

Randwick Local Planning Panel (Electronic) Meeting

Thursday 13 March 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 March 2025

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D10/25

Subject: 1605 Anzac Parade, La Perouse (DA/22/2025)

Executive Summary

Proposal:	Alterations and additions to an existing mixed use development, including the replacement of the entry and terrace awning structures, balustrades, exterior glazing and associated fabric, extension of access stair, façade maintenance works and internal reconfiguration to enable the installation of a new lift, entrance lobby and layout changes to an apartment and commercial tenancy (Variation to Building Height and FSR).
Ward:	South Ward
Applicant:	Antonio Caminiti Design P/L
Owner:	La Perouse Holdings Pty Ltd
Cost of works:	\$575,863.26
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 applicants written requests to vary the development standards relating to building height and floor space ratio in clauses 4.3 and 4.4 of Randwick Local Environmental Plan 2012 have demonstrated that;
- i. Compliance with the relevant development standard is unnecessary and unreasonable in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development standards.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/22/2025 for *Alterations and additions to an existing mixed use development, including the replacement of the entry and terrace awning structures, balustrades, exterior glazing and associated fabric, extension of access stair, façade maintenance works and internal reconfiguration to enable the installation of a new lift, entrance lobby and layout changes to an apartment and commercial tenancy (Variation to Building Height and FSR)*, at No. 1605 Anzac Parade, La Perouse, subject to the development consent conditions attached to the assessment report.

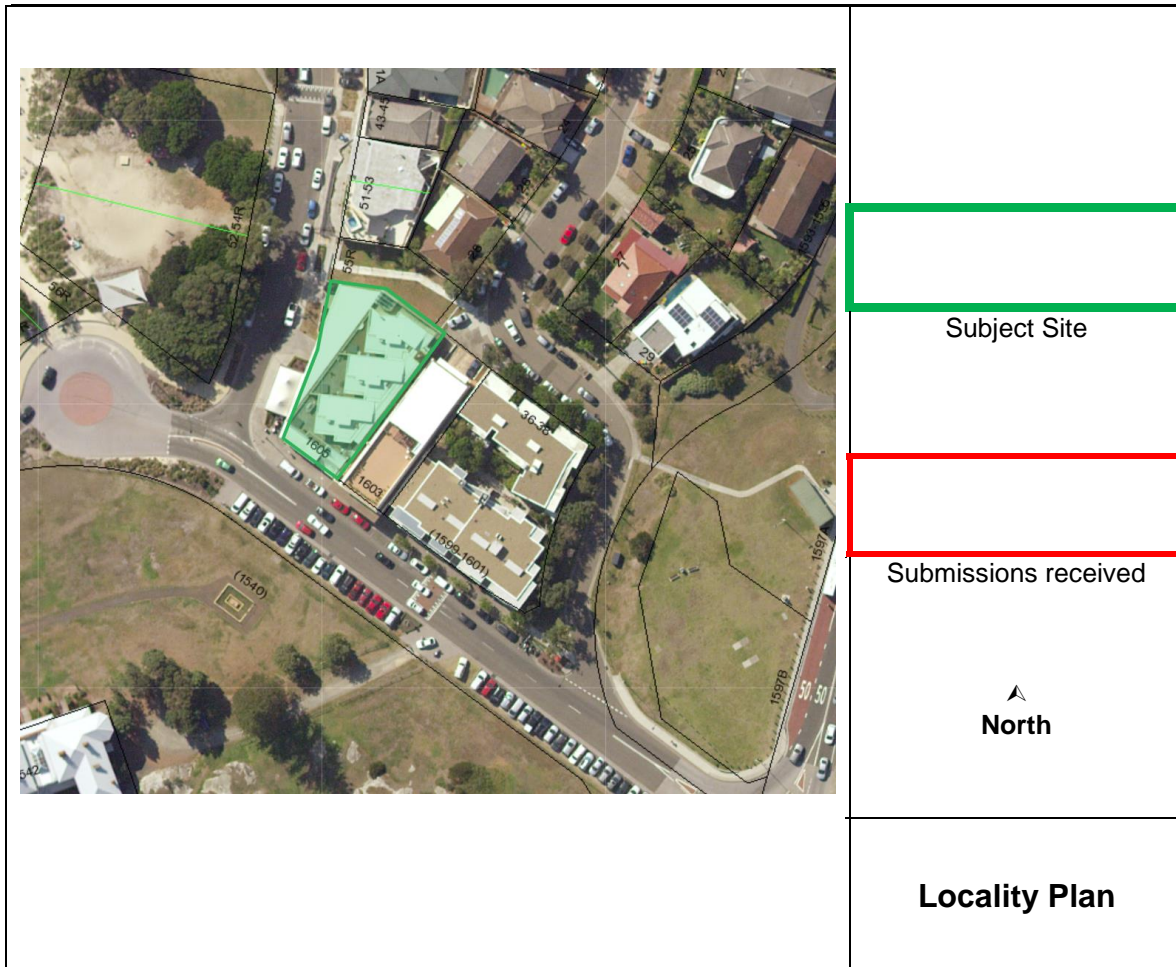
Attachment/s:



1. RLPP Dev Consent Conditions (mixed-use) - DA/22/2025 - 1605 Anzac Parade, LA PEROUSE NSW 2036 - DEV - Randwick City Council

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- N.B – Submissions were received from properties located further away or without a known address.

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 and additions to an existing mixed-use development, including the replacement of the entry and terrace awning structures, balustrades, exterior glazing and associated fabric, extension of access stair, façade maintenance works and internal reconfiguration to enable the installation of a new lift, entrance lobby and layout changes to an apartment and commercial tenancy (Variation to Building Height and FSR).

The key issues associated with the proposal relate to:

- reduction in car parking to accommodate the new lift and storage facilities for the café.
- Awning structures

2. Site Description and Locality

The subject site is known as 1605 Anzac Parade, La Perouse and is legally described as Lot 1057 in DP 752015. The site is 828.3m², is irregular in shape. The site is mostly rectangular but has a splay outward towards the north-western corner of the site.

The site is located on the Northern side of Anzac Parade (having a 15.2m frontage) and also has a frontage on Endeavour Avenue (36.5m).

The site slopes down from the east to the west, as well as down from the south to the north. The site only shares one boundary with another privately owned property, being 1603 Anzac Parade. The site contains a three-storey building, which includes two levels of retailing (restaurant – food and drink premises) in the southern part of the site, with one level of parking and servicing uses to the northern part of the site and three residential units on the top floor.

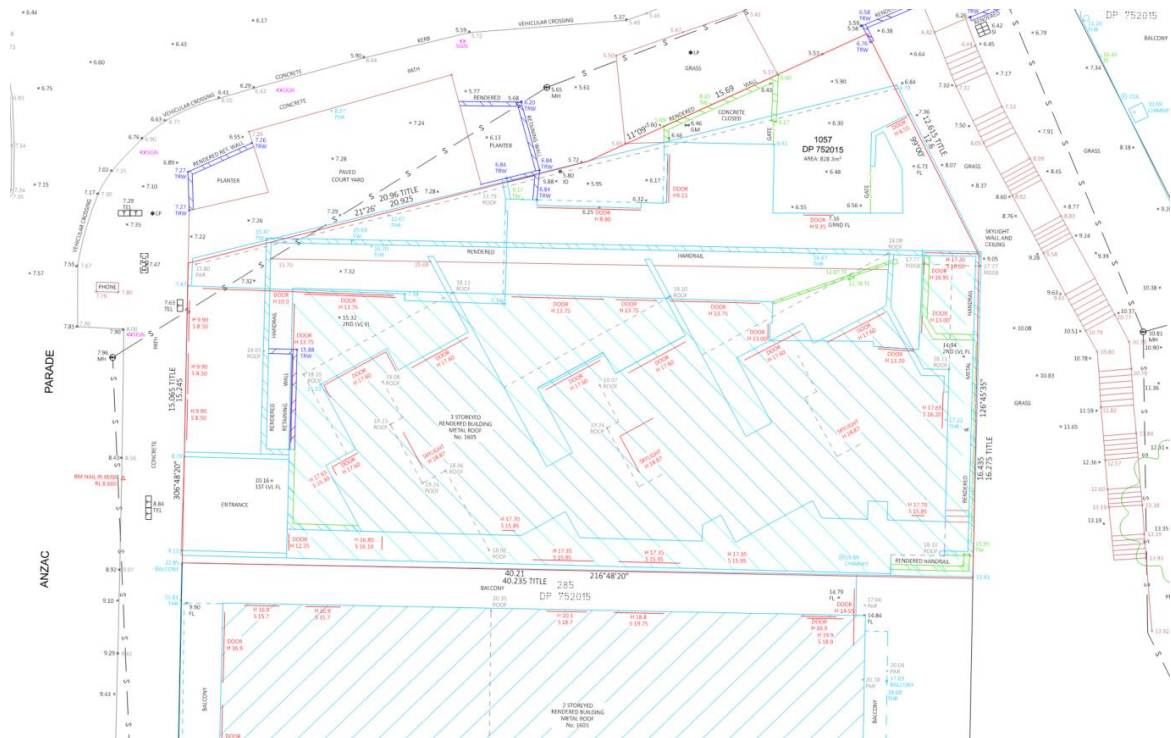


Figure 1: Survey Plan for 1605 Anzac Parade



Figure 2: Aerial Imagery of 1605 Anzac Parade (Source: NearMap 2024)

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Figure 3: Site frontage to Endeavour Avenue (Source: Applicant)



Figure 4: Site Frontage to Anzac Parade (Source: Applicant)



Figure 5: Adjoining development to the immediate east, along Anzac Parade (Source: Applicant)



Figure 6: Open space area to the immediate north of the site - Endeavour Avenue (Source: Applicant)

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Figure 7: Endeavour Avenue Context (Source: Applicant)

3. Relevant history

DA/26/2002 - Alterations and additions to existing commercial/ residential building including the demolition of the existing top floor dwelling and erection of three new dwellings [Approved 29 May 2002].

DA/692/2003 – Enlarge existing outdoor dining terrace [approved 10 September 2003]

DA/779/2011 - Construction of new shade structure over the existing outdoor seating area as part of the La Perouse street upgrade [approved on 23 November 2011].

4. Proposal

The key objectives of the owner for the proposed development are as follows:

- Improve accessibility to the restaurant and dwellings, including by installing a lift;
- Ensure safe and AS-compliant parking spaces;
- Improve the entry for both the restaurant and dwellings;
- Improve the building presentation to the public domain overall;
- Undertake repair and maintenance works.

The proposal seeks development consent for:

Ground floor (Parking and Café/ Restaurant):

- Provide separate and safe entrance to lower-level restaurant space;
- New wall to car park;
- New lift and circulation space;
- Café preparation/ storage space;
- New aluminium-framed glazing and folding doors, as shown on the plans;
- Decorative artwork applied to existing block wall (north side);

First Floor (Café/Restaurant)

- New metal-framed glass balustrade to a covered outdoor terrace;

- New aluminium-framed doors and windows;
- Revised stair and access, off Anzac Parade, with some localised raising of the floor to improve accessibility;
- New wall to the side of the southern outdoor covered dining area;
- Lift and link to the level below;
- New steel-framed awning over outdoor terrace, including adjustable shade control louvres (within site);
- New awning over entrance off Anzac Parade (partly over the footpath);

Second Floor (Dwellings)

- New lift giving access to the common side accessway/breezeway and associated internal changes to one of the units (the southern-most unit, Unit 01).

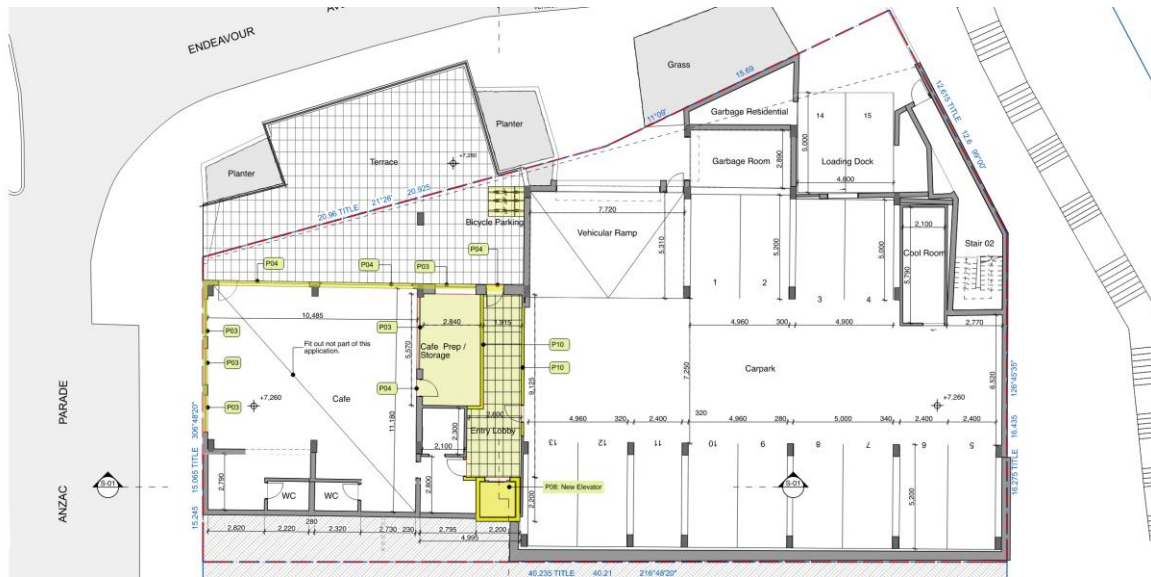


Figure 8: Proposed Ground Floor Level - 1605 Anzac Parade

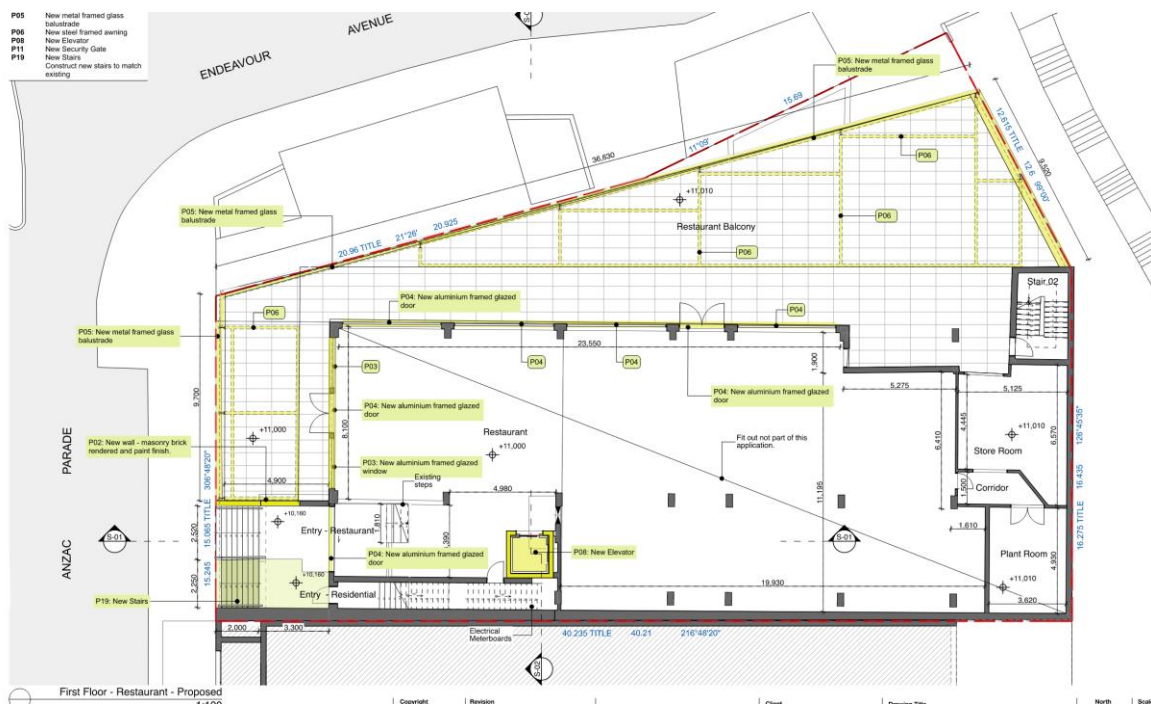


Figure 9: Proposed First Floor Plan - 1605 Anzac Parade

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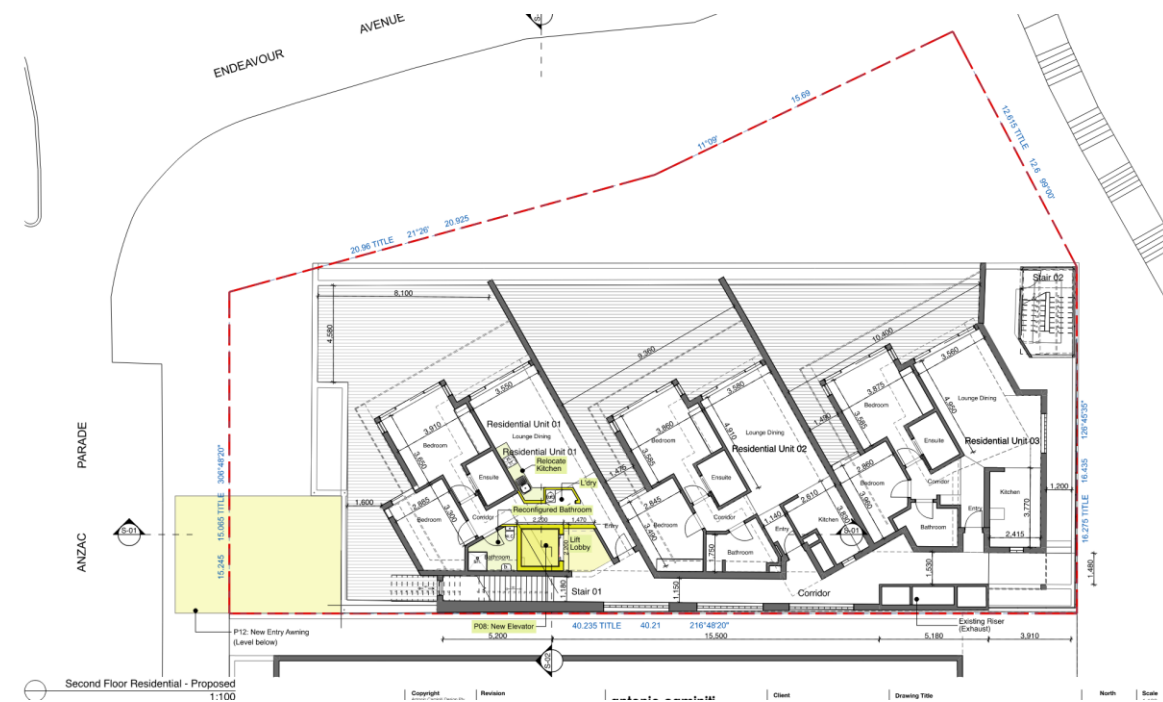


Figure 10: Proposed Second Floor Plan - 1605 Anzac Parade

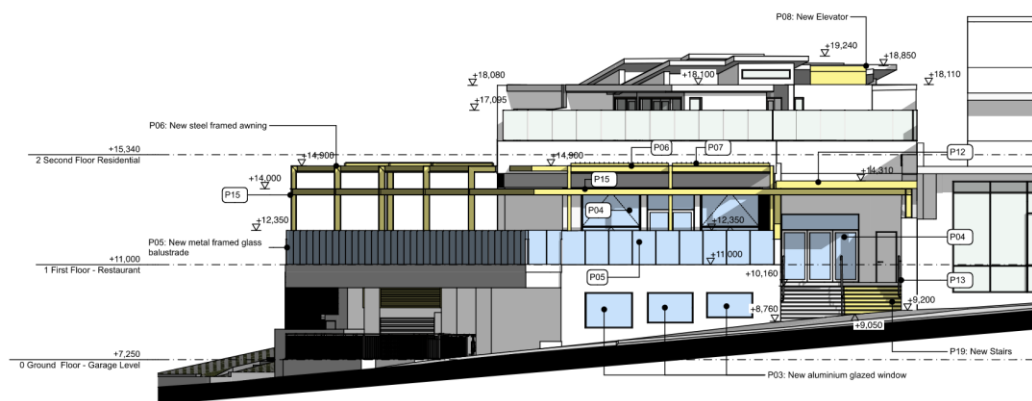


Figure 11: Proposed South-west elevation - 1605 Anzac Parade

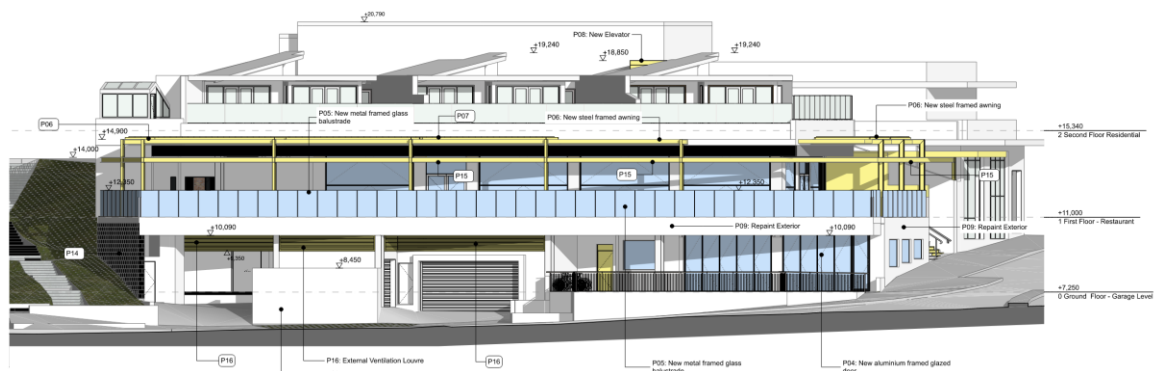


Figure 12: Proposed North-west elevation - 1605 Anzac Parade

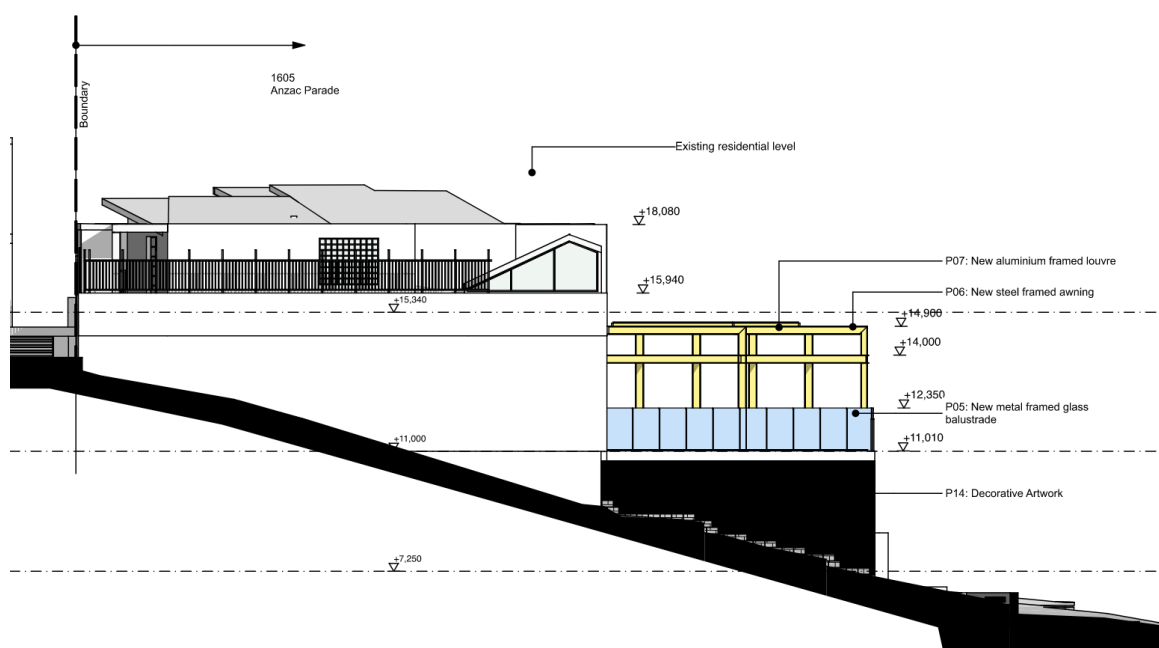
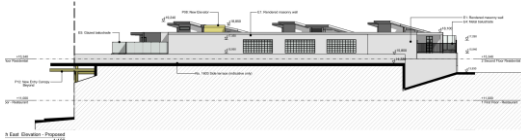


Figure 13: Proposed North-east elevation - 1605 Anzac Parade

5. Notification

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

- No address

Issue	Comment
<p>The height variation is out of character with the area.</p> <p>It will set a precedent for the area.</p>	<p>The height variation is caused by the installation of a lift. This lift is below the existing maximum building height and therefore the proposal is not increasing the maximum height of the development. A Clause 4.6 Statement has been provided and is supported by Council.</p> <p>The proposal is not expected to set a precedent because the height non-compliance is pre-existing. The exceedance in this application is within the parameters of the existing building.</p>
<p>Obstruct views and diminish the area's historical appeal.</p> 	<p>As shown in the Figure opposite, the proposed works are below the existing height and are concentrated to a small section of the site.</p> <p>This will not have adverse view sharing impacts on neighbouring properties, noting the lift overrun is screened by the existing roof ridge and will generally align with the existing roof pitch. Noting the changes are contained within the existing building envelope other than a minor change to the roof pitch to accommodate a lift overrun.</p>

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Issue	Comment
Concerns regarding the structural integrity – Reports of concrete cancer.	<p>Conditions have been included to ensure the structural integrity of the development and that the works comply with the Building Code of Australia.</p> <p>This includes a report from a suitably qualified engineer confirming suitability and stability of the site for development.</p>

- Port Botany

Issue	Comment
Acoustic measures on site.	The subject development is located 1.8km (to the nearest point) from the Port Botany operations. The site will operate within its existing approvals for the restaurant and café.
Potential for port related noise and vibration to have an impact on future businesses.	The impact of noise and vibration on this development proposal from the Port is considered minimal.

- Macquarie business school

Issue	Comment
No detail on the nature or quality of the decorative artwork to be applied to the north side block wall.	Agree, it is a condition of consent that a concept plan be provided to Council.
Positioning of the exhaust system	<p>The existing riser (exhaust) is not proposed to change.</p> <p>The works do not relate to the fit out of the interior of the buildings. It is understood that the future tenants will undertake internal alterations to suit their needs.</p>
Impacts of the exhaust system	No changes proposed to the existing exhaust system.
Any proposal to employ local/indigenous companies for the construction works.	<p>The choice of construction company used for the works will be up to the applicant and the owner of the site.</p> <p>It is inappropriate for Council to determine the company to conduct the works.</p>

Issue	Comment
Loss of car parking spaces and exacerbation of parking shortage.	The reduction to car parking has been reviewed by Council's Development Engineer, their full assessment can be seen in the referrals section of this report.
Concerned that separate parking will not be provided for the residential component.	No changes to the residential component are proposed, apart from the lift providing accessible access. The residential component does not have separate parking and will continue to operate in this way.
How affordable will the apartments be, will council hold them accountable to being affordable.	The apartments are currently unoccupied, which is an undesirable outcome. There are no changes to number and type of apartments. Council cannot hold the applicant accountable for the affordability of these pre-existing apartment and they are not seeking affordable housing provisions under the proposal.
What measures are going to be taken to enhance the heritage value of this area?	The proposal has been reviewed by Council's Heritage Officer. Their full comments can be seen in the referrals section of this report.
The height exceedance will set a precedent that other mixed use (or residential) buildings can exceed this height development standard.	The existing development exceeds the Building Height Development Standard. This historical exceedance means that the proposed exceedance is below the existing maximum building height and therefore will not set a precedent for other developments.
The scale and form of the proposed external look is not compatible with the dominant heritage elements.	The proposal has been reviewed by Council's Heritage Officer. Their full comments can be seen in the referrals section of this report. Council considers that the proposed external changes are a large improvement on the existing development. The development is not located within the Heritage Conservation area. The materials and finishes are compatible with the existing structure and neighbouring development.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021* and the Sustainable Buildings SEPP. The submitted BASIX Certificate includes a BASIX materials index which calculates the embodied emissions and therefore the consent authority can be satisfied the embodied emissions attributable to the development have been quantified.

6.2. SEPP (Biodiversity and Conservation) 2021

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.

The site is subject to the water catchment considerations in Part 6 of the SEPP. The proposal will not alter roofed areas and will not affect stormwater discharge from the site (quality or quantity).

Foreshore access will not be affected and the works are minor in the context of the SEPP. The relevant considerations in the SEPP do not give rise to any concerns.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

Chapter 2 of the Resilience and Hazards SEPP relates to coastal management. Clause 2.10 of the SEPP requires the consent authority to consider whether the proposal is likely to cause an adverse impact on the coastal environment area.

The proposal is unlikely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological, or ecological environment. The proposal is unlikely to impact on coastal environmental values, natural coastal processes, or marine vegetation and fauna.

The proposal is unlikely to cause an adverse impact on access to and along the foreshore and is unlikely to result in an adverse impact to Aboriginal cultural heritage, practices, and places, or the use of the surf zone.

On this basis, Council is satisfied that the development has been designed to avoid an adverse impact on the surrounding coastal environment area.

Chapter 2 of the Resilience and Hazards SEPP relates to coastal management. Clause 2.11 of the SEPP requires the consent authority to consider whether the proposal is likely to cause an adverse impact on the coastal use area.

The proposal is unlikely to cause an adverse impact on access to and along the foreshore and is unlikely to result in an adverse impact to the visual amenity and scenic qualities of the coast.

The proposal is unlikely to result in an adverse impact to Aboriginal cultural heritage, practices, and places, or other cultural and built environment heritage.

On this basis, Council is satisfied that the development has been designed to avoid an adverse impact on the surrounding coastal use area.

Chapter 4 - Remediation of Land

The provisions 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 as a food and drink premises and shop-top housing purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development involving alterations and additions to a dwelling are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned E1 Local Centre under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent. The site immediately adjoins (to the south) a classified road (Anzac Parade – SP2) and open space to the north (RE1), to the northeast the site adjoins the R2 zone. Across the other side of Anzac Parade (to the south) it is zone C1 – National Parks and Nature Reserves.

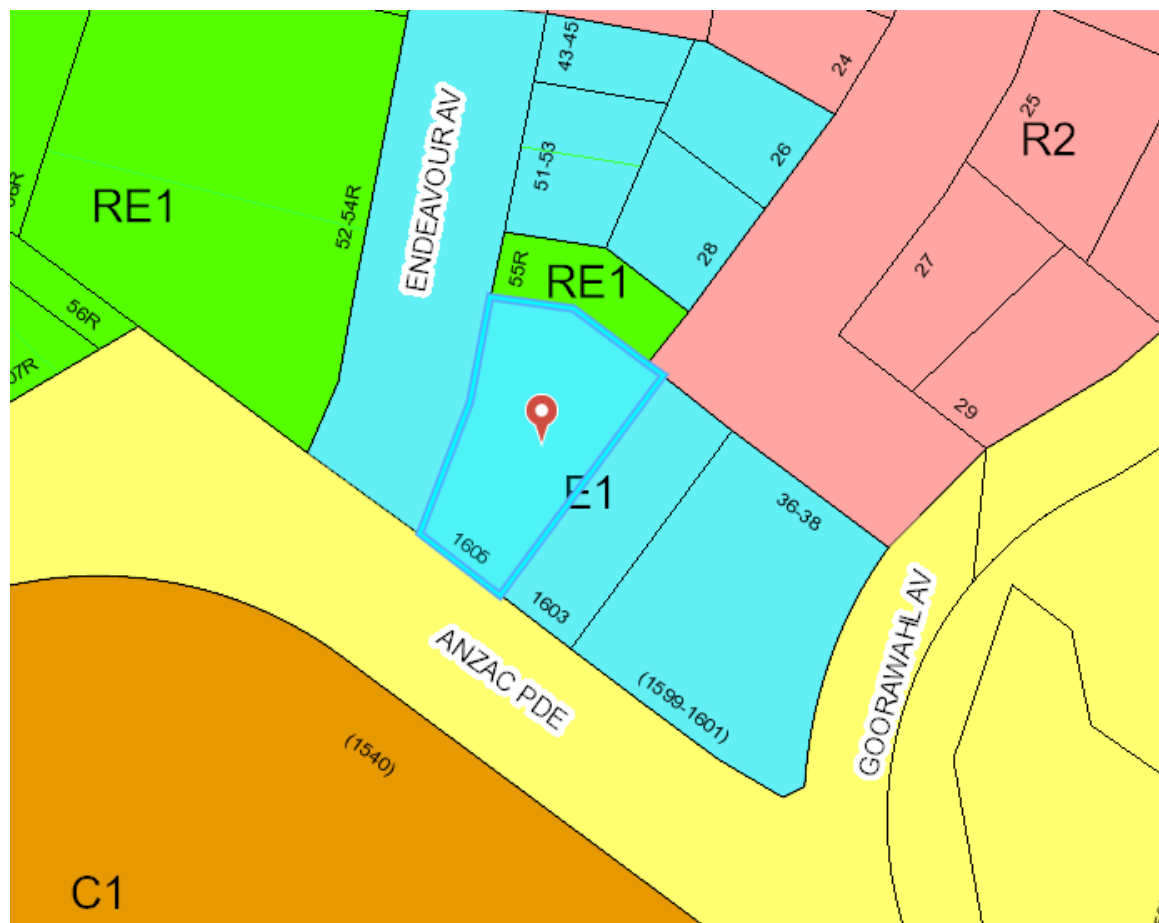


Figure 14: Zoning of 1605 Anzac Parade and surrounding area (Source: Interactive Mapping)

No changes of use are proposed. The existing restaurants “food and drink premises” and shop-top housing are permitted within the zone.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will comply with the following relevant objectives:

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings
- To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.

- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*
- *To facilitate a safe public domain.*
- *To support a diverse, safe and inclusive day and night-time economy*

The mix of uses is not being altered, investment is being facilitated, the economy and employment opportunities will be supported and facilitated, residential uses are better accessed; ground floor non-residential uses are being retained, while overall access and street activation improved. Public transport usage is encouraged by no additional parking, the urban design aspects of the building will be improved, no significant amenity impacts on neighbours will result, the public domain will be able to be activated again, with better surveillance and diverse usage throughout the day will not be compromised.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	1:1	1.065:1 (existing FSR is 1.0297:1)	No
CI 4.3: Building height (max)	9.5m	11.8m (existing building height is 12.19m)	No

Council agrees with the documentation provided that calculates the Development's proposed Building Height and Floor Space Ratio.

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 5.10 - Heritage conservation

The site is not listed as a heritage item nor is it located within a Conservation Area within RLEP 2012. The site is proximate to other heritage items and a Conservation Area.

The nature of the works are minor in the context of the setting and significance of nearby heritage items and the Conservation Area to the south and west. The building envelope is not altering, and the works will support re-activation of the site, which in turn will assist in the surveillance and perceived safety and enjoyment of the surrounding area, including heritage assets.

The application was referred to Council's Heritage Team, who provided the following conclusion:

The proposed scheme is acceptable from a heritage perspective. No heritage conditions are applicable.

The full comments can be seen in the referrals section of this report.

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 (%)
CI 4.4: Floor space ratio (max)	1:1	1.065:1	53.83m ²	6.5%
CI 4.3: Building height (max)	9.5m	11.8m	2.3m	24.21%

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

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

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

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

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

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

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

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

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

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

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

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

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and

2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

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

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

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

The applicant's written justification for the departure from the FSR is contained in Appendix 2.

- i) **Has the applicant's written request demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?**

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

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

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

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

- The perceived size and scale of the building is unchanged relative to the surrounding public domain, and relative to adjoining privately-owned properties;
- The proposed FSR does not alter the size and physical scale of the building;
- The FSR non-compliance arises from internal works and is technical due to converting internal parking to other space;
- The number of storeys is not being altered;
- The street frontage height to all 3 frontages to public land is not being altered;
- Setbacks of the building are not being altered;
- The proposal is consistent with the objectives and controls within Part D6 of Randwick Development Control Plan 2013, specifically applying to this area, as outlined in the Statement of Environmental Effects

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

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

- The building is better articulated than the current building.
- The proposed FSR does not alter the external articulation, as it is internal.
- The proposed FSR does not arise from environmental and/or energy needs, although they relate to forms of building performance and the circulation and

accessibility performance of the building will be improved as a result of the proposed works and technical increased FSR.

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

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

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

- The site does not immediately adjoin any building identified as a heritage item. The site is not within a conservation area.
- The site is opposite a National Park which is both listed as a heritage item and within a Conservation Area in RLEP 2012.
- However, the proposal and non-complying FSR component will have absolutely no adverse impact on the scale and character of nearby Heritage Items, nor the Conservation Area, given the works leading to the FSR non-compliance are internal.

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

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

- The proposed additional FSR does not alter the building form at all (the impacts of the new lift height are addressed separately in relation to the FSR contravention).
- The proposed additional FSR will cause no adverse privacy impacts and no adverse view impacts.
- At the same time, the amenity for the users of the subject site will be improved.
- The proposal is entirely consistent with all objectives of the FSR standard, despite the contravention, and therefore it can reasonably be concluded compliance is unnecessary and unreasonable

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

ii) 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:

- a) The FSR non-compliance wholly relates to internal works;
- b) The FSR non-compliance is "technical" in nature in that areas currently excluded from GFA calculations are being converted into areas that are not excluded;
- c) Even accounting for a conservative FSR calculation approach, the FSR is only being increased by just over 3% compared to the existing situation (noting the building currently exceeds the FSR standard) and 6.5% above the FSR standard overall, which is not a major non-compliance;
- d) The proposed works do not increase the intensity of the development, noting no additional areas of seating are created for café/restaurant patrons;
- e) The proposed FSR will not increase traffic generation;
- f) The FSR non-compliance does not alter the overall building bulk, setbacks/building footprint, street frontage height, number of storeys or perception of the building from the surrounding area;
- g) The overall scale and form is compatible with adjoining development;
- h) There will be no anticipated adverse impacts from the FSR non-compliance on

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- surrounding land, including relating to views, overshadowing, privacy and visual impacts;
- i) The proposal is consistent with the desired character of the area and the zone objectives (refer to the SEE);
 - j) The proposed FSR and bulk will have no adverse heritage impacts;
 - k) The proposed FSR will have no adverse natural environmental impacts;
 - l) Despite the lack of impacts to adjoining and surrounding land, the proposal will result in benefits to the users and residents at the site;
 - m) In terms of the Objects of the EPA Act, the proposal, including the non-compliant Height elements, is consistent with the following Objects of the Act:
 - i. *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations* – noting retaining and adapting an existing built asset is appropriate as well as adaptive reuse of existing materials and improved accessibility;
 - ii. *to promote the orderly and economic use and development of land* – noting the well-considered siting of the proposed alterations;
 - iii. *to promote the sustainable management of built and cultural heritage* – by no adverse impacts on the heritage significance of the surrounds from the FSR non-compliance;
 - iv. *to promote good design and amenity of the built environment* – for the same reasons above and an appropriate design for the site in its context, including the proposed FSR;
 - v. *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants* – as the proposal allows the building to be adapted to better suit the users and residents, and supports accessibility and healthy living.
 - n) The overall benefits of the proposed internal alterations leading to the FSR non-compliance include improved circulation and accessibility within the building and these benefits outweigh any negative impacts, such that the balance of environmental considerations favour granting approval, despite the FSR non-compliance.

Assessing officer's comment: In conclusion, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

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

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

The applicant's written justification for the departure from the Building Height is contained in Appendix 2.

The applicant's written request seeks to justify the contravention of the Building Height 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 Building Height 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 perceived size and scale of the building is unchanged relative to the surrounding public domain, and relative to adjoining privately-owned properties;
- The proposed height is less than the existing building height and lower than levels on the existing roof;
- The lift overrun height makes allowance for a lift overrun to not exceed the height shown;
- The number of storeys is not being altered;
- The street frontage height to all 3 frontages to public land is not being altered;
- The lift is located away from site boundaries;
- Setbacks of the building are not being altered;
- The proposal is consistent with the objectives and controls within Part D6 of Randwick Development Control Plan 2013, specifically applying to this area, as outlined in the Statement of Environmental Effects

(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 applicant's written justification demonstrates that this objective is satisfied by noting that:

- The site does not immediately adjoin any building identified as a heritage item. The site is not within a conservation area.
- The site is opposite a National Park which is both listed as a heritage item and within a Conservation Area in RLEP 2012.
- However, the proposal and non-complying height component will have absolutely no adverse impact on the scale and character of nearby Heritage Items, nor the Conservation Area.

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

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

- The proposed additional height for the lift will not adversely impact neighbours in terms of visual bulk or overshadowing.
- The proposal will cause no adverse privacy impacts and no adverse view impacts.
- At the same time, the amenity for the users of the subject site will be improved.
- The proposal is entirely consistent with all objectives of the Building Height standard, despite the contravention, and therefore it can reasonably be concluded compliance is unnecessary and unreasonable.

Assessing officer's comment: The applicant's written request has adequately demonstrated that compliance with the building height 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 Building Height development standard as follows:

- a) The footprint of the height exceedance/lift is relatively minor, at around 4sqm;
- b) The height non-compliance arises from adopting a conservative approach of using the "Merman" method of height measurement, to existing excavated ground levels. It is arguably more appropriate to use the "Bettar" method given the wholesale past excavation of the site, to the site boundaries. If the Bettar method was applied, given the lift is in an area of the site where excavation is close to the maximum, the proposed lift height would comply, as the height of excavation in the part of the site where the lift is proposed is greater than 2.1m, being the technical height exceedance. This also

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means that relative to perceived existing ground levels around the site, in and from the public domain, the perceived external height is compliant (this is shown in a previous extract of a section);

- c) The non-compliance essentially arises from localised and unique site characteristics related to site slope;
- d) In any event and using the Merman method of height measurement, the degree of height non-compliance is relatively minor;
- e) The proposed height is less than the existing building maximum height;
- f) The location of the height exceedance is well setback from the interface with the public domain surrounding the site on three (3) sides, and will not be visible from the public domain;
- g) The height non-compliance does not alter the overall building bulk, setbacks/building footprint, street frontage height, number of storeys or perception of the building from the surrounding area;
- h) The overall height and form is compatible with adjoining development;
- i) There will be no anticipated adverse impacts from the height non-compliance on surrounding land, including relating to views, overshadowing, privacy and visual impacts;
- j) The proposal is consistent with the desired character of the area and the zone objectives (refer to the SEE);
- k) The proposed height will have no adverse heritage impacts;
- l) The proposed height will have no adverse natural environmental impacts;
- m) Despite the lack of impacts to adjoining and surrounding land, the proposal will result in benefits to the users and residents at the site;
- n) In terms of the Objects of the EPA Act, the proposal, including the non-compliant Height elements, is consistent with the following Objects of the Act:
 - i. *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations* – noting retaining and adapting an existing built asset is appropriate as well as adaptive reuse of existing materials and improved accessibility;
 - ii. *to promote the orderly and economic use and development of land* – noting the well-considered siting of the proposed additions;
 - iii. *to promote the sustainable management of built and cultural heritage* – by no adverse impacts on the heritage significance of the surrounds from the Building Height non-compliance;
 - iv. *to promote good design and amenity of the built environment* – for the same reasons above and an appropriate design for the site in its context, including the proposed Building Height;
 - v. *promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants* – as the proposal allows the building to be adapted to better suit the users and residents, and supports accessibility and healthy living
- o) The overall benefits of the proposed lift leading to the height non-compliance outweighs any negative impacts, such that the balance of environmental considerations favour granting approval, despite the height non-compliance.

Assessing officer's comment: In conclusion, the applicant's written request has adequately demonstrated that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

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

9. Environmental Assessment

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

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 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in	The issues raised in the submissions have been addressed in this report.

Section 4.15 'Matters for Consideration'	Comments
accordance with the EP&A Act or EP&A Regulation	
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

Reduction of car parking

The proposal will result in the loss of two car parking spaces, which will increase the car parking shortfall on site. This proposed reduction in car parking has been reviewed by Council's Development Engineer and determined to be acceptable on merit.

The approved plan of the parking is shown below (from October 2014). However, it appears there has been a slight rearrangement. The current (existing) plan (provided by the applicant) is shown below as well. From considering the report from DA/26/2002 it is understood that at that time 1 space was allocated to each of the three (3) two-bedroom units.

Some of the key considerations from a planning perspective include:

- The spaces being removed are difficult to access
- The proposed lift and entranceways are located in the most logical place to provide accessibility to the building.
- The proposal includes additional bike parking spaces.
- The addition of a café storage and prep area is being provided for without increasing the exterior footprint of the development.
- Technically, these existing car spaces are not compliant with the Australian Standard for width.
- A condition has been imposed for a Strata Parking Management Plan to be created.
- There is public parking available surrounding the development, in addition to frequent bus services.

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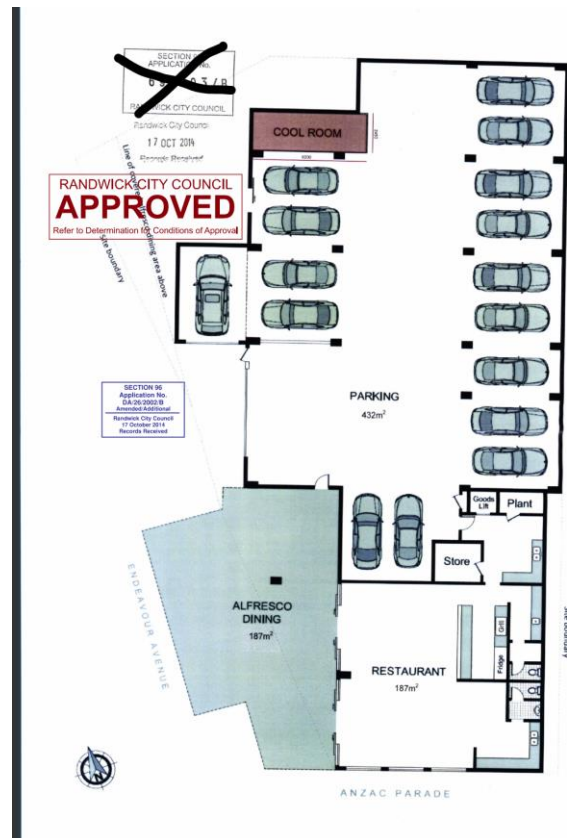


Figure 15: Approved parking plan under DA/26/2002/B

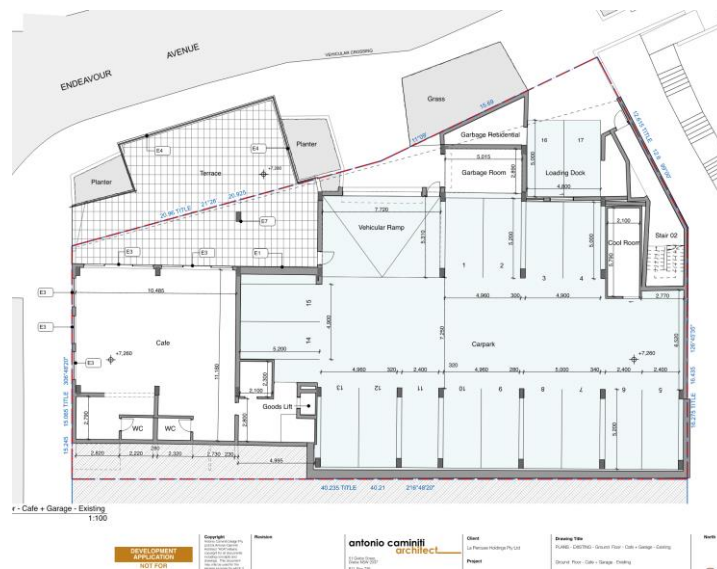


Figure 16: Existing plan of garage level at 1605 Anzac Parade (Source: Applicant).

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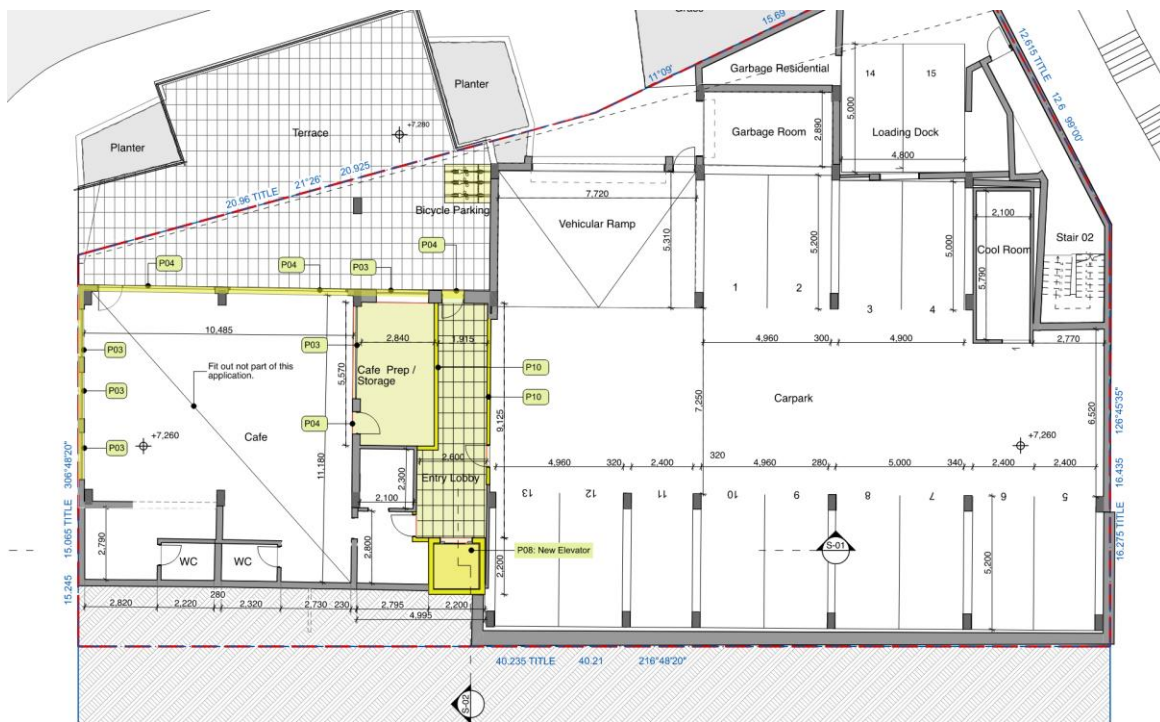


Figure 17: proposed plan for garage level at 1605 Anzac Parade (Source: Applicant)

Awning structure

The existing awning for the restaurant is at RL 13.86 and has external blinds. The awning over the building entrance (commercial and residential) sits lower at the boundary and then slopes up. The need to replace these awnings is evident from the condition illustrated in the below image.



Figure 18: Existing awning, which contains retractable blinds

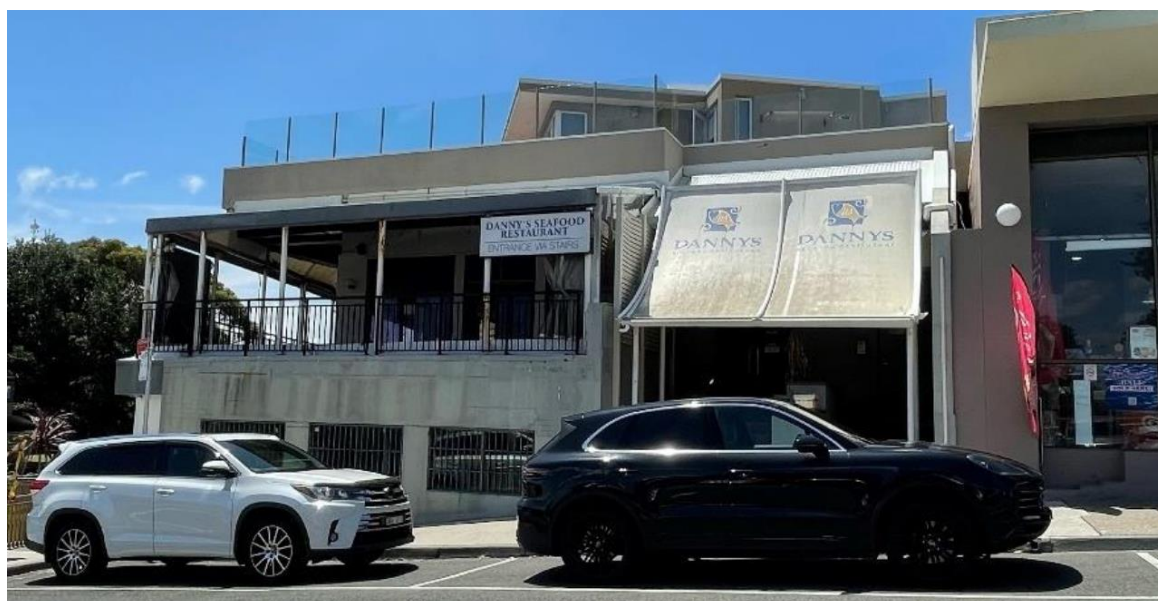


Figure 19: Existing awning, which contains retractable blinds

The replacement awning will increase the height of this awning to RL 14.0 (lower section) and RL14.9 for the upper section. These awnings will have a steel frame and external blinds, which retract along the perimeter of the buildings. The height along the perimeter is only being increased by 140mm.

Located behind the perimeter is the higher steel framed awning, which will include aluminium framed motorised louvres.

The configuration of the awnings and louvres can be seen below.

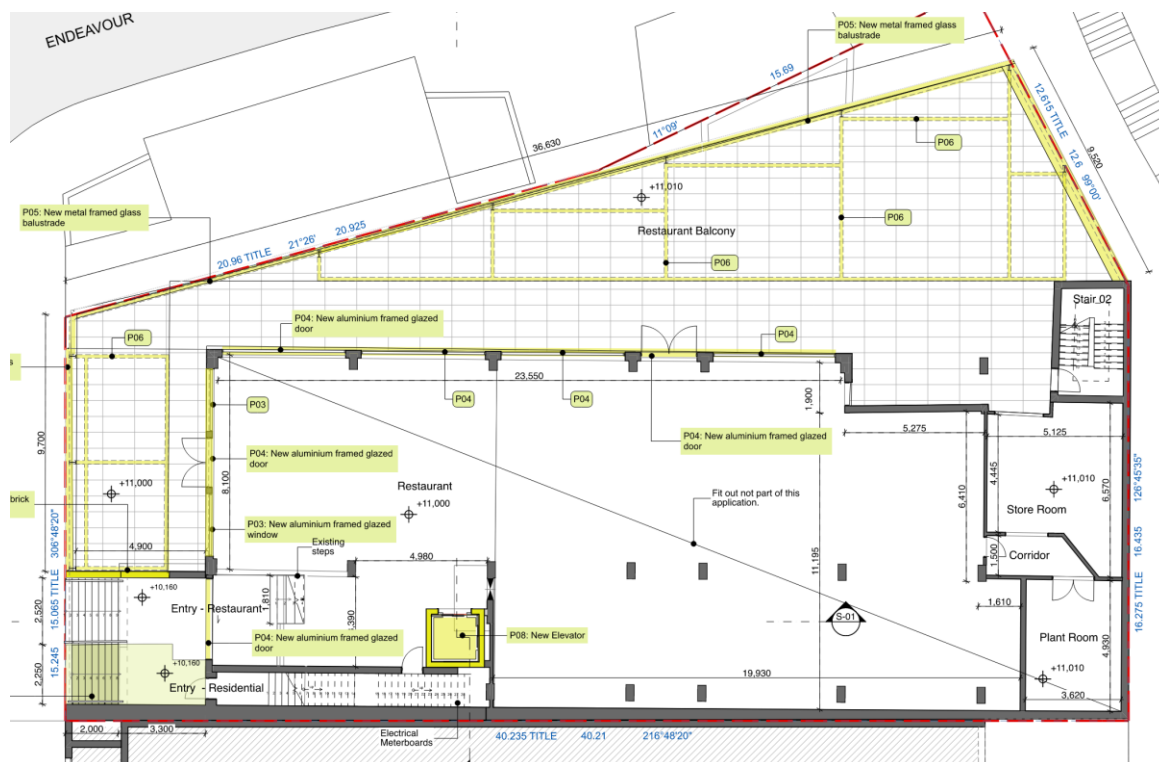


Figure 19: First Floor Plan - detailing location of awnings and louvres (Source: Applicant)

The entire structure is below the floor level of the level 2 residential areas.

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Figure 20: Northwest elevation showing the proposed awning structure (Source: Applicant)

Overall, these awning structures along the restaurant level are appropriate and are supported by Council as an appropriate replacement.

Awning over Anzac Parade Entrance:

The replacement entrance awning will sit at the same level as the existing awning but will be flat instead of angled. A condition has been included that this awning must be setback to the property boundary and that no approval is granted for this awning to extend over Council's footpath.

The applicant can apply for a local approval Under the Local Government Act 1993 and Roads Act 1993 to construct an awning over the Council footpath should they decide to undertake these works.

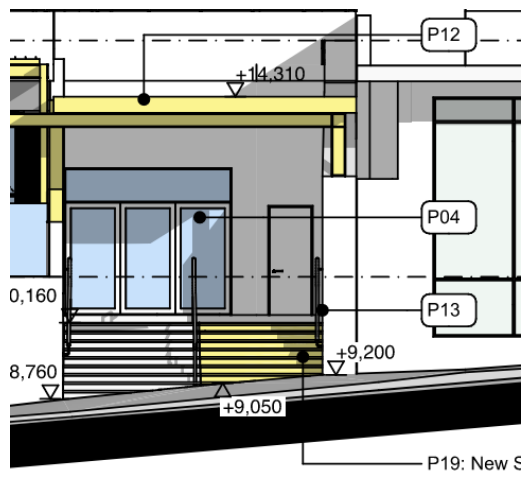


Figure 21: Southwest elevation showing the awning over the entrance (Source: Applicant)

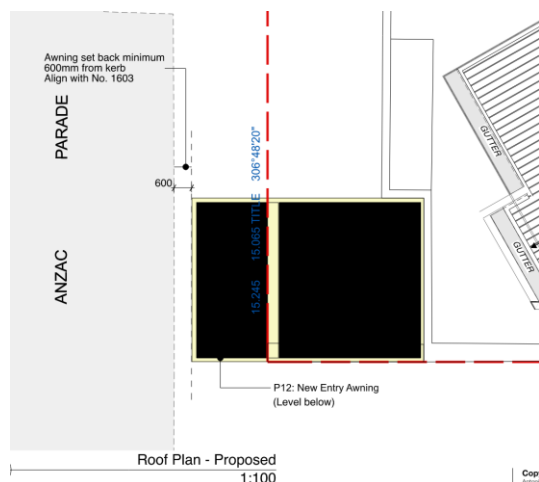


Figure 22: Proposed location of awning which must be setback

10. Conclusion

That the application for alterations and additions to an existing mixed use development, including the replacement of the entry and terrace awning structures, balustrades, exterior glazing and associated fabric, extension of access stair, façade maintenance works and internal reconfiguration to enable the installation of a new lift, entrance lobby and layout changes to an apartment and commercial tenancy (Variation to Building Height and FSR) 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 E1 Local Centre zone in that, the proposal results in:
 - *provision a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area*
 - *encourages investment in local commercial development that generates employment opportunities and economic growth.*
 - *enables residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
 - *encourage business, retail, community and other non-residential land uses on the ground floor of buildings*
 - *maximising public transport patronage and encourage walking and cycling*
 - *facilitates a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*
 - *minimises the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones*
 - *facilitates a safe public domain*
 - *support a diverse, safe and inclusive day and night-time economy*
- The scale and design of the proposal is considered to be suitable for the location, generally consistent with the current built form outcome and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.
- The proposed development will make a positive contribution to the commercial centre.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

Background:

The subject site is not a heritage item or located within a heritage conservation area. However, it is located in the vicinity of the following items/ sites:

- 'Kamay Botany Bay: botanical collection sites', listed on the National Heritage Register;
- 'Former La Perouse Aboriginal Reserve and Mission Aboriginal Place', listed under the NPW Act 1974;
- 'Kamay Botany Bay National Park (Botany Bay National Park, La Perouse Headland, Yarra Bay and Frenchmans Bay) Heritage Conservation Area' listed under Schedule 5 of the Randwick LEP 2012 (C5 – including local and State parts); and
- local heritage items listed under Schedule 5 of the Randwick LEP 2012, including Item nos. 167, 168, 169, 166, 170, 171 and 173.

Comments:

- *The proposed scheme is acceptable from a heritage perspective. No heritage conditions are applicable.*

1.2. Development Engineer

General Comments

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

Parking Provision Comments

Part B7 of Randwick Council's Development Control Plan 2013 specifies the following applicable parking rates relevant to the subject proposal.

Restaurants/Cafes

- 1 car space per 40m² for the first 80m²,
- 1 car space per 20m² thereafter.

Multi-Dwelling Housing

- 1.2 car spaces per 2-bedroom dwelling,
- 1 visitor car space per 4 dwellings.

Current situation

The submitted architectural plans depict that the site currently comprises of 539.0m² GFA of indoor dining and 290m² of outdoor dining along with three 2-bedroom apartments. The current arrangement generates a parking demand of 5 car spaces (including 1 visitor space) for the apartments and 39 car spaces for the restaurant and cafe.

The current parking layout is inclusive of 17 standard car spaces.

Proposed Development

The proposal consists of the addition of an entry lobby and associated lift to allow for disability accessibility, generating an extra 29.3m² of net gross floor area (GFA).

The DCP dictates that the parking demand must be as follows:

*Restaurant/Café demand = (539 + 290 + 29.3) – (80) / 20 = 38.9 spaces + 2 spaces
= 41 spaces*

Apartment parking demand = (3 x 1.2) + (1 visitor) = 5 spaces (unchanged)

TOTAL PARKING DEMAND	= 41 + 5	= 46 spaces
<u>CAR PARKING PROVIDED</u>	= 2 loading dock spaces = 13 standard car spaces <u>= 15 car spaces (TOTAL)</u>	
Parking Shortfall	= 31 car spaces	
<u>TOTAL BICYCLE PARKING PROVIDED</u>	= 3 bicycle spaces	

Currently, the existing parking arrangement does not comply with the proposed parking demand as per Council's requirements. To make up for the parking shortfall, the proposal aims to provide 3 bicycle parking spaces. Additionally, the "Parking & Transport Impact Assessment" prepared by Fernway Engineering outlines various elements relating to the nature of the proposed business, availability of public transport and on-street parking, etc. Therefore, Development Engineering raises no objection to the proposed development.

Waste Management Comments

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 and 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 site will operate.

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

Building Height:

27 February 2025



Request to Contravene the Building Height Development Standard under Clause 4.6 of R.L.E.P. 2012 –

1605 Anzac Parade, La Perouse
(Alterations and Additions)



Clause 4.6 Request – Building Height – 1605 Anzac Pade, La Perouse

Introduction

This written contravention request related to Building Height supports a development application (DA) for alterations and additions to an existing mixed-use building at No. 1605 Anzac Parade, La Perouse. It should be read in conjunction with the Statement of Environmental Effects by Perica and Associates Urban Planning Pty Ltd to which it is related, plans by Antonio Caminiti Architect and the information submitted with the DA through the NSW Planning Portal.

The proposal exceeds the maximum Building Height ("Height") control in Clause 4.3 of Randwick Local Environmental Plan 2012 ("RLEP 2012"). This control is a "development standard" in accordance with the definition in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act 1979").

Clause 4.6 of RLEP 2012 relevantly states:

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—*
 - (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.*
- (4) –(8) ... *[not relevant]*

1. Identifying and quantifying the non-compliance

Clause 4.3 of Randwick Local Environmental Plan 2012 ("RLEP 2012") specifies a maximum Building Height of 9.5m, by reference to the relevant LEP Map (extract below).

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Clause 4.6 Request – Building Height – 1605 Anzac Pade, La Perouse

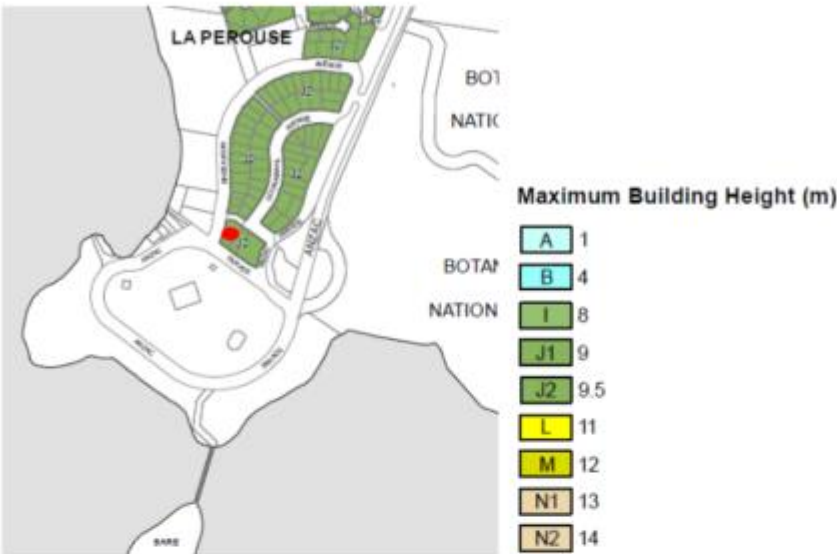


Figure 1 – Building Height Map Extract – RLEP 2012

The site has a mapped maximum height limit of 9.5m (above existing ground level). The proposed new works include a new accessible lift, which extends for 3 storeys including into the roof space, but not over the existing maximum height of the building. The maximum height of the new lift is 11.6m, derived from surveyed levels to the top of lift at RL 18.85 (source: Antonio Caminiti Architect).

There are two potentially different methods to measure the existing ground level datum, both of which have been adopted by the Land and Environment Court of NSW. One involves establishing/interpolating existing ground level from footpaths/perimeter ground levels, where a site has been extensively excavated (i.e. *Bettar v Council of the City of Sydney* [2014], NSWLEC 1070, or “Bettar”). The other involves measurement from the lowest level of an existing building vertically at every point, even if to a basement level and where that is vertically below new works (i.e. *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, or “Merman”).

There has been past excavation at the site to the site perimeter (due to the site slope), including at the lowest level where the carpark is, and such excavation is deepest towards the east of the site where the proposed lift is located. So, for the purpose of thoroughness, the architect has calculated the derived maximum height of new works using both the Bettar and Merman approach.

However, for the purpose of this Clause 4.6 Contravention request, the Merman approach has been adopted, being the most conservative, yet arguably not the most appropriate.

The following table provides the existing and proposed Building Height, using the Merman method:



Clause 4.6 Request – Building Height – 1605 Anzac Pade, La Perouse

Measure	Merman Approach (max)
Existing Building Height	12.19m (28.3% exceedance)*
Proposed Building Height	11.8m (24.21% exceedance)*

Table 1 – Building Height (figures by Antonio Caminiti Architect and illustrated on plans)*

*Note – the above numerical exceedances have included an additional 200mm to account for the basement/lowest floor slab thickness, in accordance with the findings of *Hayek v Randwick City Council [2024] NSWLEC 1631* [although I personally disagree with that finding].

The height exceedance is best depicted in the following axonometric diagram (from the south-east – lift shown yellow amongst surrounding roof):

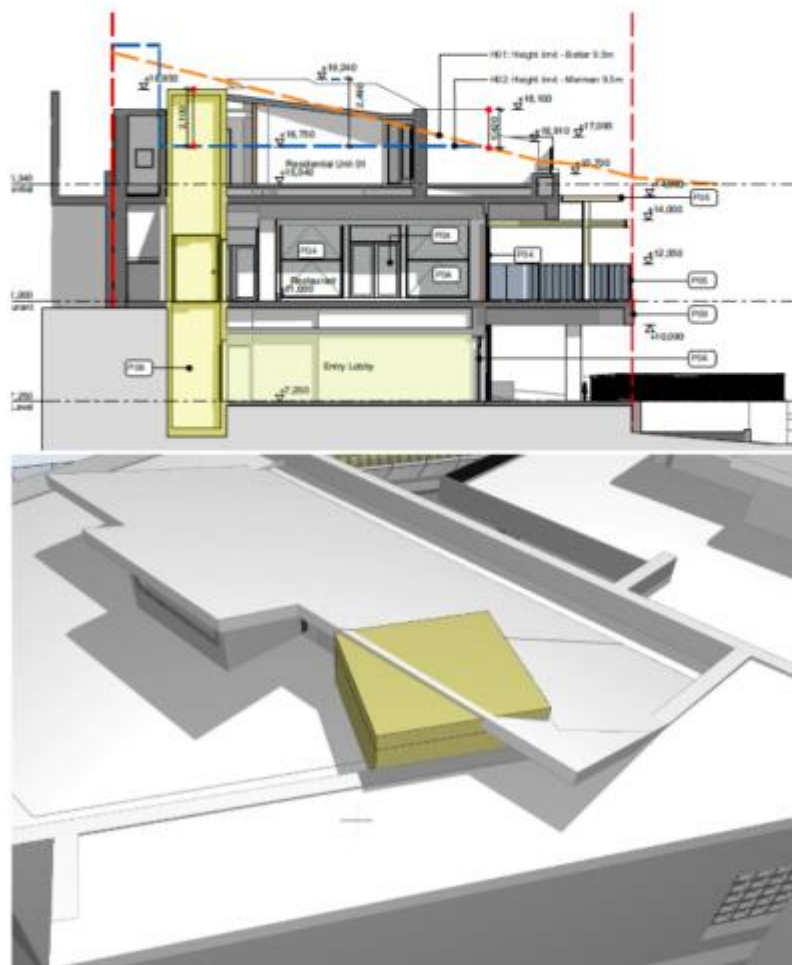


Figure 2 – Height exceedance – Merman (orange) and Bettar (blue) approaches

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PERICA & ASSOCIATES
URBAN PLANNING PTY LTD

Clause 4.6 Request – Building Height – 1605 Anzac Pade, La Perouse

As mentioned, the proposal is lower than the existing maximum height of the building (being 12.19m, RL 19.24) by 390mm or 3.3% and is also lower than the existing roof in the location of the new lift (see above).

2. Objectives of Clause 4.6 of RLEP 2012

The objectives of Clause 4.6 of RLEP 2012 are:

- (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.*

There was some legal debate about the requirement to specifically address these objectives. On one hand, the objectives are not explicitly required to be addressed or specifically considered (as typically occurs in zone objectives), and compliance with the objectives of the Clause could be read to arise when compliance with the operative provisions of the Clause are met, being the sub-clauses that follow the objectives. In other words, the objectives state what complying with the operative provisions would achieve. On the other hand, if this was the case then the objectives would have no work to do.

This matter was recently considered and determined in a judgement by the Chief Justice of the Land and Environment Court of NSW in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. That judgement held that the objectives of Clause 4.6 do not need to be specifically considered, and specifically should not be read to compel comparison with a complying development proposal.

Accordingly, compliance with the objectives of Clause 4.6 (of appropriate flexibility and better outcomes) can be assumed if the operative provisions and thresholds of Clause 4.6 are met. The objectives state what the operative clauses are designed to do.

3. Clause 4.6 (3)(a) and 3(b) of RLEP 2012

Clause 4.6(3) of RLEP 2012 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.*

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

The submission and consideration of Objections under State Environmental Planning Policy No. 1 ("SEPP 1 Objection") and the issue of compliance being "unreasonable or unnecessary" was well summarised in the Land and Environment Court judgement *Wehbe v Pittwater Council*



Clause 4.6 Request – Building Height – 1605 Anzac Parade, La Perouse

[2007] NSWLEC 827 ("the Wehbe case"). While that judgement applied to SEPP 1 Objections and not Clause 4.6 Variation requests, the approach in that case has been accepted in subsequent court cases related to Clause 4.6 Variation Requests.

The onus lies upon the applicant to demonstrate this in a written request (being this submission) and that requiring compliance with the particular standard would be unnecessary or unreasonable. In this regard, the Wehbe case outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable, by establishing:

1. Compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance; or
2. That the objectives of the standard are not relevant to the proposal; or
3. Requiring compliance with the development standard would "thwart" the achievement of the objectives of that standard; or
4. The development standard in question has been "virtually abandoned" by the Council; or
5. The zoning of the land is not appropriate for the site and therefore the associated standards are not appropriate (with some qualifications).

This written request does not rely on a case related to pathways 2-5 above. However, it is noted that variations to the Building Height standard do occur on a case-by-case basis within the Randwick LGA, and such variations are not uncommon in the Municipality, especially in hilly areas, like the subject site, given floor levels of buildings are preferably level for accessibility.

This written request does argue compliance with underlying objectives of the standard in question are achieved.

The objectives for the Building Height standard are found in Clause 4.3(1) of RLEP 2012, as follows:

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

The following responds to these objectives:

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

The proposal is considered compatible with the desired future character of the area, for the following reasons:

- The perceived size and scale of the building is unchanged relative to the surrounding public domain, and relative to adjoining privately-owned properties;



Clause 4.6 Request – Building Height – 1605 Anzac Pade, La Perouse

- The proposed height is less than the existing building height and lower than levels on the existing roof;
- The lift overrun height makes allowance for a lift overrun to not exceed the height shown;
- The number of storeys is not being altered;
- The street frontage height to all 3 frontages to public land is not being altered;
- The lift is located away from site boundaries;
- Setbacks of the building are not being altered;
- The proposal is consistent with the objectives and controls within Part D6 of Randwick Development Control Plan 2013, specifically applying to this area, as outlined in the Statement of Environmental Effects by the same author as this Contravention Request (not repeated to avoid repetition – refer pg. 25-26 of the SEE).

(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 does not immediately adjoin any building identified as a heritage item. The site is not within a conservation area.

The site is opposite a National Park which is both listed as a heritage item and within a Conservation Area in RLEP 2012.

However, the proposal and non-complying height component will have absolutely no adverse impact on the scale and character of nearby Heritage Items, nor the Conservation Area.

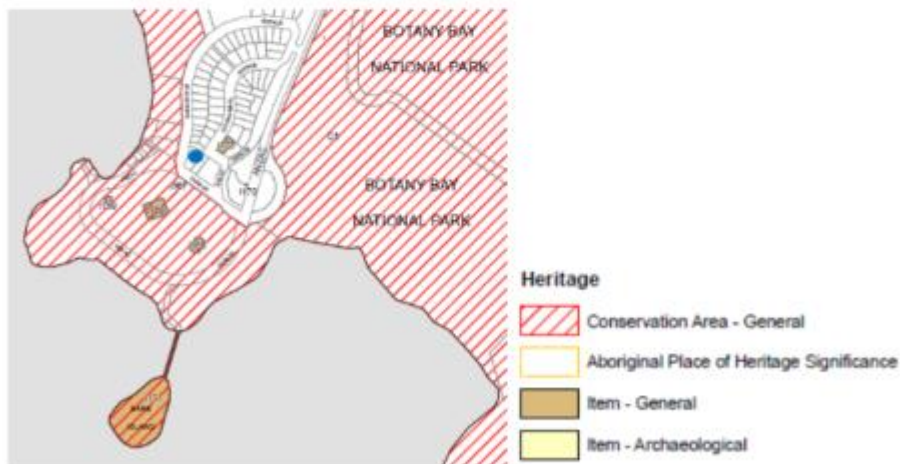


Figure 4 – Heritage Extract – RLEP 2012



Clause 4.6 Request – Building Height – 1605 Anzac Pade, La Prouse

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

The proposed additional height for the lift will not adversely impact neighbours in terms of visual bulk or overshadowing.

The proposal will cause no adverse privacy impacts and no adverse view impacts.

At the same time, the amenity for the users of the subject site will be improved.

The proposal is entirely consistent with all objectives of the Building Height standard, despite the contravention, and therefore it can reasonably be concluded compliance is unnecessary and unreasonable.

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

The case *Four2Five v Ashfield Council* [2015] NSWLEC 1009, NSWLEC 90, NSWCA 248 raises the issue that the grounds should relate to a site and specific proposal, rather than generic reasons.

The case *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 highlighted that:

1. The term "environmental planning grounds" is not defined and would include the objects of the EPA Act (Section 1.3);
2. The grounds must relate to the contravention of the development standard in question, not the whole development; and
3. The consent authority must indirectly be satisfied the applicant's written request provides sufficient environmental planning grounds, not directly form an opinion about there being sufficient environmental planning grounds to justify the contravention.

Also, given the term "environmental planning grounds" is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

In this context, the following environmental planning grounds are given to justify the proposed contravention of the Building Height development standard, on this particular site and for this particular development:

- a) The footprint of the height exceedance/lift is relatively minor, at around 4sqm;
- b) The height non-compliance arises from adopting a conservative approach of using the "Merman" method of height measurement, to existing excavated ground levels. It is arguably more appropriate to use the "Bettar" method given the wholesale past excavation of the site, to the site boundaries. If the Bettar method was applied, given the lift is in an area of the site where excavation is close to the maximum, the proposed lift height would comply, as the height of excavation in the part of the site where the lift is proposed is greater than 2.1m, being the technical height exceedance. This also means that relative to perceived existing ground levels around the site, in and from the



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public domain, the perceived external height is compliant (this is shown in a previous extract of a section);

- c) The non-compliance essentially arises from localised and unique site characteristics related to site slope;
- d) In any event and using the Merman method of height measurement, the degree of height non-compliance is relatively minor;
- e) The proposed height is less than the existing building maximum height;
- f) The location of the height exceedance is well setback from the interface with the public domain surrounding the site on three (3) sides, and will not be visible from the public domain;
- g) The height non-compliance does not alter the overall building bulk, setbacks/building footprint, street frontage height, number of storeys or perception of the building from the surrounding area;
- h) The overall height and form is compatible with adjoining development;
- i) There will be no anticipated adverse impacts from the height non-compliance on surrounding land, including relating to views, overshadowing, privacy and visual impacts;
- j) The proposal is consistent with the desired character of the area and the zone objectives (refer to the S.E.E.);
- k) The proposed height will have no adverse heritage impacts;
- l) The proposed height will have no adverse natural environmental impacts;
- m) Despite the lack of impacts to adjoining and surrounding land, the proposal will result in benefits to the users and residents at the site;
- n) In terms of the Objects of the EPA Act, the proposal, including the non-compliant Height elements, is consistent with the following Objects of the Act:
 - i. *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations* – noting retaining and adapting an existing built asset is appropriate as well as adaptive reuse of existing materials and improved accessibility;
 - ii. *to promote the orderly and economic use and development of land* – noting the well-considered siting of the proposed additions;
 - iii. *to promote the sustainable management of built and cultural heritage* – by no adverse impacts on the heritage significance of the surrounds from the Building Height non-compliance;
 - iv. *to promote good design and amenity of the built environment* – for the same reasons above and an appropriate design for the site in its context, including the proposed Building Height;
 - v. *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants* – as the proposal allows



Clause 4.6 Request – Building Height – 1605 Anzac Pade, La Perouse

the building to be adapted to better suit the users and residents, and supports accessibility and healthy living.

- o) The overall benefits of the proposed lift leading to the height non-compliance outweighs any negative impacts, such that the balance of environmental considerations favour granting approval, despite the height non-compliance.

In conclusion, for all the reasons given in this written request, the proposal should be approved and is justified, notwithstanding the numerical non-compliance with the Building Height development standard in Clause 4.3 of *Randwick Local Environmental Plan 2012*.

D10/25

Floor Space Ratio



27 February 2025



Request to Contravene the Floor
Space Ratio (F.S.R.) of R.L.E.P. 2012 –
1605 Anzac Parade, La Perouse
(Alterations and Additions)



Clause 4.6 Request – FSR – 1605 Anzac Parade, La Perouse

Introduction

This written request supports a development application (DA) for alterations and additions to an existing mixed-use building at No. 1605 Anzac Parade, La Perouse. It should be read in conjunction with the Statement of Environmental Effects by Perica and Associates Urban Planning Pty Ltd to which it is related, plans by Antonio Caminiti Architect and the information submitted with the DA through the NSW Planning Portal.

The proposal exceeds the maximum Floor Space Ratio ("FSR") control in Clause 4.4 of Randwick Local Environmental Plan 2012 ("RLEP 2012"). This control is a "development standard" in accordance with the definition in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act 1979").

Clause 4.6 of RLEP 2012 relevantly states:

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—*
 - (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.*
- (4) –(8) ... [not relevant]

1. Identifying and quantifying the non-compliance

Clause 4.4 of Randwick Local Environmental Plan 2012 ("RLEP 2012") specifies a maximum FSR of 1:1, by reference to the relevant LEP Map (extract below).

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Clause 4.6 Request – FSR – 1605 Anzac Pade, La Perouse

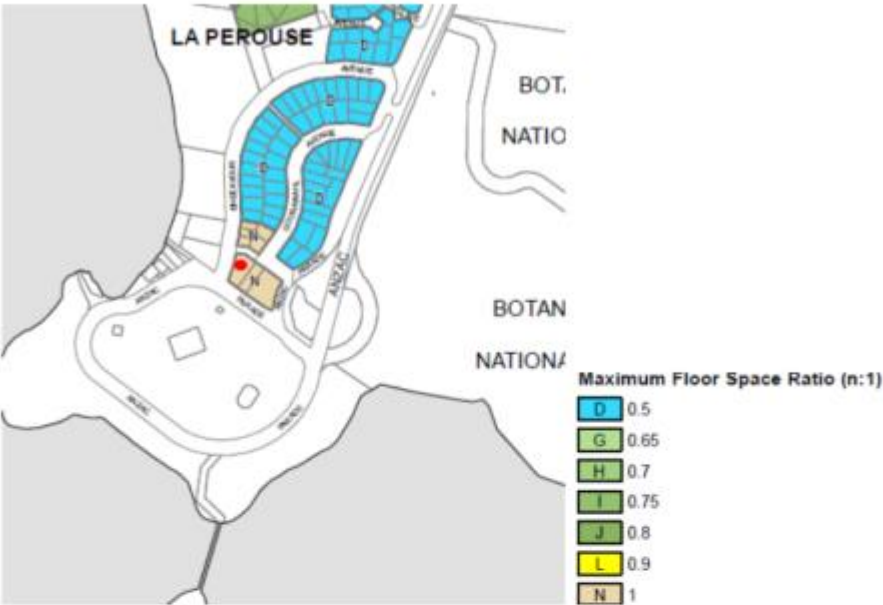


Figure 1 – FSR Map Extract – RLEP 2012

As shown, site has a mapped maximum FSR standard of 1:1. This is a ratio of "Gross Floor Area" (GFA) against site area. The definition of GFA is contained in the Dictionary to RLEP 2012, and is standard within LEPs in NSW.

The architect, Antonio Caminiti, with some advice from the author of this Contravention Request, has calculated the GFA in accordance with the LEP definition, and provided diagrams to illustrate inclusions and exclusions, as is relatively-common and leading practice.

The existing Gross Floor Area of the building is 852.83sqm. The site area is 828.3sqm. So, the existing building has a FSR of 1.0297:1.

The proposal makes internal alterations which alter the FSR, as 2 car spaces are removed and converted to a lift, circulation space and a preparation/back of house area. So, given the GFA definition excludes parking, there is a technical increase in GFA, despite the additions being internal and not adding to building bulk whatsoever.

The GFA of the proposal is 882.13sqm. This equates to an increase of 29.3sqm, or a 3.44% increase compared to the existing GSFA. In absolute terms the proposed FSR is 1.065:1, representing a total FSR non-compliance of 6.5%.

The area of additional FSR is located on the lower ground floor, with a comparison of existing layout and proposed shown below:



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Clause 4.6 Request – PSR – 1605 Antac Pado, La Frouse



Figure 2 – Area of additional GFA (existing v proposed)

It should be noted that the calculations of existing and proposed GFA include the top eastern "breezeway" for the units. This could arguably be excluded from GFA calculations, as it is open at the northern end and feels open to the elements due to wind. It is not fully weather-protected and there is an argument this should be excluded from GFA calculations. This can be seen and appreciated on site. However, on a conservative basis, it has been included in calculations (existing and proposed GFA).



Clause 4.6 Request – FSR – 1605 Arzac Pde, La Perouse

That upper eastern breezeway has an area of 44.07sqm. If it was excluded, the proposal would be just 1.2% over the FSR and the proposal would comply if the ground floor garbage rooms were excluded (some Council's exclude these areas).

2. Objectives of Clause 4.6 of RLEP 2012

The objectives of Clause 4.6 of RLEP 2012 are:

- (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.

There was some legal debate about the requirement to specifically address these objectives. On one hand, the objectives are not explicitly required to be addressed or specifically considered (as typically occurs in zone objectives), and compliance with the objectives of the Clause could be read to arise when compliance with the operative provisions of the Clause are met, being the sub-clauses that follow the objectives. In other words, the objectives state what complying with the operative provisions would achieve. On the other hand, if this was the case then the objectives would have no work to do.

This matter was recently considered and determined in a judgement by the Chief Justice of the Land and Environment Court of NSW in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. That judgement held that the objectives of Clause 4.6 do not need to be specifically considered, and specifically should not be read to compel comparison with a complying development proposal.

Accordingly, compliance with the objectives of Clause 4.6 (of appropriate flexibility and better outcomes) can be assumed if the operative provisions and thresholds of Clause 4.6 are met. The objectives state what the operative clauses are designed to do.

3. Clause 4.6 (3)(a) and 3(b) of RLEP 2012

Clause 4.6(3) of RLEP 2012 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.

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

The submission and consideration of Objections under State Environmental Planning Policy No. 1 ("SEPP 1 Objection") and the issue of compliance being "unreasonable or unnecessary" was well summarised in the Land and Environment Court judgement *Wehbe v Pittwater Council*



Clause 4.6 Request – FSR – 1605 Arzac Parade, La Perouse

[2007] NSWLEC 827 ("the Wehbe case"). While that judgement applied to SEPP 1 Objections and not Clause 4.6 Variation requests, the approach in that case has been accepted in subsequent court cases related to Clause 4.6 Variation Requests.

The onus lies upon the applicant to demonstrate this in a written request (being this submission) and that requiring compliance with the particular standard would be unnecessary or unreasonable. In this regard, the Wehbe case outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable, by establishing:

1. Compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance; or
2. That the objectives of the standard are not relevant to the proposal; or
3. Requiring compliance with the development standard would "thwart" the achievement of the objectives of that standard; or
4. The development standard in question has been "virtually abandoned" by the Council; or
5. The zoning of the land is not appropriate for the site and therefore the associated standards are not appropriate (with some qualifications).

This written request does not rely on a case related to pathways 2-5 above. However, it is noted that variations to the FSR standard do occur on a case-by-case basis within the Randwick LGA, and such variations are not uncommon in the Municipality, especially for justified internal changes like that proposed.

This written request does argue compliance with underlying objectives of the standard in question are achieved.

The objectives for the FSR standard are found in Clause 4.4(1) of RLEP 2012, as follows:

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

The following responds to these objectives:



Clause 4.6 Request – FSR – 1605 Anzac Pde, La Perouse

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

The proposal, including non-compliant FSR, is considered compatible with the desired future character of the area, for the following reasons:

- The perceived size and scale of the building is unchanged relative to the surrounding public domain, and relative to adjoining privately-owned properties;
- The proposed FSR does not alter the size and physical scale of the building;
- The FSR non-compliance arises from internal works and is technical due to converting internal parking to other space;
- The number of storeys is not being altered;
- The street frontage height to all 3 frontages to public land is not being altered;
- Setbacks of the building are not being altered;
- The proposal is consistent with the objectives and controls within Part D6 of Randwick Development Control Plan 2013, specifically applying to this area, as outlined in the Statement of Environmental Effects by the same author as this Contravention Request (not repeated to avoid repetition – refer pg. 25-26 of the SEE).

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

The building is better articulated than the current building.

The proposed FSR does not alter the external articulation, as it is internal.

The proposed FSR does not arise from environmental and/or energy needs, although they relate to forms of building performance and the circulation and accessibility performance of the building will be improved as a result of the proposed works and technical increased FSR.

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

The site does not immediately adjoin any building identified as a heritage item. The site is not within a conservation area.

The site is opposite a National Park which is both listed as a heritage item and within a Conservation Area in RLEP 2012.

However, the proposal and non-complying FSR component will have absolutely no adverse impact on the scale and character of nearby Heritage Items, nor the Conservation Area, given the works leading to the FSR non-compliance are internal.



Clause 4.6 Request – FSR – 1405 Anzac Pde, La Perouse

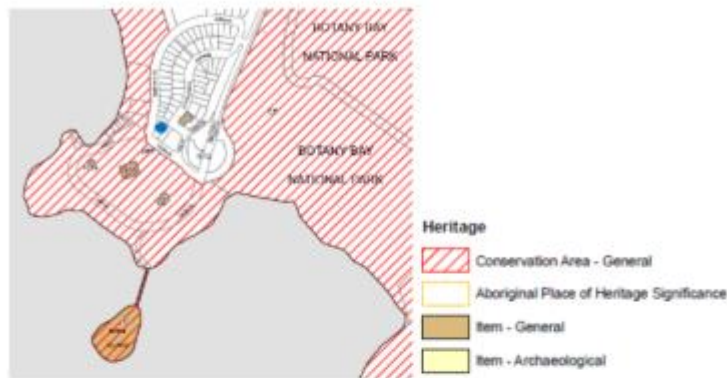


Figure 4 – Heritage Extract – RLEP 2012

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

The proposed additional FSR does not alter the building form at all (the impacts of the new lift height are addressed separately in relation to the Building Height contravention).

The proposed additional FSR will cause no adverse privacy impacts and no adverse view impacts.

At the same time, the amenity for the users of the subject site will be improved.

The proposal is entirely consistent with all objectives of the FSR standard, despite the contravention, and therefore it can reasonably be concluded compliance is unnecessary and unreasonable.

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

The case *Four2Five v Ashfield Council* [2015] NSWLEC 1009, NSWLEC 90, NSWCA 248 raises the issue that the grounds should relate to a site and specific proposal, rather than generic reasons.

The case *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 highlighted that:

1. The term “environmental planning grounds” is not defined and would include the objects of the EPA Act (Section 1.3);
2. The grounds must relate to the contravention of the development standard in question, not the whole development; and
3. The consent authority must indirectly be satisfied the applicant’s written request provides sufficient environmental planning grounds, not directly form an opinion about there being sufficient environmental planning grounds to justify the contravention.



Clause 4.6 Request – FSR – 1605 Anzac Parade, La Perouse

Also, given the term “environmental planning grounds” is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

In this context, the following environmental planning grounds are given to justify the proposed contravention of the Floor Space Ratio development standard, on this particular site and for this particular development:

- a) The FSR non-compliance wholly relates to internal works;
- b) The FSR non-compliance is “technical” in nature in that areas currently excluded from GFA calculations are being converted into areas that are not excluded;
- c) The FSR calculations have been conservative and some areas could arguably be excluded, bringing the building into FSR compliance or very close to compliance;
- d) Even accounting for a conservative FSR calculation approach, the FSR is only being increased by just over 3% compared to the existing situation (noting the building currently exceeds the FSR standard) and 6.5% above the FSR standard overall, which is not a major non-compliance;
- e) The proposed works do not increase the intensity of the development, noting no additional areas of seating are created for café/restaurant patrons;
- f) The proposed FSR will not increase traffic generation;
- g) The FSR non-compliance does not alter the overall building bulk, setbacks/building footprint, street frontage height, number of storeys or perception of the building from the surrounding area;
- h) The overall scale and form is compatible with adjoining development;
- i) There will be no anticipated adverse impacts from the FSR non-compliance on surrounding land, including relating to views, overshadowing, privacy and visual impacts;
- j) The proposal is consistent with the desired character of the area and the zone objectives (refer to the S.E.E.);
- k) The proposed FSR and bulk will have no adverse heritage impacts;
- l) The proposed FSR will have no adverse natural environmental impacts;
- m) Despite the lack of impacts to adjoining and surrounding land, the proposal will result in benefits to the users and residents at the site;
- n) In terms of the Objects of the EPA Act, the proposal, including the non-compliant FSR, is consistent with the following Objects of the Act:
 - i. to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations – noting retaining and adapting an existing built asset is appropriate as well as adaptive reuse of existing materials and improved accessibility;



Clause 4.4 Request – FSR – 1605 Anzac Parade, La Perouse

- ii. *to promote the orderly and economic use and development of land – noting the well-considered siting of the proposed alterations;*
 - iii. *to promote the sustainable management of built and cultural heritage – by no adverse impacts on the heritage significance of the surrounds from the FSR non-compliance;*
 - iv. *to promote good design and amenity of the built environment – for the same reasons above and an appropriate design for the site in its context, including the proposed FSR;*
 - v. *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants – as the proposal allows the building to be adapted to better suit the users and residents, and supports accessibility and healthy living.*
- a) The overall benefits of the proposed internal alterations leading to the FSR non-compliance include improved circulation and accessibility within the building and these benefits outweigh any negative impacts, such that the balance of environmental considerations favour granting approval, despite the FSR non-compliance.

In conclusion, for all the reasons given in this written request, the proposal should be approved and is justified, notwithstanding the numerical non-compliance with the FSR development standard in Clause 4.4 of Randwick Local Environmental Plan 2012.

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Appendix 3: DCP Compliance Table**3.1 Section D6: Neighbourhood Centre**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
2.1	Building Envelope		
2.2	Floor Space Ratio		
2.3	Building Heights		
	i) Where 9.5m height limit applies, development must not exceed 2 storeys (with exception of habitable roof space/partial floor).	Does not comply with the building height, but is suitably justified in Clause 4.6 statement. It is noted that the changes are predominantly contained within the existing building envelope other than a minor change to the roof pitch to accommodate a lift overrun that does not result in view loss impacts or adverse environmental outcomes to neighbouring properties. Complies with the habitable roof space.	Acceptable on merit.
2.4	Setbacks		
		The external setbacks are not being altered by the proposal.	N/A.
3.1	Facades		
	i) Where a development has two street frontages, each façade treatment must respond to the buildings in those streets. ii) Include shopfronts on side street frontages of corner sites to enhance the commercial potential of the space and minimise blank walls to the streetfront. iii) Facades should display proportions and detailing which respect the prevailing building facades across the centre (i.e. designing fine grain shop fronts, where the existing subdivision is fine grain). iv) Distinguish residential entries from commercial/retail entries in the case of mixed use development. v) Design shopfronts, including entries and windows, to reinforce any prevalent character in the centre. vi) All street frontage windows at ground level are to have clear glazing. Large glazed shopfronts should be avoided, with window configurations broken into	The presentation of the building is being improved. The facades respond to each street frontage. Suitable café shop front. Consistent with the surrounding development. Suitable and improved entries for residential and commercial. Council's Heritage Officer is supportive of the application. Design supports the prevalent character. Suitable clear glazing and balustrades.	Conditioned to be acceptable.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>discrete sections to ensure visual interest.</p> <p>vii) All facade elements must be contained within the site boundaries.</p> <p>viii) Building services, such as drainage pipes shall be coordinated and integrated with overall facade and balcony design.</p> <p>ix) Balconies to the street facade are to be recessed behind the principal building facade.</p> <p>x) Balcony balustrades should comprise a light open/glazed material and should be compatible with the style of the building.</p> <p>xi) The development of colonnades is discouraged.</p>	<p>The awning extends outside the property boundary. A condition has been included for this to be setback within the property boundary.</p>	
3.2	Roof forms		
	<p>i) In centres where parapet forms are prevalent, development should include parapets that reflect the rhythm, scale and detailing of existing parapets.</p> <p>ii) Provide flat roofs where these prevail across the centre, unless the site conditions justify an alternative roof form (eg. Corner sites).</p> <p>iii) Design roof forms to generate a visually interesting skyline, while minimising apparent bulk and potential for overshadowing. The style and pitch of new roofs should relate sympathetically to neighbouring buildings.</p> <p>iv) Relate roof forms to the size and scale of the building, the building elevation and the three dimensional building form.</p> <p>v) Structures such as ventilation shafts, lift over-runs and service plants, should be wholly contained within roof structures and not project above the roof line.</p>	<p>The roof form will remain as existing.</p> <p>The lift/ lift overrun is below the current max roof height.</p>	N/A.
3.3	Awnings		
	<p>i) Provide continuous street frontage awnings to all new development.</p> <p>ii) Generally awnings should be a minimum 3 metres deep and setback a minimum 600mm from the kerb.</p> <p>iii) Design new awnings to be complementary with their neighbours and aligned with the general alignment of existing awnings in the street.</p> <p>iv) Cantilever awnings from the building must have a minimum soffit height of 3.5metres.</p> <p>v) Provide under awning lighting to improve public safety.</p>	<p>A new partial awning to signify the main entry to the upper-level restaurant and the residential lobby is proposed. This will be a significant improvement compared to the current situation of a dirty and degraded canvas awning.</p> <p>A continuous street awning is not proposed and is not appropriate given the building design and sloping nature of the</p>	Acceptable on merit.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	vi) Colonnades along the street edge are inappropriate. vii) Canvas blinds along the street edge may be suitable where they would assist in sun access/protection. viii) Signage on canvas blinds is inappropriate. ix) Ensure all awnings are structurally sound and safe and comply with relevant BCA requirements.	site, yet appropriate weather protection is provided to outdoor areas, again significantly improved compared to the current/former situation. BCA conditions have been included.	
3.4 – 3.6	Colours, materials and finishes / Lighting / Signage		
		Colours and materials are appropriate for the exposed position. A suitable condition has been included to manage the lighting. No signage is proposed.	Complies.
4	Public Domain		
4.1	Active frontages		
	i) Maximise street level activity and minimise opaque or blank walls at ground level. ii) Minimise vehicular entrances not associated with active uses or building entries. iii) Security grilles or shutters may be fitted only within the shop itself behind glazing and must offer a minimum of 70% transparency. iv) Doors shall not encroach over the footpath when open. The use of fully operable glass walls or windows to open cafés and restaurants to the street is encouraged, where suitable for the prevailing character of existing buildings in the centre. v) ATMs and takeaway service counters should be recessed within a building wall to avoid negative impact on footpaths being used as service/queuing space. These areas are to be designed to avoid a hidden alcove/niche	The public domain is appropriately activated. Streetscape surveillance will be improved, and the design elements will enhance the contribution the building makes to the surrounding area.	Complies.
4.2	Pedestrian friendly access and spaces		
	i) Development should aim to increase the area of public spaces and pedestrian links that are available in the business centres. ii) In designing such areas, consideration should be given to solar access and protection from wind and rain. iii) Pedestrian and vehicle accessways	Disabled access is improved. The driveway crossing and vehicular access point and width is not being changed, nor the loading and service areas.	Complies.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>are to be separated and clearly distinguishable.</p> <p>iv) Pedestrian areas should minimise any changes in levels and allow wheelchair access to the shops from the car parking area and public footpaths.</p> <p>v) Consider artworks and design which integrates private development with the public domain. Eg. Window treatments, paving, sculptures and decorative elements.</p>		
5	Amenity		
5.1	Solar Access		
	<p>i) Commercial and mixed use development are not to reduce sunlight to adjacent dwellings below a minimum of 3 hours of sunlight on a portion of the windows of the habitable rooms between 8am and 4pm on 21 June.</p> <p>ii) Where adjacent dwellings and their open space already receive less than the standard hours of sun, new development should seek to maintain this solar access where practicable.</p>	No overshadowing impacts to neighbours will result and no additional overshadowing to the public domain of any consequence will occur.	Complies.
5.2	Acoustic and visual privacy		
	<p>i) Developments are to be designed to minimise noise transmission by:</p> <ul style="list-style-type: none"> Locating busy noisy areas next to each other and quieter areas next to each other; Locating bedrooms away from busy roads and other noise sources; Using storage or circulation areas within a dwelling to buffer noise from adjacent apartments, mechanical services or corridors/lobbies. Avoid locating wet areas, such as toilets, laundries and kitchens, adjacent to bedrooms of adjoining dwellings. <p>ii) Locate exhaust vents away from windows and open space of dwellings.</p> <p>iii) For development fronting arterial roads, provide noise mitigation measures to ensure an acceptable level of living amenity for the dwellings is maintained.</p> <p>iv) Operating hours must be submitted with the DA. Should the development require deliveries and/or operation of machinery outside of standard hours</p>	Acoustic impacts will not be altered, with modern materials and openings able to improve potential acoustic impacts compared to previous situation (noting approval for use and operation is not sought as part of this DA).	Complies.

D10/25

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(7.30am to 5pm, Monday to Friday), an acoustic report must accompany the DA. The acoustic report must be prepared by a suitably qualified acoustic consultant.		
6	Shop top housing		
	<ul style="list-style-type: none"> i) Entries to residential apartments are to be separated from commercial entries to provide security and an identifiable address for each of the different users. ii) Each dwelling must be provided with private open space directly accessible from its living area, in the form of either a balcony at least 2m deep or a terrace or private courtyard at least 10 square metres in area. iii) Private open spaces should be: located adjacent to and accessible from the main living areas of the dwelling; located so as to maximise solar access; located to ensure privacy and away from noisy locations, where possible; and screened by vegetation or a wall to ensure privacy. iv) If an elevator is provided for residential use, it must not be used for retail loading or waste removal. v) Separate the waste storage facilities for commercial and residential components of a development. vi) Site services and facilities (such as letterboxes and drying yards) should be designed to enable safe and convenient access by residents; in an aesthetically sensitive way; to have regard to the amenity of adjoining developments and streetscape; to require minimal maintenance; and to be visually integrated with the development. 	No change to the current residential use or mix of uses at the site is proposed, other than improved equitable access and a minor change to one unit to accommodate a lift.	Complies.

Responsible officer: Joseph Edmonds, Environmental Planning Officer

File Reference: DA/22/2025

Development Consent Conditions (Mixed use)



Folder /DA No:	DA/22/2025
Property:	1605 Anzac Parade, LA PEROUSE NSW 2036
Proposal:	Alterations and additions to an existing mixed use development, including the replacement of the entry and terrace awning structures, balustrades, exterior glazing and associated fabric, extension of access stair, façade maintenance works and internal reconfiguration to enable the installation of a new lift, entrance lobby and layout changes to an apartment and commercial tenancy (Variation to Building Height and FSR).
Recommendation:	Approval

Development Consent Conditions

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 Plan - 2403.06.01	Antonio Caminiti Architect	9 January 2025	13 January 2025
First Floor Plan - 2403.06.02	Antonio Caminiti Architect	9 January 2025	13 January 2025
Second Floor Plan - 2403.06.03	Antonio Caminiti Architect	9 January 2025	13 January 2025
Roof Plan - 2403.06.04	Antonio Caminiti Architect	9 January 2025	13 January 2025
Southwest Elevation - 2403.08.01	Antonio Caminiti Architect	9 January 2025	13 January 2025
Northwest Elevation - 2403.08.02	Antonio Caminiti Architect	9 January 2025	13 January 2025
Northeast elevation - 2403.08.03	Antonio Caminiti Architect	9 January 2025	13 January 2025
Southeast elevation - 2403.08.04	Antonio Caminiti Architect	9 January 2025	13 January 2025
Sections - 2403.07.01	Antonio Caminiti Architect	9 January 2025	13 January 2025

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
A11779727	13 January 2025	13 January 2025

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Condition	
	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.	<p>Amendment of Plans & Documentation</p> <p>The approved plans and documents must be amended in accordance with the following requirements:</p> <ol style="list-style-type: none"> The mural (decorative artwork) to be provided on the existing block wall on the northeastern elevation must be submitted to the Manager Development Assessment for approval prior to the release of the construction certificate. The awning provided over the entrance fronting Anzac Parade, must be setback to the property boundary as a part of the construction certificate plan set. No approval is granted for the extension of this awning over the public footpath. <p>Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.</p>

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
3.	<p>Consent Requirements</p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
4.	<p>External Colours, Materials & Finishes</p> <p>The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
5.	<p>Section 7.12 Development Contributions</p> <p>Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$575,863.26 the following applicable monetary levy must be paid to Council: \$5,758.63.</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> <p>IDC = ODC x CP2/CP1</p>

Condition

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.

6. **Long Service Levy Payments**

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

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

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

7. **Housing and Productivity Contribution**

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.

Housing and productivity contribution	Amount
Housing and productivity contribution (base component)	(\$30 x 29.3m ²) = \$879.00
Total housing and productivity contribution	\$879.00

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.

8. **Sydney Water**

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	Condition
	<p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's waste water 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/tapin</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>
9.	<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> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
10.	<p>Building Code of Australia</p> <p>Access and facilities for people with disabilities must be provided to new building work in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010 and relevant Australian Standards, to the satisfaction of the Registered Certifier for the development and details 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>
11.	<p>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 75 of the <i>Environmental Planning and Assessment Regulation 2021</i>, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be</p>

	Condition
	<p>included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
12.	<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> <ul style="list-style-type: none"> (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. <p>Condition Reason: To ensure the subject site/development and adjoining land is adequately supported and protected during any works.</p>
13.	<p>Waste Management Plan (WMP)</p> <p>A new Waste Management Plan detailing the waste and recycling storage and removal strategy for the development, is required to be submitted to and approved by Council's Lead Specialist Strategic Waste.</p> <p>The Waste Management Plan (WMP) is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Developments and must include the following details (as applicable):</p> <ul style="list-style-type: none"> • 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

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Condition	
	materials.
	<i>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</i>
	Condition Reason: To ensure that waste management is conducted in accordance with Councils guidelines.
	Public Utilities A <i>Public Utility Impact Assessment</i> must be carried out to identify all public utility services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the 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 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.

BEFORE BUILDING WORK COMMENCES

Condition	
14.	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: <ul style="list-style-type: none"> a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. 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 <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works. Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.
15.	Dilapidation Reports

	Condition
	<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>
16.	<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> <ul style="list-style-type: none"> (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. (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 <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. <p>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.</p> <ul style="list-style-type: none"> (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. <p>Condition Reason: To protect the amenity of the neighbourhood during</p>

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Condition	
	construction.
17.	<p>Construction Site Management Plan</p> <p>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:</p> <ul style="list-style-type: none"> • 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. <p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>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.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
18.	<p>Construction Site Management Plan</p> <p>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>
19.	<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>
20.	<p>Public Utilities</p> <p>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.</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 service authorities to adjust, repair or relocate their services as required.</p>

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

DURING BUILDING WORK

Condition

21. **Site Signage**
It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:
- 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.
- The sign must be—
- maintained while the building work is being carried out, and
 - removed when the work has been completed.
- This section does not apply in relation to—
- building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or
 - Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

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

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<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

	Condition
	<p><i>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.</i></p> <p>Condition reason: To protect the amenity of the surrounding area.</p>
23.	<p>Noise & Vibration</p> <p>Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the <i>Construction Noise & Vibration Management Plan</i>, prepared for the development and as specified in the conditions of consent.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
24.	<p>Construction Site Management</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> <ul style="list-style-type: none"> (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. (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. <p>Notes:</p> <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> <p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p>
25.	<p>Overhead Hoardings</p> <p>An overhead ('B' class) type hoarding is required is be provided to protect the public (unless otherwise approved by Council) if:</p> <ul style="list-style-type: none"> • 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

Condition
<ul style="list-style-type: none"> 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.

26.

Public Safety & Site Management

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

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

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

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

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

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	Condition
	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.
27.	<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 require details of measures that will minimise impacts to the public, and the surrounding environment, during site works and construction.</p>
28.	<p>Site Accessway</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.</p> <p>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 minimise and prevent damage to public infrastructure.</p>
29.	<p>Excavations and Support of Adjoining Land</p> <p>Tin 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.</p> <p>Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.</p>
30.	<p>Complaints Register</p> <p>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.</p> <p>Details of the complaints management process including contact personnel details</p>

Condition	
	<p>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.</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>
31.	<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>
32.	<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>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
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 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>

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	Condition
	<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 <i>Occupation Certificate</i>, 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>Noise Control Requirements & Certification</p> <p>The use and operation of the development (including all plant and equipment) shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997</i> and <i>Regulations</i>.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
39.	<p>Noise Control Requirements & Certification</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 the development (and plant and equipment) 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>

Condition	
	<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>
40.	<p>Street and/or Sub-Address Numbering</p> <p>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.</p> <p>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.</p> <p><i>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.</i></p> <p>Condition Reason: To ensure properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.</p>

OCCUPATION AND ONGOING USE

Condition	
41.	<p>Operational Hours</p> <p>The hours of operation of any business and commercial tenants which occupy the site in the future must seek approval for hours of operation (unless otherwise specifically approved in a separate development consent).</p> <p>Condition Reason: To ensure that the approved use is operated within the approved hours of operation, to ensure safety and security and protect the amenity of surrounding areas.</p>
42.	<p>Fire Safety Statement</p> <p>A single and complete <i>Fire Safety Statement</i> (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> at least on an annual basis each year following the issue of the <i>Fire Safety Certificate</i>, and in accordance with the <i>Fire Safety Schedule</i> for the building.</p> <p>The <i>Fire Safety Statement</i> 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 <i>Fire Safety 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>
43.	<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>

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Condition

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

**DEMOLITION WORK
BEFORE DEMOLITION WORK COMMENCES**

Condition

44.

Demolition Work

A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:

- 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):
 - 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

45.

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) -

Condition
<p>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 Principal Certifier and Council upon request. <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 that the handling and removal of asbestos from the site is appropriately managed.</p>

Development Application Report No. D11/25

Subject: 343 Rainbow Street, South Coogee (DA/1136/2024)

Executive Summary

Proposal:	Demolition of the existing dwelling house, construction of a new dwelling house and new swimming pool.
Ward:	East Ward
Applicant:	Mr E Gandevia
Owner:	Mr E I C Gandevia
Cost of works:	\$6,174,003.00
Reason for referral:	The development contravenes the development standard for floor space ratio by more than 10%.

Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 1136/2024 for demolition of the existing dwelling house, construction of a new dwelling house and new swimming pool, at No. 343 Rainbow Street, South Coogee, for the following reasons:

1. The proposal does not comply with the provisions of Randwick Local Environmental Plan 2012 (RLEP 2012) pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in particular:
 - i) The proposal is not consistent with the objectives of the R2 Low Density Residential zone pursuant to Clause 2.3 of RLEP 2012, that requires, among other, development to provide for the housing needs of the community within a low density residential environment and to protect the amenity of residents.
 - ii) The proposal does not comply with Clause 4.3 – Height of Buildings which is not supported by an acceptable Clause 4.6 variation statement with adequate environmental planning grounds.
 - iii) The proposal does not comply with Clause 4.4 – Floor Space Ratio which is not supported by an acceptable Clause 4.6 variation statement with adequate environmental planning grounds.
 - iv) The proposal does not comply with Clause 6.7 – Foreshore scenic protection area as the development has not been located and designed to minimise impacts to views to and from the coast.
2. The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in particular:
 - i) Part B7 General Controls – Parking layout, configuration and dimensions.
 - ii) Part B10 General Controls – Foreshore scenic protection area.
 - iii) Part C2 Low Density Residential – 2.5 Deep soil permeable surfaces.
 - iv) Part C2 Low Density Residential – 3.1 Floor Space Ratio
 - v) Part C2 Low Density Residential – 3.2 Building height.
 - vi) Part C2 Low Density Residential – 3.3 Setbacks.
 - vii) Part C2 Low Density Residential – 4.7 Earthworks.
 - viii) Part C2 Low Density Residential – 5.1 Solar access and overshadowing.
 - ix) Part C2 Low Density Residential – 5.3 Visual Privacy
 - x) Part C2 Low Density Residential – 5.5 Safety and security
 - xi) Part C2 Low Density Residential – 5.6 View Sharing

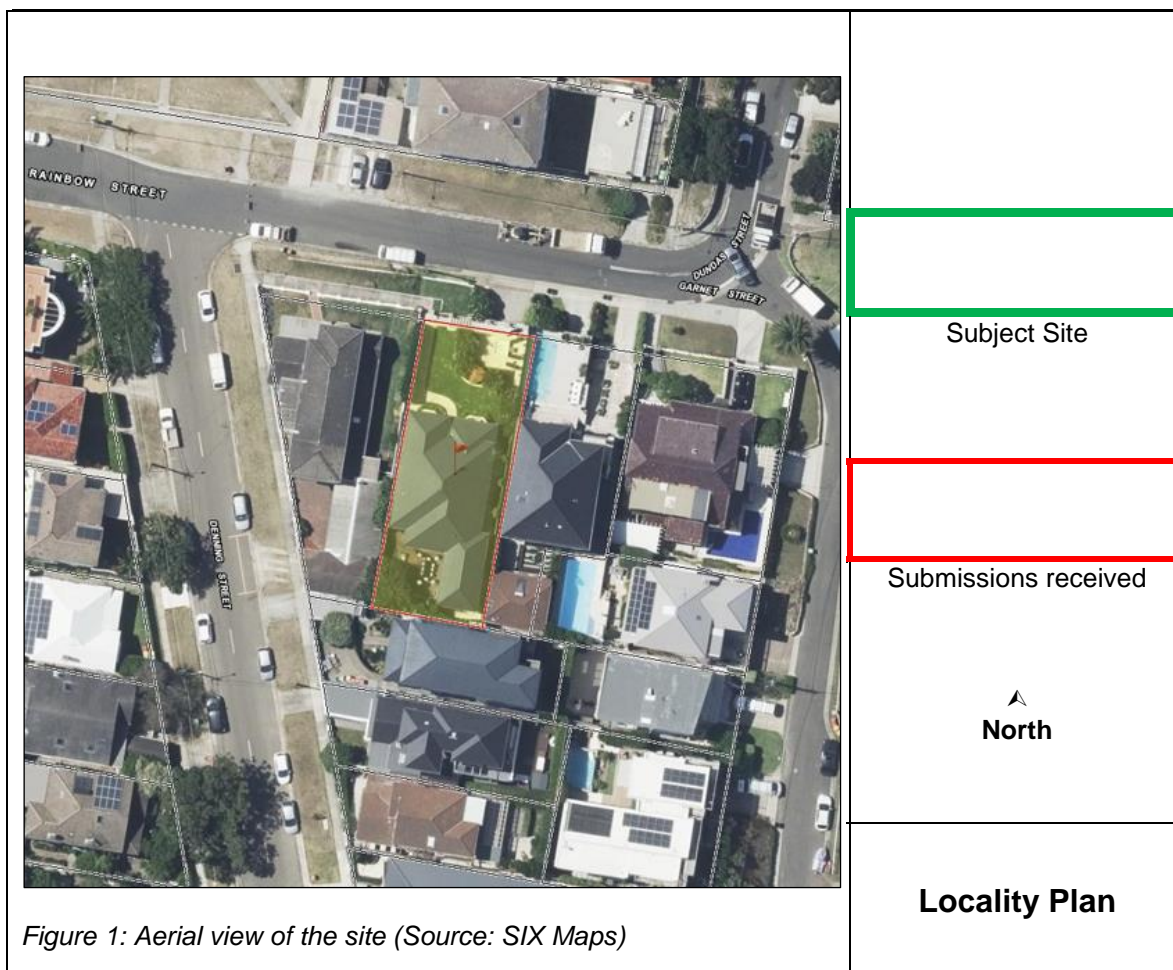
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3. The proposal will result in adverse environmental impacts on both the natural and built environments, and social and economic impacts in the locality, pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
4. The adverse environmental impact of the proposal means that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
5. The public submissions raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

Attachment/s:

Nil



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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for floor space ratio by more than 10%

The proposal seeks development consent for the demolition of the existing dwelling and construction of a three (3) storey dwelling house with basement level and inground swimming pool.

The key issues associated with the proposal relate to:

6. Floor space ratio (FSR)
7. Building height
8. Foreshore scenic protection area
9. Side setbacks
10. Deep soil area
11. Solar access
12. Excavation
13. Privacy
14. View loss
15. Swimming pool location

The proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as No. 343 Rainbow Street, South Coogee and is legally described as Lot B in DP 320755. The site is 536.06m², is regular in shape and has a 14.02m frontage to Rainbow Street to the north. The site contains one (1) storey brick dwelling with ancillary decks, pathways and structures within the front and rear setback. No major canopy trees are located on the site with vegetation generally limited to a cluster of moderate sized trees along the rear boundary. A covenant (B683420) applies to the site which requires the built form to be setback 40 feet from the site frontage.

The topography of the site varies significantly. The portion of the site where the existing dwelling is located is generally level with a slope of approximately 1.4m from west to east. However, within the front setback, the site slopes significantly in a north-easterly direction, with a fall of approximately 5.5m over a distance of 17.5m. As a result of the topography, the natural ground level for the majority of the site is situated well above the existing levels of Rainbow Street.



Figure 2: View of the subject site from the northern side of Rainbow Street.



Figure 3: View of the existing dwelling on the subject site from the front setback area.



Figure 4: View of the existing dwelling on the western adjoining property at No. 341 Rainbow Street, South Coogee.



Figure 5: View of the existing dwelling on the eastern adjoining property at No. 345 Rainbow Street, South Coogee.



Figure 6: View of the existing dwelling on the southern adjoining property at No. 1 Denning Street, South Coogee from the rear setback of the subject site

3. Relevant history

5 September 2014

DA/508/2014 was approved for the construction of a new front swimming pool above the existing driveway.

10 May 2018

DA/891/2016 was approved for the demolition of existing structures, construction of part 2 part 4 level dwelling with lift, swimming pool, garage, upper level terrace, landscaping and associated works.

17 February 2021

DA/891/2016/A was approved for a Section 4.55(2) Modification of the approved development to incorporate an expanded basement level for four vehicles and a new mezzanine level with a gym room, sauna, wine cellar and storage space. The modifications also include small adjustments to ground and first floor wall alignments.

25 November 2024

DA/1136/2024 (the current application) was lodged to Council.

28 January 2025

Following a preliminary assessment of the application, a Withdraw Refuse Letter was issued to the Applicant. The following issues were raised within the letter:

Floor Space Ratio (FSR) Variation

Council does not support the proposed extent of variation to the FSR standard, particularly due to the fact that non-compliances to other key built form controls and amenity impacts to neighbouring properties occur. Given the proposal relates to the demolition of the existing dwelling and construction of a new dwelling, there is no reason why compliance with the Randwick Local Environmental Plan (LLEP) 2012 maximum FSR standard for the site (0.65:1 or 348.44m²) cannot be achieved.

The provided clause 4.6 variation request does not provide sufficient environmental planning grounds to justify contravention from the floor space ratio development standard. Based on the provided request, Council is unable to support the proposed variation to this development standard.

Your attention is drawn to the caselaw established in Initial Action Pty Ltd v Woollahra Municipal Council (2018) 236 LGERA 256; [2018] NSWLEC 118, where, at [24] the Chief Judge explained the following:

The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written consent needs to be "sufficient".

- i. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) 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: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].*
- ii. Second, 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 under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

Stating that the proposal complies with the objectives of the control and results in no amenity impacts to neighbouring properties may be used to support the case for variation, but cannot be solely relied upon as sufficient environmental planning grounds. The environmental planning grounds must focus on the circumstances of the site and/or surrounding properties (if applicable) that ultimately contribute to the variations to the FSR development standard.

It is noted that the Clause 4.6 variation request references the previous variation to FSR approved under DA 891/2016A. However, as noted within the delegated assessment report for DA 891/2016/A, the additional FSR was approved on the basis that the size and scale of the development to which the original consent was granted remained unchanged. The proposal currently before Council is an entirely new scheme for the site and thus must be considered under its own merits.

Any future application which seeks to vary a development standard must provide sufficient environmental planning ground to justify contravention of the standard.

Building Height

The proposed development seeks a maximum building height of 9.62m, representing a 120mm or 1.2% variation to the 9.5m Randwick Local Environmental Plan 2012 (RLEP12) development standard. While the 3D Building Height Plane Diagram prepared by Smyth & Smyth illustrates that the variation is limited to a small portion of the development, the extent of variation has been achieved through non-compliances with the following controls outlined in C1, Section 3.2 of the Randwick Development Control Plan 2013 (RDCP 2013):

- i) Any habitable space located above the first floor level must be integrated into the building roof form and roofline.*
- ii) The minimum floor-to-ceiling height for living areas, such as living/lounge, dining and bedrooms, is 2.7m.*

Council's controls for building height under C1 of RDCP 2013 in combination with the controls for side setbacks do not envision three storey dwellings in this locality. The proposed second floor is not integrated into the building roof form and only provides a floor-to-ceiling height of 2.5m despite containing living areas. It is acknowledged that compliance with the abovementioned controls is likely to exacerbate the proposed variation to building height. However, the objectives of these controls are;

- To limit the bulk, scale and visual impact of buildings as viewed from the street and from neighbouring dwellings.*
- To ensure low density residential development maintains a two-storey height and street frontage.*
- To position any habitable space above the first floor level within the roof of the dwelling.*
- To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.*
- To ensure the form and massing of development is respectful of site topography.*

The current form of the proposal does not align with the above objectives.

*While the DCP notes that an alternative design that varies from the two-storey height and street frontage in Zone R2 may be acceptable, regard must be made to the potential impacts on the visual amenity, solar access, privacy and views of the adjoining properties. As will be outlined throughout this letter, the proposed development results in unacceptable impacts to neighbouring properties and thus, the proposed building height variation and three (3) storey form are **not** supported in this instance.*

Any future application should feature a built form that presents predominately as two-storeys. Any additional level should be modest in size and substantially concealed from public domain.

Foreshore Scenic Protection Area – View Loss

The subject site is located within the Foreshore Scenic Protection Area. Clause 6.7 of the Randwick LEP 2012 notes that development consent must not be granted unless the consent authority is satisfied that the development is located and designed to minimise impacts to views to and from the coast.

While a View Loss Assessment has been submitted, the assessment does not detail the extent of view loss that will occur to neighbouring properties. A number of submissions have been received flagging view loss as a major concern in regard to the proposed development. A site inspection has revealed that No. 341 Rainbow Street (western adjoining property) and No. 1 Denning Street (southern adjoining property) provide windows that allow for views towards Wedding Cake Island and the Coogee Headland.

To confirm the veracity of a view loss assessment, it is recommended that height poles are installed on the site to demonstrate the height and envelope of the works. The height poles must be checked and certified by a registered Surveyor. Alternatively, you may wish to prepare certified photomontages which illustrate the envelope of the works. Please note, the proposed photomontages must be prepared in accordance with the Land & Environment Court Photomontage Policy.

As a comprehensive view loss assessment from neighbouring properties has not been undertaken, Council cannot be satisfied that the development is located and designed to minimise impacts to and from the coast.

Side Setbacks

A detailed review of the side setbacks against the current controls indicates that the proposed first floor and second floor are within the required side setbacks. While it is acknowledged that the proposed building envelope is within the building envelope of the previous approval issued on the site (DA/891/2016/A), this application was approved with regard to the low density residential side setback controls that applied at the time of approval. These side setback controls were superceded on 1 September 2023.

Based on the proposed building height of 9.62m and frontage width of 14.02m, the following side setbacks apply in accordance with Part C1, Section 3.3.2 of the RDCP 2013:

- *Between 0m – 4.5m = 1.2m*
- *Between 4.5m – 7m = 1.825m*
- *Above 7m = 7.04m*

Any future application must comply with Council's side setback controls. Should a variation be sought, the uppermost level should be substantially recessed and modulated to present as an attic level contained within a roof form.

Deep Soil Area

Part C1, Section 2.5 of the RDCP 2013 outlines the minimum deep soil area required to be provided. Based on a site area of 536.06m², a minimum of 40% of the site area (214.42m²) is required to be provided as deep soil area.

The submitted calculation plans indicate that 220m² of deep soil area has been provided throughout the site. However, it appears that approximately 42.1m² of the deep soil area calculated will be located under the first floor or within a planter box above the basement. These deep soil areas do not appear to have sufficient space for plantings or access to sunlight, with particular regard to the deep soil area indicated within the courtyard.

Part C1, section 2.5 of the Randwick DCP defines deep soil area as follows:

"Deep soil permeable surfaces include areas used for the growing of plants (including grasses, shrubs and trees) and areas occupied by loose gravels upon soil at the ground level of the site.

Deep soil permeable surfaces do not include swimming and spa pools, paved areas, planter boxes, or planted areas above basements, podiums, roofs or slabs."

Areas measuring less than 900mm are not counted as deep soil.

It should be noted that any variation to FSR is unlikely to be supported if the minimum deep soil area requirement has not been achieved.

Private Open Space

Although ample private open space is provided throughout the site, the proposal does not provide at least one (1) contiguous area of private open space which satisfies the following criteria outlined in Part C1, Section 2.7, control ii) of the RDCP 2013:

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

It is noted that a private open space area of adequate dimensions has been provided within the front and rear setback. However, the submitted documentation suggests that neither of the areas will achieve the minimum amount of direct solar access (refer to solar access comments under point G of this letter). Therefore, the proposal has not provided at least one (1) contiguous private open space area that has been orientated and configured to maximise solar access.

Solar Access

Part C1, section 5.1 of the RDCP outlines the following solar access controls:

Solar access to proposed development

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

Solar access to neighbouring development

- iii) *A portion of the north facing living area windows of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice)*
- iv) *The private open space of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice). The area covered by sunlight must be capable of supporting passive recreation activities.*

The submitted shadow diagrams indicate that the rear private open space will be overshadowed between 8am and 4pm during the winter solstice. In terms of the front private open space, the shadow diagrams indicate that while direct solar access is achieved at 12pm, the entirety of the private open space will be overshadowed at 8am and 4pm. The overshadowing appears to have been generated through the proposed excavation and roof structures. View of the sun diagrams should be prepared in hourly intervals to indicate the extent of direct solar access that is achievable throughout the day on the winter solstice, allowing for an accurate assessment of the proposal against the abovementioned controls.

Furthermore, the shadow diagrams prepared should distinguish between the existing and proposed overshadowing cast in order to accurately determine how the proposed built form on the site will alter existing solar access conditions to neighbouring properties.

Excavation

Part C1, Section 4.7, control i) of the RDCP 2013 notes that any excavation and backfilling within the building footprint **must be limited to a maximum 1m at any point** on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a dwelling within this extent of site modification.

The submitted section plans indicate that proposal involves excavation up to 5.9m in depth within the building footprint, well exceeding the 1m control. The objectives and controls under C1 of RDCP 2013 are intended to minimise earthworks.

While it is acknowledged that some degree of variation will be required to allow for on-site car parking, the proposed basement footprint is considered excessive and can be significantly reduced to minimise the extent of earthworks required to be undertaken on the site. For example, approximately 33m² of the basement is utilised as a walkway to connect the on-site car parking spaces to the habitable levels of the dwelling. A redesigned proposal should consider locating the stairs to the basement closer to the parking spaces, thereby reducing the extent of excavation required.

In addition to the above, a cut and fill plan has not been prepared to determine the extent and location of excavation.

Privacy

Part C1, Section 5.3 of the RDCP 2013 outlines controls in relation to visual privacy. Of particular note, control iii) states:

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

The proposed second floor contains balconies that, while generally orientated to the street and rear boundary, are overly large in width with a significant portion of balcony 01 facing the eastern side boundary. Given the site is situated on higher topography than the eastern adjoining property, the proposed second floor balconies provide opportunities for overlooking into adjoining properties.

Putting aside the recommendation that the proposal should be amended to be two-storeys in form, if balconies are pursued for the second floor, they should be limited in width to limit the potential for overlooking of neighbouring properties.

Engineering Issues

Council's Development Engineer reviewed the application and identified the following issues that require addressing:

- The internal garage carspaces must be provided at a grade of between 0 and 5% to achieve compliance with AS 2890.1. The submitted long-sections (sheets 401 & 402) indicate the grade of the rear 2.6m of the carspaces will exceed this requirement thereby creating a non-compliance with the Australian Standard. The plans/sections are to be amended so that a minimum 5.4m length of garage floor slab is provided with grades of between 0 & 5%.
- An analysis of the driveway design using the B-85 design template in AS 2890.1 indicate vehicles may scrape at the southern edge of the footpath adjacent to the kerb on sections A-A and C-C. The Applicant will likely need to flatten the crossing at these locations.
- The above requirements may likely require the garage floor to be raised. Note the minimum head clearance required by AS 2890.1 is 2.20m. A 2.3m clearance is indicated on the sections

The depicted layback and gutter on the long-sections doesn't appear to reflect Council's standard requirements

As this is a new DA, the proposal must be considered against the current controls applying to the site, noting that some controls differ from the controls in place at the time that DA 891/2016 and DA 891/2016/A were considered.

No response to the Withdraw Refuse Letter was received from the Applicant.

4. Proposal

The proposal seeks development consent for the demolition of the existing dwelling house, construction of a new dwelling house and new swimming pool. A breakdown of the proposal is provided below:

A. Demolition

- The existing dwelling and all ancillary structures are proposed to be demolished to accommodate the proposed development.

B. Dwelling House

Basement Level

- The proposed dwelling house includes a basement level with the following layout:
 - Double width garage;
 - Bin storage area;
 - Garden storage areas;
 - Sport equipment storage;
 - Sculpture studio;
 - Plant room
 - Pool/spa plant room; and
 - Lift and stairs to connect the basement to the habitable floor levels of the dwelling.

Mezzanine Level

- The proposed dwelling house includes a mezzanine level with the following layout:
 - Rumpus;
 - Storage room;
 - Sauna;
 - Bathroom;
 - Laundry; and
 - Lift and stairs to connect the mezzanine level to the basement and habitable floor levels above.
- The following works are proposed outside the internal floor layout of the mezzanine level:
 - Swimming pool and spa
 - Associated pool coping and decking around the swimming pool.
 - Decking located directly adjacent to the rumpus room.
 - Planter proposed along the frontage and eastern side boundary of the front setback area.

Ground Level

- The proposed dwelling house includes a ground level with the following layout:
 - Entry foyer;
 - Open plan kitchen, dining and living room;
 - Office;
 - Powder room; and
 - Lift and stairs to connect the ground level to the other levels of the dwelling.
- The following works are proposed outside the internal floor layout of the ground level:
 - Pedestrian footpath connecting the entrance of the dwelling to the public footpath along Rainbow Street.
 - Street facing balcony directly adjacent to the living room;
 - Covered courtyard located adjacent to the kitchen; and

- New lawn areas and landscaping within the rear setback area.

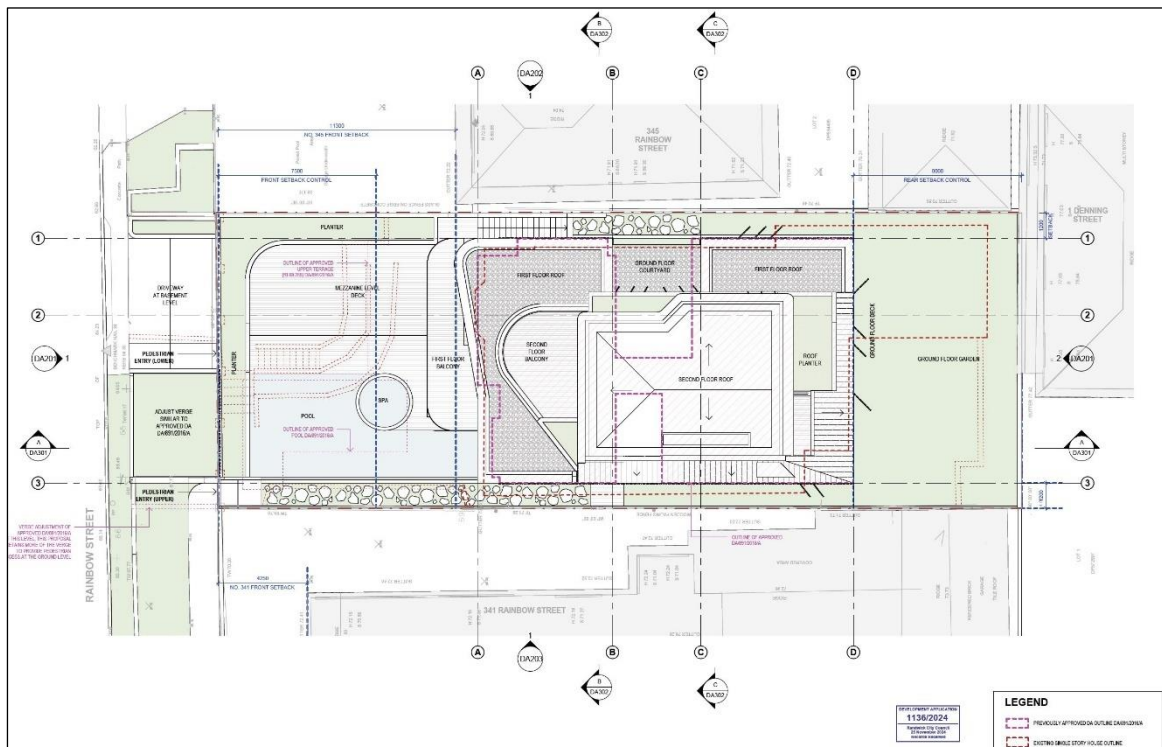
First Level

- The proposed dwelling house includes a first level with the following layout:
 - 4 x bedrooms;
 - Bedroom 02 includes an ensuite.
 - Living room;
 - Family room;
 - Study;
 - Bathroom; and
 - Lift and stairs to connect the first level to the other levels of the dwelling.
- The following works are proposed outside the internal floor layout of the first level:
 - Street facing balcony directly adjacent to the living and family rooms; and
 - Landscape planters adjacent to Bedrooms 02 and 04 and the bathroom.

Second Level

- The proposed dwelling house includes a second level with the following layout:
 - A Master Bedroom which includes the following;
 - Lounge area;
 - Study;
 - Walk-in-robe; and
 - Ensuite.
 - Stair core linking the second level to the levels below.
- The following works are proposed outside the internal floor layout of the second level:
 - Street facing balcony directly adjacent to the lounge area of the Master Bedroom;
 - Rear facing balcony located adjacent to the stair core; and
 - Landscape planters adjacent to balcony, ensuite, study and lounge areas.

Figures 7 to 15 illustrate the proposed development.



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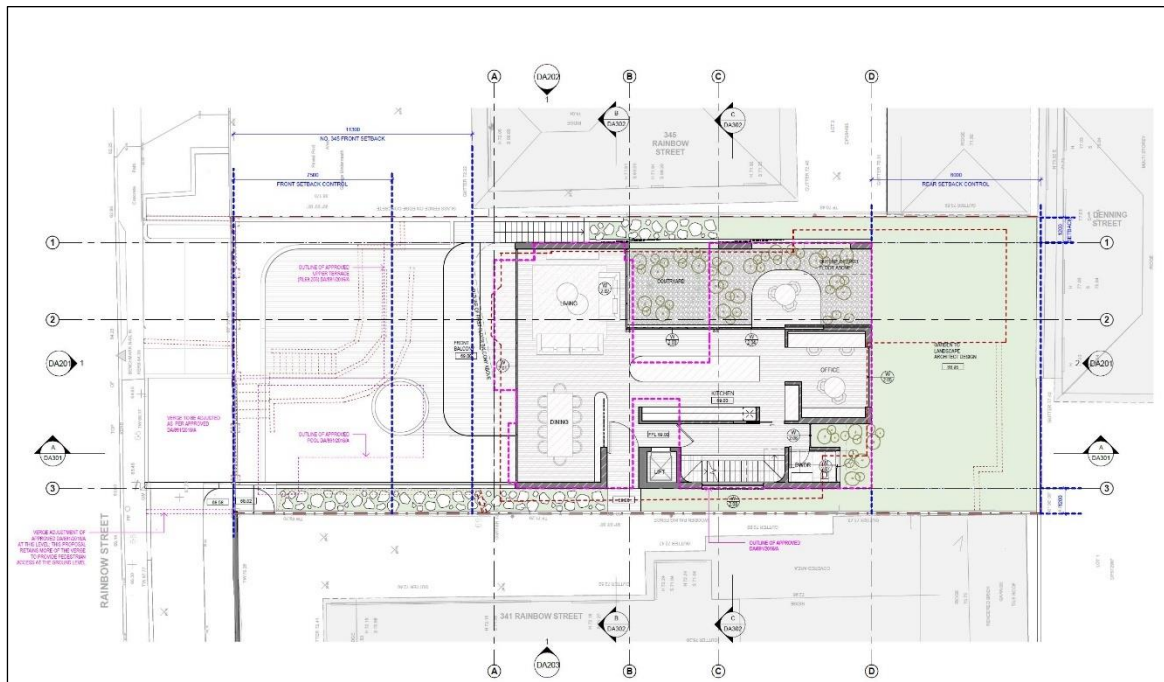


Figure 10: Ground Floor Plan

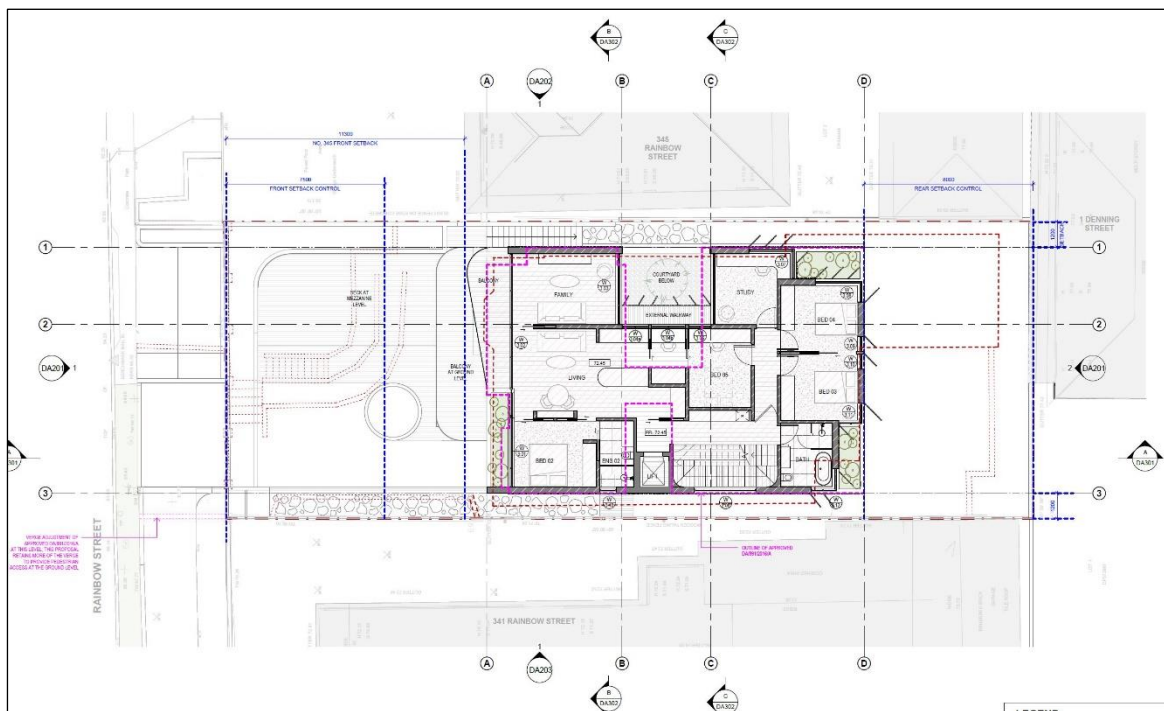


Figure 11: First Floor Plan

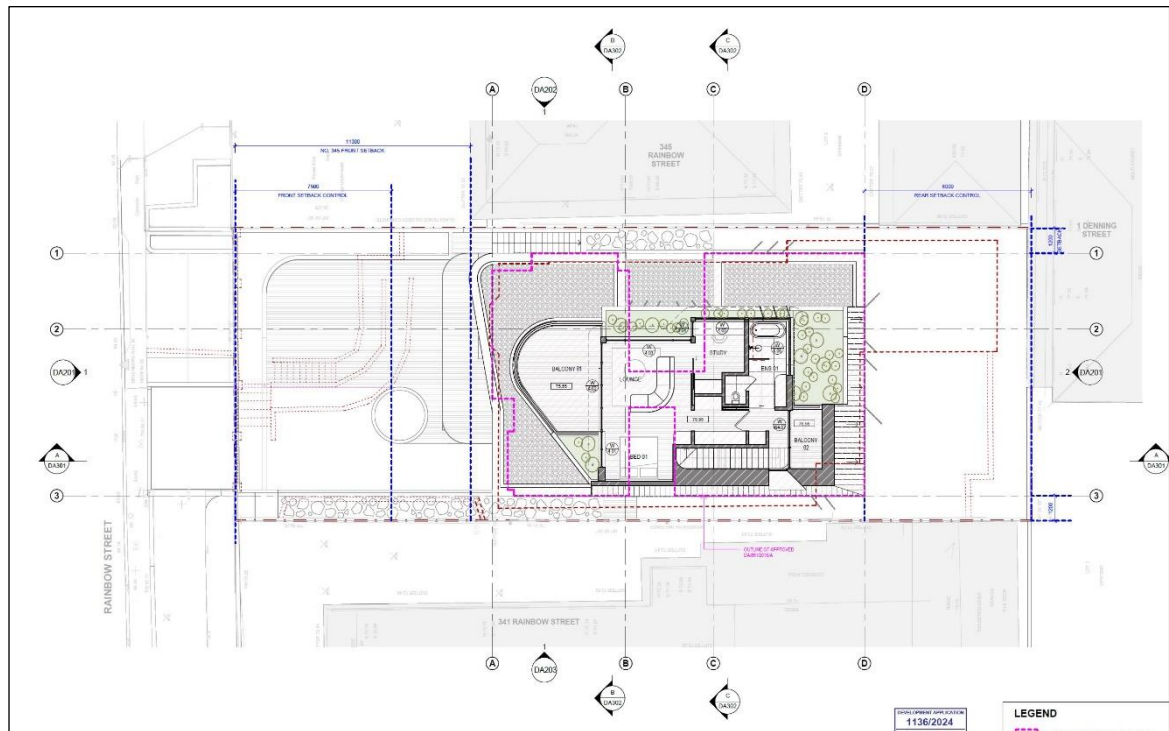


Figure 12: Second Floor Plan

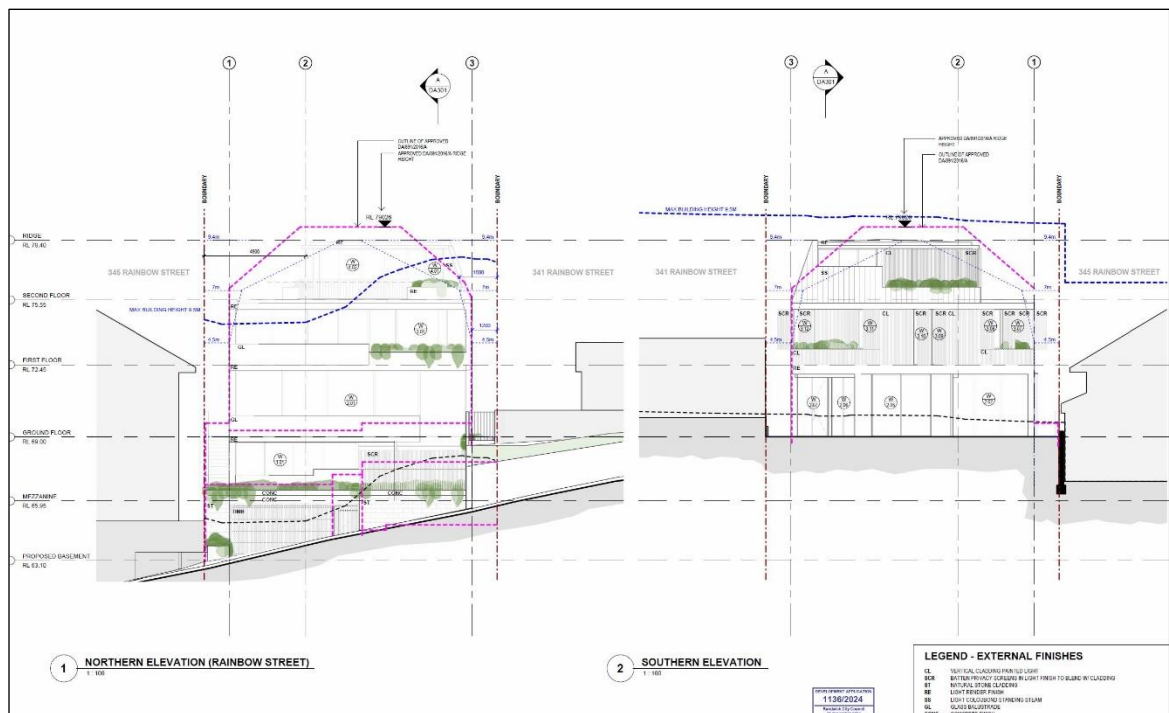


Figure 13: North and South Elevations

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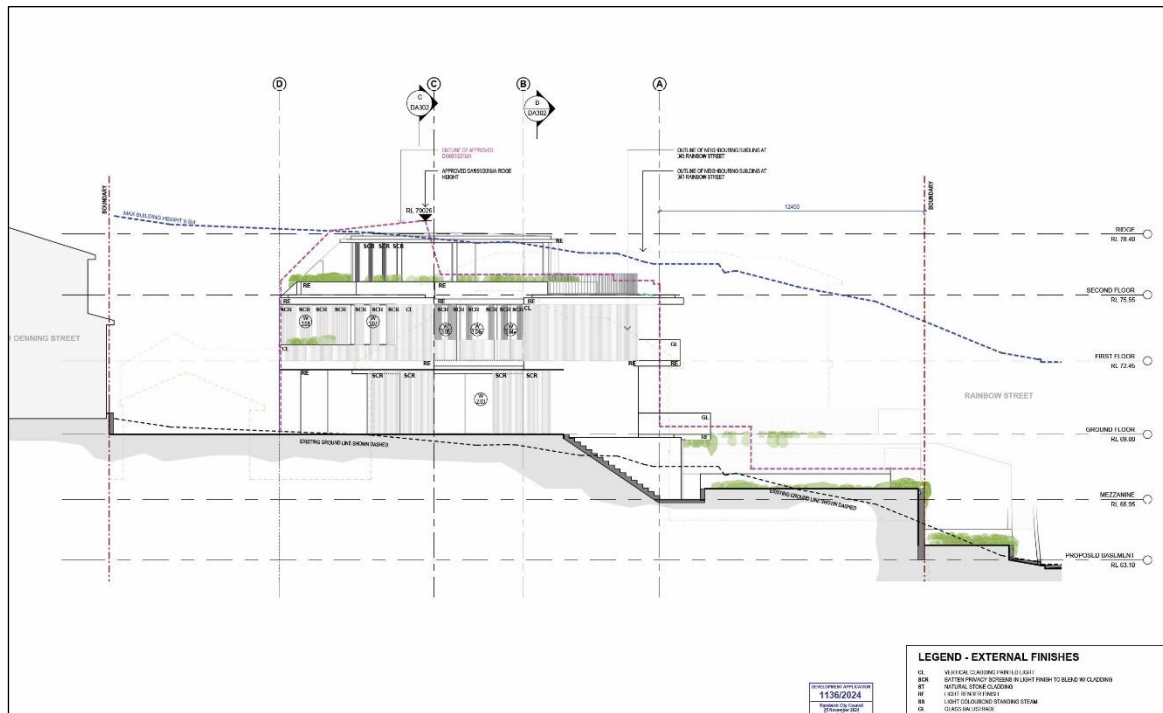


Figure 14: East Elevation

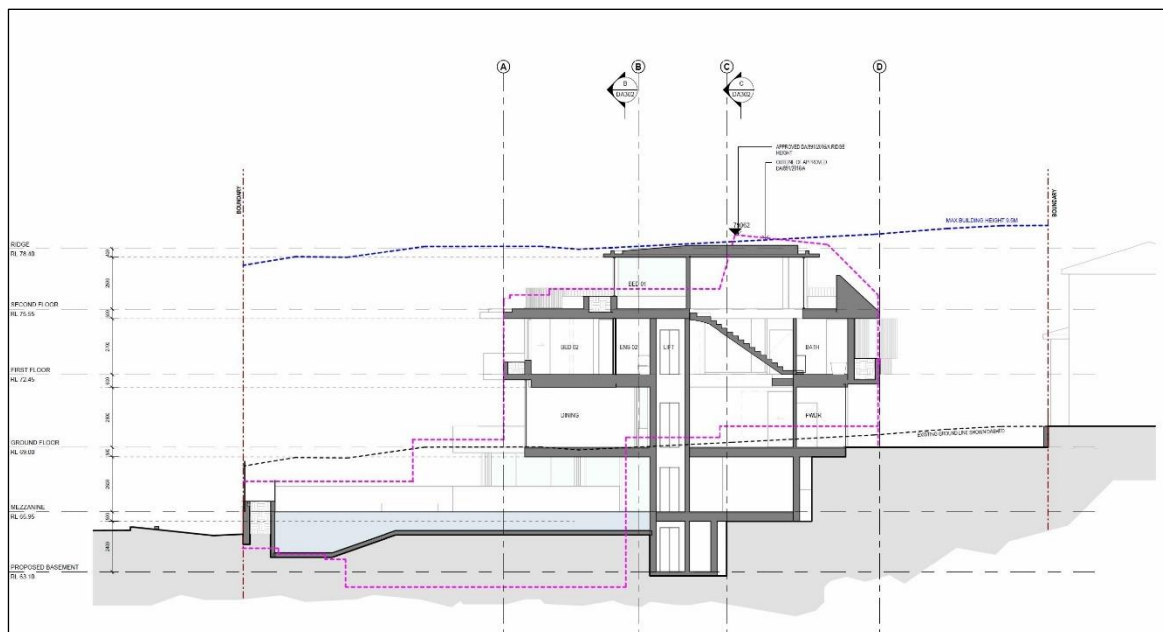


Figure 15: Longitudinal Section

5. Notification

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

- No. 341 Rainbow Street

Issue	Comment
<p><u>View loss</u> The submission raises concern that the proposed development and landscaping will impact on views from the main living area towards Wedding Cake Island and of land water interface.</p>	Noted and agree. The proposal has the potential to impact views towards Wedding Cake Island. The view loss study provided has not illustrated the extent of impact the proposal will have on this view corridor.
<p><u>Front Setback</u> The submission raises concern that the proposed front setback does not comply with the minimum control and contravenes the covenant which applies to the site.</p>	It is acknowledged that the proposed front setback does not align with the covenant which applies to the site. However, Clause 1.9A of the Randwick LEP 2012 overrides this covenant.
<p><u>Planting along western walkway</u> The submission raises concern that the proposed planting along the western walkway will impact view corridors from the dining and living room of No. 341 Rainbow Street.</p>	Noted and agree. The proposal has the potential to impact views towards Wedding Cake Island. The view loss study provided has not illustrated the extent of impact the proposed plantings will have on this view corridor.
<p><u>Potential impact from proposed excavation</u> The submission raises concern on the extent of excavation required to accommodate the proposed development. The submissions recommend excavation conditions to be imposed.</p>	The proposal includes excessive excavation works that are not supported. If the application was recommended for approval, appropriate excavation and engineering conditions would have been imposed.
<p><u>Site toilet and construction site fencing</u> The submission raises concern that the site toilet and construction site fencing erected during the construction phase will impact views</p>	If the proposal was recommended for approval, appropriate construction works and facility conditions would have been imposed.

- No. 345 Rainbow Street

Issue	Comment
<p><u>Contrary to aims of the LEP</u> The submission raises concern that the proposal is contrary to Section 4.15(1)(a)(i) of the EP&A Act as it fails to satisfy the aims under the LEP</p>	Agree. For the reasons raised in the key issues section of this report, the proposal is contrary to the aims of the LEP.
<p><u>Contrary to zone objections</u> The submission raises concern that the proposal is contrary to Section 4.15(1)(a)(i) of the EP&A Act as it fails to satisfy the objectives of the zone of the LEP.</p>	Agree. For the reasons raised in the key issues section of this report, the proposal is contrary to the objectives of the R2 Low Density Residential zone.

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Issue	Comment
<p><u>Inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards</u> The submission raises concern that the Applicant's Clause 4.6 variation request to contravene the LEP standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.</p> <p><u>Non-compliance with SEPP (Resilience and Hazards) 2021</u> The submission raises concern that the proposed development is inconsistent with the provisions of Clause 2.11(c) of the SEPP (Resilience and Hazards) as the scale of the development overly dominates the coastal environment, in a visually prominent area.</p>	<p>As will be discussed in this report, the submitted clause 4.6 variation has not demonstrated that compliance with the LEP development standard is unreasonable or unnecessary in the circumstances of the site.</p> <p>While the concern regarding the scale of the development is noted, the subject site is not identified within the coastal environment area or coastal use area on the SEPP (Resilience and Hazards) 2021 mapping. Clause 2.11(c) does not apply to the development.</p>
<p><u>Building Bulk & Scale</u> The submission notes that the development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls. The submission further notes that the excessive bulk results in adverse amenity impacts to adjoining properties and represents an overdevelopment of the site.</p> <p><u>Character & Streetscape</u> The submission notes that the proposed development is inconsistent with the provisions relating to the desired future character. The proposal, due to its excessive bulk, its impact on the amenity of adjoining properties and users of the public domain, its poor relationship with the subject property and the environment is inconsistent with the objectives and with the desired future character provisions of the locality.</p> <p><u>Excessive Building Height</u> The submission contends that the proposal should be refused as the building height is excessive and does not comply with the objectives of the LEP. Further, the submitted Clause 4.6 written submission is not well founded as it has not demonstrated that compliance with the development standard is unreasonable or unnecessary.</p>	<p>Agree. Due to the non-compliances to key built form controls, the proposed building bulk and scale is excessive and an overdevelopment of the site.</p> <p>Agree. The proposed non-compliances to key built form controls results in a development that will be out of character with the area and set an undesirable precedence for the locality.</p> <p>As will be outlined in this report, the proposed variation to building height is not acceptable. The submitted Clause 4.6 variation has been reviewed and is deemed to not be well founded.</p>

Issue	Comment
<p><u>Excessive FSR</u> The submission contends that the proposed development should be refused due to its excessive gross floor area and the associated impacts on the character of the locality and the amenity of adjoining properties. Moreover, the submission states that the calculations of GFA and FSR appear incorrect as areas that should have been included within GFA calculations appear to not to be included within the calculation.</p> <p><u>Insufficient setbacks</u> The submission states that the proposed development should be refused as it is significantly non-compliant with setback of the DCP.</p> <p><u>Scenic Protection</u> The submission raises concern that the proposal is inconsistent with the provisions of Foreshore Scenic Protection Area as the built form and scale of the proposed development exceeds the expected form of new development in the foreshore scenic protection area.</p> <p><u>Solar access</u> The submission notes that the proposed development has not provided evidence to ensure that solar access to neighbouring properties has been achieved. Additionally, concern is raised that the proposal will significantly overshadow the existing solar panels on No. 345 Rainbow Street.</p> <p><u>Privacy</u> The submission contends the proposal should be refused as it will result in unacceptable overlooking of the adjoining dwelling and associated private open space. The location and design of the proposed balcony and terraces at the upper floor levels and the excessive glazed windows facing the side boundary will result in unacceptable visual and acoustic privacy impacts to adjoining properties.</p> <p><u>Excessive Excavation & Geotechnical Concerns</u> The submission raises concern that the proposed excavation is excessive and too close to neighbouring properties. Additionally, the submitted geotechnical report does not include adequate recommendations to protect neighbouring properties.</p>	<p>The proposed variation to FSR is excessive and is not supported. Reference should be made to section 7.1 of this report for further comments.</p> <p>Agree. Insufficient side setbacks have been proposed. Reference should be made to the key issues section of this report.</p> <p>The proposal does not comply with Clause 6.7 Foreshore scenic protection area as the development has not been located and designed to minimise impacts to views to and from the coast.</p> <p>Agree. As will be discussed in the key issues section of the report, the proposal will worsen the existing solar access conditions to adjoining properties. Given the key built form non-compliances proposed, the proposed extent of overshadowing is not supported.</p> <p>The proposal includes second floor balconies that may allow for overlooking to the private areas of No. 345 Rainbow Street. As outlined in the key issues section of this report, the proposed privacy impacts are not supported.</p> <p>Agree. The proposal includes excessive excavation works that are not supported.</p>

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Issue	Comment
<p><u>Stormwater Concerns</u> The submission contends that the proposed development is not supported by sufficient information to demonstrate compliance with Council's stormwater management requirements regarding the provision of onsite stormwater detention.</p> <p><u>Flood concerns</u> The proposed development has not been designed to mitigate flood impacts to the subject site and adjoining land.</p> <p><u>Public interest</u> The submission contends that the proposal is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls.</p>	<p>Council's Development Engineer has reviewed the proposal and raised no concern regarding the proposed stormwater design.</p> <p>Council's Development Engineer has reviewed the proposal and raised no flooding concerns.</p> <p>Agree. Due to the proposed non-compliances and amenity impacts, the proposal is not in the public interest.</p>

- No. 1 Denning Street

Issue	Comment
<p><u>Contrary to aims of the LEP</u> The submission raises concern that the proposal is contrary to Section 4.15(1)(a)(i) of the EP&A Act as it fails to satisfy the aims under the LEP</p> <p><u>Contrary to zone objections</u> The submission raises concern that the proposal is contrary to Section 4.15(1)(a)(i) of the EP&A Act as it fails to satisfy the objectives of the zone of the LEP.</p> <p><u>Inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards</u> The submission raises concern that the Applicant's Clause 4.6 variation request to contravene the LEP standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.</p> <p><u>Non-compliance with SEPP (Resilience and Hazards) 2021</u> The submission raises concern that the proposed development is inconsistent with the provisions of Clause 2.11(c) of the SEPP (Resilience and Hazards) 2021 mapping. Clause 2.11(c) does not apply to the development.</p>	<p>Agree. For the reasons raised in the key issues section of this report, the proposal is contrary to the aims of the LEP.</p> <p>Agree. For the reasons raised in the key issues section of this report, the proposal is contrary to the objectives of the R2 Low Density Residential zone.</p> <p>As will be discussed in this report, the submitted clause 4.6 variation has not demonstrated that compliance with the LEP development standard is unreasonable or unnecessary in the circumstances of the site.</p> <p>While the concern regarding the scale of the development is noted, the subject site is not identified within the coastal environment area or coastal use area on the SEPP (Resilience and Hazards) 2021 mapping. Clause 2.11(c) does not apply to the development.</p>

Issue	Comment
<p><u>Building Bulk & Scale</u></p> <p>The submission notes that the development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls. The submission further notes that the excessive bulk results in adverse amenity impacts to adjoining properties and represents an overdevelopment of the site.</p>	<p>Agree. Due to the non-compliances to key built form controls, the proposed building bulk and scale is excessive and an overdevelopment of the site.</p>
<p><u>Character & Streetscape</u></p> <p>The submission notes that the proposed development is inconsistent with the provisions relating to the desired future character. The proposal, due to its excessive bulk, its impact on the amenity of adjoining properties and users of the public domain, its poor relationship with the subject property and the environment is inconsistent with the objectives and with the desired future character provisions of the locality.</p>	<p>Agree. The proposed non-compliances to key built form controls results in a development that will be out of character with the area and set an undesirable precedence for the locality.</p>
<p><u>Excessive Building Height</u></p> <p>The submission contends that the proposal should be refused as the building height is excessive and does not comply with the objectives of the LEP. Further, the submitted Clause 4.6 written submission is not well founded as it has not demonstrated that compliance with the development standard is unreasonable or unnecessary.</p>	<p>As will be outlined in this report, the proposed variation to building height is not acceptable. The submitted Clause 4.6 variation has been reviewed and is deemed to not be well founded.</p>
<p><u>Excessive FSR</u></p> <p>The submission contends that the proposed development should be refused due to its excessive gross floor area and the associated impacts on the character of the locality and the amenity of adjoining properties. Moreover, the submission states that the calculations of GFA and FSR appear incorrect as areas that should have been included within GFA calculations appear to not to be included within the calculation.</p>	<p>The proposed variation to FSR is excessive and is not supported. Reference should be made to section 7.1 of this report for further comments.</p>
<p><u>Insufficient setbacks</u></p> <p>The submission states that the proposed development should be refused as it is significantly non-compliant with setback of the DCP.</p>	<p>Agree. Insufficient side setbacks have been proposed. Reference should be made to the key issues section of this report.</p>
<p><u>Scenic Protection</u></p> <p>The submission raises concern that the proposal is inconsistent with the provisions of Foreshore Scenic Protection Area as the built form and scale of the proposed development exceeds the expected form of new development in the foreshore scenic protection area.</p>	<p>The proposal does not comply with Clause 6.7 Foreshore scenic protection area as the development has not been located and designed to minimise impacts to views to and from the coast.</p>

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Issue	Comment
<p><u>Adverse View Sharing Impacts</u> The submission contends that the development application should be refused as it results in unacceptable view loss from adjoining and nearby residential dwellings. Additionally, the submission contends that the proposed landscaping and new tree plantings will obscure water views from 1 Denning Street.</p> <p><u>Solar access</u> The submission notes that the proposed development has not provided evidence to ensure that solar access to neighbouring properties has been achieved. Additionally, concern is raised that the proposal will significantly overshadow the existing solar panels on No. 345 Rainbow Street.</p> <p><u>Privacy</u> The submission contends the proposal should be refused as it will result in unacceptable overlooking of the adjoining dwelling and associated private open space. The location and design of the proposed balcony and terraces at the upper floor levels and the excessive glazed windows facing the side boundary will result in unacceptable visual and acoustic privacy impacts to adjoining properties.</p> <p><u>Excessive Excavation & Geotechnical Concerns</u> The submission raises concern that the proposed excavation is excessive and too close to neighbouring properties. Additionally, the submitted geotechnical report does not include adequate recommendations to protect neighbouring properties.</p> <p><u>Stormwater Concerns</u> The submission contends that the proposed development is not supported by sufficient information to demonstrate compliance with Council's stormwater management requirements regarding the provision of onsite stormwater detention.</p> <p><u>Flood concerns</u> The proposed development has not been designed to mitigate flood impacts to the subject site and adjoining land.</p> <p><u>Public interest</u> The submission contends that the proposal is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls.</p>	<p>View loss for No.1 Denning Street was considered in the key issues section of this report. Given the built-form non-compliances, the proposal is considered to result in unacceptable view loss impacts.</p> <p>Agree. As will be discussed in the key issues section of the report, the proposal will worsen the existing solar access conditions to adjoining properties. Given the key built form non-compliances proposed, the proposed extent of overshadowing is not supported.</p> <p>The proposal includes second floor balconies that may allow for overlooking to the private areas of No. 345 Rainbow Street. As outlined in the key issues section of this report, the proposed privacy impacts are not supported.</p> <p>Agree. The proposal includes excessive excavation works that are not supported.</p> <p>Council's Development Engineer has reviewed the proposal and raised no concern regarding the proposed stormwater design.</p> <p>Council's Development Engineer has reviewed the proposal and raised no flooding concerns.</p> <p>Agree. Due to the proposed non-compliances and amenity impacts, the proposal is not in the public interest.</p>

***Note:** The submissions noted for 345 Rainbow Street and 1 Denning Street were prepared by the same author but submitted on behalf of different property owners. As such, despite raising similar points, these submissions have each been counted as a unique submission.

5.1. Renotification

As no additional information was provided by the Applicant, renotification of the application was not required.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

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

6.2. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

The available history of the site indicates that the site has been used as a residential dwelling for a significant period of time. An inspection of the site has not revealed any land uses that suggest contamination of land has occurred. No significant risk is posed and therefore under Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered suitable for the proposed use as a residential dwelling.

6.3. 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 is permissible with consent.

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)	0.65:1 (348.4m ²)	0.84:1 (454m ²)	No
Cl 4.3: Building height (max)	9.5m	9.62m	No

6.3.1. Clause 4.6 - Exceptions to development standards

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

6.3.2. Clause 6.7 Foreshore scenic protection area

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

6.7 Foreshore scenic protection area

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

- (a) to recognise, protect and enhance the natural, visual and environmental qualities of the scenic areas of the coastline,
- (b) to protect and improve visually prominent areas adjoining the coastal foreshore,
- (c) to protect significant public views to and from the coast,

(d) *to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.*

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

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

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

(b) *contributes to the scenic quality of the coastal foreshore.*

The proposed development will significantly increase the scale of built form on the site. This increase to built form has the potential to impact view corridors from adjoining properties, particularly No. 341 Rainbow Street and No. 1 Denning Street, towards Wedding Cake Island and the Coogee Headland. While a View Loss Assessment has been submitted, the assessment does not detail the extent of view loss that will occur to neighbouring properties.

The proposed development seeks a number of variations to key built form controls including building height and FSR. The submitted documentation has not provided sufficient evidence to determine whether the proposed variations to these built form controls will affect existing views towards the coast from neighbouring properties.

Therefore, due to the insufficient information provided, Council is not satisfied that the development is located and designed to minimise impacts to views to and from the coast. The proposal does not satisfy subclause (3)(a) nor meet the relevant objectives outlined for Foreshore scenic protection areas under Clause 6.7 of the RLEP 2012.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.65:1 (348.44m ²)	0.84:1 (454m ²)	105.56m ²	30.2%
Cl 4.3: Building height (max)	9.5m	9.62m	0.12m	1.26%

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

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

3. *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the Applicant has demonstrated that:*

(a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

(b) *there are sufficient environmental planning grounds to justify the contravention of the development standard*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- *The proposed built form, including the FSR variation, will be compatible with the desired future character as the built form will not appear out of context with the height, bulk and scale of adjoining properties to the east.*
- *The additional 0.19:1 is located below the existing ground level. The additional FSR would thereby be indiscernible.*
- *The substantial front setback from the Rainbow Street frontage also ensures that the built form, including the FSR variation, would not contradict the objective.*

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

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

- *The proposed development provides for articulated and modulated facades. The incorporation of a variety of materials, finishes and indentions reflects the function of the building and represents a contemporary design that makes a positive contribution to the streetscape character.*
- *The building is articulated not unreasonably to add to the bulk and scale of the development. Landscaping is retained to soften the built form.*
- *The application is accompanied by a BASIX Certificate demonstrating compliance with the State Government's environmental sustainability targets for water, thermal comfort, and energy efficiency through introducing appropriate measures to reduce artificial heating, lighting, and cooling means whilst also reducing water consumption.*

(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 outlines that this objective is satisfied by noting that:

- *The impact of the proposed new residential dwelling house associated with the FSR variation will not be detrimental to the amenity of the adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views, and has been assessed above at Justification for Contravention of the Development Standard –*

that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

- *The removal of excess FSR beyond what is permitted would not result in an appreciable benefit to surrounding properties.*
- *The bulk and scale of the dwelling expressed as FSR includes the Lower Ground Floor, which is indiscernible from the public domain, including Rainbow Street and Denning Street.*

Assessing officer's comment:

As will be discussed below, the proposed variation to FSR is considered to contravene objectives (a) and (d) of the Clause 4.4 – Floor space ratio of the Randwick LEP 2012. Thus, the proposed variation to FSR does not satisfy the objectives of the standard.

With respect to objective (a), the desired future character of the locality is established in the land zoning and development standards which apply to the site under the Randwick LEP. An FSR standard of 0.65:1 (348.44m²) applies to the site and the proposal seeks a significant variation of 105.56m² or 30.2%. In addition to the numerical non-compliance to the FSR standard, the proposal also seeks variation to key built form controls which include and are not limited to, building and storey height, side setbacks, deep soil area and excavation depth. These non-compliances illustrate that the proposal is an overdevelopment on the site as it is inconsistent with the key built form controls that apply to dwelling house developments within the R2 low density residential zone. Therefore, the size and scale of the proposed development is not compatible with the 'desired future character of the locality' as it will significantly contravene the FSR standard and other key built form controls which apply to the site and surrounding properties.

In terms of objective (d), an assessment has been undertaken to determine whether the development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views. A summary of these impacts has been provided below.

- **Visual bulk:** The development results in a significant increase to building bulk on the site. The proposed three (3) storey form, which could be perceived as four (4) storeys from the streetscape, contravenes the maximum two (2) storey limit specified within the Randwick DCP. This contravention, coupled with the elevated topography of the site in relation to Rainbow Street, results in a development that overwhelms the adjoining low density residential zoned properties as well as the Rainbow Street streetscape. The proposed departure from the FSR standard of 0.65:1, will result in a built form that does not respond to the density of the area envisaged under the Randwick LEP 2012.
- **Loss of privacy:** A detailed assessment of privacy impacts is provided in Appendix 3 (Item 5.3 – Visual Privacy). The proposed second floor contains balconies that, while generally orientated to the street and rear boundary, are overly large in width with a significant portion of balcony 01 facing the eastern side boundary shared with 345 Rainbow Street. Given the site is situated on higher topography than the eastern adjoining property, the proposed second floor balconies provide opportunities for overlooking into adjoining properties. Insufficient mitigation measures have been proposed to limit the potential for overlooking to No. 345 Rainbow Street.
- **Overshadowing:** A detailed assessment of the overshadowing impacts is provided in Appendix 3 (Item 5.1 – Solar access and overshadowing). Although shadow diagrams have been provided, these diagrams lack detail to conclusively determine if adjoining properties achieve the minimum amount of direct solar access during the winter solstice. Furthermore, concern is raised regarding the potential overshadowing that will fall over the solar panels at No. 345 Rainbow Street. Based on the shadow diagrams provided, Council is unable to conclude that the proposal will not result in adverse overshadowing impacts.
- **Views:** The adjoining properties are currently afforded view corridors to Wedding Cake Island and land/water interface. A detailed view loss assessment has been undertaken

within the key issues section of this letter. While a View Loss Assessment has been submitted, the assessment does not detail the extent of view loss that will occur to neighbouring properties. As a comprehensive view loss assessment (illustrating the current and proposed extent of views) from neighbouring properties has not been undertaken, Council cannot be satisfied that the development is located and designed to minimise impacts to existing view corridors from neighbouring properties.

Based on the above assessment, it is considered that development will adversely impact on the amenity of adjoining and neighbouring properties in terms of visual bulk, privacy, overshadowing and view loss.

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

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

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

- *The proposed excess FSR is below existing ground level and thereby not perceptible from the streetscape nor private properties, ensures that the FSR variation would be indiscernible. Such matter is considered to constitute a sufficient environmental ground.*
- *Consistency with the previously approved FSR within a similar building envelope is also considered a sufficient environmental planning ground.*
- *As illustrated in the accompanying, the additional FSR will not significantly impact solar access. The analysis confirms that there are no meaningful additional overshadowing impacts to adjoining neighbours, with the proposal compliant with the DCP, with three (3) hours of sunlight retained in north-facing living areas and private open space areas.*
- *Retention of views is another important consideration, given the highly valued nature of the coastal views, including Wedding Cake Island. Highly valued views are retained from all primary living and private open space areas surrounding the site, thereby confirming that the FSR variation does not generate any adverse or unreasonable view impacts. Such matter is also considered to constitute a sufficient environmental planning ground.*

Assessing officer's comment: In conclusion, As per the caselaw established by Chief Justice Preston in ***Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*** previously outlined in this report, the Applicant's written request needs to focus 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 provided in the Applicant's written request outline the overall benefits of the development but do not specifically state why departure from the current FSR standard is justified. Although the written request claims that the proposed extent of variation will be below ground level and not discernible from the street, this does not justify contravention to the current FSR standard. Furthermore, the claim that the FSR variation will not result in overshadowing and view loss impacts has not been demonstrated within the submitted documentation. Nevertheless, compliance with solar access and view sharing controls is not a valid environmental planning ground to justify variation as compliance with key amenity controls should be the aim for all development applications.

Furthermore, it is noted that the Clause 4.6 variation request references the previous variation to FSR approved under DA 891/2016A. However, as noted within the delegated assessment report for DA 891/2016/A, the additional FSR was approved on the basis that the size and scale of the development to which the original consent was granted remained unchanged. The proposal currently before Council is an entirely new scheme for the site and thus must be considered under its own merits. Additionally, as this is a new DA, the proposal must be

considered against the current controls applying to the site, noting that some controls differ from the controls in place at the time that DA 891/2016 and DA 891/2016/A were considered.

Moreover, the proposed development is inconsistent with the objectives of the standard as the size and scale of development is not compatible with the desired future character of the locality; the building form does not respond to the site context; and the development adversely impacts on the amenity of adjoining and neighbouring land in terms of visual bulk, privacy, overshadowing and view loss.

In conclusion, the Applicant's written request has **not** adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

On the basis of the above assessment, the proposed variation to FSR is not supported and the submitted Clause 4.6 is not considered well founded nor conducive to the objectives of Clause 4.6 particularly as the development does not result in a better environmental or planning outcome.

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

The Applicant's written justification for the departure from the Building Height 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 Building Height 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 Building Height 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 outlines that this objective is satisfied by noting that:

- *It is considered that the proposed height variation will not generate any inconsistency with the desired future character of the locality.*
- *The height variation is associated with a dwelling house compatible with the height, bulk, and scale of existing dwellings and more recently constructed contemporary dwellings, particularly those near Denning Street.*
- *The substantial front setback and recessed nature of the upper level associated with the height variation ensure that the*

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

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

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

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

- *The impact of the proposed residential dwelling house associated with the height variation will not be detrimental to the amenity of the adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views, and has been*

assessed above at Justification for Contravention of the Development Standard – that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

- *The removal of the additional height beyond that permitted would not result in an appreciable benefit to surrounding properties, as outlined above.*
- *Removing the excess height component would not improve solar access, views, or privacy, nor would it reduce the streetscape/visual bulk outcome.*
- *On this basis, the variation does not contradict the objective.*

Assessing officer's comment:

As will be discussed below, the proposed variation to building height is considered to contravene objectives (a) and (c) of the Clause 4.3 – Height of buildings of the Randwick LEP 2012. Thus, the proposed variation to building height does not satisfy the objectives (a) and (c) of the standard.

Similar to the previous comments outlined in response to the FSR objectives under section 7.1 of this report, the proposal also seeks variation to key built form controls which include and are not limited to, FSR, storey height, side setbacks, deep soil area and excavation depth. These non-compliances illustrate that the proposal is an overdevelopment on the site as it is inconsistent with the key built form controls that apply to dwelling house developments within the R2 low density residential zone. Additionally, as a result of these non-compliances, it is considered that development will adversely impact on the amenity of adjoining and neighbouring properties in terms of visual bulk, privacy, overshadowing and view loss as earlier noted.

Therefore, the Applicant's written request has not adequately demonstrated that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

- *The particular site circumstances are considered to constitute sufficient environmental grounds. The large front setback and compliance with the rear setback result in a limited building footprint. The distribution of the FSR is thereby in a confined footprint. Such footprint and built form/height maintain solar access and views for both neighbouring properties to a greater extent than the built form were distributed over a greater footprint.*
- *The absence of impacts associated with the additional height on the uppermost level (i.e. shadows, views and privacy) also constitutes sufficient environmental grounds.*
- *It is noted from the 3D height plane that the height variation occurs at the eastern end of the upper level only. Such variation is due to the sloping nature of the site in the front portion of the site whereby the RL at the western end of the front yard is RL69.31, whereas the eastern end of the front yard has an RL of 67.81, which represents a fall of 1.5-metres. If not for the sloping nature of the site in this location, the height would be compliant. This circumstance is also considered to constitute a sufficient environmental ground.*

Assessing officer's comment: Although the degree of variation to the building height standard is minor, the three (3) storey form of the proposal is inconsistent with the desired future character of the locality. This is further exacerbated by the fact that the proposal seeks variation to key built form controls such as FSR, side setbacks and deep soil area. These non-compliances illustrate that the proposal is an overdevelopment on the site as it is inconsistent with the key built form controls that apply to dwelling house developments within the R2 low density residential zone.

If the proposal was amended to be a maximum two (2) storey form, it is likely the proposal would comply with the maximum building height LEP standard despite the topography of the

site. As such, the sloping nature of the site is not considered to be a sufficient environmental planning ground for variation in this instance.

Furthermore, while the 3D Building Height Plane Diagram prepared by Smyth & Smyth illustrates that the variation is limited to a small portion of the development, the extent of variation has been achieved through non-compliances with the following controls outlined in C1, Section 3.2 of the Randwick Development Control Plan 2013 (RDCP 2013):

- i) *Any habitable space located above the first floor level must be integrated into the building roof form and roofline.*
- ii) *The minimum floor-to-ceiling height for living areas, such as living/lounge, dining and bedrooms, is 2.7m.*

The proposed second floor is not integrated into the building roof form and only provides a floor-to-ceiling height of 2.5m despite containing living areas. It is acknowledged that compliance with the abovementioned controls is likely to exacerbate the proposed variation to building height.

Moreover, the proposed development is inconsistent with the objectives of the standard as the size and scale of development is not compatible with the desired future character of the locality and the development adversely impacts on the amenity of adjoining and neighbouring land in terms of visual bulk, privacy, overshadowing and view loss.

In conclusion, the Applicant's written request has **not** adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

On the basis of the above assessment, the proposed variation to building height is not supported and the submitted Clause 4.6 is not considered well founded nor conducive to the objectives of Clause 4.6 particularly as the development does not result in a better environmental or planning outcome.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

The relevant provisions of the DCP are addressed in Appendix 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	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy all the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is not consistent with the dominant character in the locality and represents a built form that contravenes the desired future character envisaged for the area under the Randwick LEP 2012.</p> <p>The proposed built form results in unacceptable amenity impacts to adjoining residential properties.</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 does not have sufficient area to accommodate the proposed development, as demonstrated through non-compliance with the current building height and FSR standards. Therefore, the site is not 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 contravenes the objectives of the zone and will result in significant adverse environmental and social impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

Floor Space Ratio

An assessment concerning the significant departure to the Randwick LEP 2012 Floor Space Ratio (FSR) standard was undertaken under Part 7.1 of this report. In summary, the significant variation to the standard, coupled with non-compliances to a number of key built form controls, results in an overdevelopment of the site and subsequently results in adverse amenity impacts to surrounding properties.

Building Height

An assessment concerning the significant departure to the Randwick LEP 2012 building height standard was undertaken under Part 7.2 of this report. In addition to the non-compliance to the Randwick LEP 2012 building height standard, the proposal includes non-compliances with the following controls outlined in C1, Section 3.2 of the Randwick Development Control Plan 2013 (RDCP 2013):

- i) *Any habitable space located above the first floor level must be integrated into the building roof form and roofline.*
- ii) *The minimum floor-to-ceiling height for living areas, such as living/lounge, dining and bedrooms, is 2.7m.*

The proposed second floor is not integrated into the building roof form and only provides a floor-to-ceiling height of 2.5m despite containing living areas. It is acknowledged that compliance with the abovementioned controls is likely to exacerbate the proposed variation to building height. However, the variations to the abovementioned controls result in a development that presents as three (3) storeys to the streetscape and a poor amenity outcome for future occupants of the dwelling.

Furthermore, the objectives of these controls are as follows;

- *To limit the bulk, scale and visual impact of buildings as viewed from the street and from neighbouring dwellings.*
- *To ensure low density residential development maintains a two-storey height and street frontage.*
- *To position any habitable space above the first floor level within the roof of the dwelling.*
- *To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.*
- *To ensure the form and massing of development is respectful of site topography.*

The proposal does not align with the above objectives.

While the DCP notes that an alternative design that varies from the two-storey height and street frontage in Zone R2 may be acceptable, regard must be made to the potential impacts on the visual amenity, solar access, privacy and views of the adjoining properties. As will be discussed below, the proposed development generates adverse building bulk, privacy, overshadowing and view loss impacts to neighbouring properties.

Therefore, the proposed departure to the Randwick LEP and DCP building height controls is not acceptable and will set an undesired precedence for the area.

View Loss

Concerns regarding potential view loss were raised by neighbouring properties during the assessment process. Given the location of the subject site in relation to adjoining properties, the proposed development has the potential to impact view corridors towards the Pacific Ocean, Coogee Headland and Wedding Cake Island. Part 5.6 of the Randwick DCP states that Wedding Cake Island is a prominent natural feature which carries scenic and iconic values.

While a View Loss Assessment has been submitted, the assessment does not detail the extent of view loss that will occur to neighbouring properties. While the assessment includes real estate photos of views from neighbouring properties, in the absence height poles and/or certified photomontages which illustrate the envelope of works, it is difficult to determine the extent of impact the proposal will have on existing view corridors. In the absence of a detailed View Loss Study, a view loss assessment has been undertaken based on the submitted application information, site inspection and information provided within submissions.

The general planning principles pertaining to views have been established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* ('*Tenacity*'). Council's analysis is provided below, with respect to the planning principle for views as established by *Tenacity*:

Step 1: Assessment of views to be affected:

The extent of views affected include water views, including land and water interface, and views towards the Pacific Ocean, Coogee headlands and Wedding Cake Island.



Figure 16: Existing view corridor across front setback area to Wedding Cake Island (Photo taken facing north-east in a standing position).

Step 2: Consideration of the part of the property the views are obtained:

No. 341 Rainbow Street

No. 341 Rainbow Street contains a dwelling house which provides large east facing windows towards Wedding Cake Island as well as expansive views of the Pacific Ocean. This can be seen in Figures 17 and 18 below. Figure 18 has been extracted from the submission received from No. 341 Rainbow Street.



Figure 17: View of existing ground floor living room windows at No.341 Rainbow Street (Photo taken facing west)



Figure 18: Extract from submission indicating existing view of Wedding Cake Island from ground floor living room.

No. 1 Denning Street

No. 1 Denning Street contains a dwelling house which provides north facing windows towards Coogee headlands, including desirable land water interface. This can be seen in Figures 19 and 20 below. Figure 20 has been extracted from the submission received from No.1 Denning Street.

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Figure 19: View of existing first floor north facing windows at No.341 Rainbow Street (Photo taken facing south-east).



Figure 20: Extract from submission indicating existing view of Coogee headland including land water interface from first floor secondary living/rumpus room.

Step 3: Assessment of the Impact:

No. 341 Rainbow Street

While the main built form of the dwelling will be situated away from the view corridor from No. 341 Rainbow Street to Wedding Cake Island, the proposal includes a solid balustrade measuring 1.6m in height along the eastern side of the entry pathway. The submitted view loss study does not indicate how this balustrade will impact this view corridor. Based on the available information, it appears as though the existing view corridor to Wedding Cake Island will not be impacted by the proposed balustrade with only a minor loss to water views occurring. However, in the absence of a detailed view loss study, Council is unable to confirm if this is the case and must take a cautious approach to ensure neighbouring amenity is protected.

No. 1 Denning Street

The breach in building height and storey height will significantly reduce the existing views towards the Coogee headlands from the secondary living/rumpus room window. This has been shown in the photomontage included as part of the submission from No1 Denning Street (refer to Figure 21 below). Close to the entirety of the Coogee headland land water interface will be lost as a result of the proposal based on the available information submitted to Council.



Figure 21: Extract from submission indicating view loss that will occur as a result of the proposed built form and landscaping.

It is acknowledged that the submitted view loss study notes that 1 Denning Street has view corridors towards Wedding Cake Island and the Pacific Ocean from other rooms within the dwelling that will not be impacted by the proposal. However, this does not mean that the view loss proposed to the secondary living/rumpus room window is an acceptable outcome, especially considering that the proposal breaches the maximum permissible building height and FSR standards which apply to the site.

Step 4: Reasonableness of the proposal causing the impact:

As an insufficient view loss study has been provided, it is difficult to determine the reasonableness of the proposal causing the impact. However, the fact that the proposal includes a number of key built form non-compliances, including but not limited to FSR, building height, storey height and side setbacks, any impact caused to existing view corridors is considered unreasonable. A compliant built form that is skillfully designed is likely to allow for the retention of existing view corridors from neighbouring properties to Wedding Cake Island, Coogee headlands and the Pacific Ocean.

In summary, given the extent of built-form non-compliances, any impacts to view corridors generated by the proposal cannot be supported. In the absence of a detailed view loss study which includes height poles and/or a certified photomontage, Council cannot be certain that the proposal will not result in adverse view loss impacts to neighbouring properties.

Side setbacks

Side setbacks under Part C1, Section 3.3.2 of the RDCP 2013 are calculated in accordance with the table below.

Minimum side setbacks			
Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m
Less than 6m	Merit assessment		
6m to less than 9m	0.9m	0.9m	0.9m + (building height – 7m)
9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$
12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$

In accordance with the table above and based on the proposed building height of 9.62m and frontage width of 14.02m, the following side setbacks apply:

- Between 0m – 4.5m = 1.2m
- Between 4.5m – 7m = 1.825m
- Above 7m = 7.04m

The mezzanine and ground floor levels comply with the abovementioned side setbacks. However, the top portion of the first floor and the majority of the second floor are within the required setbacks. The portion of the site between 4.5m – 7m in height is only setback 1.2m from the western side boundary while the portion of the building above 7m is only setback 1.8m from the western side boundary. This breach can be seen in the elevation plan prepared by Smyth & Smyth (refer to Figure 22 below).

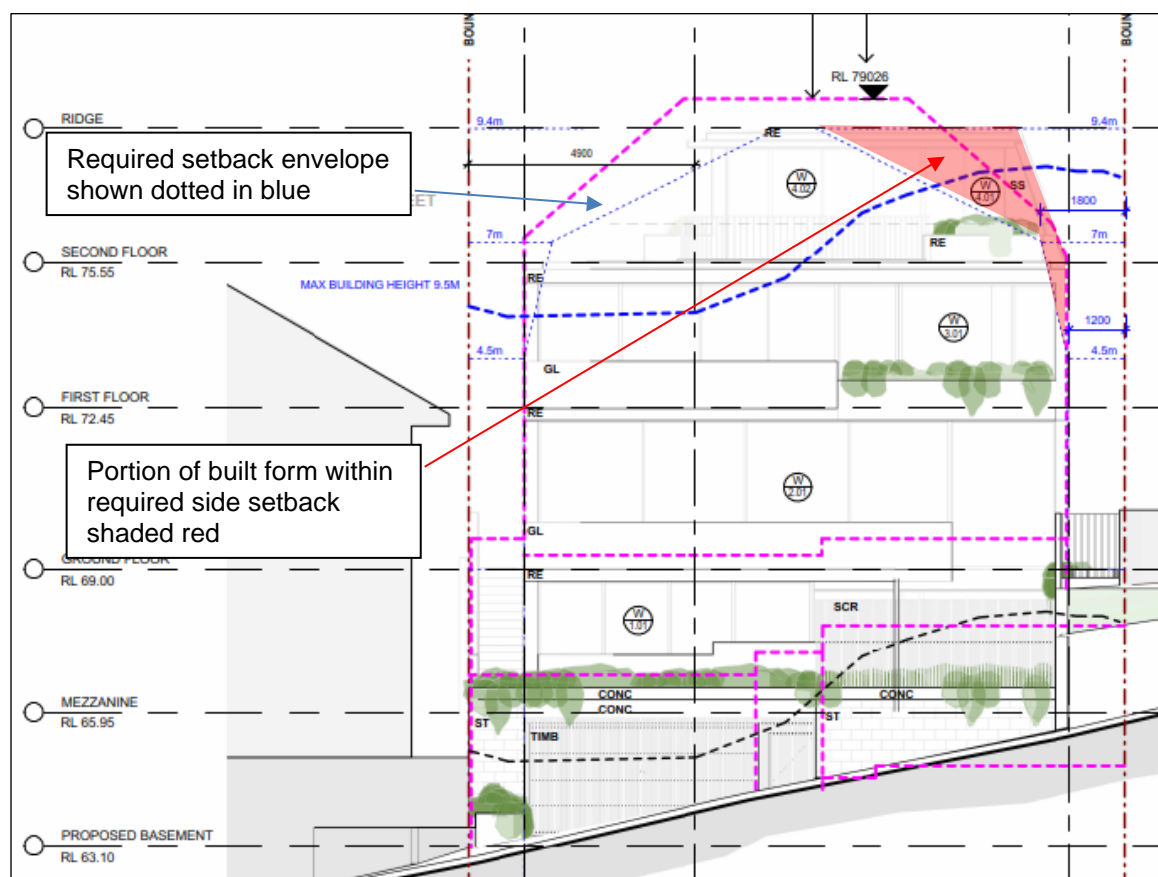


Figure 22: Extract of Elevation 1 plan prepared by Smyth & Smyth.

The proposed breach to the side setback control is largely attributed to the proposal exceeding the storey height limit envisaged for low density residential development under Part C1, Section 3.2 of the RDCP 2013. The non-compliance with the minimum side setback control, along with variations to the RLEP 2012 building height and FSR standards, demonstrate that the proposal is an overdevelopment of the subject site, resulting in unacceptable amenity impacts to the streetscape and neighbouring properties.

It is noted that the submitted elevation plan references the building envelope approved on the site under DA 891/2016. While it is acknowledged that the proposed building envelope is within the building envelope of the previous approval issued on the site (DA/891/2016/A), this application was approved with regard to the low density residential side setback controls that applied at the time of approval. These side setback controls were superseded on 1 September 2023. As this is a new DA, the proposal must be considered against the current controls applying to the site.

Given the extent of non-compliance to key built form controls as well as amenity impacts generated to neighbouring properties, variation to the minimum side setback control cannot be supported in this instance.

Deep Soil Area

Part C1, Section 2.5 of the RDCP 2013 outlines the minimum deep soil area required to be provided. Based on a site area of 536.06m², a minimum of 40% of the site area (214.42m²) is required to be provided as deep soil area.

The submitted calculation plans indicate that 220m² of deep soil area has been provided throughout the site. However, it appears that approximately 42.1m² of the deep soil area calculated will be located under the first floor or within a planter box above the basement. These deep soil areas do not appear to have sufficient space for plantings or access to sunlight, with particular regard to the deep soil area indicated within the courtyard.

Part C1, section 2.5 of the Randwick DCP defines deep soil area as follows:

“Deep soil permeable surfaces include areas used for the growing of plants (including grasses, shrubs and trees) and areas occupied by loose gravels upon soil at the ground level of the site.

Deep soil permeable surfaces do not include swimming and spa pools, paved areas, planter boxes, or planted areas above basements, podiums, roofs or slabs.”

Based on the definition above, only 177.9m² or 33.1% of the site area has been provided as deep soil area. Considering the proposal represents the demolition of the existing dwelling and construction of a new dwelling, there is no reason why compliance with the minimum deep soil area cannot be achieved. The fact that the proposal breaches the maximum FSR standard and does not achieve the minimum deep soil area requirement demonstrates that the proposal is an overdevelopment of the site.

Solar Access

Part C1, section 5.1 of the RDCP outlines the following solar access controls:

Solar access to proposed development

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

Solar access to neighbouring development

- iii) *A portion of the north facing living area windows of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice)*
- iv) *The private open space of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice). The area covered by sunlight must be capable of supporting passive recreation activities.*
- v) *Existing solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (winter solstice).*
- vi) *Where the neighbouring dwellings do not contain any solar panels, direct sunlight must be retained to the north, east and/or west roof planes of neighbouring dwellings, which are at least 6m above ground level (existing), so that future solar panels are able to capture 3 or more hours of sunlight between 8am and 4pm on 21 June*
- vii) *Any variation from the above requirements will be subject to a merit assessment having regard to the following factors:*
 - *Degree of meeting the FSR, height, setback and site coverage controls*
 - *Orientation of the subject and adjoining allotments and subdivision pattern of the urban block*
 - *Topography of the subject and adjoining allotments*
 - *Location and level of the windows in question*
 - *Shadows cast by existing buildings on the neighbouring allotments.*

With regard to the solar access to private open space of the proposed development, the submitted shadow diagrams indicate that the rear private open space will be overshadowed between 8am and 4pm during the winter solstice. In terms of the front private open space, the shadow diagrams indicate that while direct solar access is achieved at 12pm, the entirety of the private open space will be overshadowed at 8am and 4pm. Insufficient information has been provided to demonstrate that the proposal provides a private open space area which achieves at least 3 hours of solar access between 8am and 4pm during the winter solstice. Given the proposal relates to the erection of a new dwelling and includes a private open space area that is orientated to the north of the site, non-compliance with Part C1, Section 5.1 control ii) of the RDCP 2013 is not acceptable.

With regard to overshadowing of neighbouring properties, the shadow diagrams submitted with the application lack detail to conclusively determine if adjoining properties achieve the minimum amount

of direct solar access during the winter solstice. The shadow diagrams prepared have been provided for 8am, 12pm and 4pm only. At no stage does it appear that either adjoining properties at Nos. 341 or 345 Rainbow Street achieve at least 3 hours of sunlight to private open space areas as can be seen in Figures 14 – 16 below.

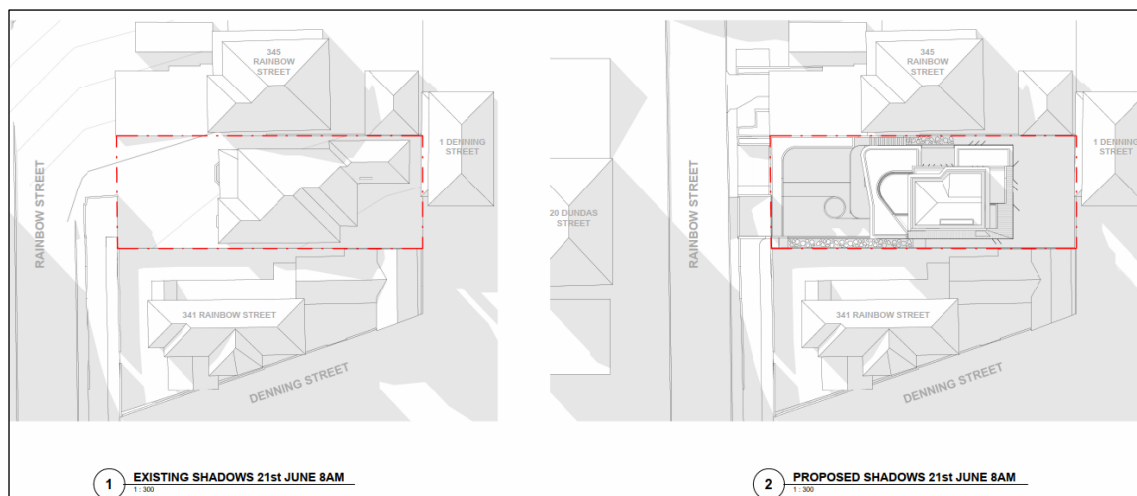


Figure 23: Extract of shadow diagrams – June 21 8am prepared by Smyth & Smyth.

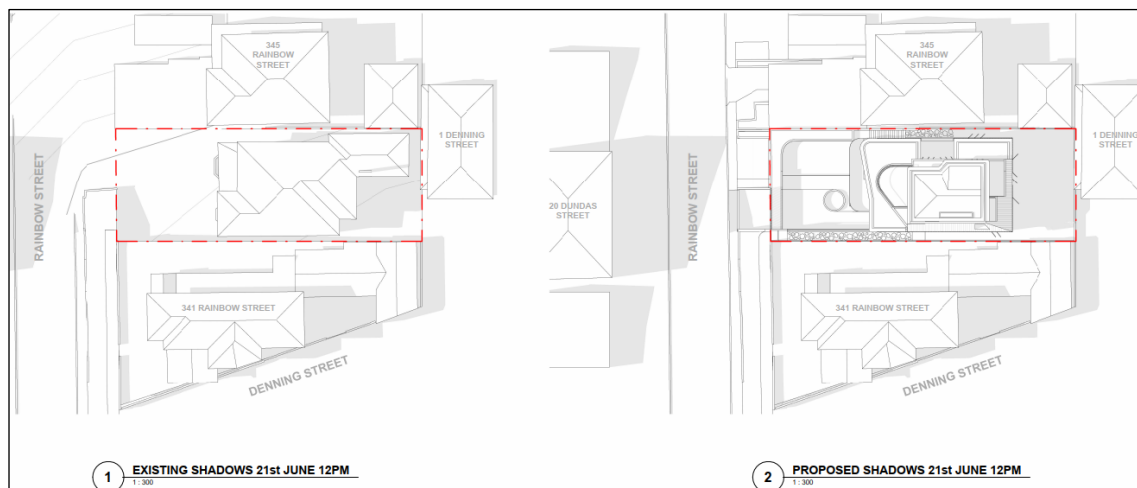


Figure 24: Extract of shadow diagrams – June 21 12pm prepared by Smyth & Smyth.



Figure 25: Extract of shadow diagrams – June 21 12pm prepared by Smyth & Smyth.

Furthermore, concern is raised regarding the potential overshadowing that will fall over the solar panels at No. 345 Rainbow Street (Figure 26). In the absence of detailed shadow diagrams, Council is unable to conclude that the proposal will not result in adverse overshadowing impacts to these solar panels.



Figure 26: Photograph of west facing solar panels at No. 345 Rainbow Street.

Based on the existing overshadowing shown, it appears as though the majority of the overshadowing is generated by existing built form elements on the site and adjoining properties. However, the solar access diagrams provided suggest that the existing solar access achieved by neighbouring properties will be worsened as a result of the proposal. Control (vi) of Part C1, Section 5.1 of the Randwick DCP 2012 states that any variation from the solar access requirements will be subject to a merit assessment having regard to the following factors:

- *Degree of meeting the FSR, height, setbacks and site coverage controls.*
- *Orientation of the subject and adjoining allotments and subdivision pattern of the urban block.*
- *Topography of the subject and adjoining allotments.*
- *Location and level of the windows in question.*
- *Shadows cast by existing buildings on the neighbouring allotments.*

The proposed development seeks variation to the FSR, building height and side setback controls applicable to the site. Therefore, given the proposal will result in a built form that exceeds what is allowable and envisaged for the site, the proposed variation to the solar access requirements outlined in Part C1, Section 5.1 the Randwick DCP cannot be supported.

Excavation

Part C1, Section 4.7, control i) of the RDCP 2013 notes that any excavation and backfilling within the building footprint must be limited to a maximum 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a dwelling within this extent of site modification.

The submitted section plans indicate that proposal involves excavation up to 5.9m in depth within the building footprint, well exceeding the 1m control. The objectives and controls under C1 of RDCP 2013 are intended to minimise earthworks and ensure buildings are designed to respect the topography of the land.

While it is acknowledged that a degree of variation will be required for developments which include a basement, the extent of excavation required to accommodate the basement and mezzanine floor levels is considered excessive and as a result of an overdevelopment of the site. Furthermore, the extent of excavation required within the front setback to accommodate the swimming pool and decking will result in a private open space area that will be situated below the surrounding ground

level, resulting in significant overshadowing during the winter solstice despite the northern orientation of this private open space area.

Moreover, while building height is calculated from the existing ground level of the site, it should be noted that due to the degree of excavation proposed, a portion of the proposed dwelling from the base of the mezzanine level to the roof of the first floor level will effectively have a building height of 9.8m, resulting in a significant presentation of building bulk to Rainbow Street. This building bulk is further exacerbated by the fact the proposal includes a second floor level which, while recessed from the front setback of the first floor, may result in a perceived four (4) storey presentation of the dwelling to Rainbow Street. This will set an undesirable precedence for the locality.

For the reasons above, the extent of variation proposed to the maximum 1m excavation depth control cannot be supported.

Privacy

Part C1, Section 5.3 of the RDCP 2013 outlines controls in relation to visual privacy. Of particular note, control iii) states:

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

The proposed second floor contains balconies that, while generally orientated to the street and rear boundary, are overly large in width with a significant portion of balcony 01 facing the eastern side boundary. Given the site is situated on higher topography than the eastern adjoining property, the proposed second floor balconies provide opportunities for overlooking into adjoining properties.

Moreover, the intention of the rear facing second floor balcony is unclear as it does not service any particular living area or bedroom. Additionally, views to Wedding Cake Island and the Coogee headlands would not be achieved from this south facing balcony which will only offer views of the Pacific Ocean along the eastern elevation. Considering the number of balconies and large east facing windows proposed, the rear facing balcony on the second floor is excessive and will result in further privacy impacts to adjoining properties.

It should be stated that the objective of the RDCP 2013 visual privacy controls is *to ensure that development minimises overlooking or cross-viewing of neighbouring dwellings to maintain the amenity of neighbouring properties.*

For the reason above, the proposed second floor balconies do not satisfy control iii) nor the objective of Part C1, Section 5.3 of the RDCP 2013.

Swimming Pool

Part C1, Section 7.5, control i)a. of the RDCP 2013 notes that swimming pool are to be located behind the alignment of the front façade. The proposal includes a swimming pool within the front setback area.

While the proposed swimming pool location contravenes the abovementioned control, it is deemed that the variation to the control is acceptable for the following reasons:

- Given the topography of the site, the proposed swimming pool will not be noticeable from the public domain as it is situated on a portion of the site that is significantly higher than the existing levels of Rainbow Street. The proposed landscape planter along the front boundary will provide further privacy protection to occupants utilising the swimming pool and associated decking areas.
- A swimming pool within the front setback is not uncommon for the area noting that the adjoining property at No. 345 Rainbow Street provides a swimming pool within the front setback area.
- The previous DA approval issued on the site (DA 891/2016) included a swimming pool within the front setback area.

While the application is recommended for refusal, it should be stated that no issue is raised regarding the location of the swimming pool within the front setback area.

10. Conclusion

That the application for demolition of existing dwelling and construction of a new dwelling house and new swimming pool at 343 Rainbow Street, South Coogee be refused for the following reasons:

- The proposal does not comply with the provisions of Randwick Local Environmental Plan 2012 (RLEP 2012) pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in particular:
 - The proposal is not consistent with the objectives of the R2 Low Density Residential zone pursuant to Clause 2.3 of RLEP 2012, that requires, among other, development to provide for the housing needs of the community within a low density residential environment and to protect the amenity of residents.
 - The proposal does not comply with Clause 4.3 – Height of Buildings which is not supported by an acceptable Clause 4.6 variation statement with adequate environmental planning grounds.
 - The proposal does not comply with Clause 4.4 – Floor Space Ratio which is not supported by an acceptable Clause 4.6 variation statement with adequate environmental planning grounds.
 - The proposal does not comply with Clause 6.7 – Foreshore scenic protection area as the development has not been located and designed to minimise impacts to views to and from the coast.
- The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in particular:
 - Part B7 General Controls – Parking layout, configuration and dimensions.
 - Part B10 General Controls – Foreshore scenic protection area.
 - Part C2 Low Density Residential – 2.5 Deep soil permeable surfaces.
 - Part C2 Low Density Residential – 3.1 Floor Space Ratio.
 - Part C2 Low Density Residential – 3.2 Building height.
 - Part C2 Low Density Residential – 3.3 Setbacks.
 - Part C2 Low Density Residential – 4.7 Earthworks.
 - Part C2 Low Density Residential – 5.1 Solar access and overshadowing.
 - Part C2 Low Density Residential – 5.3 Visual Privacy
 - Part C2 Low Density Residential – 5.5 Safety and security
 - Part C2 Low Density Residential – 5.6 View Sharing
- The proposal will result in adverse environmental impacts on both the natural and built environments, and social and economic impacts in the locality, pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
- The adverse environmental impact of the proposal means that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
- The public submissions raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

Appendix 1: Referrals

1. External referral comments:

1.1. Ausgrid

Ausgrid consents to the development subject to the following conditions: -.

The Applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.

Ausgrid Overhead Powerlines are in the vicinity of the development.

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

The “as constructed” minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website at www.ausgrid.com.au.

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer’s cost.

New Driveways - Proximity to Existing Poles

Proposed driveways shall be located to maintain a minimum clearance of 1.5m from the nearest face of the pole to any part of the driveway, including the layback, this is to allow room for future pole replacements. Ausgrid should be further consulted for any deviation to this distance.

New or modified connection

To apply to connect or modify a connection for a residential or commercial premises. Ausgrid recommends the proponent to engage an Accredited Service Provider and submit a connection application to Ausgrid as soon as practicable. Visit the Ausgrid website for further details; <https://www.ausgrid.com.au/Connections/Get-connected>

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

2. Internal referral comments:

2.1. Development Engineer

Development Engineer comments

I have completed my analysis of the driveway grades and I have detected some issues. See below.

- *The internal garage carspaces must be provided at a grade of between 0 and 5% to achieve compliance with AS 2890.1. The submitted long-sections (sheets 401 & 402) indicate the grade of the rear 2.6m of the carspaces will exceed this requirement thereby creating a non-compliance with the Australian Standard. The plans/sections are to be amended so*

that a minimum 5.4m length of garage floor slab is provided with grades of between 0 & 5%.

- *An analysis of the driveway design using the B-85 design template in AS 2890.1 indicate vehicles may scrape at the southern edge of the footpath adjacent to the kerb on sections A-A and C-C. The Applicant will likely need to flatten the crossing at these locations.*
- *The above requirements may likely require the garage floor to be raised. Note the minimum head clearance required by AS 2890.1 is 2.20m. A 2.3m clearance is indicated on the sections*
- *The depicted layback and gutter on the long-sections doesn't appear to reflect Council's standard requirements.*

Any amended plans & sections will need to address the above issues

2.2. Landscape Development Officer

Landscape Development Officer comments

A preliminary review of the application has identified no substantial issues associated with tree removal and landscaping. No objections are raised with regard to the submitted Landscape Plan.

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

Clause 4.6 - FSR

343 Rainbow Street, South Coogee



CLAUSE 4.6 TO CLAUSE 4.4 OF RANDWICK LEP 2012

EXCEPTIONS TO DEVELOPMENT STANDARDS – FSR VARIATION

Demolition of the existing dwelling house and construction of a new residential dwelling house

343 RAINBOW STREET, SOUTH COOGEE

PREPARED BY

ABC PLANNING PTY LTD

NOVEMBER 2024

ABC Planning Pty Ltd

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November 2024

D11/25

RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the Development Application seeking consent for the demolition of the existing dwelling house and construction of a new dwelling house at 343 Rainbow Street, South Coogee.

The site is zoned R2 Low Density Residential under the provision of Randwick LEP 2012. Dwelling houses are permitted under the R2 zoning.

The proposal results in a non-compliance with Clause 4.4 of the Randwick LEP 2012 which relates to floor space ratio. As such, this Clause 4.6 variation request has been prepared in accordance with Clause 4.6 of the Randwick LEP 2012:

Clause 4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows—
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted 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.

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)

Development Standard to be Varied.

The proposal seeks a variation to the development standard contained within Clause 4.4A (3) of the RLEP2012 - maximum FSR of 0.65:1 (348.44m²), given the site is in the R2 zone and has an area of 536m². The proposal is for an FSR of 0.84:1 (454m²), being a 30.2% (105.56m²) variation from the numerical development standard, demonstrated by the excerpt from the LEP below.

4.4A Exceptions to floor space ratio—Zones R2 and R3

(1) This clause applies to land in the following zones—

(a) Zone R2 Low Density Residential.

(b) Zone R3 Medium Density Residential.

(2) The maximum floor space ratio for a building used for the purposes specified in the table to this subclause is the ratio determined in accordance with the table.

Land use	Zone	Lot size	Maximum floor space ratio
Dual occupancies (attached)	Zone R2	≤550m ² and ≤600m ²	0.65:1
		≥600m ²	0.6:1
Dwelling houses, semi-detached dwellings	Zone R2	≤275m ² and ≤300m ²	0.65:1
		>300m ²	0.6:1
	Zone R3	>300m ² and ≤450m ²	0.75:1
		>450m ² and ≤600m ²	0.65:1
>600m ²		0.6:1	

(3) For a building on a lot created before the commencement of *Randwick Local Environmental Plan 2012 (Amendment No 9)*, the maximum floor space ratio for the building used for the purposes specified in the table to this subclause is the ratio determined in accordance with the table.

Land Use	Zone	Lot size	Maximum floor space ratio
Dwelling houses, semi-detached dwellings	Zone R2	>300m ² and ≤450m ²	0.75:1
		>450m ² and ≤600m ²	0.65:1
		>600m ²	0.6:1

Figure 1: FSR Clause 4.4A (3) Lots between 450-600sqm have an FSR of 0.65:1

Council's assessment is that the FSR variation should include non-habitable rooms in basement areas and that the lift be counted on each level.

Justification for Contravention of the Development Standard

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

4.6(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances

5-Part test

As outlined in the 'Guide to Varying Development Standards' prepared by the Department of Planning and Environment in 2023, the common ways to establish whether compliance with the

*Clause 4.6 - FSR**343 Rainbow Street, South Coogee*

development standard is unreasonable or unnecessary is known as the '5-Part Test' (from the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The 5-Part Test is summarised as follows:

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

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

An applicant only needs to satisfy at least one part of the 5-Part Test, not all 5 parts.

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

- The proposal complies with the objectives of the development standard and the R2 Low-Density Residential zone, indicated in the assessment in **Table 1**. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest, given it is consistent with the objectives for development within the zone.
- Notwithstanding the FSR variation, the proposed height bulk and scale of the dwelling are compatible with the scale and design of numerous contemporary dwellings in the vicinity of the site. The lack of external impact generated by the additional FSR also confirms that the objectives of the standard are satisfied, notwithstanding the minor departure.

Overshadowing

As illustrated in the accompanying shadow diagrams, the additional FSR will not significantly impact solar access to adjoining properties either side to the east or west nor to the dwelling to the south addressed to 1 Denning Street. The shadow analysis confirms that there are no meaningful additional overshadowing impacts to adjoining neighbours, with the proposal compliant with the DCP, with more than three (3) hours of sunlight retained in north-facing living areas and private open space of these properties. All north-facing living room windows and private open space areas either side and to the rear will continue to receive well in excess of 3 hours solar access between 8am and 4pm on June 21. On this basis, it is demonstrated that the additional FSR is not responsible for any adverse overshadowing impacts.

Clause 4.6 - FSR

343 Rainbow Street, South Coogee

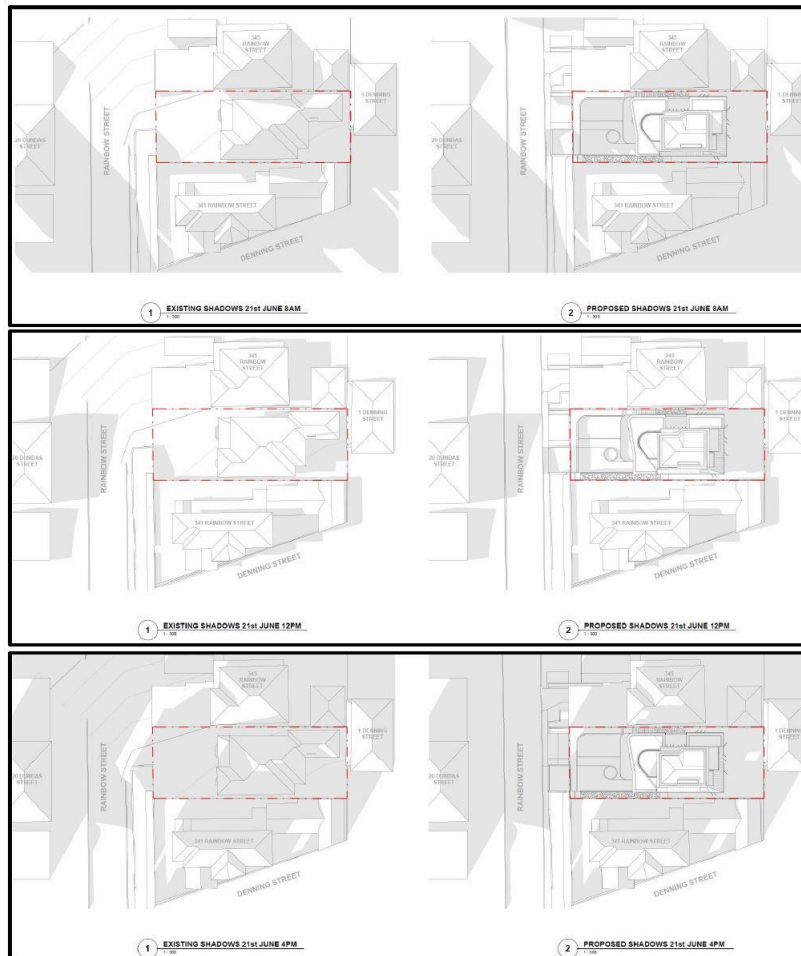


Figure 2: Excerpt of shadow diagrams illustrate no significant additional overshadowing

Visual and Acoustic Privacy

Visual and acoustic privacy impacts to adjoining neighbours have also been considered. The excess FSR contained within retained side and rear setbacks confirms that appropriate separation distance exists between adjoining neighbours, and an appropriate degree of privacy will be maintained.

Notwithstanding the excess FSR, the orientation of primary openings to the front and rear of the dwelling ensures that visual privacy is maintained to the east and west adjoining neighbours.

Clause 4.6 - FSR343 Rainbow Street, South Coogee**Streetscape**

The proposed FSR variation will not generate any adverse streetscape impacts, as shown in the series of images prepared by the architect. The following images are taken immediately in front and from approaches to the east and west. The view from the west, looking southeast (4th image), shows that there will be no adverse streetscape impacts from Blenheim Park.



View from directly opposite from the southern side of Rainbow St looking north



View from opposite lower down along Rainbow Street looking south

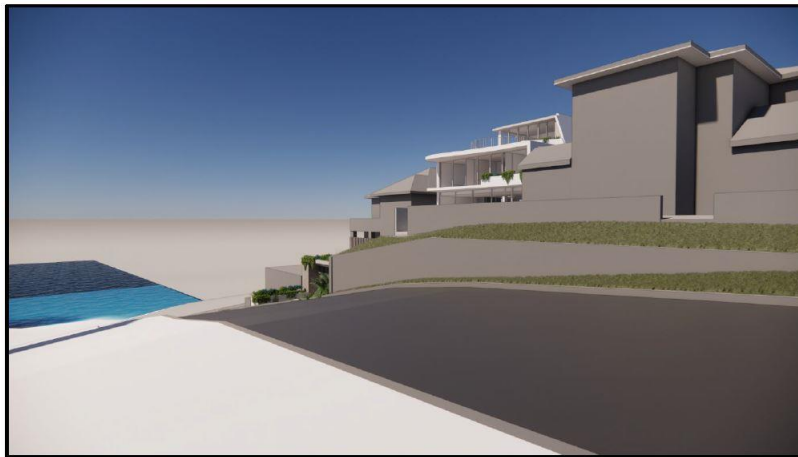
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*Clause 4.6 - FSR**343 Rainbow Street, South Coogee*

View from lower Rainbow Street adjacent to the intersection with Dundas Street looking south-west up-slope to the site and adjoining properties



View from Blenheim Park looking south-east towards the site and adjoining properties

Visual bulk

The FSR variation will not generate any adverse or unreasonable visual bulk impacts as the variation would be indiscernible, noting that a component greater than the variation is below existing ground level. The FSR included at the basement and mezzanine levels are greater than the extent of the FSR above the standard. The GFA of the areas that are readily visible from the

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streetscape and from neighbouring properties, being the ground, 1st and 2nd floor levels account for an FSR of 0.59:1 which is below the 0.65:1 FSR standard. The remaining GFA including that which generates a variation is located in the concealed basement and mezzanine levels, both of which are below existing ground level. It is confirmed from the streetscape perspectives and side and rear elevations that such excess FSR will not be perceptible from the public domain nor from neighbouring properties.

The location of the GFA variation is similar to that previously granted by Council to DA 891/2016A, whereby Council permitted an FSR of 0.68:1. The justification is the same to that proposed, whereby the additional FSR is associated with excavated mezzanine level.

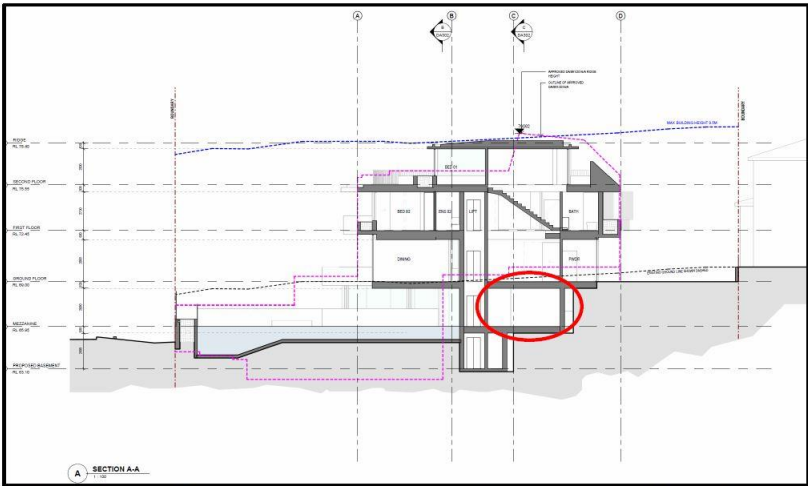


Figure 3: Excerpt of Section A-A, illustrating a portion of FSR contained within the Lower Ground Floor (circled in red) and indiscernible from the public domain, including Rainbow Street and Denning Street.

View Impacts

The built form and associated FSR variation will not be responsible for any adverse or unreasonable view impacts, noting that the variation is contained in the basement and excavated mezzanine area. It is reiterated that both adjoining properties on either side and that to the south will retain all primary coastal views from the main living and private open space areas, notwithstanding the FSR variation. The built form has been purposely setback from the streetscape in accordance with the covenant for the adjoining dwelling to the west at 341 Rainbow Street to retain north-east facing views across the front setback of the subject property. The coastal view from the eastern neighbouring property at 345 Rainbow Street are unaffected by the proposal. The southern neighbouring property at 1 Denning Street has its primary living and

Clause 4.6 - FSR

343 Rainbow Street, South Coogee

private open space areas to the east of the overlap with the subject site. All iconic coastal views including Wedding Cake Island are retained from primary living areas. Any north-facing views from windows to the immediate south of the subject site are affected by the compliant building envelope component on the subject site. The narrower form of development on the upper level than that approved will retain a greater extent of outlook and views than the approved built form on the site as shown by the comparison below:

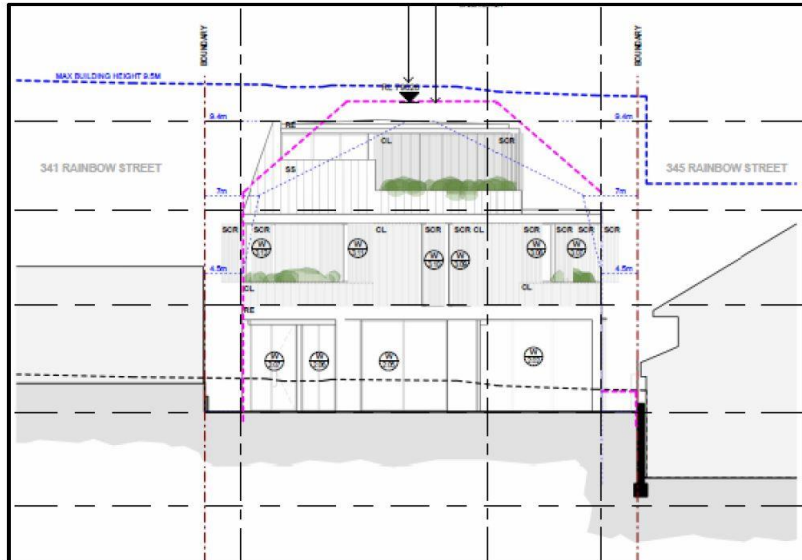


Figure 4: Approved built form in pink which has a greater building envelope than proposed whilst also showing that the built form is compliant with the height limit at the southern end of the built form from where the views are obtained

Amenity

The proposed demolition of the existing two-storey residential dwelling house and construction of a new residential dwelling house will provide a high degree of amenity internally, with no additional external amenity impact, including no new unreasonable visual bulk, overshadowing, or impacts to views to adjoining neighbours or the streetscape from the proposed development in relation to the excess FSR.

Clause 4.6 - FSR

343 Rainbow Street, South Coogee

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

Table 1: Assessment against the Objectives of the Development Standard and Land Use zone.

Consistency with the objectives of the FSR standard in the LEP	
Objectives	Assessment
<p>4.4</p> <p>(1)(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,</p>	<p>Complies</p> <ul style="list-style-type: none"> The proposed built form, including the FSR variation, will be compatible with the desired future character as the built form will not appear out of context with the height, bulk, and scale of adjoining properties to the east. The additional 0.19:1 is located below the existing ground level. The additional FSR would thereby be indiscernible. The substantial front setback from the Rainbow Street frontage also ensures that the built form, including the FSR variation, would not contradict the objective.
<p>4.4</p> <p>(1)(b) to ensure that buildings are well articulated and respond to environmental and energy needs,</p>	<p>Complies</p> <ul style="list-style-type: none"> The proposed development provides for articulated and modulated façades. The incorporation of a variety of materials, finishes and indentions reflects the function of the building and represents a contemporary design that makes a positive contribution to the streetscape character. The building is articulated not unreasonably to add to the bulk and scale of the development. Landscaping is retained to soften the built form. The application is accompanied by a BASIX Certificate demonstrating compliance with the State Government's environmental sustainability targets for water, thermal comfort, and energy efficiency through introducing appropriate measures to reduce artificial heating, lighting, and cooling means whilst also reducing water consumption.
<p>4.4</p> <p>(1)(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</p>	<p>Complies</p> <ul style="list-style-type: none"> The subject site is not heritage listed or in a conservation area and does not adjoin any heritage items.
<p>4.4</p> <p>(1)(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</p>	<p>Complies</p> <ul style="list-style-type: none"> The impact of the proposed new residential dwelling house associated with the FSR variation will not be detrimental to the amenity of the of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views, and has been assessed above at Justification for Contravention of the Development Standard - that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Clause 4.6 - FSR

343 Rainbow Street, South Coogee

	<ul style="list-style-type: none"> The removal of excess FSR beyond what is permitted would not result in an appreciable benefit to surrounding properties. The bulk and scale of the dwelling expressed as FSR includes the Lower Ground Floor, which is indiscernible from the public domain, including Rainbow Street and Denning Street (Figure 4).
Consistency with the objectives of the R2 Low-Density zone	
Objectives	Assessment
<ul style="list-style-type: none"> To provide for the housing needs of the community within a low-density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area. To protect the amenity of residents. To encourage housing affordability. To enable small-scale business uses in existing commercial buildings. 	<p>The proposal associated with the FSR variation replaces an outdated dwelling with a high-quality house that will provide for the community's housing needs in a low-density environment.</p> <p>Despite the FSR variation, the dwelling will be compatible with the height, bulk, and scale of other dwellings in the R2 Low-Density Residential zone.</p> <p>The built form responds to the desirable elements of the streetscape and unique site circumstances by orienting primary living and private open space areas to the street frontage.</p> <p>The built form protects the amenity of surrounding residents, notwithstanding the FSR variation.</p> <p>On this basis, the FSR variation does not generate any inconsistency with the zone objectives. The proposed FSR variation is, therefore, not considered to generate any inconsistency with the zone objective.</p>

Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance.

4.6(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard

Assessment: The assessment under the unreasonable and unnecessary section of this Clause 4.6 variation demonstrates that there are sufficient environmental grounds to permit the variation in this instance, which includes:

- The proposed excess FSR is below existing ground level and thereby not perceptible from the streetscape nor private properties, ensures that the FSR variation would be indiscernible. Such matter is considered to constitute a sufficient environmental ground.

*Clause 4.6 - FSR**343 Rainbow Street, South Coogee*

- Consistency with the previously approved FSR within a similar building envelope is also considered a sufficient environmental planning ground.
- As illustrated in the accompanying shadow diagrams, the additional FSR will not significantly impact solar access. The shadow analysis confirms that there are no meaningful additional overshadowing impacts to adjoining neighbours, with the proposal compliant with the DCP, with three (3) hours of sunlight retained in north-facing living areas and private open space areas. (Figure 2).
- Retention of views is another important consideration, given the highly valued nature of the coastal views, including Wedding Cake Island. Highly valued views are retained from all primary living and private open space areas surrounding the site, thereby confirming that the FSR variation does not generate any adverse or unreasonable view impacts. Such matter is also considered to constitute a sufficient environmental planning ground.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the FSR variation in this instance.

Conclusion

This Clause 4.6 variation request is considered to adequately address the relevant matters under Clause 4.6 and demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances (Clause 4.6(3)(a)) and that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).

For reasons mentioned herein, this Clause 4.6 variation request is forwarded in support of the development proposal at No. 343 Rainbow Street, South Coogee and is requested to be looked upon favourably by the consent authority.

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

Clause 4.6 - Height

343 Rainbow Street, South Coogee

CLAUSE 4.6 TO CLAUSE 4.3 OF RANDWICK LEP 2012

EXCEPTIONS TO DEVELOPMENT STANDARDS – **HEIGHT VARIATION**

Demolition of the existing dwelling house and construction of a new residential dwelling house

343 RAINBOW STREET, SOUTH COOGEE

PREPARED BY

ABC PLANNING PTY LTD

NOVEMBER 2024

ABC Planning Pty Ltd

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November 2024

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Clause 4.6 - Height

343 Rainbow Street, South Coogee

RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the Development Application that seeks consent for the demolition of the existing dwelling house and construction of a new residential dwelling house at 343 Rainbow Street, South Coogee.

The site is zoned R2 Low Density Residential under the provision of Randwick LEP 2012. Dwelling houses are permitted under the R2 zoning.

The height variation is associated with a dwelling house compatible with the height, bulk, and scale of existing dwellings and more recently constructed contemporary dwellings, particularly those near Denning Street.

The proposal results in a non-compliance with Clause 4.3 of the Randwick LEP 2012 which relates to building height. As such, this Clause 4.6 variation request has been prepared in accordance with Clause 4.6 of the Randwick LEP 2012:

Clause 4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows—
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted 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.

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.

*Clause 4.6 - Height**343 Rainbow Street, South Coogee*

- (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)*

Development Standard to be Varied

Pursuant to Clause 4.3 of the RLEP2012, the site is subject to a maximum building height of 9.5m, with the proposal for a maximum roof height of 9.62m, which is an 1.26% (120mm) variation from the numerical development standard. The extent and siting of the component which breaches the height limit is minor in nature and shown below:

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Clause 4.6 - Height

343 Rainbow Street, South Coogee

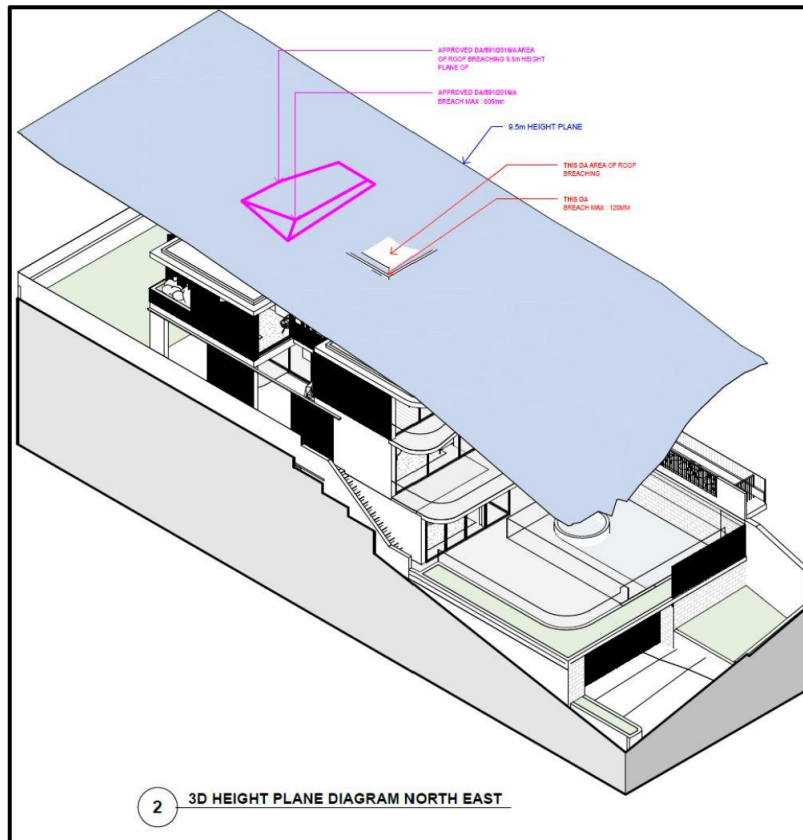


Figure 1: Excerpt of the height plane shows the limited extent of height variation.

The proposal seeks a variation to the development standard contained within Clause 4.3 of the RLEP2012 - a maximum height of 9.5m, demonstrated on the LEP map in **Figure 1** below.

Clause 4.6 - Height

343 Rainbow Street, South Coogee



Figure 2: Building Height Map

Justification for Contravention of the Development Standard

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

4.6(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances

5-Part test

As outlined in the 'Guide to Varying Development Standards' prepared by the Department of Planning and Environment in 2023, the common ways to establish whether compliance with the development standard is unreasonable or unnecessary is known as the '5-Part Test' (from the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The 5-Part Test is summarised as follows:

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

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

An applicant only needs to satisfy at least one part of the 5-Part Test, not all 5 parts.

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

Streetscape

The proposed height variation will not generate any adverse streetscape impacts, as shown in the series of images prepared by the architect. The following images are taken immediately in front and from approaches to the east and west. The view from the west, looking southeast (4th image), shows that there will be no adverse streetscape impacts from Blenheim Park. The uppermost level associated with the height variation (circled in red) is substantially recessed from the streetscape and the remainder of the built form below, as shown below:



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Visual bulk

The component over the height limit will not generate any adverse or unreasonable visual bulk impacts as the element over the height limit is limited to a minor section of the eastern side of the roof/upper level. Such an element would not generate any adverse visual impacts to the properties on either side, to the rear, or those across Rainbow Street, noting that the primary aspect from all of the abovementioned dwellings is east and northeast towards the coast, not towards the element in breach.

Overshadowing

As illustrated on the accompanying Shadow Diagrams, the additional height will not generate any greater shadow impacts beyond that of a dwelling with a compliant height. The neighbouring properties either side and to the rear/south will continue to receive more than 3 hours solar access between 8am and 4pm on June 21 which confirms that the additional height is acceptable on this basis.

Privacy Impacts

The proposed height variation will not generate any privacy impacts as the component associated with the breach is limited to the uppermost roof form (eastern side).

View sharing

The component of the roof over the height limit is not responsible for any adverse view impacts, noting that all views from primary living and private open space areas are retained.

Clause 4.6 - Height

343 Rainbow Street, South Coogee

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

Consistency with the objectives of the height standard in the LEP	
Objectives	Assessment
4.3(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	Complies <ul style="list-style-type: none"> It is considered that the proposed height variation will not generate any inconsistency with the desired future character of the locality. The height variation is associated with a dwelling house compatible with the height, bulk, and scale of existing dwellings and more recently constructed contemporary dwellings, particularly those near Denning Street. The substantial front setback and recessed nature of the upper level associated with the height variation ensure that the variation will provide for a built form compatible with the desired future character.
4.3(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,	Complies <ul style="list-style-type: none"> The subject site is not heritage listed or in a conservation area and does not adjoin any heritage items.
4.3(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.	Complies <ul style="list-style-type: none"> The impact of the proposed residential dwelling house associated with the height variation will not be detrimental to the amenity of the adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views, and has been assessed above at Justification for Contravention of the Development Standard - that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The removal of the additional height beyond that permitted would not result in an appreciable benefit to surrounding properties, as outlined above. Removing the excess height component would not improve solar access, views, or privacy, nor would it reduce the streetscape/visual bulk outcome. On this basis, the variation does not contradict the objective.

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Consistency with the objectives of the R2 Low-Density Zone	
Objectives	Assessment
<ul style="list-style-type: none"> To provide for the housing needs of the community within a low-density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area. To protect the amenity of residents. To encourage housing affordability. To enable small-scale business uses in existing commercial buildings. 	<p>The proposal associated with the height variation replaces an outdated dwelling with a high-quality house that will provide for the community's housing needs in a low-density environment.</p> <p>Despite the height variation, the dwelling will be compatible with the height, bulk, and scale of other dwellings in the R2 Low-Density Residential zone.</p> <p>The built form responds to the desirable elements of the streetscape and unique site circumstances by adopting a large front setback with limited floor plates and a recessed upper level.</p> <p>The built form protects the amenity of surrounding residents, notwithstanding the height variation.</p> <p>On this basis, the height variation does not generate any inconsistency with the zone objectives.</p>

Based on the above assessment, it is considered that strict compliance with the LEP height standard is unreasonable and unnecessary in this instance.

4.6(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard

Assessment: The assessment under the unreasonable and unnecessary section of this Clause 4.6 variation demonstrates that there are sufficient environmental grounds to permit the variation in this instance, which includes:

- The particular site circumstances are considered to constitute sufficient environmental grounds. The large front setback and compliance with the rear setback result in a limited building footprint. The distribution of the FSR is thereby in a confined footprint. Such footprint and built form/height maintain solar access and views for both neighbouring properties to a greater extent than if the built form were distributed over a greater footprint.
- The absence of impacts associated with the additional height on the uppermost level (i.e. shadows, views and privacy) also constitutes sufficient environmental grounds.
- It is noted from the 3D height plane that the height variation occurs at the eastern end of the upper level only. Such variation is due to the sloping nature of the site in the front portion of the site whereby the RL at the western end of the front yard is RL69.31, whereas the eastern end of the front yard has an RL of 67.81, which represents a fall of 1.5-metres. If not for the

*Clause 4.6 - Height**343 Rainbow Street, South Coogee*

sloping nature of the site in this location, the height would be compliant. This circumstance is also considered to constitute a sufficient environmental ground.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the height variation in this instance.

Conclusion

This Clause 4.6 variation request is considered to adequately address the relevant matters under Clause 4.6 and demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances (Clause 4.6(3)(a)) and that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).

For reasons mentioned herein, this Clause 4.6 variation request is forwarded in support of the development proposal at No. 343 Rainbow Street, South Coogee and is requested to be looked upon favourably by the consent authority.

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Appendix 4: DCP Compliance Table**3.1 Part C1: Low Density Residential (2023)**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 536.06m ²	
2.4	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Proposed = 231.97m ² (43.27% of site area).	Complies.
2.5	Deep soil permeable surfaces		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces	Proposed = 177.9m ² (33.18%)	No. Refer to key issues section.
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	Proposed = Four (4) trees capable of achieving a mature height of at least 5m are proposed.	Yes.
2.7	Private open space (POS)		
	Dwelling Houses and Semi-detached Dwellings		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 or above sqm = 8m x 8m	Proposed = A private open space area measuring 8m x 14m has been provided at the rear of the site. However, the private open space area does not satisfy the criteria outlined in Part C1, Section 2.7, control ii) of the RDCP 2013	Refer to key issues section regarding solar access.
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.65:1 (348.4m²).	Proposed = 0.84:1 (454m ²).	Refer to key issues section.
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 9.62m	Refer to key issues section.
	i) Habitable space above 1st floor level must be integrated into roofline	Proposed = i) The proposal includes habitable space above the first floor that has not been integrated into the roofline. ii) & iii) A floor to ceiling	Refer to key issues section.

DCP Clause	Controls	Proposal	Compliance																							
	<p>ii) Minimum ceiling height = 2.7m</p> <p>iii) Minimum floor height = 3.1m (except above 1st floor level)</p> <p>iv) Maximum 2 storey height at street frontage</p> <p>v) Alternative design which varies 2 storey street presentation may be accepted with regards to:</p> <ul style="list-style-type: none"> - Topography - Site orientation - Lot configuration - Flooding - Lot dimensions - Impacts on visual amenity, solar access, privacy and views of adjoining properties. 	<p>height of 2.7m has been achieved for living areas on the ground and first floor. The rumpus room and second floor contain living areas that only achieve a floor to ceiling height of 2.6m and 2.5m respectively.</p> <p>iv) The proposal presents as a three (3) storey development to the street.</p>																								
3.3	Setbacks																									
3.3.1	<p>Front setbacks</p> <p>i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment.</p> <p>ii) Corner allotments: Secondary street frontage:</p> <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites - Should align with setbacks of adjoining dwellings <p>iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.</p>	<p>Proposed = Complies. The average front setback of the adjoining properties equates to 7.7m. The proposal includes a front setback of 11.3m.</p> <p>The proposed swimming pool is located within the front setback area</p>	Yes. Refer to key issues section regarding swimming pool location.																							
3.3.2	<p>Side setbacks</p> <table border="1"> <thead> <tr> <th rowspan="2">Existing primary frontage width</th><th colspan="3">Minimum side setbacks</th></tr> <tr> <th>Building heights 0m to 4.5m</th><th>Building heights >4.5m to 7m</th><th>Building heights >7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height - 7m)</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.5m + 2 \times (\text{building height} - 7m)$</td></tr> <tr> <td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.8m + 2 \times (\text{building height} - 7m)$</td></tr> </tbody> </table>	Existing primary frontage width	Minimum side setbacks			Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m	Less than 6m	Merit assessment			6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	<p>Proposed = The proposed first and second floors are within the required setbacks. The proposed 1.2m and 1.8m side setbacks for the first and second floor do satisfy the calculation of side setbacks outlined in the table to the left.</p>	No. Refer to key issues section.
Existing primary frontage width	Minimum side setbacks																									
	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m																							
Less than 6m	Merit assessment																									
6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)																							
9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$																							
12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$																							
3.3.3	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and 	<p>Proposed = A minimum 8m rear setback is required and has been provided.</p>	Yes.																							

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DCP Clause	Controls	Proposal	Compliance
	<p>private)</p> <ul style="list-style-type: none"> - Protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p><i>*Definition: predominant rear setback is the average of adjacent dwellings on either side and is determined separately for each storey.</i></p> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings.</p>		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	<p>The proposed dwelling is well articulated and includes appropriately sized bedrooms. However, the extent of excavation and variations to building height, FSR and side setbacks demonstrate that the proposal is an overdevelopment of the site and this cannot be considered to respond to the site characteristics.</p>	No.
4.4	Roof terraces and balconies		
	<p>i) Locate on stepped buildings only (not on uppermost or main roof)</p> <p>ii) Where provided, roof terraces must:</p> <ul style="list-style-type: none"> • Prevent overlooking • Size minimised • Secondary POS – no kitchens, BBQs or the like • Maintain view sharing, minimise structures and roof top elements • Be uncovered and comply with maximum height <p>iii) Locate above garages on sloping sites (where garage is on low side)</p> <p><i>*Note: Existing roof terraces in locality that do not comply with the above controls should not be utilised as precedent in seeking variations to the controls outlined in this section. This is to ensure that the objectives of low density residential</i></p>	<p>The proposal includes a balcony on the second floor which is directly located above the storeys below. The proposed balcony has the potential to increase overlooking opportunities towards neighbouring properties.</p>	No.

DCP Clause	Controls	Proposal	Compliance
	development are met.		
4.5	Roof design and features		
	<p>Dormers</p> <ul style="list-style-type: none"> i) Dormer windows do not dominate ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. iii) Multiple dormers consistent iv) Suitable for existing <p>Clerestory windows and skylights</p> <ul style="list-style-type: none"> v) Sympathetic to design of dwelling <p>Mechanical equipment</p> <ul style="list-style-type: none"> vi) Contained within roof form and not visible from street and surrounding properties. 	<p>No roof dormers are proposed.</p> <p>The proposed skylight is centrally located within the envelope of the building and will not be discernible from neighbouring properties or the streetscape.</p> <p>No mechanical equipment is proposed that is in view from the street or surrounding properties.</p>	Yes.
4.6	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone 	<p>The proposal will consist of materials and colours which aligns with contemporary built forms in the area. Lighter colours and minimal expanses of render are proposed.</p>	Yes.
4.7	Earthworks		
	<ul style="list-style-type: none"> i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vii) cut and fill for POS is terraced <i>where site has significant slope:</i> viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas. 	<p>Significant excavation is proposed to accommodate the proposed development. The submitted section plans indicate that proposal involves excavation up to 5.9m in depth within the building footprint.</p>	No. Refer to key issues section.
5	Amenity		

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DCP Clause	Controls	Proposal	Compliance
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	Insufficient information has been provided to enable a detailed assessment of solar access. However, based on the shadow diagrams provided, the proposal does not include a private open space area which achieves the minimum amount of direct solar access during the winter solstice.	No. Refer to key issues section.
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	Although shadow diagrams have been provided, these diagrams lack detail to conclusively determine if adjoining properties achieve the minimum amount of direct solar access during the winter solstice. Furthermore, concern is raised regarding the potential overshadowing that will fall over the solar panels at No. 345 Rainbow Street. In the absence of detailed shadow diagrams, Council is unable to conclude that the proposal will not result in adverse overshadowing impacts.	No. Refer to key issues section.
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and	The proposed development includes north facing windows and skylight to maximise solar access to internal areas. A BASIX Certificate has been submitted for both dwellings, demonstrating that	

DCP Clause	Controls	Proposal	Compliance
	<p>ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) Living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	sustainability requirements have been achieved.	
5.3	Visual Privacy		
	Windows		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	<p>The proposal includes large windows on the second floor level orientated to face the eastern side boundary. While these windows do not provide the required sill heights or include translucent glazing, the notable 4.9m setback of these windows to the eastern side boundary, will not facilitate an opportunities to look downwards on the private areas of adjoining properties.</p>	
	Balcony		
	<p>iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side)</p> <p>iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers)</p> <p>v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure)</p> <p>vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.</p>	<p>The proposed second floor contains balconies that, while generally orientated to the street and rear boundary, are overly large in width with a significant portion of balcony 01 facing the eastern side boundary. Given the site is situated on higher topography than the eastern adjoining property, the proposed second floor balconies provide opportunities for overlooking into adjoining properties.</p>	
5.4	Acoustic Privacy		
	<p>i) Noise sources not located adjacent to adjoining dwellings bedroom windows</p> <p><i>Attached dual occupancies</i></p> <p>ii) Reduce noise transmission between dwellings by:</p> <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	<p>The proposed alterations and additions do not result in the location of potential noise sources adjacent to adjoining bedroom windows.</p> <p>The proposed alterations and</p>	

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DCP Clause	Controls	Proposal	Compliance
		additions do not result in the location of noise-generating areas adjacent to quiet areas.	
5.5	Safety and Security		
	<ul style="list-style-type: none"> i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access) 	The proposed dwelling entrance is located along the side elevation and accessed via a pathway along the western side boundary. This is considered to be a poor amenity outcome as it creates an area of concealment and restricts casual surveillance opportunities.	
5.6	View Sharing		
	<ul style="list-style-type: none"> i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. 	<p>The view loss analysis submitted does not detail the extent of view loss that will occur to neighbouring properties.</p> <p>An inspection of the site and surrounding properties indicates that the proposal has the potential to impact views from neighbouring properties to Wedding Cake Island and Coogee Headland.</p>	
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	All dwellings		
	<ul style="list-style-type: none"> i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: <ul style="list-style-type: none"> - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard. v) Tandem parking may be considered vi) Avoid long driveways (impermeable surfaces) 	<p>A maximum of one (1) vehicular access point has been provided.</p> <p>Although the garage is located forward of the building line, the proposed arrangement is similar to the existing arrangement and character of the streetscape.</p> <p>No tandem parking spaces or long driveways are proposed.</p>	
6.2	Parking facilities forward of the front façade		

DCP Clause	Controls	Proposal	Compliance
	alignment		
	<p>i) If parking facilities behind the front façade alignment is not feasible, parking facilities may be provided within the front setback areas as follows:</p> <ul style="list-style-type: none"> - An uncovered single car space; or - A single carport having an external width of not more than 3m; and - Landscaping must be able to be incorporated into the site frontage. <p>ii) The provision of garages or carports within the front setback areas may only be considered where:</p> <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating carparking, - The site has a significant slope with the dwelling being elevated above the street - The garage or carport will not adversely affect the visual amenity of the street and the surrounding areas. - The garage or carport location will not pose an undue risk on the safety of pedestrians. - The garage or carport will not require the removal of significant landscape elements that enhance the streetscape, such as rock outcrop or sandstone retaining walls. - The garage design compliments the architectural character, design elements and materials and finishes of the primary dwelling. 	<p>There are no feasible locations to accommodate car parking behind the front façade alignment. The proposal seeks to incorporate the garage within the existing slope of the site, as per the existing arrangement. No removal of significant landscaping is required to accommodate the proposed garage.</p>	
7	Fencing and Ancillary Development		
7.5	Swimming pools and Spas		
	<p>i) Locate swimming pools and associated structures:</p> <ol style="list-style-type: none"> Behind the front building line Minimise damage to existing tree root systems on subject and adjoining sites. Locate to minimise noise impacts on the adjoining dwellings. <p>ii) Pool and coping level related to site topography (max 1m over lower side of site).</p> <p>iii) Where pool coping height is above natural ground level, pool to be located to avoid pool boundary fencing exceeding 2.2m from existing ground level from adjoining properties.</p> <p>iv) Where above natural ground and has potential to create privacy impacts, appropriate screening or planting along full length of pool to be provided. Planting to comply with legislation for non-climbable zones.</p> <p>v) Incorporate screening or planting for privacy as above, unless need to retain view corridors.</p> <p>vi) Position decking to minimise privacy</p>	<p>The proposal includes a swimming pool within the front setback.</p> <p>The proposed pool coping and decking is situated below the existing ground level.</p> <p>Pool pump and filter will be located within the basement to mitigate noise impacts to neighbouring properties.</p>	

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DCP Clause	Controls	Proposal	Compliance
	impacts. vii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.		
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	A clothes drying area can be accommodated behind the front alignment.	
7.9	Utility Connections		
	If power pole is within 15m of site (on same side of street), Applicant must meet full cost for Ausgrid to relocate.	A power pole is located within 15m of the site. A condition would have been imposed if the application was recommended for approval.	

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	1. Space per dwelling house with up to 2 bedrooms 2. Spaces per dwelling house with 3 or more bedrooms	The proposed garage provides for two (2) on-site car parking spaces.	Yes.
3.7	Parking layout, configuration & dimensions		
	i) An off-street car space must be a minimum of 2.4m by 5.4m long and comply with AS 2890.1. ii) Small car spaces as provided for in the Australian Standard are not permitted for dwelling houses, terraces, semi-detached dwellings or attached dwellings. iii) Motor cycle parking spaces must be a minimum 2.5m by 1.2m and clearly marked. iv) Motor cycle spaces are to be designed and located so they are not vulnerable to being struck by maneuvering vehicles. v) Motor cycle spaces must be located on flat and even surfaces as they rely on side-stands to park. vi) In all development except dwelling houses, semi-detached dwellings or attached dwellings, all vehicles must enter and exit in a forward direction. vii) Unless otherwise stated, development is to comply with the relevant Australian Standard and the RMS Guidelines for car parking layout, dimensions, aisle widths, grades, access requirements for different uses & users (e.g. those with disabilities), driveway widths, service and delivery needs.	Council's Development Engineer has reviewed the proposed parking layout and design and noted that proposed parking grades do not comply with the Australian standards.	No.

3.4 Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	<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) Outbuildings and ancillary structures integrated 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. 	<p>Reference should be made to Clause 6.7 addressed earlier within this report. To reiterate, the proposed development seeks a number of variations to key built form controls including building height and FSR. The submitted documentation has not provided sufficient evidence to determine whether the proposed variations to key built form controls will affect existing views towards the coast from neighbouring properties.</p> <p>Therefore, due to the insufficient information provided, Council is not satisfied that the development is located and designed to minimise impacts to views to and from the coast. The proposal does not satisfy subclause (3)(a) nor meet the relevant objectives outlined for Foreshore scenic protection areas under Clause 6.7 of the RLEP 2012.</p>	Yes.

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Responsible officer: GAT & Associates, Town Planners

File Reference: DA/1136/2024

Development Application Report No. D12/25

Subject: 286-290 Arden Street, Coogee (DA/55/2025)

Executive Summary

Proposal:	Alterations to an existing 3 storey residential flat building, including the provision of a revised facade treatment and the structural remediation of the existing verandah and balconies. (Heritage Item and Variation to Building Height).
Ward:	East Ward
Applicant:	Hector Abrahams Architects Pty Ltd
Owner:	Marulie Dulay
Cost of works:	\$275,000
Reason for referral:	The development involves demolition of a heritage item

Recommendation

- A. That the RLPP is satisfied that the applicants written requests to vary the development standards relating to building height and floor space ratio in clause 4.3 of Randwick Local Environmental Plan 2012 have demonstrated that;
- i. Compliance with the relevant development standard is unnecessary and unreasonable in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development standards.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/55/2025 for alterations to an existing 3 storey residential flat building, including the provision of a revised facade treatment and the structural remediation of the existing verandah and balconies, at No. 286-290 Arden Street, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/55/2025 - 286-290 Arden Street, COOGEE NSW 2034 - DEV - Randwick City Council

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development involves demolition of a heritage item and variation to the development standard for building height by more than 10%.

The proposal seeks development consent for alterations to an existing 3 storey residential flat building, including the provision of a revised facade treatment and the structural remediation of the existing verandah and balconies.

The existing building has a variation to the maximum permissible building height standard under the LEP and parts of the works to be carried out are within the existing building variation. There are no changes proposed to the maximum building height of approx. 16.4m to RL 11.75 to top of parapet.

The non-compliant portion where the works are to be carried out will not be altering the size, height and scale of the existing building and therefore, the building remains compatible with the desired future character of the locality.

The key issues associated with the proposal relate to impact on the existing heritage item and its setting.

Overall, the proposed works will have a positive contribution to the building with regards to structural integrity, fire safety and weatherproofing and will not impact its heritage significance and its setting within the streetscape.

However, Council's Heritage Planner has recommended that a condition be included which requires the ground floor verandah of Unit 1 be reinstated to its original open verandah to be consistent with Randwick DCP Part B2 Heritage 2.8 objectives and controls.

The proposal is recommended for approval subject to non-standard conditions that require the ground floor verandah of Unit 1 be reinstated to its original open verandah; the proposed new materials/elements for the balconies to match the existing/original fabric in presentation, proportions, and detailing; and a detailed and targeted digital photographic archival recording of the balconies internally and externally be prepared and submitted to Council for approval.

2. Site Description and Locality

The subject site is known as 286-290 Arden Street, Coogee and is legally described as Lot 1 DP 70944 & Lot 1 DP 71312 (Being Lots 1-14 in SP 14074). The site is 664.63m², is a corner allotment and triangular in shape.

The subject site is currently occupied by a 3 storey residential flat building which is listed as a heritage item (I49) in the Randwick LEP 2012 (Amendment No.9).

Development to the south consists of a part one, part two storey residential flat building and to the west is a three storey residential flat building.

The surrounding area mainly contains a mixture of two and three storey shop top housing and residential flat buildings. The subject site is in close proximity to the main local commercial and retail shops along Arden Street.



Figure 1: Subject site facing Havelock Avenue and adjoining development.



Figure 2: Subject site facing Arden Street and adjoining development.

3. Relevant history

There is no relevant history related to this application.

4. Proposal

The proposal seeks development consent for alterations to an existing 3 storey residential flat building, including the provision of a revised facade treatment and the structural remediation of the existing verandah and balconies.

The proposed exterior works to the verandah include:

- New like for like ceramic tile floor with fall to allow for water drainage.
- New fire rated ceiling underneath the verandah floor.
- New PVC pipe outlet that connects to new PVC downpipe.
- New overflow wall outlet.

The proposed exterior works to the balconies include:

- New ceramic tile/paver on pedestals
- New battens underneath floor, planned to achieve fall for water drainage.
- New fire rated ceiling and finish
- New PVC pipe outlet that connects to new PVC downpipe.
- New overflow wall outlet.
- New flashing underneath balustrade sill.

There are no changes proposed to the overall building height.

The statement of works is provided as follows:

	Existing		Proposed	Discussion
Structure				
1	Floor Structure	Timber Joists	Use existing joists where condition allows or new joists similar to existing.	
2		Timber Beams	New steel beams.	
3	Columns	Two tapered timber columns with timber necking and two tapered timber half columns abutting the wall.	Two new 139.7 Steel Column + reconstruct timber necking detail. The two tapered timber half columns abutting the walls will be conserved.	Retaining the tapered timber half columns preserves the original column design.
4	Balustrade	Timber stud framing	New timber stud framing with new fire rated cladding fixed to stud wall.	
5	Roof	Klip Lok Roof	New Klip-Lok roof sheeting to match existing.	New kliplok roof will fall into gutter, improving from the existing kliplok roof which overshot the gutter.
6	Windows (Verandah)	Fixed windows enclosing verandah	Existing Windows to be reinstated.	Verandah will remain enclosed.
7	Doors	Timber Doors	Existing Timber Doors to be conserved.	
8	Water Egress	Spitters	New PVC overflow outlet and new PVC drainage outlet on verandah and balconies.	New PVC drainage outlet to connect to new PVC downpipe.
9	Downpipe	Rectangular Downpipe	New 100mm Round PVC Downpipe	

Finish				
10	Floor (Verandah)	Ceramic Tile Floor Finish	New like for like ceramic tiles adhered to underlying membrane.	New unbonded screed underneath ceramic floor tiles to fall 1:100 min to drainage outlet.
11	Floor (Balconies)	Timber Flooring	New ceramic tile/paver on pedestals. New fibre cement floor sheets situated underneath.	New battens underneath floor finish to be planed to fall 1:100 min to drainage outlet.
12	Ceiling	Timber Ceiling Cladding	Existing timber ceiling cladding conserved and fixed on top of new fire rated ceiling wrapped around structure.	
13	Columns	Paint	New intumescent paint to all steel members.	Intumescent paint is a layer of passive fire protection.
14	Shingles	Timber Shingles	New fire rated Fibre Cement shingles.	New fibre cement shingles to match existing in size.
15	Balustrade Sill	Painted Timber Sill	New colorbond flashing installed underneath existing Timber Sill.	Fall designed in colorbond flashing to allow water runoff in an outwards direction.
16	Balustrade	Timber Cladding	New non-combustible cladding fixed on top of new fire rated lining.	
17	Valence	Decorative Timber Valence.	New decorative timber valence following with panelling details similar to existing.	
18	Fascia	Timber Fascia	Existing Timber Fascia to be conserved.	
19	Moulding	Decorative Timber Mouldings	Existing Decorative Timber Mouldings conserved.	The decorative timber mouldings are located at the junction between beams and ceiling.
20	Façade Coating	Paint on Brick Substrate	New waterproof membrane façade coating.	The new façade coating will terminate on the inside face of the roof parapet.

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:

- Unit 2/286-290 Arden Street, Coogee

Issue	Comment
<p>Object to the proposed reinstatement of the unauthorised enclosure of the Unit 1 verandah/porch. It was enclosed without Council consent in 1979. Objection of this enclosure is based on aesthetic/heritage and noise issues resulting from inappropriate expansion of living space.</p> <p>The verandah/porch of Unit 1 is a defining architectural feature of the building. The enclosure detracts from the heritage and aesthetic appearance of the building and streetscape.</p>	<p>Noted and Council's Heritage Planner has recommended that a condition be included which requires the ground floor verandah of Unit 1 to be reinstated to its original open verandah.</p> <p>Whilst the Statement of Heritage Impact provided by the applicant notes that the chosen colour scheme is not sympathetic to the aesthetic significance of the building and will have a negative impact on the streetscape (a colour scheme similar to the existing was recommended), Council Heritage Planner does not raise concern in relation to the proposed</p>

Issue	Comment
The proposed façade colour scheme lacks sympathy with the heritage character of the building and will detract from the streetscape.	light and dark grey colour scheme submitted and therefore, is supported. Council's Heritage officer has advised that the overall aesthetic improvements to the appearance of the building will make a positive contribution to the heritage building and streetscape.

6. Relevant Environment Planning Instruments

6.1. 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).

6.2. SEPP (Sustainable Buildings) 2022

It is noted that the subject works are defined as BASIX excluded development under the Environmental Planning and Assessment Regulation 2021 as the works relate to the remediation of unenclosed balconies, including the unauthorised sunroom that has been conditioned for reinstatement as an open balcony in accordance with the BASIX exclusions list.

6.3. SEPP (Resilience and Hazards) 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 application involves the provision of a revised facade treatment and the structural remediation of the existing verandah and balconies to an existing residential flat building. Noting that the site has historically been used for residential purposes, the possibility of contamination is unlikely, and the site is considered suitable for the proposed development.

6.4. Randwick Local Environmental Plan 2012 (LEP) (amendment No. 9)

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

The proposal is consistent with the specific objectives of the R3 zone in that the proposed works will provide for the continued use of the site for residential purposes that will enhance structural integrity, fire safety and whether proofing 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)
CI 4.4: Floor space ratio (max)	0.9:1	There are no changes proposed to the existing FSR.	Not applicable.
CI 4.3: Building height (max)	12m	<p>The existing building has a maximum building height of approx. 16.42m from the existing ground level to top of parapet (RL 11.75).</p> <p>The proposed works which involve repairs and structural improvement to the existing northern balconies are contained at the top height of 13.4m from the natural ground line which exceeds the maximum height limit by 1.4m.</p>	<p>No changes proposed to the maximum building height limit.</p> <p>However, parts of the works to be carried out are within the existing building variation and therefore, a Clause 4.6 - Exceptions to development standard is required.</p>

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6.4.1. Clause 4.6 - Exceptions to development standards

The non-compliance with the Height of Building development standard is discussed in section 7 below.

6.4.2. Clause 5.10 - Heritage conservation

Clause 5.10 - Heritage Conservation

The objectives of Clause 5.10 are as follows:

- (a) to conserve the environmental heritage of Randwick,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

The subject site is listed as a heritage item under Part 1 of Schedule 5 of the Randwick Local Environment Plan 2012 (RLEP) as item no. 149.

The subject site is also located in close proximity to other listed heritage items of local significance directly opposite the site along Arden Street.

The proposal seeks development consent for demolition and reconstruction of the north verandah and balconies, weatherproofing works all elevations and repainting of compound walls.

Some fabric on the balconies is to be retained and reused including the timber ceiling cladding, some existing joints, two timber half-columns, existing fixed windows in the verandah, timber sills, doors, fascia and mouldings.

Reconstruction with some minor changes to materials and details is proposed, as required for fire safety. Changes include new steel columns, fiber cement shingles and new outlet pipes.

Existing paint to elevation to be removed and replaced with new colour scheme. New paint will have water proofing membrane.

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Council’s Heritage Planner has reviewed the proposed plans and documents provided and is satisfied that the proposed works comply with clause 5.10 of RLEP 2012, subject to conditions.

Whilst the Statement of Heritage Impact provided by the applicant notes that the chosen colour scheme is not sympathetic to the aesthetic significance of the building and will have a negative impact on the streetscape, Council’s Heritage Planner does not contest the proposed light and dark grey colour scheme submitted and has advised that the overall aesthetic improvements to the appearance of the building will make a positive contribution to the heritage building and streetscape.

However, Council’s Heritage Planner notes the proposed works are satisfactory on heritage grounds subject to an inclusion of a condition, which requires the ground floor verandah of Unit 1 be reinstated to its original open verandah in order to be consistent with RDCP Part Heritage 2.8 objectives and control.

Refer to referral comments from Council’s Heritage Planner in Appendix 1: Referrals section of this report and detailed planners’ assessment under Appendix 3: DCP Compliance Table - 3.1 Randwick DCP 2023 - Part B2 Heritage.

Subject to conditions, the proposal will not result in any adverse impacts to the heritage significance or qualities of the heritage item and nearby heritage items.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the Height of Building 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	12m	13.4m	1.4m	11.67%

The existing building has a variation to the maximum permissible building height limit under the LEP and parts of the works to be carried out are within the existing building variation. There are no changes proposed to the maximum building height limit of approx. 16.42m to RL 11.75 to top of parapet.

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 1.

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 noncompliance derives from the existing height of the building exceeding the maximum height limit where parts of the repair works are to be carried out. The size, bulk and scale of the proposed development remains unchanged.

The reconstructed balconies will match the proportions and detailing of the existing balconies and the replacement roof material matches existing.

The building remains compatible with the desired future character of the locality and will not have a negative impact on the streetscape of heritage item.

- (b) The subject site is not located within a heritage conservation area; however, the subject site is listed as a heritage item under Part 1 of Schedule 5 of the Randwick Local Environment Plan 2012 (RLEP) as item no. I49. The subject site is also located in close proximity to other listed heritage items of local significance.

The proposed works will have a positive impact on the structure of the balconies and will not affect the aesthetic quality and detailing of the heritage item.

The architectural expression and detailing of the building will be reinstated to its historical likeness and will not have a negative impact on the streetscape or heritage item.

Refer to Detailed assessment made by Council's Heritage Planner who notes subject to a condition which requires the ground floor verandah of Unit 1 be reinstated to its original open verandah in order to be consistent with RDCP Part Heritage 2.8 objectives and control, the proposed works are satisfactory on heritage grounds.

- (c) As the proposed works involve demolition and reconstruction of the existing north verandah and balconies in order to enhance structural integrity and comply with fire safety and standards, the proposed development will not result in any additional adverse impacts 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 Height of Buildings development standard as follows:

The proposed works do not change the existing building height maximum of 16.42m. The non-compliance derives from the existing height of the property exceeding the maximum building height of 12m where remediation work will take place to improve the structure and fire safety of the balconies. There are no changes proposed to the scale and form of the building.

The proposed works will maintain the character of the building which is locally recognised as a heritage item (No. I49) in the Randwick LEP 2012 (Amendment No.9).

The proposed works which will benefit the overall building improving its livability making the building safe, improving waterproofing and the longevity of the structure.

The proposed works retain the historical balcony, verandah design detail, decorative elements, original doors and important horizontal lines with upgraded materials.

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 balconies are in poor condition, having lost their structural integrity and they are currently being held in place through timber bracing. The verandah and balconies do not have adequate fire safety measures and do not currently comply with the provisions of the NCC and Building Design and Practitioner's Act.

The proposed works are to demolish and reconstruct the existing north verandah and balconies in order to enhance structural integrity and comply with fire safety and standards. The proposed works retain the historical balcony and verandah design detail with upgraded material.

Remove and repainting of elevations which will have a positive impact on weatherproofing.

The non-compliant portion where the works are to be carried out will not be altering the size, height and scale of the existing building and therefore, the building remains compatible with the desired future character of the locality.

Whilst the Statement of Heritage Impact provided by the applicant notes that the chosen colour scheme is not sympathetic to the aesthetic significance of the building and will have a negative impact on the streetscape, Council's Heritage Planner does not contest to the proposed light and dark grey colour scheme submitted and has advised that the overall aesthetic improvements to the appearance of the building will make a positive contribution to the heritage building and streetscape.

However, Council's Heritage Planner notes the proposed works are satisfactory on heritage grounds subject to an inclusion of a condition which requires the ground floor verandah of Unit 1 be reinstated to its original open verandah in order to be consistent with RDCP Part Heritage 2.8 objectives and control.

Given there are no changes proposed to the height and built form, 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.

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 3.

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iia) – 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 submission 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.

10. Conclusion

That the application to carryout alterations to an existing 3 storey residential flat building, including the provision of a revised facade treatment and the structural remediation of the existing verandah and balconies 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 R3 zone in that the proposed works will provide for the continued use of the site for residential purposes that will enhance structural integrity, fire safety and whether proofing and will not result in any unreasonable amenity impacts upon adjoining properties.
- There are no changes proposed to the built form and therefore, 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 and subject to a condition heritage item.
- The development enhances the visual quality of the public domain/streetscape.
- The proposed development will make a positive contribution to the existing residential flat building and will improve the structural integrity, weatherproofing and comply with fire safety and standards. Overall, the aesthetic improvements to the appearance of the building will make a positive contribution to the heritage building and streetscape.
- The proposal is supported from a heritage perspective subject to the recommended non-standard recommended conditions outlined as a part of the consent.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The proposed development was referred to Council Heritage Planner for comments. The following comments have been provided:

I concur with the recommendation of Statement of Heritage Impact prepared by Hector Abrahams dated 14 November 2024.

Recommendation

Whilst I concur with the recommendation of Statement of Heritage Impact prepared by Hector Abrahams dated 14 November 2024, council heritage officers does not contest to the proposed colour scheme submitted TRIM D05588724.

The proposal is supported from a heritage perspective subject to the following recommendation/conditions:

1. *To be consistent with RDCP Part B2 Heritage 2.8 objectives and controls, it is recommended to open/reinstate the original balcony at Unit 1.*
2. *The proposed new materials/elements (i.e. steel posts and fibre cement shingles, tiles, etc.) for the balconies must match the existing/original fabric in presentation, proportions, and detailing.*
3. *A detailed and targeted digital photographic archival recording of the balconies internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.*

The first submission of the archival recording of significant building fabric is to be prior to the removal of any significant building fabric from the site, and must be submitted to and approved by Council prior to the commencement of any work on site and prior to a Construction Certificate being issued.

The second submission of the archival recording is of significant building fabric that is exposed during demolition or construction and after work has been completed on site and must be submitted to Council prior to any Occupation Certificate being issued.

This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Film or Digital Capture. An electronic digital/PDF copy of the archival recording is to be submitted to Council for inclusion in the Local History Collection of Randwick City Library and for Council's own records incorporating a detailed historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base plans showing the locations of archival photographs taken, and index print of the photographs.

Appendix 2: Clause 4.6 exception to a development standard

The applicant provided additional information clarifying the matter regarding the height of the proposed works, to accompany the Clause 4.6 Height Exemption Statement.

The current height of the building is 16.42m, which exceeds the LEP standard for the maximum building height, set at 12m.

The proposed works, which involve repairs and extending the lifespan of the existing northern balconies are contained at the top height of 13.4m – which is 1.4m above the LEP standard. However, these works remain within the existing building height of 16.42m.

Although a portion of the proposed works exceeds the LEP's maximum building height of 12m, the overall height of the building will remain unchanged at 16.42m.

Development standard

Randwick Local Environment Plan 2012, Clause 4.3.2 Height of Buildings:

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.

1. Justify why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

As specified on the Height of Buildings Map Sheet HOB_007, the maximum building height for 286-290 Arden Street, Coogee is 12m. Although our proposed works do not pertain to any change in the height of the building, the non-compliance derives from the existing height of the property exceeding the maximum building height of 12m. Therefore, the development standard is unreasonable as it does not account for buildings that already exceed the maximum height standard.

2. Demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

Contravening the development standard will allow for Council's consideration of the proposed works which will benefit the overall building and improve its liveability. To summarise the discussion in our Statement of Environmental Effects:

The proposal complies with Controls:

- The scope of work retains the historical balcony, verandah design detail and important horizontal lines with upgraded materials.
- Reinstatement of original doors, decorative elements and salvageable structural elements, where suitable.
- New steel elements to improve the structure of the verandah and balconies.
- Addition of waterproofing to improve the longevity of the structure.
- No change to scale and form.

3. Explain how the proposed development will be in public interest.

Not only will the proposed work upgrade the balconies and allow for their use by occupants, it will also be in public interest. Built in 1921, the 3-storey neo-classical brick building showcases details derived from the Arts and Craft movement; timber balconies featuring decorative timber mouldings, tapered timber columns and timber shingle cladding. The scope of work retains this historical detail, thereby maintaining an important building example from this period of time.

We understand that the objectives of the standard are to ensure that the size and scale of the development is compatible with the desired future character of the locality. The proposed works will not affect the existing size and scale of the property, instead, the works will ensure that an important example of a neo classical building from the 1920s is retained in Coogee.

4. Identify whether contravention of the development standard will raise any matter of significance for state or regional planning?

As the existing building already contravenes the maximum height development standard and the height of the building will not be affected by our proposal, we believe that the development standard is unnecessary in this case. Therefore, the contravention of the development standard will not raise any matter of significance for state or regional planning.

5. Detail why there is no public benefit in maintaining the standard.

The application of the standard is to limit any increase in building height. As the existing building already exceeds the limit of 12m as outlined in the standard, it becomes unnecessary in the circumstances of this case. There is no public benefit to maintaining the standard as the height will not be affected by our proposal.

In summary, the development standard is unreasonable in this case as:

1. Our proposed alterations relate to the repair of existing balconies and does not impact or change the existing building height.
2. The works will upgrade and allow for occupants to use the balcony.
3. The works maintain the character of the building, locally recognised as heritage item No. I49 in the Randwick LEP 2012.

Appendix 3: DCP Compliance Table**3.1 Randwick DCP 2023 - Part B2 Heritage**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
General Controls – Heritage			
2.2 Design and Character	i) Development must demonstrate how it respects the heritage values of the heritage item or the heritage conservation area (as detailed in the statements of significance and key characteristics outlined in this section of the DCP).	The aesthetic significance of the building is respected by reconstructing the verandah and balconies to match existing.	Yes
	iii) New development should be consistent with important horizontal lines of buildings in the streetscape, in particular ground floor levels and eaves lines, where appropriate.	The horizontal lines of the building will be retained.	Yes
	v) Street elevations and visible side elevations must not be significantly changed. Additions must be located to the rear or to one side of the building to minimise impact on the streetscape.	The proposed works are to demolish and reconstruct the existing north varandah and balconies in order to enhance structural integrity and comply with fire safety and standards. Remove and repainting of elevations which will have a positive impact on weatherproofing. Whilst the Statement of Heritage Impact provided by the applicant notes that the chosen colour scheme is not sympathetic to the aesthetic significance of the building and will have a negative impact on the streetscape, Council Heritage officer does not contest to the proposed colour scheme submitted and therefore, is supported.	Yes
	vi) The design of any proposed additions or alterations must complement the existing building in its scale, form and detailing. However, it should be possible to distinguish the new work from the old, on close inspection, so that old and new are not confused or the boundaries/junctions blurring.	The scale and built form of the existing building is not altered. Council's heritage officer has recommended to open/reinstate the original balcony at Unit 1. The Statement of Heritage Impact notes that the works aim to	Subject to condition.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		conserve as much of the original fabric where possible and the new works will be distinguishable from the old and will be reconstructed to historical likeness in scale, form and detailing.	
	vii) All new work and additions must respect the proportions of major elements of significant existing fabric including doors, windows, openings and verandas.	Subject to condition, which requires Unit 1 to open and reinstate the original balcony, the proposed works will respect the proportion of major elements of significant existing fabric to the building.	Subject to condition.
	vii) All new work and additions must respect the proportion of major elements of significant existing fabric including doors, windows, openings and verandas.	<p>The existing verandah and balconies are in poor condition and are not structurally sound.</p> <p>The proposed works will improve the structural adequacy of the verandah and balconies, and the reconstructed balconies will match the proportions of the existing.</p> <p>As noted above, Council's heritage officer has recommended to open/reinstate the original verandah of Unit 1.</p>	Subject to condition will comply.
2.5 Detailing	i) only detailing which is known to have been original to your building is acceptable. Do not add what was never there.	<p>The original doors and decorative elements will be reinstated based on the existing balconies and other detailed elements will be replaced like for like.</p> <p>The proposed works will have a positive impact on the structure and will not affect the aesthetic quality and detailing of the building.</p>	
	ii) Retain and repair original doors, windows, original sun hoods, awnings, gable detailing and other decorative elements to principal elevations. Original leadlight and coloured glass panes should be retained.	The original timber doors, windows, fascia, timber half columns and decorative timber moldings will be retained and conserved.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		Other demolished decorative elements will be reconstructed like for like.	
	iii) Where original windows, doors and façade detailing have been removed and replaced with modern materials, consideration should be given to reconstructing original features.	The existing balconies are demolished due to their poor condition. They will be reconstructed, and façade detailing will be reinstated.	Yes
	iv) Authentic reconstruction is encouraged. Decorative elements must not be introduced unless documentary or physical evidence indicates the decorative elements previously existed. Undertake thorough research before attempting to reconstruct lost detail and elements.	The HSI notes that the works include authentic reconstruction of demolished fabric based on exiting, documented photographic and historical photographs. There is no new decorative element introduced as part of the proposed works.	Yes
	v) Alterations and additions should incorporate new doors and windows which are compatible with the position, size, and proportions and detailing of original windows and doors.	The existing doors and windows will be reinstated. The size of the new steel columns and beams have been selected to improve the structural integrity of the balconies and will be in proportion with the original elements.	Yes
	vi) Alterations and additions should adopt a level of detailing which complements the heritage fabric and should (in general) be less elaborate than the original.	The proposed alterations will complement the heritage fabric and will be reconstructed with the original detailing.	Yes
2.6 Materials, Finished and Colour Schemes	ii) Changes to materials (including roofs and walls) on elevations visible from a public place are not favoured. Original face brickwork must not be rendered, bagged or painted. The removal of external brickwork skin is not supported.	The proposed works include the demolition of the existing roof over the north balconies due to their poor condition and reconstruction using matching material and detail. The existing paint will be removed, and a waterproof membrane coating will be applied, prior to repainting a new colour scheme. Whist the colour scheme is not supported by the SHI submitted with the	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		documentation, Council Heritage officer does not contest to the proposed colour scheme submitted and therefore, is supported. The proposed works will have a positive contribution to the building with regards to structural integrity and weatherproofing and will not impact its heritage significance.	
	iii) Matching materials must be used in repairing the fabric of external surfaces. In the case of new face brickwork, the colour and texture of the brick, the type of jointing and mortar colour should be carefully matched.	No new face brick is proposed. The new fibre cement shingles will replace the existing timber shingles in the same size. New steel column will replace the existing timber column. The size of the steel column is similar in proportional to the appearance of the existing column. New waterproof membrane façade coating will be applied to the brick work surface and painted. The grey tone colour scheme is supported by Council heritage officer.	Yes
	iv) New or replacement roof materials must match existing materials. Alternative materials may be considered appropriate to the architectural style of the building and the streetscape context, and must be submitted for approval.	The reconstructed roof material over the northern balconies will match the existing.	Yes
	v) Alterations and additions must use materials and colours similar to, or compatible with, the original material or colours.	Whilst the Statement of Heritage Impact provided by the applicant notes that the chosen colour scheme is not sympathetic to the aesthetic significance of the building and will have a negative impact on the streetscape, Council Heritage officer does not contest to the proposed light and grey tone colour	Yes


DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		scheme submitted and therefore, is supported.	
2.8 Verandahs and Balconies	i) Consider the provision of front verandahs and balconies at a compatible scale where these are a characteristic feature of the heritage conservation area.	No additional verandahs or balconies are proposed.	Not applicable.
	ii) Original front verandahs and balconies must be retained and conserved. Consider opening up verandah enclosures or infills, to reinstate an original open verandah.	The verandah and front balconies are retained. The enclosed verandah to Unit 1 on the ground floor level was illegal constructed in approx. 1979. To be consistent with RDCP Part B2 Heritage 2.8 objectives and controls, Council's Heritage officer has recommended that the opening be reinstated to the original verandah.	Conditioned to comply.
	iii) infilling or enclosure of front verandahs and balconies is not supported.	As above.	Conditioned to comply.
	iv) Additional verandahs must not compete with the importance of the original and should be simple in design and based on existing detail or an understanding of appropriate designs for each period or style.	No additional verandahs are proposed.	Not applicable.

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Randwick DCP 2023 - Part C2 – Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
4. Building Design			
4.1 Building Design - Facade	vi) Alterations and additions to an existing residential flat building must present an integrated design with suitable façade configuration, materials and detailing, so that the new and retained structures are visualized as one whole building.	The proposed remedial works are for structural improvement and waterproofing to allow safe access and use of the verandah and balconies. The proposed works will retain the configuration and detailing of the existing building and integrity and significance of the heritage item.	Subject to a condition which requires the enclosed balcony to be reinstated to its open original form the proposed development will comply with this control.
4.9 Colours, Materials and	vi) use materials and details that are suitable for the local climatic condition to properly withstand natural weathering, ageing and deterioration.	The replacement of timber elements to steel will improve the structural integrity of the balconies	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
Finishes		and verandah. The proposed waterproofing will protect the structure and building from weathering and deterioration.	
4.11 Alterations and additions to residential flat buildings	i) DAs for the comprehensive refurbishment of older walk-up flat buildings must have regard to the Randwick City Council 'Design Ideas for rejuvenating residential flat buildings' manual, dated 2006.	The works are minor and are for structural improvements and waterproofing.	Not applicable.
	ii) DAs involving alterations and additions to residential flat buildings located within heritage conservation areas or a heritage item shall ensure that the overall aesthetic improvements to the appearance of the building can make a positive contribution to the heritage streetscape by: <ul style="list-style-type: none"> - Providing for a combination of materials, colours and finishes to the building façade that are compatible with the heritage conservation area or heritage item; - Incorporating elements such as shading devices, blade walls or vertical elements to articulate the façade of the building; - Providing for balconies and terraces that can help recess garages; - Incorporating landscaping and where practical suitable fencing to the street frontage; - Where practical, removal external elements that detract from the appearance of the heritage conservation area or heritage item. 	The proposed materials and finishes schedule provided are of light and dark grey tones as shown in figure 3 below. Whilst the Statement of Heritage Impact provided by the applicant notes that the chosen colour scheme is not sympathetic to the aesthetic significance of the building and will have a negative impact on the streetscape, Council Heritage officer does not contest to the proposed colour scheme submitted and therefore, is supported. Council's Heritage officer has advised that the overall aesthetic improvements to the appearance of the building will make a positive contribution to the heritage building and streetscape.	Yes
 <p>Figure 3: Photomontage of proposed schedule of colours and finishes.</p>			

Responsible officer: Chahrazad Rahe, Senior Assessment Planner

File Reference: DA/55/2025

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**Development Consent Conditions
(Medium Density Residential)**

Folder /DA No:	DA/55/2025
Property:	286-290 Arden Street, COOGEE NSW 2034
Proposal:	Alterations to an existing 3 storey residential flat building, including the provision of a revised facade treatment and the structural remediation of the existing verandah and balconies. (Heritage Item and Variation to Building Height).
Recommendation:	Approval

GENERAL CONDITIONS

Condition

1. Approved plans and documentation

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Site Plan 0849/DA/000	Hector Abrahams Architects	22/01/2025	23 January 2025
Proposed Verandah and Balcony Plans 0849/DA/101	Hector Abrahams Architects	22/01/2025	23 January 2025
Proposed Balcony Section and Elevation 0849/DA/102	Hector Abrahams Architects	22/01/2025	23 January 2025
Exterior Colour Specification	Lick light & Colour	-	23 January 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:

- a. The ground floor verandah of Unit 1 shall be reinstated to its original open balcony form in order to be consistent with Randwick DCP, Part B2 Heritage 2.8 Objectives and Controls.

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

3. Heritage Condition

Condition	
	<p>The proposed new materials/elements (i.e. steel posts and fibre cement shingles, tiles, etc.) for the balconies must match the existing/original fabric in presentation, proportions, and detailing.</p> <p>Condition Reason: To ensure heritage item is conserved to its original significance.</p>
4.	<p>Heritage Condition</p> <p>A detailed and targeted digital photographic archival recording of the balconies internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.</p> <p>The first submission of the archival recording of significant building fabric is to be prior to the removal of any significant building fabric from the site, and must be submitted to and approved by Council prior to the commencement of any work on site and prior to a Construction Certificate being issued.</p> <p>The second submission of the archival recording is of significant building fabric that is exposed during demolition or construction and after work has been completed on site and must be submitted to Council prior to any Occupation Certificate being issued.</p> <p>This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Film or Digital Capture. An electronic digital/PDF copy of the archival recording is to be submitted to Council for inclusion in the Local History Collection of Randwick City Library and for Council's own records incorporating a detailed historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base plans showing the locations of archival photographs taken, and index print of the photographs.</p> <p>Condition Reason: To ensure a photographic recording is archived appropriately so it is documented for future generations.</p>

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
5.	<p>Consent Requirements</p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
6.	<p>External Colours, Materials & Finishes</p> <p>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 Council's Manager Development Assessments prior to issuing a construction certificate for the development.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and</p>

- | | Condition |
|----|---|
| | compatible with surrounding development. |
| 7. | <p>Section 7.12 Development Contributions</p> <p>Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$275,000 the following applicable monetary levy must be paid to Council: \$2750.00.</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> <p style="text-align: center;">IDC = ODC x CP2/CP1</p> <p>Where:</p> <p>IDC = the indexed development cost
 ODC = the original development cost determined by the Council
 CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment
 CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p> |
| 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"> • \$5000.00 - 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</p> |

	Condition
	<p>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>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
11.	<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> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
12.	<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</p>

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Condition
<p>Certifier for the development:</p> <ul style="list-style-type: none"> (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. <p>Condition Reason: To ensure the subject site/development and adjoining land is adequately supported and protected during any works.</p>

BEFORE BUILDING WORK COMMENCES

Condition
<p>13. Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):</p> <ul style="list-style-type: none"> a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. 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 <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.

Condition	
	<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>
14.	<p>Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>.</p>
15.	<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>
16.	<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 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.</p>

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Condition

- (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.

17. **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.

18. **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 provided to the Principal Certifier and Council.

Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

Condition

19. **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.

Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.

DURING BUILDING WORK

Condition

20. **Site Signage**

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

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

The sign must be—

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

This section does not apply in relation to—

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

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

21. **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

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Condition	
	<p><i>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.</i></p> <p>Condition reason: To protect the amenity of the surrounding area.</p>
22.	<p>Noise & Vibration</p> <p>Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the <i>Construction Noise & Vibration Management Plan</i>, prepared for the development and as specified in the conditions of consent.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
23.	<p>Construction Site Management</p> <p>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.</p> <p>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.</p> <p>Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.</p> <p>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.</p> <p>Notes:</p> <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> <p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p>
24.	<p>Public Safety & Site Management</p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ol style="list-style-type: none"> a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.

Condition
<p>c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.</p> <p>Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.</p> <p><i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i></p> <p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) 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>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.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>

25. **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.*

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| | <ul style="list-style-type: none"> 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. <p>Condition Reason: To require details of measures that will minimise impacts to the public, and the surrounding environment, during site works and construction.</p> |
| 26. | <p>Site Accessway</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.</p> <p>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 minimise and prevent damage to public infrastructure.</p> |
| 27. | <p>Excavations and Support of Adjoining Land</p> <p>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.</p> <p>Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.</p> |
| 28. | <p>Complaints Register</p> <p>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.</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> |
| 29. | <p>Building Encroachments</p> <p>There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p> |

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

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| 30. | <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</p> |

	Condition
	<p>(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>
31.	<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>
32.	<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>
33.	<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>
34.	<p>Sydney Water Certification</p> <p>A <i>section 73 Compliance Certificate</i>, under the <i>Sydney Water Act 1994</i> must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For</p>

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| | <p>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.</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> |
| 35. | <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> |
| 36. | <p>Street and/or Sub-Address Numbering</p> <p>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.</p> <p>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.</p> <p><i>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.</i></p> <p>Condition Reason: To ensure properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.</p> |

OCCUPATION AND ONGOING USE

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| 37. | <p>Fire Safety Statement</p> <p>A single and complete <i>Fire Safety Statement</i> (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> at least on an annual basis each year following the issue of the <i>Fire Safety Certificate</i>, and in accordance with the <i>Fire Safety Schedule</i> for the building.</p> |

Condition	
	<p>The <i>Fire Safety Statement</i> 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 <i>Fire Safety 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>
38.	<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>

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
39.	<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 & 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. <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</i></p>

Condition
<p><i>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>

Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.

DURING DEMOLITION WORK

Condition
<p>40. 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 Principal Certifier and Council upon request. <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 that the handling and removal of asbestos from the site is appropriately managed.</p>