area/infiltration system must be regularly cleaned and maintained to ensure it functions as required by the design.</p> <p>The stormwater overland flowpath must be regularly cleaned and maintained to ensure it functions as required by the design.</p> <p>Condition Reason: To ensure suitable stormwater management.</p> |
| 96. | <p>Residential Parking Permits</p> <p>All prospective owners and tenants of the building must be notified that Council will not issue any residential parking permits to occupants/tenants of this development.</p> <p>A notice shall be placed in the foyer/common areas of the building advising tenants/occupiers that they are in a building which does not qualify for on-street resident parking permits.</p> <p>Condition Reason: To ensure that all parties are aware that residential parking permits will not be issued to occupants/tenants.</p> |

**DEMOLITION WORK
BEFORE DEMOLITION WORK COMMENCES**

| | Condition |
|-----|---|
| 97. | <p>Demolition Work</p> <p>A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <ol style="list-style-type: none"> a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy. |

Condition

b) The Demolition Work Plan must include the following details (as applicable):

- The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor
- Details of hazardous materials in the building (including materials containing asbestos)
- Method/s of demolition (including removal of any hazardous materials including materials containing asbestos)
- Measures and processes to be implemented to ensure the health & safety of workers and community
- Measures to be implemented to minimise any airborne dust and asbestos
- Methods and location of disposal of any hazardous materials (including asbestos)
- Other measures to be implemented to ensure public health and safety
- Date the demolition works will commence/finish.

The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.

Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.

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

Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.

DURING DEMOLITION WORK

Condition

98. **Demolition Work and Removal of Asbestos Materials**

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

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

- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro),
- Asbestos waste must be disposed of in accordance with the *Protection of the Environment Operations Act 1997* and relevant Regulations

Condition

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

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

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

Development Application Report No. D6/25

Subject: 135-143R Beach Street, Coogee (DA/1041/2024)

Executive Summary

| | |
|-----------------------------|--|
| Proposal: | Alterations and additions to Coogee Surf Life Saving Club |
| Ward: | East Ward |
| Applicant: | Randwick City Council |
| Owner: | The State of New South Wales |
| Cost of works: | \$1,714,290.60 |
| Reason for referral: | Conflict of interest – the Applicant is Council |

Recommendation

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/1041/2024 for alterations and additions to Coogee Surf Life Saving Club including excavation works for new structural columns and support beam, upgrades to existing interior of ground floor, installation of new mechanical ventilation shaft and rooftop mounted mechanical plant, and refurbishment of existing windows/doors and installation of new windows/doors (Heritage Item), at No. 135-143R Beach Street Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

- [1. !\[\]\(a04aa4a56f13f980d2b2f5e4290e8f6d_img.jpg\) RLPP Dev Consent Conditions \(commercial\) - DA/1041/2024 - 135-143R Beach Street, COOGEE NSW 2034 - DEV - Randwick City Council](#)

D6/25

| | |
|--|---|
|  | |
| | Subject Site |
| | 4/138 Beach Road Coogee 6/140 Beach Road Coogee Coogee Precinct |
| | 3 x Submissions received |
| | ▲ North |
| | Locality Plan |

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the applicant is Council, which is the Crown Land Manager for the site.

The proposal seeks development consent for alterations and additions to Coogee Surf Life Saving Club including excavation works for new structural columns and support beam, upgrades to existing interior of ground floor, installation of new mechanical ventilation shaft and rooftop mounted mechanical plant, and refurbishment of existing windows/doors and installation of new windows/doors (Heritage Item).

The key issues associated with the proposal relate to:

- Whether section 7.12 contributions should apply to the proposal.
- Public domain presentation.
- The impact of screening on the western side of the rooftop.

The proposal is recommended for approval subject to the imposition of non-standard conditions that require:

- Tree planting to refer to Sydney Water’s Technical Guidelines – Building over and adjacent to pipe assets
- Ausgrid’s requirements for minimum clearances to its infrastructure are included.

2. Site Description and Locality

The subject site is known as the Coogee Surf Life Saving Club at 135-143R Beach Street Coogee which is close to the junction with Carr Street. It is legally described as part Lot 7314 in DP 1166721, a large irregular lot which also encompasses Coogee Beach, the Ross Jones Rockpool, and parts of Grant Reserve. The lot fronts Beach Street to the south of Coogee Beach.

The site forms part of the Crown Land Reserve called Grant Reserve and Goldstein Park number R82505 which reserves the site for public recreation. Randwick City Council is the Crown Land Manager of the site under the Crown Land Management Act 2016. The site is subject to the Coogee Beach Foreshore Plan of Management dated November 1997.

The site is leased by the Coogee Surf Life Saving Club Inc from Randwick City Council under a lease dated 1 September 2022 for 20 years commencing on 1 October 2022. The area of the lease on the ground floor is shown by the red dots in Figure 1 below and incorporates the northern area within which the forecourt works are proposed.

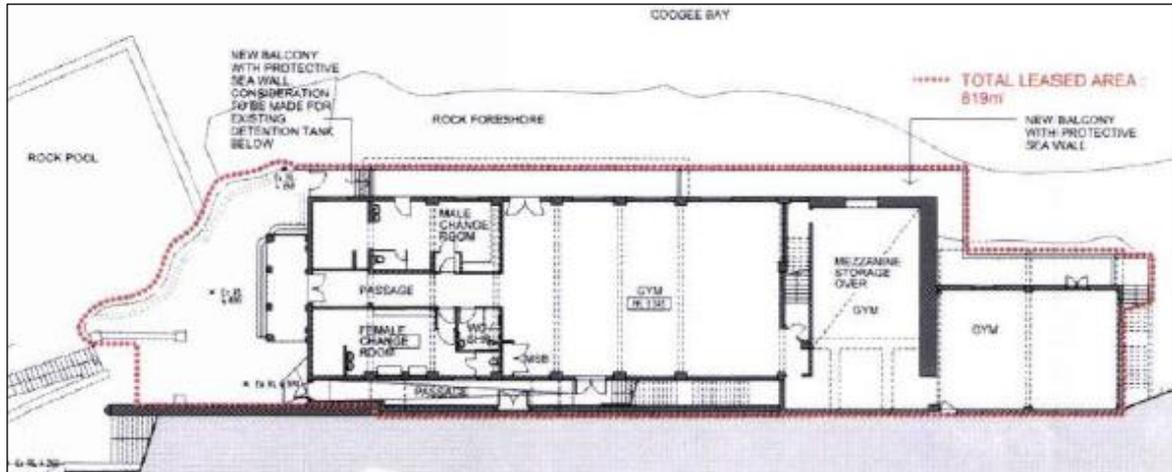


Figure 1: Lease area (highlighted in red dots)

A very small portion of land (less than 1m²) within the Council road reserve to the east of the northern forecourt and adjacent to the existing sandstone wall, is to be repaved as part of the proposal. This is illustrated in Figure 2 below. A s138 Road Act approval for civil works will be required by condition for works to this small portion of land if the proposal is approved:

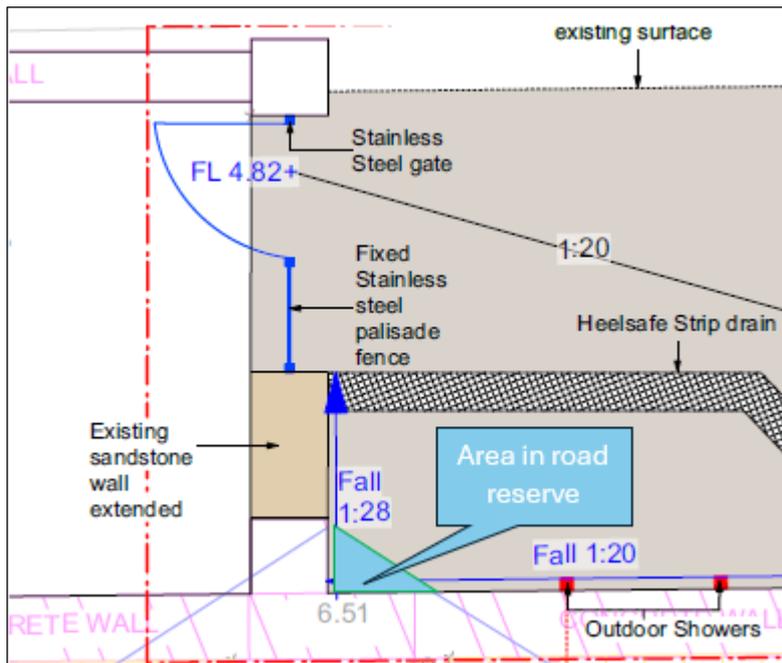


Figure 2: Location of a small portion within road reserve (highlighted in pale blue)

The part of the Lot which relates to the application is at the junction of Beach Street and Carr Street. To the east of the club house is a tidal rock platform. To the north of the club is the Ross Jones Rockpool and Coogee Beach. A pathway granting access to the beach is adjacent to the beach. To the north-east is the ANZAC Memorial Coogee within the southern part of the Goldstein Reserve. Another pathway is to the east of that reserve which is elevated above the beach pathway. On-street parking is on Beach Street and Carr Street with limited parking adjacent to the club accessed off Beach Street. The Stan Windon Memorial Playground is to the south of the club and the Mclver's Ladies Baths is to the east of the playground.

D6/25

D6/25



Fig 3: Northern façade. Two windows proposed on each side of the entry door. Stainless steel gates and an extended sandstone wall are in the location of the existing gates

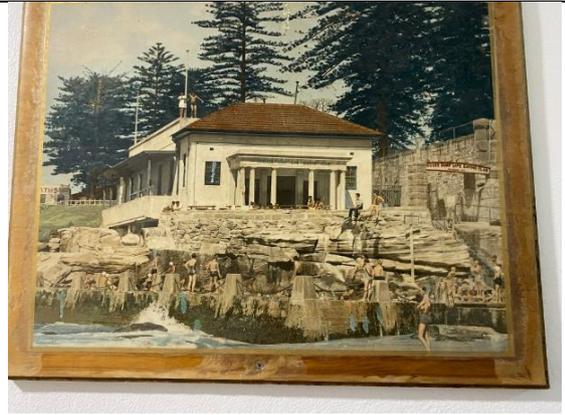


Fig 4: Old photograph in the Clubrooms illustrating the windows which formerly graced the northern façade



Fig 5: Southern façade as viewed from the public path to the south showing existing air conditioning units proposed to be screened



Fig 6: Western façade. The proposed masonry cowling will be behind the Norfolk Island pine. Additional air conditioning units will be placed further to the right (south) of the existing units on the roof above the left hand garage door



Fig 7: Existing male bathrooms/changerooms at the north-east corner of the building – to become part of the training room



Fig 8: eastern walkway looking north. Lockers to be removed. Gate to remain.

3. Relevant history

On 14 March 2017 approval was granted under DA/897/2016 for alterations and additions to the Coogee Surf Life Saving Club's premises including decking, external stairs and enclosure of an existing terrace. This included a modern style northern first floor façade with large picture windows.

On 15 November 2019 a modification application DA/897/2016/A was approved to alter some windows, relocate the clock and PV cells, rationalise the condenser unit, internal changes, a reduction in works to the sea wall, and a new weather hood.

On 8 October 2020 a section 4.55(2) modification application (DA/897/2016/B) was approved to amend coastal protection elements to the eastern facade of the building and associated works.

On 12 December 2024 the assessing planner requested clarification about the parapet heights as indicated on the plans which appeared inconsistent with those on site. On 18 December 2024 amended plans were uploaded to the planning portal correcting those inconsistencies.

4. Proposal

The proposal seeks development consent for alterations and additions to Coogee Surf Life Saving Club including excavation works for new structural columns and support beam, upgrades to existing interior of ground floor, installation of new mechanical ventilation shaft and rooftop mounted mechanical plant, and refurbishment of existing windows/doors and installation of new windows/doors. Specifically, these include:

- nominated demolition works
- minor excavation works for new structural columns and supporting beam to support the existing first floor downturn slab;
- upgrade the existing interior ground floor level (FFL 5.45 and approximate 400m² in area) which provides facilities for Club members in the form of a main training room with operable wall partitioning, member and guest amenities (male, female, accessible, non-gender and changing places), storage rooms, cupboards, kitchenette and refurbishment of the gym flooring and western access corridor (including new 1:14 ramp);
- provide for new mechanical equipment within the existing ground floor void behind a bulkhead;
- include a sink in the coffee machine servery in the north-west corner of the first floor
- The provision of new structural columns in the first floor garage are required to support the new rooftop equipment detailed below;
- external works including:
 - mechanical ventilation shaft / exhaust to the central western side roof;
 - new and refurbishment of window and door openings in the northern (5) and eastern (3) facades.
 - new auto accessible doors to the ground floor central and northern western side and compliant ramps (1:10 and 1:14);
 - demolition and relandscaping of the external northern side hardstand to accommodate a new rinse and foot wash showers (adjacent existing concrete wall) and resolve accessibility gradients (1:20 and 1:10) between the sandstone wall extension, new access stainless steel palisade fence and access gates and the existing entry doors; and
 - provision of new rooftop mounted mechanical HVAC plant (with mesh screening) alongside existing equipment plus a new fresh air intake and exhaust manifolds above the existing northern, western entry areas and in the southern façade..

The purpose behind the proposed alterations are described by the Club to the assessing officer as being:

- To continue the Club's push for inclusivity, diversity and accessibility as part of the Australian Governments "Changing Places" program;
- To increase privacy for change rooms by including cubicles for showering;
- Provide for a gender neutral and accessible bathroom facilities;
- To provide a better delineation between wet areas and dry/training areas;
- To open the training facilities to the north and east views and sunlight by:
 - Relocating the male changerooms to the western side
 - Increasing the windows and openings to the eastern side walkway

- Reinstating windows and articulation to the northern ground floor façade
- To replace a deteriorated floor in the gym to a concrete floor;
- To provide outside washing facilities for members to reduce the volume of sand being brought inside the clubhouse, and to slightly extend the sandstone wall to provide additional privacy for those members. The extended sandstone wall and new stainless steel gate are to replace existing gates which are within the lease boundary;
- To update services.

5. Notification

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

- 4/138 Beach Street Coogee

| Issue | Comment |
|---|---------------------------|
| The proposed western screen to the rooftop will obscure their view to the sparkling water. They only see one AC unit currently, which is partially obscured by the parapet, but the screen will provide a much larger barrier | See View Assessment below |

- 6/140 Beach Street Coogee

| Issue | Comment |
|--|---|
| Possible night noise level increase from social functions would impact neighbour amenity | The proposed works do not impact upon the first floor level which is the level used for the referenced functions. The proposed works are to the ground floor wet areas and training and gym facilities and not expected to have any impact on night-time noise. |
| Impact on local wildlife from light pollution which currently occurs | The proposed works will not have any impact on the lighting provisions. However, the concerns raised should be raised with the club management directly. |

- Coogee Precinct

| Issue | Comment |
|---|---|
| Opposed due to the added height in this sensitive scenic location | There is no increase in height. The cawling is below its adjacent parapet. There will be additional air conditioners and there will be screening of those services, however they are below the height of other parts of the building. |

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

This SEPP includes standards for non-residential buildings relating to sustainable practices and building standards. It applies to the erection of a new building with an estimated development cost of \$5 million or more, or alterations, enlargement or extensions to an existing building with an estimated development cost of \$10 million or more. The estimated development cost is less than \$5 million and the SEPP therefore does not apply.

6.2. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development does not involve the removal of vegetation. As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

Chapter 2 of the Resilience and Hazards SEPP concerns Coastal Management and applies to land within the coastal zone, including the Coastal Use and Coastal Environment Area as defined in the mapping under the SEPP (see **Figure 9**). The site is within the Coastal Use Area and the Coastal Environment Area under this SEPP. The consent authority must consider whether adverse impacts are likely to arise from the proposed development.

Within the coastal environment area the most relevant considerations for adverse impact are to:

- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

Within the coastal use area the most relevant considerations for adverse impact are to:

- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) *Aboriginal cultural heritage, practices and places,*
- (v) *cultural and built environment heritage,*

The consent authority must also be satisfied that development is designed, sited and will be managed to avoid any such adverse impacts, failing which they will be minimised, failing which they must be mitigated. The internal works will have no impact upon those identified matters provided that stormwater runoff and construction impacts are suitably managed.

Comments on the external works are:

- The changes to windows and doors and painting will have a negligible visible impact;
- The rooftop mechanical plant with mesh screening to the southern side will lead to an improved visual outlook by screening existing and proposed plant from the public domain;
- The new masonry cawling on the western side will add a further plant to the exterior as viewed from the public pathway to the west, however it is a relatively minor size (1.7m x 1.52m) and at a height which is approximately 0.9m lower than the existing parapet behind. It will therefore have a negligible impact on the scenic qualities of the coast;
- The landscaping works to the external northern forecourt will not have an impact on the existing use to and along the foreshore for members of the public due to the proposed fencing. The works are replacing existing fencing and that fence is within the boundaries of the Club's leased area (as detailed in Figure 1 above). The works have been designed to resolve accessibility gradients, hence no adverse impacts to access to the foreshore for members of the public are anticipated.

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Figure 9: Coastal Use Area and Coastal Environment Area mapping under the SEPP (Hazards and Resilience) 2021

Chapter 4 - Remediation of Land

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

The subject site has been the site of the Coogee Surf Life Saving Club since 1907 and as such is unlikely to contain any contamination. The nature and location of the proposed development (involving demolition) are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed. It is recommended that if approved, conditions of consent relating to management of asbestos be included.

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned RE1 Public Recreation under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will enhance the ability of the land to provide a range of recreational settings and activities and compatible land uses, it protects the natural environment for recreational purposes, and it manages public access within areas of open space, including the coastline and parks and plazas.

There are no development standards in the RLEP 2012 which apply to the proposal.

6.4.1. Clause 5.10 - Heritage conservation

The site is not itself a heritage item, nor is it within a heritage conservation area. There are a number of heritage items within the visual catchment, namely:

- I57 – sandstone wall at 111 to 131R Beach Street with local significance;
- I58 – Ross Jones Memorial Pool at 133R Beach Street with local significance;
- I59 – McIver Women’s Baths at 145-149R Beach Street with state significance;
- I76 – Grand Pacific Hotel at 64 Carr Street with local significance;
- I476 – interwar residential flat building at 142-144 Beach Street;
- I486 – interwar residential flat building “Denison Hall” at 5 Kurrawa Avenue with local significance; and
- I60 – ‘The Warwick’ a 4 storey residential flat building at 154-156 Beach Street with local significance.

The works are not considered to have any impact on the heritage significance of any of the nearby heritage items. The heritage officer is supportive of the proposal from a heritage perspective.

6.4.2. *Clause 5.12 Infrastructure development of Crown Buildings*

Section 5.12 of the LEP states that the LEP does not restrict public authorities from carrying out work with or without development consent or by exempt development under SEPP (Transport and Infrastructure) 2021 Chapter 2. The works are not to be done by exempt development, nor without consent. The provisions are noted.

6.4.3. *Clause 6.1 Acid sulfate soils*

The site is identified as acid sulfate soils class 5 and is within 500m of ASS Class 4, and some of the works are to be carried out below AHD5. However the nature of the works are not anticipated to lower the watertable below that class 4 land. Further consideration by the environmental health officer indicated no further information was required.

6.4.4. *Clause 6.2 Earthworks*

The proposed earthworks generally relate to structural support column towards the southern end of the site and minor ground level site works in the northern forecourt. These are considered to be minor and unlikely to have any impact on the environment. Conditions of consent relating to construction impacts can be imposed if the proposal is approved. It is not considered that the earthworks will have a detrimental effect on drainage patterns, the likely future use of the land, the amenity of adjoining properties, the likelihood of disturbing relics or impacts on any waterway. The matters outlined in the section have been considered.

6.4.5. *Clause 6.7 Foreshore scenic protection area*

Despite being on the foreshore, the Club is not within the foreshore scenic protection area identified in the LEP mapping. However the very small portion of the road reserve which is to be repaved is within the foreshore scenic protection area. The clause requires development to be located and designed to minimise visual impact on public areas of the coastline, including views, and to contribute to the scenic quality of the coastal foreshore.

The proposed resurfacing in this small corner is part of a broader improvement of the forecourt to provide compliant accessibility to the club. It will improve the scenic quality of the coastal foreshore and will have a minimal visual impact on public areas.

6.4.6. *Clause 6.10 – Essential services*

The listed services in the section are already provided to the site. Suitable vehicular access is provided for in the plans and the other services are available to the site.

7. **Development control plans and policies**

7.1. Randwick Comprehensive DCP 2013

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

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

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

7.2. Randwick Section 7.12 Development Contribution Plan 2024

An application for exemption from section 7.12 development contributions has been made and is considered under the Key Issues Section below.

8. Crown Land Management Act 2016

The site is Crown land and Randwick City Council is the Crown Land Manager under the Crown Land Management Act 2016 (CLM Act). Section 3.21 of the CLM Act authorizes a Council manager to manage the reserved Crown land as if it were public land within the meaning of the Local Government Act 1993, subject to division 3.4 of the CLM Act.

Section 3.23(6) of the CLM Act requires the adoption of a plan or management for community land and Division 3.6 of the CLM Act sets out details of the plan of management required by the Crown Land Manager. Section 3.36(3) of the CLM Act states:

- (3) *If a plan of management is adopted—*
- (a) *the applicable Crown land manager concerned must carry out and give effect to it, and*
 - (b) *no activities may be undertaken on or in relation to the dedicated or reserved Crown land to which it relates unless they are in accordance with the plan, and*
 - (c) *the applicable Crown land manager must ensure that all leases or licences over the dedicated or reserved Crown land that the manager grants include a provision that requires their holders to comply with the requirements of any plan of management in force for the land from time to time that are relevant to the holders' use or occupation of the land.*

The Coogee Beach Foreshore Plan of Management dated November 1997 (PoM) applies to the site. Section 4.3.2 specifically relates to the site and comments upon the generally poor architectural amenity it provides for the public domain. It notes, amongst other things:

“The area in front of the porch has been annexed off with a crude concrete block wall to control unauthorized entry and protect the privacy of the solarium balcony on the north east side of the building. This strongly discourages member of the public from entering land that is outside the club's lease area”.

The Club officials have advised that since 1997, the referenced crude concrete block wall has been replaced with the existing sandstone wall in the forecourt. Additionally, the lease area has expanded to incorporate the area which is identified in the Plan of Management as being “outside the club's leased area”.

The POM, provides the following recommendations and priority categorisation:

- replace the cement breeze block wall outside the surf club lease area with stainless steel rail as used elsewhere in Goldstein Reserve (high priority);

- allow no further extension of the building for any purpose (ongoing priority);
- liaise with the surf club to encourage continuance and increase of public access to the Club (high priority);
- improve the western facade to visually integrate it into the park. There is no need (on heritage grounds) to rebuild original details in upgrading the building's exterior and quality contemporary design solutions are encouraged (medium priority);
- in liaison with the surf club, redesign and landscape the forecourt and parking area (figure 4 of the Plan of Management) (high priority).

All of the works are within the leased area as set out in the drawing attached to the lease and included in Figure 1 of this report. None of the works are counter to the recommendations in the Plan of Management. The northern ground floor façade will be improved by the addition of windows and the southern and western view to the rooftop will be improved by the screening of the rooftop plant and equipment. The building is not increasing in size.

9. Environmental Assessment

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

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument | See discussion in sections 6 & 7 and key issues below. |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | Nil. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below |
| Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement | Not applicable. |
| Section 4.15(1)(a)(iv) – Provisions of the regulations | The relevant clauses of the Regulations have been satisfied. |
| Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p> |
| Section 4.15(1)(c) – The suitability of the site for the development | The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development. |
| Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation | The issues raised in the submissions have been addressed in this report. |
| Section 4.15(1)(e) – The public interest | The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on |

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| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| | the locality. Accordingly, the proposal is considered to be in the public interest. |

9.1. Discussion of key issues

9.1.1. S 7.12 Contributions

The Applicant seeks an exemption from the payment of s 7.12 contributions under the s7.12 Development Contributions Plan 2024, particularly section 1.13.2 and 1.13.3 of the Plan. Exemptions are available for the following matters:

| 2024 Plan | Comment |
|---|--|
| (a) ..other emergency services | Surf Life Saving Clubs are not a listed emergency services organisaion within the definitions of the standard instrument |
| (b) Works proposed for charitable purposes by or on behalf of a not-for-profit charity as defined by the ATO, but only in cases where the development is of a small scale with minimal floor space intensification... and where Council considers that there will not be an increase in the demand for public works or infrastructure as a result of the development which would warrant payment of the s 7.12 levy | Coogee Surf Life Saving Club is a registered charity with the Australian Charities and Not-for-profits Commission. There is no floor space intensification. It is unlikely to require future works or infrastructure |
| (c) seniors housing... | NA |
| (d) Applications submitted by or on behalf of Randwick City Council | Application submitted by the Club on behalf of Council |

In considering the exemption, the 2024 Plan indicates that it must clearly demonstrate how it falls within one of the above categories and that Council will take into consideration:

- (i) The extent to which the proposed development comprises or includes the provision, extension or augmentation of public amenities or public services that provide a public benefit, and or
- (ii) Whether the applicant is affected by any adverse financial circumstance which will impact on its ability to fund the payment of any levy

The works have the effect of upgrading the internal training facilities and amenities, refurbishing window and door openings, providing accessible ramps and facilities for disabled users, refurbishing the hardstand to provide outdoor washing facilities and improving the location of services. These works appear to be augmenting the public services provided by the Coogee Surf Life Saving Club for surf life saving for Coogee Beach. It is therefore considered that an acceptable exemption request has been made.

Furthermore, an exemption was submitted to the Strategic Planning Team at Council. The Strategic Planning Team notes that exemptions (b) and (d) apply and that the works, whilst internal and affecting private areas of the club, give broader indirect benefit to the public digen the public service that the club provides. Council’s Strategic Planning Team recommends that the applicant’s request to be exempt from the payment of development contributions be granted.

9.1.2. View loss

The submitter from unit 4/138 Beach Street Coogee has raised concern about view loss from her bedroom window and balcony arising from the proposed western screen to the rooftop plant. She currently obtains a vista through trees where she can see the sea sparkling in the morning, The submitter acknowledges that the view loss assessment under the *Tenacity* principles is unlikely to provide her much comfort, however, has suggested that the deletion of the screen will not make significant difference to the view of rooftop equipment from the public domain but will enable her vista to the sparkling water to be retained.

Figure 10 shows the view from unit 4’s balcony. The proposed screen is to be placed behind the Banksia tree behind the power pole. A red box shows the location:



Figure 10: View from the balcony of Unit 4, 138 Beach Street Coogee

Figures 11 to 13 show the view towards the existing air conditioners from the car park entry near the footpath. More air conditioners are proposed to the right (south) of the current air conditioners. The proposal would screen the air conditioners from view from Beach Street.



Figure 11: Western façade showing existing air conditioners viewed from the car park entry near the footpath of Beach Street. Proposed to be screened in the proposal



Figure 12: View from the grassed park area of Grant Reserve showing existing air conditioners.



Figure 13: Southern façade from the coastal walk. Screening on the southern side will reduce the visibility of the existing and proposed air conditioners.

On balance it is considered that the visual amenity benefit for the public domain outweighs the reduced view to the water for Unit 4, 128 Beach Street which will result from the screening on the western side of the air conditioners. A small window to the sea above the rear part of the garage roof will remain above the solar panels. If the Banksia tree dies, the increase in air conditioners will be more visible and the screening will be more advantageous to provide an improved roof presentation to the public domain.

9.1.3. Public domain presentation

The addition of windows to the northern ground floor façade will improve the public domain presentation to better reflect the original design of the building and to bring additional light, ventilation and a view to the users of the training room. Likewise the additional window and door openings to the eastern walkway will improve light and ventilation and provide a vista to the sea for the training room users – enhancing the internal amenity for all users.

The new masonry cawling will be lower than the existing parapet behind it and in any event will be largely hidden from the public domain by the Norfolk Island Pine directly in front of it.

The screening to the southern roof top will reduce the visibility of the plant from the existing situation and will improve the views to the building from the south.

The screening on the western side of the roof will reduce the visibility of the plant on the roof from the public domain.

10. Conclusion

That the application for alterations and additions to Coogee Surf Life Saving Club including excavation works for new structural columns and support beam, upgrades to existing interior of ground floor, installation of new mechanical ventilation shaft and rooftop mounted mechanical plant, and refurbishment of existing windows/doors and installation of new windows/doors 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 RE1 Public Recreation zone in that it enhances the ability of the land to provide a range of recreational settings and activities and compatible land uses, it protects the natural environment for recreational purposes, and it manages public access within areas of open space, including the coastline and parks and plazas.
- 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 by screening the rooftop plant which is currently quite visible from the coastal pathway approaching from the south, and by increasing articulation to the northern face of the ground floor of the building by adding windows to the existing façade.

Non-standard conditions are recommended that require:

- Tree planting to refer to Sydney Water's Technical Guidelines – Building over and adjacent to pipe assets
- Ausgrid's requirements for minimum clearances to its infrastructure are included.

Appendix 1: Referrals

1. External referral comments:

1.1. Ausgrid

Ausgrid has no objection to this development application, however the design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.

The “as constructed ”minimum clearances to Ausgrid ’s infrastructure must not be encroached by the building development . It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Ausgrid’s Network Standards can be sourced from Ausgrid’s website, www.ausgrid.com.au

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website:
www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

Should you have any enquiries, please contact Ausgrid at Development@ausgrid.com.au

1.2. Sydney Water

Thank you for notifying Sydney Water of DA/1041/2024 at 135-143R Beach Street, Coogee, which proposes alterations and additions to the existing Coogee Surf Life Saving Club including minor excavation works for new structural columns and supporting beam, interior/exterior amendments and refurbishments, and relandscaping works. Sydney Water has reviewed the application based on the information supplied and provides the following Sydney Water requirements to assist in understanding the servicing needs of the proposed development.

| | |
|--|---|
| Sydney Water position: | Condition of Consent applies |
| Condition of Consent which applies: | Building Plan Approval required |
| | See Attachment 1 for recommended wording for Sydney Water conditions to be included in the consent letter. |

| | |
|-----------------------------|---|
| Additional comments: | |
| Other information: | This advice is not formal approval of our servicing requirements. Detailed requirements will be provided once the development is referred to Sydney Water for further applications. |

The *Sydney Water Development Application Information Sheet (for proponent)* enclosed contains details on how to make further applications to Sydney Water and further information on Infrastructure Contributions. A copy of this should be provided to the proponent in conjunction with the development consent.

If you require any further information, please contact the Growth Planning Team at urbangrowth@sydneywater.com.au

Attachment 1 – Recommended Development Conditions

Prior to the issue of a Construction Certificate/Complying Development Certificate:

Building Plan Approval (including Tree Planting Guidelines)

The plans must be approved by Sydney Water prior to demolition, excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater

mains or easements will be affected by any part of your development. Any amendments to plans will require re-approval. Please go to Sydney Water Tap in® to apply.

Sydney Water recommends developers apply for a Building Plan Approval early as to reduce unnecessary delays to further referrals or development timescales.

Tree Planting

Certain tree species placed in proximity to Sydney Water's underground assets have the potential to inflict damage through invasive root penetration and soil destabilisation. Section 46 of the Sydney Water Act specifies what might occur when there is interference or damage to our assets caused by trees.

For any trees proposed or planted that may cause destruction of, damage to or interference with our work and are in breach of the Sydney Water Act 1994, Sydney Water may issue an order to remove that tree or directly remove it and seek recovery for all loss and associated compensation for the removal.

For guidance on types of trees that can cause damage or interference with our assets see Sydney Water webpage Wastewater blockages. For guidance on how to plant trees near our assets, see Diagram 5 – Planting Trees within Sydney Water's Technical guidelines – Building over and adjacent to pipe assets.

2. Internal referral comments:

2.1. Environmental Health Officer

Proposed Development:

An application has been received for alterations and additions to the Coogee Surf Life Saving Club 135-143R Beach Street, Coogee, NSW 2034.

The proposed works include;

- minor excavation works for new structural columns and supporting beam to support the existing first floor downturn slab;
- upgrade the existing interior ground floor level (FFL 5.45 and approximate 400m² in area)
- which provides facilities for Club members in the form of a main training room with operable wall partitioning, member and guest amenities (male, female, accessible, non-gender and changing places),
- storage rooms, cupboards, kitchenette and refurbishment of the gym flooring and western access corridor (including new 1:14 ramp);

External works including:

- mechanical ventilation shaft / exhaust to the central western side roof;
- new and refurbishment of window and door openings in the northern (5) and eastern (3) facades.
- new auto accessible doors to the ground floor central and northern western side and compliant ramps (1:10 and 1:14);
- demolition and relandscaping of the external western side hardstand to accommodate a new rinse and foot wash showers (adjacent existing concrete wall) and resolve accessibility gradients (1:20 and 1:10) between the sandstone wall extension, new access stainless steel palisade fence and access gates and the existing entry doors; and
- provision of new rooftop mounted mechanical HVAC plant (with mesh screening) alongside existing
- equipment plus a new fresh air intake and exhaust manifolds above the existing northern, western entry areas and in the southern façade.
- The provision of new structural columns in the first floor garage are required to support the new rooftop equipment.

Environmental Health Comments:

The proposed works are situated on land classified as Class 5 Acid Sulfate Soils. The Statement of Environmental Effects (SEE) addresses the issue of acid sulfate soils and states: *“The proposed works are internal to the existing built form or over hardstand/roofed areas. The works do not alter the ground-level building footprint of the built form. Therefore, the water table will not be lowered below 1m AHD on any land within 500m of Class 1, 2, or 3 land classifications. Accordingly, any further assessment is not required as acid sulfate soil affectation is unlikely.”*

Given the minor excavation works to the existing columns and the applicant's confirmation that the works will not lower the water table below 1m AHD within areas classified as Class 1-3, no further information regarding Acid Sulfate Soils is required at this stage.

Noise emissions:

The application proposes the installation of mechanical plant on the rooftop, including a new mechanical ventilation shaft/exhaust on the central western side of the roof and rooftop-mounted HVAC plant with mesh screening.

The Environmental Health team has raised concerns regarding potential noise emissions from the operation of these units, which may impact nearby residential properties, including 136A Beach Street, Coogee, and other residential receivers in the vicinity.

As no acoustic report was submitted with the application and considering the potential for noise emissions to affect neighbouring properties, it is recommended that an acoustic report be provided prior to the issuing of a Construction Certificate for the development.

Additionally, an acoustic validation report is recommended at the Occupation Certificate stage to confirm that noise emissions comply with relevant noise standards.

Documents reviewed

- DA file associated plans and information provided
- Statement of Environmental Effects D05500484 SEE - 135-143R Beach Street Coogee.
- History of complaints in pathway in regards to mechanical plant noise: None noted
- Objections to DA: None

2.2. Heritage planner**The Site**

The subject site is not a heritage item nor located within a heritage conservation area. However, it is located within the proximity of a number of heritage items –

157 – Coogee Beach Sandstone Wall

158 – Ross Jones Memorial Pool

176 – Grand Pacific Hotel

Background

Major alterations and addition in 2016 – approved DA/897/2016

Proposal

Alterations and additions to Coogee Surf Life Saving Club including excavation works for new structural columns and support beam, upgrades to existing interior of ground floor, installation of new mechanical ventilation shaft and rooftop mounted mechanical plant, and refurbishment of existing windows/doors and installation of new windows/doors

Submission

D05500484 – SEE

D05500500 – Architectural Plans

P00354822-3 - Photomontages

Controls

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

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

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

Comments

The proposed development is consistent with Part B2 Heritage of RDCP 2023 and appears to have no significant adverse visual or material impact on the heritage fabric.

Recommendation

The proposal is supported from a heritage perspective; no condition is required.

2.3. Development Engineer

An application has been received for alterations and additions to the existing Surf Club at the above site.

This report is based on the following plans and documentation:

- Architectural Plans by AJC Architects and dated 27.9.24;
- Statement of Environmental Effects by Lockrey Planning & Dev Solutions;
- Detail & Level Survey by Environmental Partnership.

Standard conditions of consent were recommended in relation to Sydney Water, Public Utilities, Road/asset opening permit, council infrastructure/vehicular crossings and street verge, which have all been included in the draft conditions.

2.4. Landscape Officer

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

2.5. Building Regulation**Proposed Development:**

Alterations and additions to Coogee Surf Life Saving Club including excavation works for new structural columns and support beam, upgrades to existing interior of ground floor, installation of new mechanical ventilation shaft and rooftop mounted mechanical plant, and refurbishment of existing windows/doors and installation of new windows/doors (Heritage Item).

Comments:

The building comprises the following classification:

Building classification Class 9b
Rise in storeys Two (2)
Type of construction Type B

The 'BCA Design Assessment Report' and the 'Access Report' that have been submitted with this application are considered to be satisfactory.

It is recommended that the said report recommendations outlined be adopted as a condition of development consent with details of the certification provided to the engaged Principal Certifier. As such, the Access and performance solution report will also need to be incorporated into the

development consent and construction certificate application with a validation report provided to the Principal Certifier.

And, any proposed variations to the recommendations and requirements in the subject reports shall be submitted to and approved by the Director City Planning, prior to approval of the construction certificate.

Recommendation:

Should the application be approved, it is recommended that the following conditions be included in the consent: [conditions provided and included in the draft conditions]

2.6. Property Management

The officer had no comments on the proposal.

2.7. Strategic Planning

Background:

A S7.12 levy exemption request was received on 4 December 2024 for the subject Development Application (DA/1041/2024).

The DA seeks consent for alterations and additions to the Coogee Surf Life Saving Club (SLSC) at 135-143R Beach Street, Coogee (the subject site), that generally comprises excavation works for new structural columns and support beam, upgrades to existing interior of ground floor, installation of new mechanical ventilation and plant, and refurbishment / replacement of existing windows/doors.

As the property is owned by the Government of New South Wales and managed by Randwick City Council, the application has been referred to an independent town planning consultant (Ros Read, Urban Perspectives) for assessment.

The application is seeking an exemption to the Section 7.12 levies based on the following grounds stated within the Statement of Environmental Effects (SEE):

- *the proposal comprises alterations and additions to an existing community facility that provides essential surf lifesaving operations, emergency services, education and training;*
- *the site is available for the use by precinct committees or other interest groups within the Randwick LGA;*
- *it reinvigorates an existing iconic built form that will be undoubted public benefit;*
- *any fees payable relative to the S7.12 Plan are better served being used in the scope of works proposed;*
- *the site is located on Crown land;*
- *the proposal does not place any additional demand on public amenities, services or facilities within the Randwick LGA; and*
- *the imposition of such a condition may render the redevelopment of the site to be financially unviable.¹*

Comments:

As the subject site is located outside of any site-specific s7.12 contribution areas, the Randwick Council LGA wide *s7.12 Development Contribution Plan 2024* applies.

¹ Statement of Environmental Effects, prepared by Lockery Planning & Development Solutions for Coogee Surf Life Saving Club, dated 9 OCT 2024, page 24

The LGA wide *Contribution Plan* includes an exemption section under section 1.13 *Exemptions to the levy*. Specifically, section 1.13.2 *Development exempted from the levy* outlines a number of development types that may be exempt to the payment of development contributions, including:

- (a) places of worship, public hospitals, police stations, fire stations, and other emergency services*
- (b) works proposed to be undertaken for charitable purposes by, or on behalf of, a not-for-profit charity (as defined by the ATO) but only in cases where the development is of a small scale, for example a retail outlet operated by the Salvation Army, St Vincent de Paul or similar organisations, and where the Council considers that there will not be an increase in the demand for public works or infrastructure as a result of the development which would warrant the payment of a Section 7.12 levy*
- (c) seniors housing, as defined in the State Environmental Planning Policy (Housing) 2021 which is undertaken by a social housing provider*
- (d) applications submitted by or on behalf of Randwick City Council.*

Considering the application against the above four exempt development types:

- (a) - the Coogee SLSC is not an emergency services organisation within the definition of the standard instrument; therefore it does not meet this criteria.
- (b) – the Coogee SLSC is registered as a not-for-profit charity for the purposes of the ATO², and the application does not result in an increase in floorspace nor is it likely to necessarily increase intensification of use the site, therefore it meets this criteria.
- (c) - given the proposed use is non-residential, this criteria is not relevant.
- (d) – the application has been submitted on behalf of Randwick City Council; therefore it meets this criteria.

In addition to the application meeting exemptions (b) and (d), it is commented that while the works are for internal, private areas of the club, given the public service the club provides there is a broader established indirect benefit to the public.

Recommendation:

It is recommended that the applicant's request to be exempt from the payment of development contributions be granted as the Coogee SLSC is a registered not-for profit charity registered with the ATO and the application does not increase floor space nor demand. In addition, the application has been submitted on behalf of Randwick City Council.

These two considerations are established grounds that are consistent with the LGA-wide s7.12 Plan for exclusion from the payment of development contributions.

² Charity register, Australian Charities and Not-for-profits Commission, accessed 8 JAN 2025 from <https://www.acnc.gov.au/charity/charities/bdc8d964-38af-e811-a961-000d3ad24182/profile>

Appendix 2: DCP Compliance Table

3.1 Part B General Controls

D6/25

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|-------------------------|
| | Section B1: Design | | |
| 3.1 | Context Analysis Submit a context analysis addressing location, spatial characteristics, streetscape, building form and character and natural characteristics | Context analysis provided in SEE | Yes |
| 3.2 | Site analysis | Provided DA1001 | Yes |
| | | | |
| | Section B2 Heritage | | |
| 1.12 | Development in the vicinity of heritage items and HCA. Consider for the likely effect on heritage significance and setting. Address this in the SEE, | Council's heritage officer has advised the proposal is consistent with Part B2 of the DCP and appears to have no significant adverse or material impact on the heritage fabric, with no conditions required | Yes |
| | | | |
| | B3 Ecologically sustainable development | | |
| 2 | Submit a schedule of materials maximizing ESD | No materials schedule provided, however materials specified on the plans. Stainless steel and sandstone used for the gate area. Masonry cowling used for mechanical duct. Double glazed performance windows to mechanical and ESD specifications on the north and east sides | Yes |
| 3.2 | Energy and Water efficiency | There are already solar panels on the roof. These are relatively minor alterations | Satisfactory |
| | | | |
| | B4: Landscaping and biodiversity | | |
| 2 | Provide landscape plan including natural features | Natural features are not impacted | Yes |
| | | | |
| | B6 Recycling and waste management | | |
| 2 | Provide a waste management plan | Provided | Yes |
| 3. | Demolition and construction – identify volumes, location for storage of wastes | Volumes shown. Location plan not identified | Partial – can condition |
| | | | |
| | B7: Transport, Traffic, Parking and Access | | |
| 3.2 | i) Comply with parking rates in Table 1. Parking as per a Transport Assessment Study | The proposal makes no changes to use or GFA or | NA |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|--------------|
| | | parking areas so no changes necessary | |
| | | | |
| | B8: Water Management | | |
| 2. | Water conservation – provide rainwater tanks, dual reticulation, encourage grey water recycling | Only changes are to external foot washing area/showers and the alterations are relatively minor and there is no obvious location for a rainwater tank | Satisfactory |
| 3. | Stormwater management – consider use of water sensitive urban design technologies to improve stormwater runoff | No change | No change |
| | | | |
| | Foreshore Scenic Protection Area (NB only a tiny portion is affected by this) | | |
| | <ul style="list-style-type: none"> i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Integrated outbuildings and ancillary structures with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone. | <ul style="list-style-type: none"> i) Improved articulation to the north and east with additional windows viewed from the public domain ii) Forecourt integrates to building entry. Improved accessibility features iii) Natural tones applied iv) This could be conditioned v) Stainless steel, masonry and sandstone vi) NA vii) NA viii) NA ix) No change to rock features x) No change to retaining walls | Yes |
| | | | |

D6/25

3.2 Part F1 Development in Recreation Zones

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|------------|
| | Development proposed in a RE1 or RE2 zone must demonstrate the following as a minimum: <ul style="list-style-type: none"> i) the need for the proposed development on that land; ii) the need to retain the land for its existing or likely future recreation use; iii) the impact of the proposed development on the existing or likely future use of the | i) the proposal will enable the continued implementation of works to encourage diversity, inclusiveness and accessibility, and improve training facilities for the surf life savers | Yes |

D6/25

| | | | |
|--|---|--|--|
| | <p>land;</p> <p>iv) whether the proposed development is complementary to the scenic, recreational and/or ecological values of the land; and</p> <p>v) in the case of RE1 Public Recreation zoned land, whether the proposed development would:</p> <p>a) unreasonably impede or diminish the intended public use or public access to the land;</p> <p>b) be consistent with any relevant plan of management adopted by Council.</p> | <p>ii) no change to current use</p> <p>iii) no impact on future use of the land</p> <p>iv) complements the ongoing use of the surf life saving club. Natural materials are to be used</p> <p>v) will not affect the public use or access to the land.</p> <p>It is consistent with the 1997 Plan of management</p> | |
|--|---|--|--|

Responsible officer: Urban Perspectives, Town Planners

File Reference: DA/1041/2024

**Development Consent Conditions
(Commercial)**



D6/25

| | |
|------------------------|--|
| Folder /DA No: | DA/1041/2024 |
| Property: | 135-143R Beach Street, COOGEE NSW 2034 |
| Proposal: | Alterations and additions to Coogee Surf Life Saving Club including excavation works for new structural columns and support beam, upgrades to existing interior of ground floor, installation of new mechanical ventilation shaft and rooftop mounted mechanical plant, and refurbishment of existing windows/doors and installation of new windows/doors (Heritage Item). |
| Recommendation: | Approval |

Development Consent Conditions

GENERAL CONDITIONS

| Condition |
|-----------|
|-----------|

1. **Approved plans and documentation**

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

| <i>Plan</i> | <i>Drawn by</i> | <i>Dated</i> | <i>Received by Council</i> |
|---|-----------------|--------------|----------------------------|
| DA1002 Rev 1 Proposed site/roof plan | AJC Architects | 27.09.24 | 1.11.2024 |
| DA1101 Rev 1 Demolition – Plan & RCP – Ground level | AJC Architects | 27.09.24 | 1.11.2024 |
| DA2001 Rev 1 Proposed – Plan & RCP – Ground level | AJC Architects | 27.09.24 | 1.11.2024 |
| DA2002 Rev 1 Proposed – Plan & RCP – Level 1 | AJC Architects | 27.09.24 | 1.11.2024 |
| DA3101 Rev 2 Proposed elevations | AJC Architects | 18.12.24 | 18.12.2024 |
| DA3201 Rev 2 Sections | AJC Architects | 18.12.24 | 18.12.2024 |
| DA4001 Rev 1 Photomontage 01 (sketch renders and cut away section only) | AJC Architects | 18.12.24 | 18.12.2024 |

D6/25

| Condition | | | | |
|-----------|--|---------------------------|----------------|-----------|
| | Landscape | | | |
| | 3942-LD-GA01 General arrangement plan | Environmental Partnership | September 2024 | 1.11.2024 |
| | 3942-LD-DE01 Hard landscape details | Environmental Partnership | September 2024 | 1.11.2024 |

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

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

2. Amendment of Plans & Documentation

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

- a. The northern window to the female change room on the ground floor must be provided with translucent, obscured, frosted or sandblasted glazing.

Amended plans must be submitted to and approved by 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 finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

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

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

| Condition | |
|-----------|--|
| 5. | <p>Long Service Levy Payments</p> <p>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 <i>Environmental Planning and Assessment Act 1979</i>.</p> <p><i>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.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p> |
| 6. | <p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to a Sydney Water Quick Check agent, to determine whether the development will affect Sydney Water's waste water and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>If suitable, the plans will be appropriately stamped. For details please refer to the Sydney Water web site at www.sydneywater.com.au for:</p> <ul style="list-style-type: none">• Quick Check agents details - see <i>Building and Developing</i> then Quick Check and• Guidelines for Building Over/Adjacent to Sydney Water Assets – see <i>Building and Development</i> then <i>Building and Renovating</i>, or telephone 13 20 92. <p>The Principal Certifying Authority must ensure that a Sydney Water Quick Check Agent has appropriately stamped the plans prior to issuing the construction certificate.</p> <p>Certain tree species placed in proximity to Sydney Water's underground assets have the potential to inflict damage through invasive root penetration and soil destabilisation. Section 46 of the Sydney Water Act specifies what might occur when there is interference or damage to our assets caused by trees.</p> <p>For any trees proposed or planted that may cause destruction of, damage to or interference with our work and are in breach of the Sydney Water Act 1994, Sydney Water may issue an order to remove that tree or directly remove it and seek recovery for all loss and associated compensation for the removal.</p> <p>For guidance on types of trees that can cause damage or interference with our assets see Sydney Water webpage Wastewater blockages. For guidance on how to plant trees near our assets, see Diagram 5 – Planting Trees within Sydney Water's Technical guidelines – Building over and adjacent to pipe assets.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p> |
| 7. | <p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> |

D6/25

- | | Condition |
|-----|--|
| | <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application/</p> <p>The works are to be carried out in compliance with the 'BCA Design Assessment Report', prepared by DC Partnership, dated 3 October 2024 (Reference No. SYD224_183-1 (BCA)). Details of compliance is to be provided to the Principal Certifier's satisfaction.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p> |
| 8. | <p>Building Code of Australia – Accessibility</p> <p>The works are to be carried out in compliance with the 'Access Report', prepared by Funktion, dated 17 September 2024 (Reference Report Issue 1). Details of compliance is to be provided to the Principal Certifier's satisfaction.</p> <p>Access, facilities and car parking for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Registered Certifier for the development. Details of the required access, facilities and car parking for people with disabilities are to be included in the construction certificate for the development.</p> <p>Condition Reason: To ensure safe and easy access to the premises for people with a disability.</p> |
| 9. | <p>Site Stability, Excavation and Construction Work</p> <p>A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:</p> <ol style="list-style-type: none"> Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties. Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings. Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration. Recommendations and requirements in the geotechnical engineer's report shall be implemented accordingly and be monitored during the course of the subject site work. Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate. <p>Condition Reason: To ensure adjoining land is adequately supported.</p> |
| 10. | <p>Ausgrid Requirements</p> <p>All design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical</p> |

Condition

assets.

The "as constructed "minimum clearances to Ausgrid 's infrastructure must not be encroached by the building development . It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Ausgrid's Network Standards can be sourced from Ausgrid's website, www.ausgrid.com.au

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website:

www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

Condition Reason: To ensure compliance with applicable requirements from Ausgrid.

11. **Acoustic Report – Noise Management**

A report, prepared by a suitably qualified and experienced consultant in acoustics, shall be submitted to the Principal Certifier and Council, which demonstrates and certifies that noise and vibration from the proposed amendments to the development satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority Noise Policy for Industry 2017 and conditions of this development consent (including any relevant approved acoustic report and recommendations), to the satisfaction of Council. The assessment and report must include all relevant fixed and operational noise sources, including all new mechanical equipment to be installed on the rooftop. The report must also address the following;

- a) Noise and vibration from the development shall be assessed in accordance with the NSW Environment Protection Authority (EPA) Noise Policy for Industry 2017, the DECC (EPA) Assessing Vibration – A Technical Guideline and relevant Australian Standards and conditions of this development consent.
- b) Noise from the development must not exceed the project amenity/intrusiveness noise level or the maximum noise level as detailed in the NSW Environment Protection Authority (EPA) Noise Policy for Industry 2017.
- c) Noise from commercial plant and use of the premises, when assessed as an LAeq, 15 min must not exceed the LA90, 15 min background noise level by more than 3dB when assessed inside any habitable room of any affected residence or noise-sensitive commercial premises when is use (assessed with doors and windows closed).

Condition Reason: To maintain an appropriate level of amenity for adjoining land uses.

BEFORE BUILDING WORK COMMENCES

Condition

12. **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)

Condition

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.

13. **Dilapidation Reports**

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

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.

14. **Construction Noise & Vibration Management Plan**

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.

A *Construction Noise & Vibration Management Plan* must be developed and implemented throughout demolition and construction work.

- (a) The *Construction Noise & Vibration Management Plan* must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority *Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline* (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.

Condition

- (b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.
- (c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.
- (d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.

A copy of the Construction Noise & Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.

- (e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.

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

15. **Construction Site Management Plan**

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

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

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

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

- | Condition | |
|-----------|---|
| | Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction. |
| 16. | <p>Construction Site Management Plan A <i>Sediment and Erosion Control Plan</i> must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.</p> |
| 17. | <p>Public Liability The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p> |
| 18. | <p>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.</p> <p>The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p> |

DURING BUILDING WORK

- | Condition | |
|-----------|---|
| 19. | <p>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:</p> <ol style="list-style-type: none"> showing the name, address and telephone number of the principal certifier for the work, and showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ol style="list-style-type: none"> maintained while the building work is being carried out, and removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the |

| Condition |
|---|
| 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.

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

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

21. **Noise & Vibration**
Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the *Construction Noise & Vibration Management Plan*, prepared for the development and as specified in the conditions of consent.

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

22. **Construction Site Management**
Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:

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

| Condition |
|---|
| (b) Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting. |
| (c) All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible. |
| (d) Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land. |
| (e) 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. |
| (f) Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings. |

Notes:

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

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

23. Overhead Hoardings

An overhead ('B' class) type hoarding is required is be provided to protect the public (unless otherwise approved by Council) if:

- goods or materials are to be hoisted (i.e. via a crane or hoist) over a pedestrian footway
- building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment
- it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or adjoining land
- as may otherwise be required by SafeWork NSW, Council or the Principal Certifier.

Condition Reason: To ensure proper management of public land and ensure public safety during site works and construction.

24. Public Safety & Site Management

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

- Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- The road, footpath, vehicular crossing and nature strip must be maintained in

-
- | Condition |
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| 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) 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. |
| h) 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. |
| i) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details. |
| Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction. |
| 25. Excavations and Support of Adjoining Land In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 74 of the <i>Environmental Planning and Assessment Regulation 2021</i> , it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times. Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021. |
| 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. Survey Report A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building: <ul style="list-style-type: none">• prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,• prior to construction (pouring of concrete) of new floor levels,• prior to issuing an Occupation Certificate, and• as otherwise may be required by the Principal Certifier. The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council. |

| Condition | |
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| | Condition Reason: To ensure compliance with approved plans. |
| 28. | <p>Road / Asset Opening Permit</p> <p>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.</p> <p>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.</p> <p>For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.</p> <p>Condition Reason: To ensure works are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p> |
| 29. | <p>Dust Control</p> <p>Dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.</p> <p><i>Dust control measures and practices may include:</i></p> <ul style="list-style-type: none"> • <i>Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).</i> • <i>Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.</i> • <i>Installation of water sprinkling system or provision hoses or the like.</i> • <i>Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.</i> • <i>Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.</i> • <i>Landscaping and revegetation of disturbed areas.</i> <p>Condition Reason: To minimise dust emissions during construction works.</p> |
| 30. | <p>Site Access</p> <p>A temporary timber, concrete crossing or other approved stabilised access is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council throughout the works, unless access is via an existing suitable concrete crossover. Any damage caused to the road, footpath, vehicular crossing or nature strip during construction work must be repaired or stabilised immediately to Council's satisfaction.</p> <p>Condition Reason: To facilitate reasonable and suitable site access without compromising public infrastructure and to minimise damage to public infrastructure.</p> |
| 31. | <p>Temporary Site Fencing</p> <p>Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:</p> <p>a) Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.</p> |

| Condition | |
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| b) | Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting. |
| c) | All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible. |
| d) | Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land. |
| e) | Site access gates must open inwards and not onto Council land. |
| <i>Notes:</i> | |
| <ul style="list-style-type: none"> • <i>Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.</i> • <i>A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.</i> | |
| Condition Reason: To ensure the site is secure during construction works and to minimise and manage risk to public safety. | |

32. **Complaints Register**

A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.

Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigation, actioned and responded to and documented in a Complaints Register accordingly.

Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.

Condition Reason: To minimise and mitigate potential acoustic impacts associated with the development (during construction).

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

| Condition | |
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| 33. | <p>Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.</p> |
| 34. | <p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development</i></p> |

| | Condition |
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| | <p><i>Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p> |
| 35. | <p>Post-construction Dilapidation Report</p> <p>A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.</p> <p>The dilapidation report shall detail whether:</p> <ul style="list-style-type: none"> (a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and (b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent. <p>The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.</p> <p>Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.</p> |
| 36. | <p>Fire Safety Certificate</p> <p>A single and complete <i>Fire Safety Certificate</i>, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the <i>Fire Safety Certificate</i> must be displayed in the building entrance/foyer at all times and a copy of the <i>Fire Safety Certificate</i> and <i>Fire Safety Schedule</i> must also be forwarded to Fire and Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, and that adequate provision is made for fire safety in the premises for building occupant safety.</p> |
| 37. | <p>Structural Certification</p> <p>A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal Certifier</i>. A copy of which is to be provided to Council.</p> <p>Condition Reason: To ensure the structural adequacy of the building and works.</p> |
| 38. | <p>Sydney Water Certification</p> <p>A <i>section 73 Compliance Certificate</i>, under the <i>Sydney Water Act 1994</i> must be</p> |

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| | <p>obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site www.sydneywater.com.au > <i>Building and developing</i> > <i>Developing your Land</i> > <i>Water Servicing Coordinator</i> or telephone 13 20 92.</p> <p>Please make early contact with the Water Servicing Coordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.</p> <p>The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p> |
| 39. | <p>Environmental Amenity – Noise Management</p> <p>A report, prepared by a suitably qualified and experienced consultant in acoustics, shall be submitted to the Principal Certifier and Council, which demonstrates and certifies that noise and vibration from the development satisfies the relevant provisions of the Protection of the Environment Operations Act 1997, NSW Environment Protection Authority Noise Policy for Industry 2017 and conditions of this development consent (including any relevant approved acoustic report and recommendations), to the satisfaction of Council.</p> <p>The assessment and report must include all relevant fixed and operational noise sources and validate noise emissions from all mechanical equipment installed on the rooftop, complies with the <i>Protection of the Environment Operations Act 1997</i>, NSW Environment Protection Authority Noise Policy for Industry 2017 and conditions of this development consent.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p> |
| 40. | <p>Waste Management</p> <p>Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.</p> <p>Trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to Council prior to commencing operation of the business.</p> <p>The operator of the business must also arrange for the recycling of appropriate materials and make the necessary arrangements with an authorised waste services contractor accordingly.</p> <p>Any liquid trade waste materials are to be disposed of in accordance with the requirements of the Sydney Water, Trade Waste Department (i.e. via a grease trap) and details of compliance are to be submitted to the Certifier prior to the commencement of any works.</p> <p>Condition Reason: To ensure that waste and recycling is appropriately managed.</p> |
| 41. | <p>Council's Infrastructure, Vehicular Crossings, Street Verge</p> <p>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</p> |

Condition

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, typically within 4 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.

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.

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

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

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

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

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

OCCUPATION AND ONGOING USE

Condition

43. **Use of Commercial Premises**

A separate development application and construction certificate or a complying development certificate (as applicable) must be obtained if the premises is to be used for any of the purposes detailed below unless the proposed development and fit-out is encompassed in this consent or if prior consent has already been granted:

- All food businesses (including premises used for the sale, storage, preparation and distribution of food and drinks)

| Condition |
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| <ul style="list-style-type: none"> • Hairdressing salons, Beauty salons, Businesses involving Skin Penetration & Piercing, Massage businesses • Licensed premises, places of public entertainment and hotels • Places of Shared Accommodation (including Boarding / Lodging Houses, Bed & Breakfast businesses, Backpackers, Residential Hotels or the like • Cooling Towers or Warm Water Systems • External plant and equipment not encompassed in the consent • Business providing any form of sexual service. |

Business premises which are used for any of these purposes must comply with relevant public health and safety legislation and requirements and they must be registered with Council prior to an Occupation Certificate being issued for the development.

Condition Reason: To ensure a separate approval is sought for any future proposed commercial uses for the subject land.

44. **Fire Safety Statement**

A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* at least on an annual basis each year following the issue of the *Fire Safety Certificate*, and in accordance with the *Fire Safety Schedule* for the building.

The *Fire Safety Statement* is required to confirm that all the fire safety measures have been assessed by a registered fire safety practitioner and are operating in accordance with the standards of performance specified in the *Fire Safety Schedule*.

A copy of the *Fire Safety Statement* must be displayed within the building entrance or foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.

Condition Reason: Statutory requirement. To ensure compliance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, and that adequate provision is made for fire safety in the premises for building occupant safety.

45. **Environmental Amenity – Noise Levels**

There are to be no emissions or discharges from the premises which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997 and Regulations*.

Noise from all plant and equipment must not give rise to an 'offensive noise', as defined in the *Protection of the Environment Operations Act 1997* and shall not give rise to a sound pressure level at any affected premises that exceeds the background (LA90), 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed in accordance with the NSW Environment Protection Authority's *Noise Policy for Industry 2017*.

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

46. **Waste Management**

Adequate provisions are to be made within the confines of the premises for the storage, collection and disposal of waste and recyclable materials, to the satisfaction of Council, prior to commencing business operations.

The waste storage area must be located within the property and not within any

| | Condition |
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| | <p>areas used for the preparation or storage of food.</p> <p>A tap and hose is to be provided within or near the waste storage area and suitable drainage provided so as not to cause a nuisance.</p> <p>Waste/recyclable bins and containers must not be placed on the footpath (or road), other than for waste collection, in accordance with Council's requirements.</p> <p>Trade/commercial waste materials must not be disposed via council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to the Council prior to commencing operation of the business.</p> <p>Condition Reason: To ensure waste generated during operations is disposed of and managed appropriately.</p> |
| 47. | <p>Sanitary Facilities</p> <p>Sanitary facilities, plus wash hand basin and paper towel dispenser or hand dryer and appropriate signage, must be provided for customers and staff and be maintained in a clean and sanitary condition at all times.</p> <p>Condition Reason: To ensure appropriate sanitary facilities is provided with respect to the development.</p> |
| 48. | <p>Regulatory Requirements</p> <p>The premises must not be used principally, for the sale, supply and consumption of alcohol.</p> <p>The written approval of Council and a relevant Liquor Licence under the (<i>Liquor Act 2007</i>) must be obtained beforehand for any proposed sale, supply and consumption of alcohol on the premises.</p> <p>Condition Reason: To ensure a separate approval is sought for any future proposed sale, supply and consumption of alcohol on the premises.</p> |

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

| | Condition |
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| 49. | <p>Demolition Work</p> <p>A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <ol style="list-style-type: none"> a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy. b) The Demolition Work Plan must include the following details (as applicable): <ul style="list-style-type: none"> • The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor • Details of hazardous materials in the building (including materials containing asbestos) • Method/s of demolition (including removal of any hazardous materials including materials containing asbestos) • Measures and processes to be implemented to ensure the health & |

| Condition |
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| <p>safety of workers and community</p> <ul style="list-style-type: none"> • Measures to be implemented to minimise any airborne dust and asbestos • Methods and location of disposal of any hazardous materials (including asbestos) • Other measures to be implemented to ensure public health and safety • Date the demolition works will commence/finish. <p>The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.</p> <p>If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.</p> <p><i>Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.</i></p> <p><i>A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition Reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.</p> |

DURING DEMOLITION WORK

| Condition |
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| <p>50. Demolition Work and Removal of Asbestos Materials</p> <p>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 <i>demolition work plan</i>, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the <i>Protection of the Environment Operations Act 1997</i> 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 |

D6/25

Condition

Principal Certifier and Council upon request.

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

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

Development Application Report No. D7/25

Subject: 55 The Corso, Maroubra (DA/1033/2024)

Executive Summary

| | |
|-----------------------------|--|
| Proposal: | Alterations to external façade, fencing and boundary wall to an existing residential flat building (pre-existing variation to Maximum Building Height Development Standard). |
| Ward: | Central Ward |
| Applicant: | MX Architects |
| Owner: | The Owners – Strata Plan No. 2929 |
| Cost of works: | \$715,000.00 |
| Reason for referral: | The development contravenes the development standard for building height by more than 10% |

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of buildings development standard in Clause 4.3 of Randwick Local Environmental Plan 2012.
- B. 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/1033/2024 for alterations to the external façade, fencing and boundary wall to an existing residential flat building (pre-existing variation to Maximum Building Height Development Standard), at No. 55 The Corso, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  [RLPP Dev Consent Conditions \(med density res\) - DA/1033/2024 - 55 The Corso, MAROUBRA NSW 2035 - DEV - Randwick City Council](#)

D7/25



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| |
| Subject Site |
| |
| Submissions received |
|  North |
| Locality Plan |

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for building height by more than 10%.

The proposal seeks development consent for alterations to external façade, fencing and boundary wall to an existing residential flat building (pre-existing variation to Maximum Building Height Development Standard).

The key issues associated with the proposal relate to a pre-existing non-compliance with the height of buildings development standard pursuant to Clauses 4.3 of RLEP 2012 and existing use rights. The variation is supported as the proposal is consistent with the objectives of the height of buildings development standard, and the R2 Low Density zone. The Applicant's written requests have adequately addressed the matters for consideration pursuant to clause 4.6.

The proposed development is supported noting that external works is contained within the existing residential flat building for the purpose of restoration and minor alterations to the façade. The addition will not be readily visible from the street or surrounding public domain and will not adversely impact the amenity of neighbouring residential properties.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is known as 55 The Corso, Maroubra and is legally described as Lot CP in Strata Plan 2929. The site is 543.64m², is regular in shape and has a 13.41m frontage to The Corso Street to the north east.

As shown in Figure 1, the site is currently occupied by a brick four (4) storey residential flat building. The site has a pitched tile roof, three (3) attached garage spaces on the ground floor front façade and three (3) more garages towards the rear. The scope of proposed works relates only to external works.



Figure 1: Subject site, viewed from The Corso (Source: Council's Planning Officer).

3. Relevant history

The land has been used for residential purposes for an extended period. There are no recent applications related to the subject site, noting the most recent application was for tree removal and for the strata subdivision of the existing residential flat building in 1967.

A search of Council's electronic records revealed additional applications for the site:

- [DA/9008/1966](#) – approved 06 December 1966 for 3 storey RFB (6)
- [BA/732/1977](#) – approved 01 January 1977 for enclosed balcony
- [BA/9/1967](#) – approved 01 January 1967 for flats

4. Proposal

The proposal seeks development consent for alterations to external façade, fencing and boundary wall to an existing residential flat building (pre-existing variation to Maximum Building Height Development Standard). As shown in Figures 2-7, the proposed alterations are contained within the built form. Specifically, the works include the following:

- Alterations to balcony balustrades, slab edges and external wall to have a rendered paint finish
- Garage doors to be painted
- Downpipes and gutters to be painted
- New stack stone design incorporated into the front façade
- New building address signage to be incorporated into the front facade



Figure 2: Streetscape Elevation (Source: MX Architects).



Figure 3: Existing and Proposed North/ South Elevation (Source: MX Architects).



Figure 4: Proposed East Elevation (Source: MX Architects).



Figure 5: Proposed West Elevation (Source: MX Architects).

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Figure 6: Front Eastern, Northern and Western Facade (Source: MX Architects).



Figure 7: Rear Eastern, Northern and Western Facade (Source: MX Architects).

5. Notification

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

- 53 The Corso

| Issue | Comment |
|---|---|
| Concern raised in relation to boundary fence along the western boundary. Structure requires replacement to ensure safety and integrity. | Render and paint finish to the boundary dividing wall is proposed. The concerns are noted, however this would be a matter for the individual owners/ strata and not a matter for consideration under the subject application. |

6. Relevant Environment Planning Instruments

6.1. Housing SEPP – Chapter 4 - Design of Residential Apartment Developments

Chapter 4 of the Housing SEPP seeks to improve the design of residential apartment development. The proposed development is not subject to Chapter 4 of the SEPP as it involves alterations to an existing flat building and is not considered to be a substantial redevelopment or refurbishment of the existing building.

6.2. SEPP (Sustainable Buildings) 2022

Subject to the proposed amendments a BASIX certificate is not required to be submitted in accordance with the requirements of the SEPP (Sustainable Buildings) 2022.

6.3. SEPP (Biodiversity and Conservation) 2021

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

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

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

6.4. SEPP (Resilience and Hazards) 2021

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

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

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned R2 Low Density Residential under Randwick Local Environmental Plan 2012 and the proposal, involving alterations and additions to a *residential flat building* is a prohibited land use

in this zone. Notwithstanding, the proposal involves no changes to the existing residential flat building that was approved in 1966 (DA/9008/1966) and strata subdivided in 1967 (SC/33/1967) – based on Council’s records. Both approvals predate the current LEP framework and as a result, the site would benefit from existing use rights. A discussion on existing use rights is provided below.

Part 7, Section 163 of the EPA Regulation 2021 permits an existing use to be ‘enlarged, expanded and intensified’ and ‘altered or extended’ provided that the subject works ‘involves only minor additions’. No changes to the existing footprint, gross floor area/floor space ratio and height of the residential flat building are proposed, however, as stated in the SEE cosmetic works are proposed to a maximum height of 12.123m or (27.61%), as the tile roof is to remain as existing. Accordingly, the proposal has satisfied the relevant tests for consideration under existing use rights within the R2 Low Density zone.

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

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

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------------|----------------------|---|---------------------|
| Cl 4.4: Floor space ratio (max) | 0.5:1 | No change to existing. | N/A |
| Cl 4.3: Building height (max) | 9.5m | 14.52m, subject to existing (proposed works 12.123m). | No |

6.5.1. Clause 4.3 – Height of buildings

Pursuant to clause 4.3 of RLEP 2012, a maximum building height of 9.5m is applicable. The existing building at the subject site has a maximum height of 14.52m (Roof RL41000 – Ground Floor 26680 minus 200mm floor slab) which does not comply with the 9.5m development standard.

The proposal will not alter the existing maximum height of the building. Notwithstanding, the new works have a maximum height of 12.123m, (excluding roof form), which does not comply with the 9.5m development standard.

6.5.2. Clause 4.6 - Exceptions to development standards

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

6.5.3. Clause 6.7 Foreshore scenic protection area

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

The proposed development does not alter the height, built form or layout of the building, therefore, the existing building footprint and scale is to remain as existing with unaltered views from the foreshore.

The proposal will not compromise the scenic qualities of the foreshore location. The proposal has been designed to protect existing views of Maroubra Bay and the ocean from neighbouring properties. On this basis, the development is satisfactory with regard to clause 6.7 of RLEP 2012.

7. Clause 4.6 exception to a development standard

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

| Clause | Development Standard | Proposal | Proposed variation | Proposed variation (%) |
|----------------------------------|----------------------|----------|--------------------|------------------------|
| Cl 4.3: Building height (max) | 9.5m | 12.123m | 2.623m | 27.61% |

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

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

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

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

As part of the clause 4.6 reform the requirement to obtain the Planning Secretary's concurrence for a variation to a development standard was removed from the provisions of clause 4.6, and therefore the concurrence of the Planning Secretary is no longer required. Furthermore, clause 4.6 of the Standard Instrument no longer requires the consent authority to be satisfied that the proposed development shall be in the public interest and consistent with the zone objectives as consideration of these matters are required under sections 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979*, and clause 2.3 of RLEP 2012 accordingly.

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

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

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

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

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

The grounds relied on by the Applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase

“environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

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

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

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

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

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

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

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

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

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

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

The Applicant’s written justification demonstrates that this objective is satisfied by noting that the proposal does not alter the scale of the residential flat building. The changes to the façade are considered to be compatible with the desired character of the locality as they align with other properties within the visual catchment including but not limited to 57 and 59 The Corso.

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

A BASIX certificate is not required to be submitted. Subject to existing, the development meets the relevant water and energy saving targets.

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

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

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that the proposal relates to an existing building and as such seeking cosmetic changes above the height limit will not unduly impact upon the amenity of adjoining land in terms of visual bulk, loss of privacy, overshadowing and views.

The proposal is considered to result in a positive or neutral impacts with respect to applicable objectives of 4.3.

Assessing officer's comment: In conclusion, the Applicant's written request has adequately demonstrated that compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of the case as the objectives of the development standard are achieved notwithstanding numeric non-compliance.

The proposal will not alter the maximum height of the existing building. The proposed works maintain an appropriate relationship with neighbouring built form and as detailed in this report, will not result in unreasonable amenity impacts.

The proposed works have been designed to restore external spaces, with little to no impact on the amenity of neighboring residents. As existing, the unit has cracks and old paint. The proposed works have been specifically designed to address these issues, ensuring that external fixtures are provided.

On this basis, compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

Initial Action layouts out a framework to demonstrates that there are 'sufficient' environmental planning grounds to justify contravening the development standard as:

- *"environmental planning grounds" by their nature, being grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979 (including section 1.3 of the EPA Act); and*
- *"sufficient" in that they are adequate to:*
 - *justify contravening the development standard, not simply promote the benefits of the development. The focus should be the element of the development that contravenes the development standard, not on the development as a whole.*
 - *demonstrate that there are sufficient environmental planning grounds to justify contravention so that the Council can be satisfied that the written request has adequately addressed the matter*

The following environmental planning grounds justify the proposed contravention of the Clause 4.3 height standard:

- *The proposal will not create undue impacts on the amenity of the adjoining properties in terms of privacy, overshadowing, and visual bulk,*
- *The variation relates to an existing building and does not seek to increase its height; and*
- *The design team have skillfully ensured that the resulting presentation will revitalise the residential flat building*

It is emphasised that Initial Action affirms that there is no requirement to demonstrate a neutral or beneficial outcome and as such on the basis of the above listed it is considered that there are sufficient environmental planning grounds to permit a variation to Clause 4.3.

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

The proposed works have been designed to improve the building externally, with little to no impact on the amenity of neighboring residents.

On this basis, there are sufficient environmental planning grounds to justify contravening the Height of Buildings development standard.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

In the assessment of the proposed development, the provisions, requirements and controls under the DCP were considered. It is noted that given the nature and location of the proposal in combination with its reliance on the existing use rights under the EP&A Act – only some of these are triggered. The proposed development involves minor works that do not result in any changes in terms of building height, site coverage, landscaped (deep soil/permeable surface) areas and setbacks. The resultant external façade changes would slightly alter the current presentation and expression of the building – however, the overall design is considered appropriate and ties-in with the general development pattern and streetscape of the immediate locality. An evaluation of potential visual bulk, privacy, overshadowing and view loss impacts has determined that any impacts of this nature generated by the proposal will be minor and reasonable.

The relevant provisions of the DCP specific and relevant to the proposal are addressed in Appendix 3.

9. Environmental Assessment

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

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument | Refer to Sections 6 and 7 of this report. |
| Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument | Nil. |
| Section 4.15(1)(a)(iii) – Provisions of any development control plan | The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3. |
| Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement | Not applicable. |
| Section 4.15(1)(a)(iv) – Provisions of the regulations | The relevant clauses of the Regulations have been satisfied. |
| Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p> |
| Section 4.15(1)(c) – The suitability of the site for the development | The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development. |
| Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation | The issues raised in the submissions have been addressed in this report. |
| Section 4.15(1)(e) – The public interest | The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest. |

9.1. Discussion of key issues

Existing Use Rights

Section 4.65 of Division 4.11 of the *Environmental Planning and Assessment Act 1979* requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Based on a search of past approvals, the existing building was approved under development consent DA/9008/1966 and strata subdivided in 1967 under SC/33/1967.

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

Section 4.67 of the EP&A Act provides that any provisions in an instrument that would derogate from the “incorporated provisions” of the Act would have no force or effect. It should be noted that

derogation from the incorporated provisions has also been considered in recent caselaw with regards to the matters of *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made Property Group Pty Limited v North Sydney Council* [2020] NSWLEC 1332 in which it was determined that the provisions of a LEP do not necessarily derogate from the incorporated provisions of the EP&A Regs and that the existing use right permits the permissibility and alteration of the development, however may not result in the derogation from the standards of a LEP. In this instance (and adopting the Commissioner's findings in the above LEC matters), it is considered that the provisions of clause 4.4 read in conjunction with clause 4.6 of RLEP 2012 allow the application to be made and considered by the consent authority, and do not derogate from the incorporated provisions, and that an assessment of the development in accordance with s4.15 of the EP&A Act should be undertaken.

Furthermore, as the provisions of clause 4.4 are applicable, and the Applicant seeks to vary the development standard for building height, a clause 4.6 Objections has been provided and is assessed in Section 7 above.

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

An assessment against the planning principle is provided below:

Planning Principle 1

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

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

The subject site is located within the R2 – Low Density Residential zoning, with the adjoining and adjacent properties within the surrounding area primarily low density developments in the form of dwelling houses and semi-detached dwellings. There are also several examples in the near vicinity (along Marine Parade) of residential flat buildings of similar bulk and scale to this building which are also non-conforming uses.

The existing height of the building exceeds the permitted 9.5m, being 14.52m. The proposed works do not increase the building height and are situated lower (at 12.123m).

The proposal does not alter the maximum FSR of the building, or the current site coverage and landscaping on the site. The proposal results in retention of the existing building's bulk and scale. As such, the resultant built form will be compatible with the existing streetscape and the character of the local area within the immediate vicinity.

In view of the above, the bulk and scale of the proposed development is supportable when considered in the context of the site and surrounds.

Planning Principal 2

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

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

The proposed development does not involve a change of use to the existing development. The proposed development seeks minor works (external changes) to the existing residential flat building. The proposal does not alter the number of units and habitable rooms nor intensify the use of the building.

Planning Principal 3

What are the impacts on adjoining land?

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

Visual Privacy and Acoustic Privacy

The proposed development will have no visual and acoustic privacy impacts as the internal spaces of the building and any existing balcony locations and dimensions, openings and fenestration remain unchanged.

Solar Access and View Loss

Due to the proposed works not extending beyond the existing building envelope, the proposal does not impact solar access to adjoining properties or result in any view loss impacts.

Planning Principal 4

What is the internal amenity?

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

The proposed development does not result in a loss of amenity for future occupants of units within the residential flat building.

Based on the above existing use rights assessment, and subject to the recommendations within the report, the proposal is considered reasonable.

10. Conclusion

That the application for alterations to external façade, fencing and boundary wall to an existing residential flat building (pre-existing variation to Maximum Building Height 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 matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed regarding the height of building development standard in clause 4.3 of Randwick Local Environmental Plan 2012.

- The proposal is consistent with the specific objectives of the R2 zone in that the proposal will continue to provide housing needs for the community within a low-density residential environment.
- 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.

D7/25

Appendix 1: Referrals**1. Internal referral comments:****1.1. Development Engineer**

A referral was allocated to Council's Development Engineer. No objections were raised and specific engineering conditions were required by Council's Development Engineer.

D7/25

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

55 The Corso, Maroubra
Written Justification – Clause 4.3

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Introduction

This written justification relates to a Development Application for 55 The Corso, Maroubra (Lot 12 in DP 9150) which seeks ‘restoration and facade alterations to an existing residential flat building’. The application relates to an existing building which has elements over the maximum building height prescribed by Clause 4.3 Randwick Local Environmental Plan 2012 (‘RLEP 2012’) and as such this written justification has been prepared.

This statement has been prepared considering the ‘Department of Planning & Environment’s *Guideline for Varying Development Standards: A Guide*’ (August 2011) and ‘*Planning Circular PS-18-003: Variations to development standards*’ (Issued 21 February 2018), and has attempted to ensure consistency with the relevant principles identified in the following Land and Environment Court judgements:

- o *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
- o *Wehbe v Pittwater Council [2007] NSWLEC 827 (‘Wehbe’)*
- o *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (‘Four2Five No 1’)*
- o *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
- o *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (‘Four2Five No 3’)*
- o *Maskovich v Waverley Council [2016] NSWLEC 1015*
- o *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (‘Initial Action’)*

Please refer to the below listed drawings/documents when reading this statement:

- Detail Survey Of Lot 1 & 2 IN DP 587351 prepared by C&A Surveyors NSW P/L*
- Architectural Plans, Revision D, 21.04.2024 prepared by Kizana Design Group*

Clause 4.6 of the RLEP 2012 states that:

4.6 Exceptions to development standards

Current version for 15 December 2023 to date (accessed 20 September 2024 at 13:52)

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows—
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—



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55 The Corso, Maroubra
Written Justification – Clause 4.3

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- (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.

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

- (4) The consent authority must keep a record of its assessment carried out under subclause (3).
 - (5) (Repealed)
 - (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.
 - (7) (Repealed)
 - (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).
- cl 4.6: Am 2015 (163), Sch 1 [1]; 2022 (857), Sch 1.2A[3] (ins 2023 (82), Sch 1.6[4]).

Chief Justice Preston, in *Initial Action* outlined that the former Clause 4.6(4) establishes the preconditions that a Consent Authority must be satisfied before it can grant a variation to a development standard. This written justification has sought to address those preconditions which have been listed below:

- (a) addresses why compliance with the development standard is unreasonable or unnecessary in the circumstances; and
- (b) provides sufficient environmental planning grounds to justify contravening the development standard; and
- (c) identifies that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone.



55 The Corso, Maroubra
Written Justification – Clause 4.3

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Initial Action also establishes that:

- *in determining whether compliance with the development standard is unreasonable or unnecessary, the consent authority needs to ask itself if the applicants written submission has adequately addressed this matter, not that they themselves considers the compliance unreasonable or unnecessary.*
- *Clause 4.6 does not directly or indirectly establish that a neutral or beneficial effect be realised by the proposal variation.*
- *clause 4.6(3)(b) required that there be "sufficient environmental planning grounds to justify contravening the development standard" and the words "better environmental outcome" came from the objectives of clause 4.6. as there is no provision to require compliance with those objectives, the belief that the outcome be a better outcome both for and by development is not a relevant matter for consideration.*

On 15 September 2023, the NSW Government introduced legislative changes to Clause 4.6 which came into effect on 1 November 2023. The changes by the NSW Government are identified below:

retain the existing 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests, but requiring consent authorities to consider the same matters as applicants are required to address in their written request

simplify the drafting, notably removing specific references to considering the public interest in the clause, noting that consideration of the public interest is already an obligation of consent authority

remove the requirement to obtain the Planning Secretary's concurrence for a variation. A new reporting framework will replace the concurrence obligations to ensure transparency and accountability in decision making.

This written justification aims to address each of the objectives relating to Clause 4.3 and R2 Zone of the RLEP 2012, as well as identify planning outcomes in the subsequent sections of this document to establish that the preconditions are met in this instance.

Development Standard

The subject site is known as 55 The Corso, Maroubra having the legal description of SP 2929 ('the Site'). The land is a regular shaped lot which has a frontage of 13.41m and has a site area of 543.5qm as per the Survey Plan prepared by Chadwick Cheng Consulting Surveyor. A four-storey residential flat building consisting of six (6) dwellings resides on the Site. The residential flat building has a brick façade, pitched tile roof and three (3) attached garage spaces on the ground level. The Site is zoned R2 Low Density Residential (Figure 1).



55 The Corso, Maroubra
Written Justification – Clause 4.3

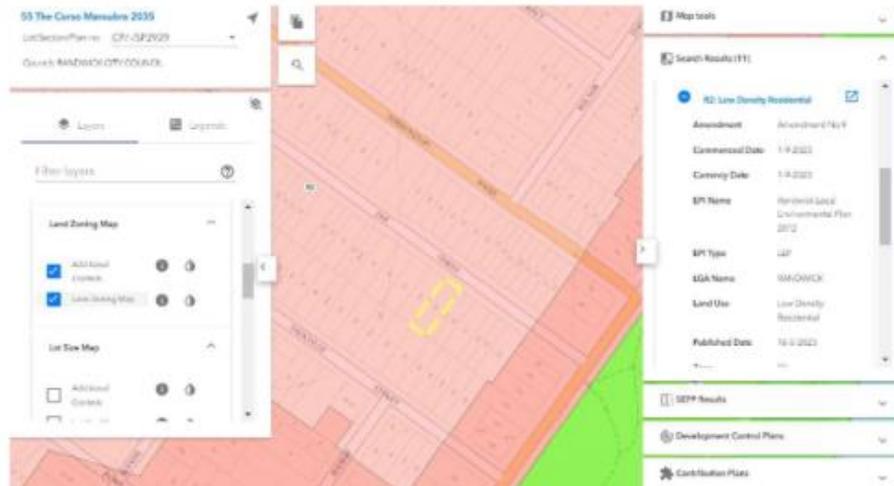


Figure 1. Zoning Map Overlay – R2 Low Density Residential – RLEP 2012 (Extracted from <https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>)

The Site is prescribed a maximum height of 9.5m under Clause 4.3 of the RLEP 2012 and Figure 2:

4.3 Height of buildings

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

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

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

(2A) Despite subclause (2), the maximum height of a dwelling house or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.



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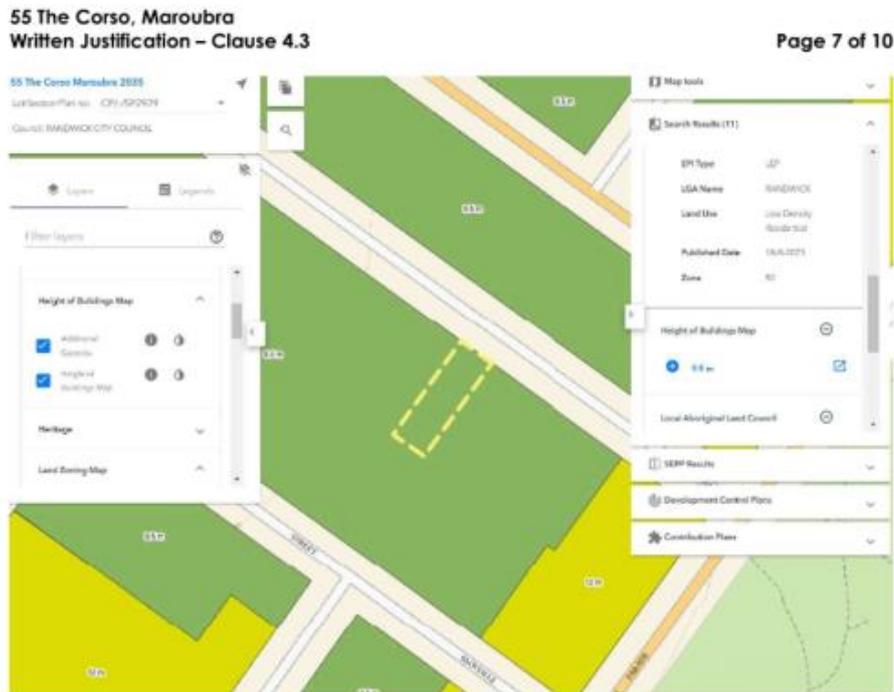


Figure 2. Height Map Overlay – 9.5m – Randwick Local Environmental Plan 2012 (Extracted from <https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>)

The Proposal seeks works above the 9.5m height limit, albeit the works are to the façade of an existing residential flat building. The Proposal does not seek to increase height of the building at any point. The cosmetic works are to occur up to a maximum height of approximately 12.123m which equates to a variation of **27.61%** to Clause 4.3 of the RLEP 2012.

Is Compliance with The Development Standard is Unreasonable or Unnecessary?

As outlined earlier in this statement, Initial Action Preston CJ establishes that in assessing whether compliance with a development standard is unreasonable or unnecessary, the consent authority needs to specifically assess if the applicant's written justification has adequately addressed this matter, not that they themselves consider the compliance unreasonable or unnecessary.

Wehbe asserts that compliance with a development standard is unreasonable or unnecessary, which may be demonstrated in one or more of the following ways:

- *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*
- *the underlying objective or purpose is not relevant to the development*



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Written Justification – Clause 4.3

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- *the underlying objective or purpose would be thwarted if compliance with the standard was required*
- *the development standard has been virtually abandoned or destroyed by the Council's decisions in granting development consents that depart from the standard*
- *the Zoning of the land is unreasonable or inappropriate (though this limb is limited) some other way".*

In this circumstance, it is unreasonable and unnecessary to strictly comply with the Height of Building requirement of Clause 4.3 as the applicable objectives are satisfied as considered below:

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

The Proposal does not alter the scale of the residential flat building. The changes to the façade are considered to be compatible with the desired character of the locality as they align with other properties within the visual catchment including but not limited to 57 and 59 The Corso.

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

The Site is not near a heritage item or conservation area identified within the RLEP 2012 as per Figure 3 below.

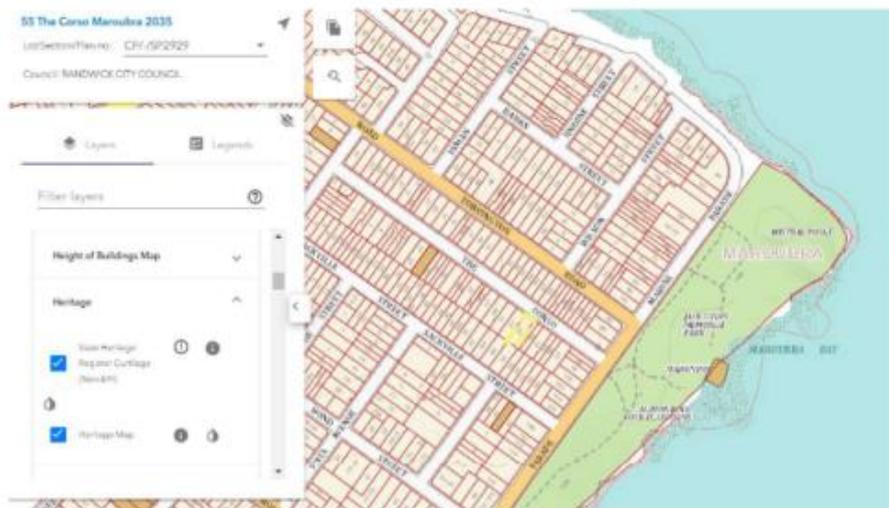


Figure 3. Heritage Map Overlay (RLEP 2012) with State Heritage Register Curtilage overlay (Extracted from <https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>)

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



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Written Justification – Clause 4.3

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The Proposal relates to an existing building and as such seeking cosmetic changes above the height limit will not unduly impact upon the amenity of adjoining land in terms of visual bulk, loss of privacy, overshadowing and views.

The Proposal is considered to result in a positive or neutral impacts with respect to applicable objectives of 4.3.

Environmental Planning Grounds to Justify Contravening the Development Standard

Initial Action layouts out a framework to demonstrates that there are 'sufficient' environmental planning grounds to justify contravening the development standard as:

- "environmental planning grounds" by their nature, being grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979 (including section 1.3 of the EPA Act); and
- "sufficient" in that they are adequate to:
 - justify contravening the development standard, not simply promote the benefits of the development. The focus should be the element of the development that contravenes the development standard, not on the development as a whole.
 - demonstrate that there are sufficient environmental planning grounds to justify contravention so that the Council can be satisfied that the written request has adequately addressed the matter

The following environmental planning grounds justify the proposed contravention of the Clause 4.3 height standard:

- The proposal will not create undue impacts on the amenity of the adjoining properties in terms of privacy, overshadowing, and visual bulk,
- The variation relates to an existing building and does not seek to increase its height; and
- The design team have skilfully ensured that the resulting presentation will revitalise the residential flat building

It is emphasised that Initial Action affirms that there is no requirement to demonstrate a neutral or beneficial outcome and as such on the basis of the above listed it is considered that there are sufficient environmental planning grounds to permit a variation to Clause 4.3.

The Public Interest

As identified earlier in this document, the 1 November 2023 changes to Clause 4.6 removed references to the public interest on the following basis:

simplify the drafting, notably removing specific references to considering the public interest in the clause, noting that consideration of the public interest is already an obligation of consent authority



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Written Justification – Clause 4.3

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In any case, the public interest is considered in this section having already established consistency with the objectives of Clause 4.3 in a previous section. In establishing consistency with the public interest the objectives of the R2 zone are considered below.

Zone R2 Low Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a low density residential environment.*

The Proposal relates to an existing residential flat building.

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

The Proposal involves cosmetic alterations to an existing residential use, ensuring that the development continues to serve its residential purpose without impacting neighbouring properties

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

The alteration to the façade is considered to desirable and in line with the existing and future character of the locality.

- *To protect the amenity of residents.*

The resulting works will not have any discernible impact on the amenity of residents on the Site or adjoining properties.

- *To encourage housing affordability.*

The Proposal is not anticipated to have any direct impact on housing affordability.

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

The Proposal relates to an existing residential use.

The Proposal is considered to result in a neutral or positive impacts with respect to each of the applicable objectives of the R2 zone. There are no discernible undue adverse or unreasonable impacts to the broader community and as such there are no public interest matters that would prevent a variation being granted in this instance.

Conclusion

In this circumstance, as argued in this document the referenced variation satisfies the criteria established under Clause 4.6 of the RLEP 2012. It is our view that there are sufficient planning grounds to justify the contravention to Clauses 4.3 and that the development is consistent with the objectives of Clause 4.3 and the R2 zone. The Proposed Development is considered to be suitable for the Site subject to appropriate conditions of consent.



Appendix 3: DCP Compliance Table

3.1 Section C2: Medium Density Residential

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|--------------|--|--|---|
| 2. | Site Planning | | |
| 2.1 | Site Layout Options | | |
| | Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> • Two block / courtyard example • T-shape example • U-shape example • Conventional example | Building envelope and footprint retained in proposal. | Yes |
| 3. | Building Envelope | | |
| 3.1 | Floor space ratio | | |
| | Floor space ratio LEP 2012 = 0.5:1 | No change to existing gross floor area. | Yes |
| 3.2 | Building height | | |
| | Maximum overall height LEP 2012 = 9.5m | Proposed = 9m | Does not comply. See Clause 4.6 assessment. |
| 3.4 | Setbacks | | |
| 3.4.1 | Front setback | | |
| | (i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries. (ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways. | No change proposed to front setback alignment. However, façade changes include paint to existing garage doors, stacked stone to external walls, new building signage and render/ paint finish to existing balcony balustrades, walls and slab edges. | Yes |
| 3.4.2 | Side setback | | |
| | Residential flat building (i) Comply with the minimum side setback requirements stated below: <ul style="list-style-type: none"> - 14m ≤ site frontage width < 16m: 2.5m | No change proposed to building footprint. | Acceptable |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---------------------------|--|--|------------------------------------|
| | <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p> | | |
| 3.4.3 | Rear setback | | |
| | For residential flat buildings, provide a minimum rear setback of 15% of allotment depth (4.4m) or 5m, whichever is the greater. | No change proposed to the existing rear setback. | Acceptable |
| 4. Building Design | | | |
| 4.1 | Building façade | | |
| | <p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p> | New paint finish and stacked stone material to the site enables material articulation and improves visual character of the street. The proposed building signage will also improve the visibility of street numbering. | Yes |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|--|--|------------------------------------|
| | (vi) Conceal building services and pipes within the balcony slabs. | | |
| 4.2 | Roof design | | |
| | <p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. | <p>No change to the existing roof of the development proposed.</p> | <p>Yes</p> |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|--|------------------------------------|
| | <ul style="list-style-type: none"> - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. (viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan. | | |
| 4.4 | External wall height and ceiling height | | |
| | (ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies. | No change to overall wall height proposed. | Yes |
| | (iii) The minimum ceiling height is to be 2.7m for all habitable rooms. | Subject to existing. | Yes |
| 4.5 | Pedestrian Entry | | |
| | (i) Separate and clearly distinguish between pedestrian pathways and vehicular access. | Pedestrian entrance provided from driveway, subject to existing. | Yes |
| | (ii) Present new development to the street in the following manner: <ul style="list-style-type: none"> - Locate building entries so that they relate to the pedestrian access network and desired lines. - Design the entry as a clearly identifiable element in the façade composition. - Integrate pedestrian access ramps into the overall building and landscape design. - For residential flat buildings, provide direct entries to the individual dwellings within a development from the street where possible. - Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably integrated into a wall adjacent to the primary entry (and at 90 degrees to the street rather than along the front boundary). - Provide weather protection for building entries. Postal services and mailboxes <ul style="list-style-type: none"> (i) Mailboxes are provided in accordance with the delivery requirements of Australia Post. | Street access retained to the front of the Unit. No change to pedestrian circulation within the site or the location of mailboxes. | Yes |

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|------------|---|---|------------------------------------|
| | (ii) A mailbox must clearly mark the street number of the dwelling that it serves. (iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street. | | |
| 4.6 | Internal circulation | | |
| | (i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. | No changes to internal layout. | Acceptable |
| 4.8 | Balconies | | |
| | (i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments. | Subject to existing each apartment has a balcony or sunroom. Render and paint finish to the existing balcony balustrades and external walls are proposed. | Yes |
| | (ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m ² . All ground floor apartments are to have direct access to a terrace. | Nil- garages form part of the ground floor. | Not applicable |
| 4.9 | Colours, materials and finishes | | |
| | (i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is | Paint finishes used include Dulux pipe clay for external walls and garage doors, whilst Dulux powdered rock will be for external walls, slab edges, retaining walls, front fence, downpipes and gutters. The front façade external walls will be natural stone. | Yes |

| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---|---|---|------------------------------------|
| | <p>encouraged.</p> <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p> | | |
| 4.12 Earthworks Excavation and backfilling | | | |
| | <p>(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification.</p> <p>(ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site.</p> <p>(iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.</p> | <p>No earthworks are proposed as a part of the subject proposal.</p> | <p>N/A</p> |
| | <p>Retaining walls</p> <p>(iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries.</p> <p>(v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the neighbouring properties and the public domain.</p> <p>(vi) Where it is necessary to construct retaining walls at less than 900mm from the side or rear boundary due to site conditions, retaining walls must be stepped with each section not exceeding a maximum height of</p> | <p>Existing retaining walls are proposed to only be rendered and painted.</p> | <p>Yes</p> |

D7/25

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| DCP Clause | Control | Proposal | Compliance (Yes/No/NA/Conditioned) |
|---|---|---|------------------------------------|
| | 2200mm, as measured from the ground level (existing). | | |
| 7. Fencing and Ancillary Development | | | |
| 7.1 Fencing | | | |
| | (i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering. (ii) Sandstone fencing must not be rendered and painted. (iii) The following materials must not be used in fences: <ul style="list-style-type: none"> - Steel post and chain wire - Barbed wire or other dangerous materials (iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided. | Front fence to remain as existing with new render and paint finish. | Yes |

Responsible officer: Alyssa Chau, Environmental Planning Officer

File Reference: DA/1033/2024

Development Consent Conditions

(Medium Density Residential)



D7/25

| | |
|------------------------|--|
| Folder /DA No: | DA/1033/2024 |
| Property: | 55 The Corso, MAROUBRA NSW 2035 |
| Proposal: | Alterations to external façade, fencing and boundary wall to an existing residential flat building (pre-existing variation to Maximum Building Height Development Standard). |
| Recommendation: | Approval |

GENERAL CONDITIONS

Condition

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

| <i>Plan</i> | <i>Drawn by</i> | <i>Dated</i> | <i>Received by Council</i> |
|---|-----------------|--------------|----------------------------|
| Ground floor & Level 01, Drawing No.DA004, Rev No. B | MX Architects | 31/01/2025 | 31/01/2025 |
| Level 02 & Level 03, Drawing No. DA005, Rev No. B | MX Architects | 31/01/2025 | 31/01/2025 |
| Sections, Drawing No. DA006, Rev No. B | MX Architects | 31/01/2025 | 31/01/2025 |
| Streetscape Elevation, Drawing No.0007, Rev No. B | MX Architects | 31/01/2025 | 31/01/2025 |
| North & South Elevations – Proposed & Existing, Drawing No.008, Rev No. B | MX Architects | 31/01/2025 | 31/01/2025 |
| East Elevation – Proposed & Existing, Drawing No. 009, Rev No. B | MX Architects | 31/01/2025 | 31/01/2025 |
| East Elevation (West Elevation) – Proposed & Existing, Drawing No. 010, Rev No. B | MX Architects | 31/01/2025 | 31/01/2025 |

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

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

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

| | Condition |
|----|---|
| 2. | <p>Consent Requirements The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p> |
| 3. | <p>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.</p> <p>Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by the Certifier prior to issuing a construction certificate for the development.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p> |
| 4. | <p>Section 7.12 Development Contributions Development Contributions are required in accordance with applicable Randwick City Council Development Contributions Plan, based on the development cost of \$715,000.00 the following applicable monetary levy must be paid to Council: \$7150.00.</p> <p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> $\text{IDC} = \text{ODC} \times \text{CP2/CP1}$ <p>Where: IDC = the indexed development cost ODC = the original development cost determined by the Council CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p> |
| 5. | <p>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</p> |

Condition

of the Environmental Planning & 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.

6. **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 approved plans to Sydney Water Tap in online service.

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

7. **Building Code of Australia**

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

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

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

BEFORE BUILDING WORK COMMENCES

Condition

8. **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):

| | Condition |
|-----|---|
| | <p>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <p>b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</p> <p>c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</p> <p>d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and</p> <p>e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</p> <p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p> |
| 9. | <p>Home Building Act 1989 In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p> |
| 10. | <p>Construction Noise & Vibration Management Plan Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p> |
| 11. | <p>Public Utilities A <i>Public Utility Impact Assessment</i> must be carried out on all public utility services</p> |

| Condition |
|--|
| <p>on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works.</p> <p>Documentary evidence from the relevant public utility authorities confirming that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Energy Australia, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p> |

DURING BUILDING WORK

| Condition | | | | | | |
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| <p>12. Site Signage</p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ol style="list-style-type: none"> 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. <p>The sign must be—</p> <ol style="list-style-type: none"> a) maintained while the building work is being carried out, and b) removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> 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. <p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p> | | | | | | |
| <p>13. Restriction on Working Hours</p> <p>Building, demolition and associated site works must be carried out in accordance with the following requirements:</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Activity</th> <th style="text-align: left;">Permitted working hours</th> </tr> </thead> <tbody> <tr> <td>All building, demolition and site work, including site deliveries (except as detailed below)</td> <td> <ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted </td> </tr> <tr> <td>Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like</td> <td> <ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm • (maximum) • Saturday - No work permitted </td> </tr> </tbody> </table> | Activity | Permitted working hours | All building, demolition and site work, including site deliveries (except as detailed below) | <ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted | Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like | <ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm • (maximum) • Saturday - No work permitted |
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D7/25

| Condition | |
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| | <ul style="list-style-type: none"> 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.

14. 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

| Condition |
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| <p>system, roadway or Council land.</p> <p>i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.</p> <p>j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.</p> |

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

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

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

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

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| <p>16. Occupation Certificate Requirements An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition reason: Statutory requirement. To ensure the site is authorised for occupation.</p> |
| <p>17. 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:</p> <p>(a) All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors.</p> <p>(b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a <i>Pre-paid Works Application Form</i>, prior to issuing an occupation certificate, together with payment of the relevant fees.</p> |

 Condition

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

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

 OCCUPATION AND ONGOING USE

 Condition

18. **External Lighting**
External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.
- Condition reason: To protect the amenity of the surrounding area and residents.
19. **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.