

Randwick Local Planning Panel (Public) Meeting

Thursday 12 December 2024



RANDWICK LOCAL PLANNING PANEL (PUBLIC) MEETING

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held online via Microsoft Teams on Thursday, 12 December 2024 at 1:00 PM

Acknowledgement of Country

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

Declarations of Pecuniary and Non-Pecuniary Interests

Address of RLPP by Councillors and members of the public

Privacy warning;

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

Development Application Reports

D93/24 9-13 Abbotford Street, Kensington (DA/530/2024)..... 1

Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D93/24

Subject: 9-13 Abbotford Street, Kensington (DA/530/2024)

Executive Summary

Proposal:	Partial demolition, alterations, and adaptive re-use of existing buildings at No. 11-13 Abbotford Street, demolition of existing building at No. 9 Abbotford Street and the construction of an 8-storey co-living development comprising 134 co-living apartments, two (2) basement levels, communal areas and open space, spread across the three (3) properties.
Ward:	West Ward
Applicant:	The Trustee for HSN Hospitality No. 2 Trust
Owner:	HSN Hospitality No. 2 Pty Ltd
Cost of works:	\$25,492,500
Reason for referral:	The development contravenes the development standards for floor space ratio (FSR), communal living area, communal open space, landscaped area, and room size by more than 10% and more than 10 unique submissions by way of objection were received.

Recommendation

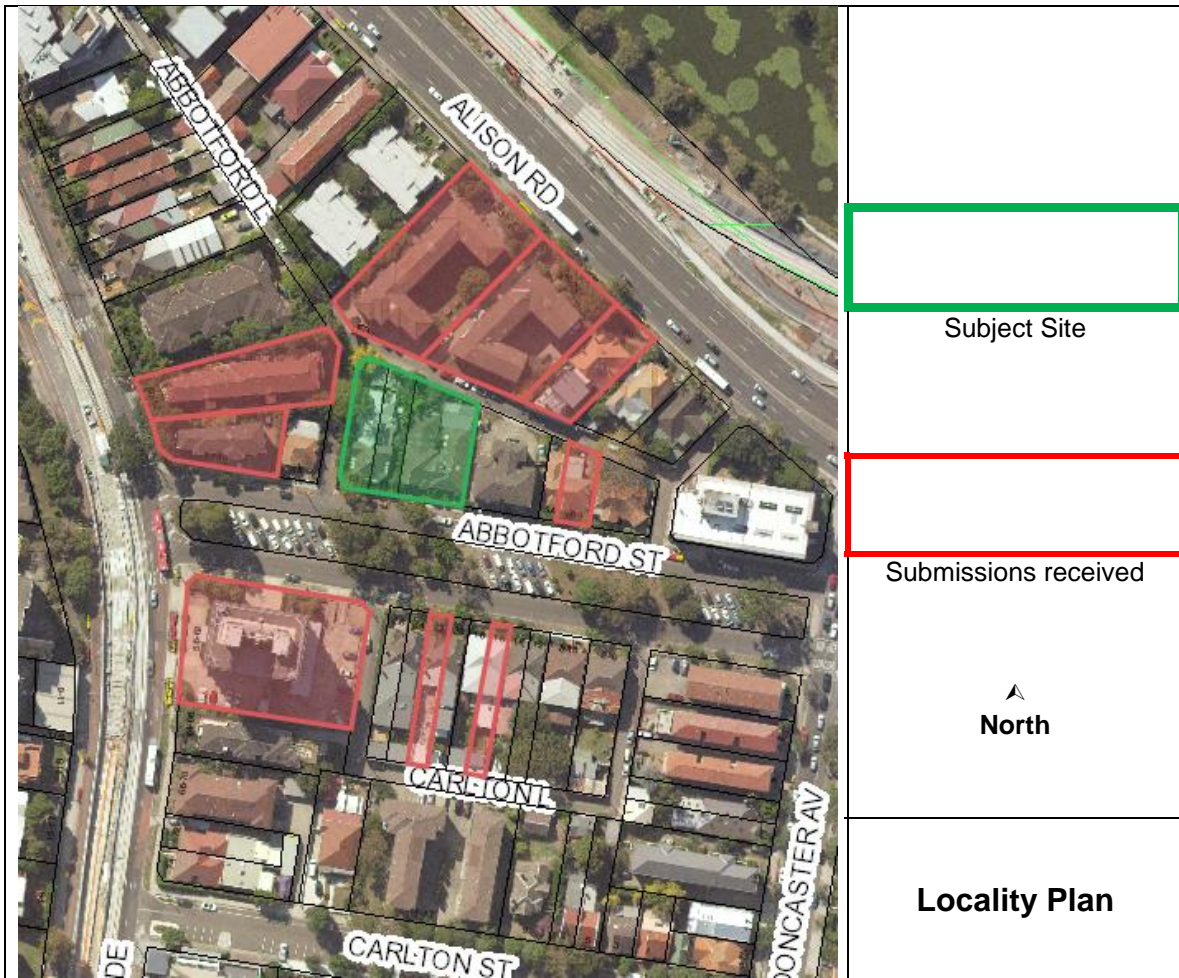
That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/530/2024 for partial demolition, alterations, and adaptive re-use of existing buildings at No. 11-13 Abbotford Street, demolition of existing building at No. 9 Abbotford Street and the construction of an 8-storey co-living development comprising 134 co-living apartments, two (2) basement levels, communal areas and open space, spread across the three (3) properties, at No. 9-13 Abbotford Street, Kensington, for the following reasons:

1. The proposal is inconsistent with the objectives of the R3 Medium Density Residential zone in that it is not compatible with the desired future character of the locality, it fails to recognise or reflect the desirable elements of the existing streetscape and built form, (including the heritage item), and it results in adverse amenity impacts to neighbouring residential properties in terms of visual bulk and visual privacy impacts.
2. The proposed development is of an excessive height and is incompatible with the desired future character of the locality, resulting in non-compliance with the height of buildings development standard pursuant to clause 4.3 of RLEP.
3. The submitted written request to vary the height of buildings development standard pursuant to clause 4.6 of RLEP is not considered to be well founded in that it does not sufficiently demonstrate that the proposed non-compliance is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify a variation to the development standard.
4. The proposed development is of an excessive bulk and scale and is incompatible with the desired future character of the locality, resulting in non-compliance with the floor space ratio development standard pursuant to clause 4.4 of RLEP and section 68(2)(a) of the Housing SEPP. The Applicant has failed to provide a written request to vary the FSR development standard pursuant to clause 4.6 of RLEP.
5. Pursuant to clause 5.10 of RLEP and Part B2 of RDCP, the proposal will have a detrimental impact upon the heritage significance of the local heritage item at 11-13 Abbotford Street (Item I489 – ‘*Federation semi-detached cottages*’).

6. Pursuant to clause 6.11 of RLEP 2012, the proposed development does not exhibit design excellence.
7. Pursuant to section 68(2)(c) of the Housing SEPP, the proposal fails to provide sufficient communal living area.
8. Pursuant to section 68(2)(d) of the Housing SEPP, the proposal fails to provide sufficient communal open space.
9. Pursuant to section 68(2)(f) of the Housing SEPP, the proposal fails to provide sufficient landscaped area.
10. Pursuant to section 69(1)(a) of the Housing SEPP, the proposal fails to provide sufficient room sizes.
11. Pursuant to section 69(2)(a) of the Housing SEPP, the proposal fails to provide sufficient building setbacks.
12. Pursuant to section 69(2)(b) of the Housing SEPP, the proposal fails to provide sufficient building separation and visual privacy.
13. Pursuant to section 69(2)(f) of the Housing SEPP, the proposal is not compatible with the desired future character of the local area, particularly having regard to its excessive bulk and scale and adverse impacts to the amenity of neighbouring residential properties.
14. Pursuant to section 4.6 of the Resilience and Hazards SEPP, the Applicant has failed to provide sufficient information to determine whether the land is contaminated.
15. The proposed development does not provide suitable internal amenity for future residents.
16. The proposed development fails to comply with the requirements for waste management pursuant to Part B6 of RDCP.
17. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to land contamination, heritage conservation, area calculation plans, laundry facilities, shadow diagrams, groundwater seepage and dewatering, air quality, acoustic reporting, and contextual design analysis.
18. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
19. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.

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 standards for floor space ratio (FSR), communal living area, communal open space, landscaped area, and room size by more than 10% and more than 10 unique submissions by way of objection were received.

The proposal seeks development consent for partial demolition, alterations, and adaptive re-use of existing buildings at No. 11-13 Abbotford Street, demolition of existing building at No. 9 Abbotford Street and the construction of an 8-storey co-living development comprising 134 co-living apartments, two (2) basement levels, communal areas, and open space.

The key issues associated with the proposal relate to non-compliance with the development standards for building height and FSR pursuant to clauses 4.3 and 4.4 of RLEP, respectively. The key issues also relate to non-compliance with the development standards for communal living area, communal open space, landscaped area, and room size pursuant to the Housing SEPP.

The proposed development is inconsistent with the desired future character of the locality, as evidenced by the inconsistency of the proposal with the Kensington North Housing Investigation Area (HIA) block controls at Part E7, Chapter 9.5 of the Interim DCP (the Interim DCP). The proposed development presents substantial variations to the Interim DCP, including storey height, setbacks, and landscape area.

The proposal is recommended for refusal.

2. Site Description and Locality

The site is located at Nos. 9-13 Abbotford Street, Kensington, and comprises the following three (3) allotments:

- No. 9 Abbotford St – Lot 26 Sec 28 in DP 4601 (Being Lots 1-4 in SP 12920).
- No. 11 Abbotford St – Lot 2 in DP 786825.
- No. 13 Abbotford St – Lot 1 in DP 786825.

The site is irregular in shape and has an area of 1,351.6m². The site has a 36.1m frontage to Abbotford Street (to the south), a 37.75m frontage to Abbotford Lane (to the north), and a 36.475m frontage to Abbotford Lane (to the west).

The site is within Zone R3 Medium Density Residential under the provisions of Randwick Local Environmental Plan 2012 (RLEP).

The site is relatively flat and is currently occupied by four (4) single storey multi dwelling units at No. 9 (refer Figure 5) and a pair of single storey semi-detached dwellings at Nos.11-13 (refer Figure 6). The semi-detached dwellings (Nos. 11 and 13) are listed under Schedule 5 of RLEP as a local heritage item (I489 – ‘Federation semi-detached cottages’).



Figure 1: Existing development at No. 9, viewed from Abbotford St (*Source: Council officer*)



Figure 2: Existing development at Nos. 11-13, viewed from Abbotford St (Source: Council officer)

The site is located on the northern side of Abbotford Street and approximately 55m from the intersection with Anzac Parade to the west and 110m from the intersection of Doncaster Avenue to the east. Abbotford Street is a split carriageway separated by a landscaped median and at grade angled car parking.

The Light Rail corridor runs to the east and west of the site along Anzac Parade and Alison Road. Surrounding development is characterised by a mix of residential flat buildings, dwellings, and semi-detached dwellings.

To the east of the site, at 7 Abbotford Street, is a three (3) storey residential flat building (refer Figure 3).

Development to the north of the site, on the opposite side of Abbotford Lane at 21-23 and 25-27 Alison Road, comprises four (4) storey residential flat buildings (refer Figure 4).

Development to the west of the site, on the opposite side of Abbotford Lane at 15 Abbotford Street comprises a four (4) storey dual occupancy. Development at 50-52 Anzac Parade comprises a three (3) storey residential flat building (refer Figure 5).

Directly to the south of the site, is a Council owned median (known as 1R Abbotford Street). Development on the opposite side of Abbotford Street comprises a 12 storey residential flat building (56-62 Anzac Parade – refer Figure 6) and single storey semi-detached dwellings (refer Figure 7).

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Figure 3: RFB at 7 Abbotford St, viewed from Abbotford St (Source: Council officer)



Figure 4: RFBs at 21-23 and 25-27 Alison Rd, viewed from Abbotford Ln (Source: Council officer)



Figure 5: RFB at 50-52 Anzac Pde, viewed from Abbotford Ln (Source: Council officer)



Figure 6: RFB at 56-62 Anzac Pde, viewed from Abbotford St (Source: Council officer)



Figure 7: Semi-detached dwellings at 24-26 Abbotford St, viewed from Abbotford St (Source: Council officer)

3. Background

Development Application No. DA/297/2020

DA/297/2020 was refused by the Land and Environment Court on 24 March 2022. The application sought consent for demolition of existing structures and construction of a four storey, 86 room boarding house (including 1 on-site manager's room) with basement parking, tree removal, landscaping, and associated works.

At the time of lodgment, the site was zoned R3 Medium Density Residential and was subject to a maximum 12m building height and maximum 0.9:1 FSR pursuant to RLEP.

Interim Heritage Order

On 29 January 2021, an Interim Heritage Order (IHO) for the properties at 11-13 Abbotford Street was gazetted.

On 18 August 2013, the Department of Planning and Environment (DPE) formally notified Amendment 9 of RLEP. Relevantly, the amended instrument inserted 11-13 Abbotford Street as a local heritage item (I489 – *Federation semi-detached cottages*) under Schedule 5. On 01 September 2023, Amendment 9 of RLEP commenced.

Comprehensive Planning Proposal

On 12 September 2021, the Draft Randwick Comprehensive Planning Proposal (CPP) was issued Gateway Determination by DPE. The CPP proposed changes to the planning controls for five (5) HIAs, including the Kensington North HIA. The subject site is located in the Kensington North HIA.

The CPP was placed on public exhibition from 31 May 2022 to 12 July 2022.

At the Extraordinary Council Meeting of 30 August 2022, Council resolved not to support the changes to the planning controls for the Kensington North HIA.

At the Council Meeting of 23 May 2023, and following correspondence from the then Department of Planning and Environment (DPE) in relation to potentially reinstating the Kensington North HIA,

Council resolved to confirm its previous resolution to exclude the Kensington North HIA. The CPP was amended accordingly and was submitted to DPE for finalisation.

On 18 August 2023, DPE formally notified Amendment 9 of RLEP. Relevantly, the amended instrument modified the Height of Buildings and Floor Space Ratio maps to stipulate a maximum 23m building height and maximum 2:1 FSR for the Kensington North HIA.

In a letter dated 18 August 2023, DPE confirmed the reasons for reinstating changes to the planning controls for the Kensington North HIA, as follows:

“The Department considers that there is sufficient merit to progress these HIAs, considering the suitability of these locations for uplift as demonstrated by the urban design studies undertaken by Council, and that these HIAs are a key initiative in the planning proposal to provide affordable and additional housing that could contribute to meeting the Council’s housing targets.”

On 01 September 2023, Amendment 9 of RLEP commenced.

At the Council Meeting of 19 September 2023, and in line with the increased height and FSR controls for the Kensington North HIA, Council resolved to adopt interim controls for the Kensington North HIA. The interim controls are provided in the Interim DCP dated 31 August 2023 (Interim DCP).

The Interim DCP is an interim policy and has not yet been formally exhibited for community and stakeholder consultation. Whilst the Interim DCP has no statutory recognition pursuant to the *Environmental Planning & Assessment Act 1979*, the intent of the policy is to be used as a development guide in line with the increased height and FSR controls under RLEP.

4. Proposal

The proposal seeks development consent for partial demolition, alterations, and adaptive re-use of existing buildings at No. 11-13 Abbotford Street, demolition of existing building at No. 9 Abbotford Street and the construction of an 8-storey co-living development comprising 134 co-living apartments, two (2) basement levels, communal areas, and open space.

Specifically, as shown in Figures 8-10, the proposal comprises:

- Demolition of the existing building at 9 Abbotford Street and the rear portion of the existing building at 11-13 Abbotford Street.
- Construction of an eight (8) storey co-living development comprising:
 - 134 co-living apartments to accommodate a maximum of 141 residents.
 - Two (2) basement levels to accommodate 24 car parking spaces, 17 motorcycle parking spaces, and 80 bicycle parking spaces.
- Communal living areas, including:
 - Living room, dining room, kitchen, library, and study at ground level.
 - Living rooms at Level 3 and Level 5.
 - Communal terrace at Level 7.
- Associated site works and landscaping.

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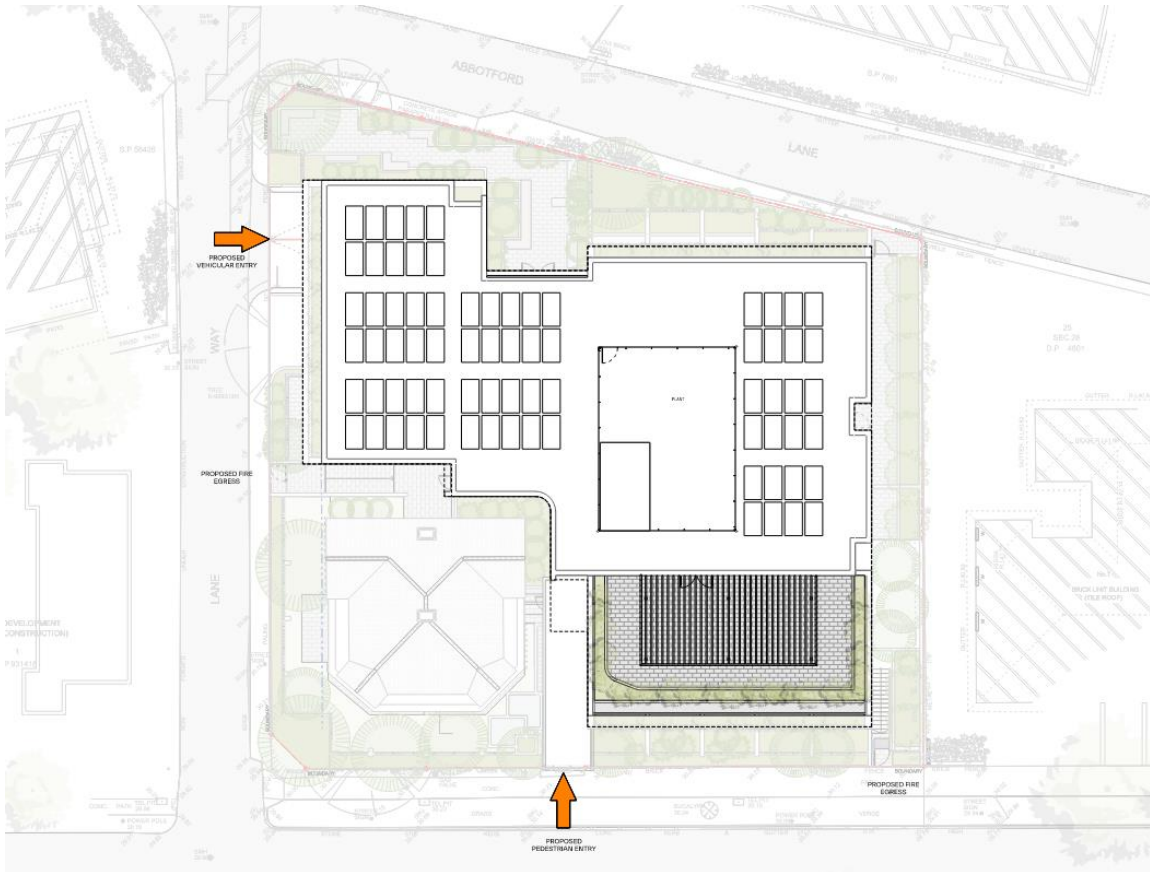


Figure 8: Proposed site plan (Source: PBD Architects)



Figure 9: Proposed photomontage (Source: PBD Architects)

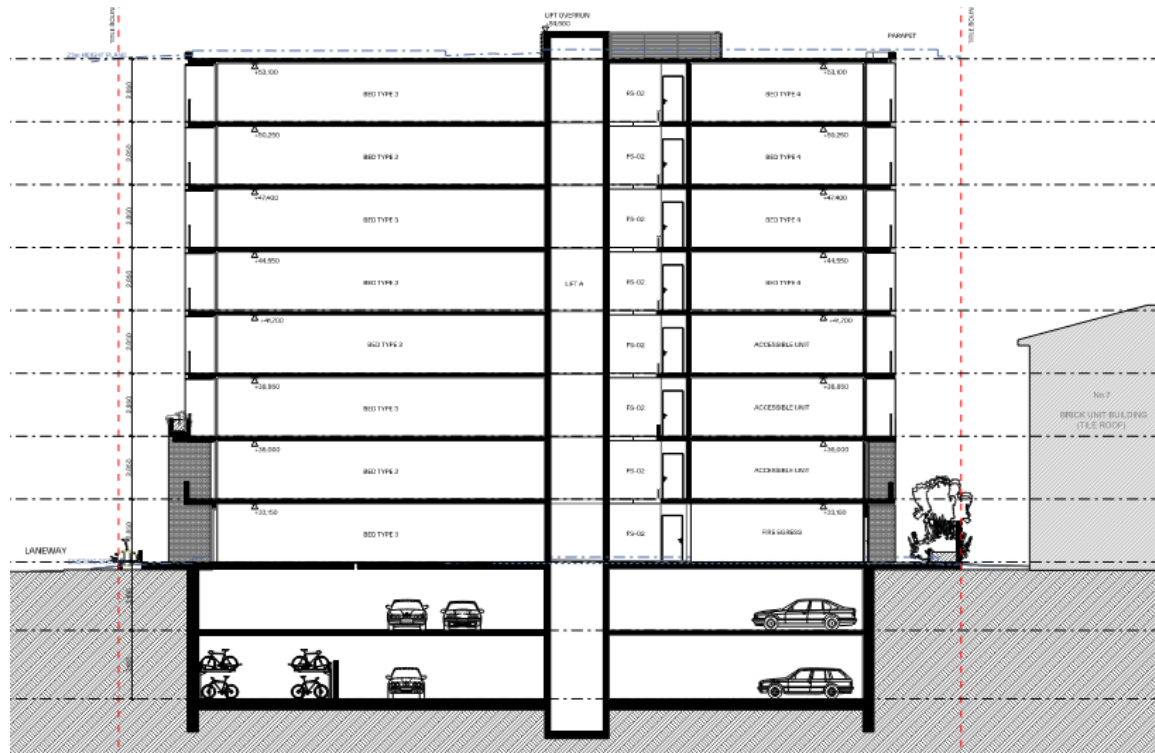


Figure 10: Proposed section plan (Source: PBD Architects)

5. Notification

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

- 21-23 Alison Road, Kensington – 2 x objections.
- 3/25-27 Alison Road, Kensington.
- 13/25-27 Alison Road, Kensington.
- 2/29 Alison Road, Kensington – 2 x objections.
- 8/29 Alison Road, Kensington.
- 9/50-52 Anzac Parade, Kensington.
- 56-62 Anzac Parade, Kensington.
- 12/56-62 Anzac Parade, Kensington.
- 85/56-62 Anzac Parade, Kensington.
- 95/56-62 Anzac Parade, Kensington.
- 102/56-62 Anzac Parade, Kensington.
- 5 Abbotford Street, Kensington.
- 16 Abbotford Street, Kensington – 2 x objections.
- 2/17-19 Abbotford Street, Kensington.
- 5/17-19 Abbotford Street, Kensington.
- 22 Abbotford Street, Kensington.
- Unknown – 3 x objections.

Issue	Comment
Traffic and parking impacts, including pedestrian safety.	Recommendation for refusal
Suitability of co-living land use, including noise, hygiene, and community cohesion concerns.	Recommendation for refusal
Overdevelopment of the site and 'overcrowding' of the locality.	Recommendation for refusal
Excessive student housing in the locality.	Recommendation for refusal
Building height and density.	Recommendation for refusal

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Issue	Comment
Privacy impacts.	Recommendation for refusal
Noise impacts.	Recommendation for refusal
Visual bulk impacts.	Recommendation for refusal
Solar access impacts.	Recommendation for refusal
View impacts.	Recommendation for refusal
DCP non-compliances, including setbacks.	Recommendation for refusal
Consistency with desired future character of the locality.	Recommendation for refusal
Tree removal.	Recommendation for refusal
Insufficient landscaping and open space.	Recommendation for refusal
Impacts on local infrastructure, including public transport, roads, supermarkets, and shops.	Recommendation for refusal
Property devaluation and saturation of rental market.	Recommendation for refusal
Safety and security concerns.	Recommendation for refusal
Insufficient room sizes.	Recommendation for refusal
Construction impacts, including structural integrity of neighbouring properties.	Recommendation for refusal
Stormwater management and potential flood impacts.	Recommendation for refusal
Waste management.	Recommendation for refusal
Draft North Kensington HIA DCP has not been publicly exhibited.	Recommendation for refusal
Heritage impacts.	Recommendation for refusal
Lack of community consultation.	Recommendation for refusal

6. Relevant Environment Planning Instruments

6.1. SEPP (Housing) 2021

6.1.1. Chapter 3 – Diverse Housing – Co-Living Housing

Chapter 3, Part 3 of the Housing SEPP relates to development for the purpose of co-living housing. An assessment of the proposal against the relevant standards is provided in the table below.

Section	Design Criteria	Proposal	Compliance
Part 3: Co-living housing			
67	Co-living housing may be carried out on certain land with consent		
	Development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing is permitted under another environmental planning instrument, or development for the purposes of residential flat buildings or shop top housing is permitted under Chapter 5 or another environmental planning instrument.	The site is zoned R3 Medium Density Residential. Development for the purpose of residential flat buildings is permitted in the R3 zone under RLEP.	Yes
68	Non-discretionary development standards—the Act, s 4.15		
	(2) The following are non-discretionary development standards in relation to development for the purposes of co-living housing—		
	(a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than—	2.9:1 (3,931m ² GFA) – NB: based on Council calculation	No

Section	Design Criteria	Proposal	Compliance
	(i) the maximum permissible floor space ratio for residential accommodation on the land, and (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,		
	(b) for co-living housing containing 6 private rooms— (i) a total of at least 30m ² of communal living area, and (ii) minimum dimensions of 3m for each communal living area,	N/A	N/A
	(c) for co-living housing containing more than 6 private rooms— (i) a total of at least 30m ² of communal living area plus at least a further 2m ² for each private room in excess of 6 private rooms, and (ii) minimum dimensions of 3m for each communal living area,	Required: 286m ² Proposed: 217.58m ²	No
	(d) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	Refer to Key Issues section of this report.	No
	(e) unless a relevant planning instrument specifies a lower number— (i) for development on land in an accessible area—0.2 parking spaces for each private room, or (ii) otherwise—0.5 parking spaces for each private room,	Required: 27 spaces Proposed: 24 spaces, plus a credit of up to five (5) spaces for one (1) carshare space will be accepted thereby giving an equivalent provision of 28 spaces.	Yes
	(f) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,	Control: 50% landscape (675.8m ²) and 25% deep soil (337.9m ²) Proposed: 39.81% landscape (538.2m ²) and 13.88% deep soil (187.62m ²)	No
	(g) for development on land in Zone R4 High Density Residential—the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.	N/A	N/A
69	Standards for co-living housing		
	(1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—		
	(a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m ² and not less than— (i) for a private room intended to be used by a single occupant—12m ² , or	Refer to Key Issues section of this report.	No

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Section	Design Criteria	Proposal	Compliance
	(ii) otherwise—16m ² , and		
	(b) the minimum lot size for the co-living housing is not less than— (i) for development on land in Zone R2 Low Density Residential—600m ² , or (ii) for development on other land—800m ² , and	1,351m ²	Yes
	(c) for development on land in Zone R2 Low Density Residential or an equivalent land use zone, the co-living housing— (i) will not contain more than 12 private rooms, and (ii) will be in an accessible area, and	N/A	N/A
	(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and	A workspace is provided in the manager's room at ground floor level.	Yes
	(e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and	N/A	N/A
	(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and	Adequate bathroom and kitchen facilities are available for residents. Insufficient information has been provided by the Applicant to confirm whether the proposed 15.46m ² common laundry is of sufficient size to service the proposed 141 residents.	Unable to assess
	(g) each private room will be used by no more than 2 occupants, and	Each private room will be used by no more than 2 residents.	Yes
	(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.	Adequate bicycle (80) and motorcycle (17) parking spaces are provided.	Yes
	(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—		
	(a) the front, side and rear setbacks for the co-living housing are not less than— (i) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument, or (ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for	Refer to Key Issues section of this report.	No

Section	Design Criteria	Proposal	Compliance
	residential flat buildings under a relevant planning instrument, and		
	(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and	Refer to Key Issues section of this report.	No
	(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and	At least 3hrs of solar access will be provided between 9am and 3pm at mid-winter to at least one (1) communal living area.	Yes
	(f) the design of the building will be compatible with— (i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition—the desired future character of the precinct.	Refer to Key Issues section of this report	No
70	No Subdivision		
	Development consent must not be granted for the subdivision of co-living housing into separate lots.	N/A	N/A

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6.2. SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the Biodiversity and Conservation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW.

Refer to discussion by Council's Landscape Officer at Appendix 1.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 of the Resilience and Hazards 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.

An assessment of the proposed development against Chapter 4 cannot be undertaken as the Applicant has failed to submit a Preliminary Site Contamination Investigation.

Refer to comments by Council's Environmental Health Officer at Appendix 1.

6.4. SEPP (Transport and Infrastructure) 2021

Pursuant to section 2.48 of the Transport and Infrastructure SEPP, the application was referred to Ausgrid. No objection was raised, subject to conditions (refer Appendix 1).

Pursuant to clause 2.122 of the Transport and Infrastructure SEPP, the application was referred to Transport for NSW. No objection was raised, subject to conditions (refer Appendix 1).

6.5. Randwick Local Environmental Plan 2012 (RLEP)

The site is zoned R3 Medium Density Residential under RLEP.

The proposal, being for co-living housing, is permissible with consent in the R3 zone pursuant to section 67(b) of the Housing SEPP.

The proposal is inconsistent with the specific objectives of the zone, as follows:

- The proposed development exceeds the level of built form anticipated for the site. The bulk and scale of the proposed development as a result of the non-compliance with the height of buildings and FSR development standards is considered excessive and results in a building that is not compatible with the desired future character of the area.
- The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form, including the heritage item, which is proposed to be demolished (in part).
- The proposed development results in adverse amenity impacts to neighbouring residential properties in terms of visual bulk and visual privacy impacts.
- The proposed development results in poor internal amenity for future residents.

The following development standards in RLEP apply to the proposal:

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.3: Building height	23m	23.98m	No
Cl 4.4: Floor space ratio	2.2:1 (including 10% Housing SEPP bonus)	2.9:1 (3,931m ² GFA) – NB: based on Council calculation	No

6.5.1. *Clause 4.6 – Exceptions to development standards*

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

6.5.2. *Clause 5.10 – Heritage conservation*

Clause 5.10 of RLEP seeks to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

Clause 5.10(4) of RLEP requires Council to consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area.

Part of the site (11-13 Abbotford Street) is listed as a local heritage item pursuant to Schedule 5 of RLEP (Item I489 – *Federation semi-detached cottages*). Additionally, there are several heritage items in proximity to the site, including:

- 5-5A Abbotford Street (Item I102 – *“Parkside”, Federation semi-detached pair*).
- 29 Alison Road (Item I104 – *“The Legers”, Federation dwelling*).
- 31 Alison Road (Item I105 – *2 storey Federation duplex*).

Refer to comments by Council’s Heritage Planner at Appendix 1. It is considered that the proposed development will have an adverse impact on the heritage significance of the heritage item at 11-13 Abbotford Street.

6.5.3. *Clause 6.8 – Airspace Operations*

In accordance with clause 6.8 of RLEP 2012, the application was referred to the Sydney Airport Corporation. No objection was raised, subject to conditions (refer Appendix 1).

6.5.4. *Clause 6.11 – Design excellence*

Clause 6.11 of RLEP applies to a development application in circumstances where the proposed development will be at least 15m in height. Pursuant to clause 6.11(3), development consent must not be granted unless the consent authority is satisfied that the proposed development exhibits design excellence.

The proposed development does not exhibit design excellence having regard to the reasons summarised in this report. The building form, scale, detailed design, and external appearance of the proposed development does not improve the quality or amenity of the public domain, nor does it achieve an acceptable relationship with buildings on the subject and neighbouring sites, including the heritage item at 11-13 Abbotford Street.

The repetitive egg-crate box-like design and the use of large scale panel wall finishes (except for the face brick of the first two (2) storeys), is characteristic of a commercial office or institutional building, which is inconsistent with the residential nature of the locality and streetscape.

The proposal does not achieve a high standard of architectural design due to the following:

- Inappropriate massing, lack of articulation, and extent of blank walls.
- Crowding of the public domain due to insufficient street setbacks.
- Unacceptable separation to the heritage item and adjacent residential properties.
- Additional overshadowing and visual bulk caused by the non-compliant building footprint and massing.
- Lack of built form transition to the heritage item.
- Inadequate sustainability measures.
- Inadequate internal amenity for future residents in terms of room size, communal living area, communal open space, natural ventilation, and solar access.

Refer to comments by Council’s Design Excellence Advisory Panel at Appendix 1.

Having regard to the above, the consent authority could not be satisfied that the proposed development exhibits design excellence as required by clause 6.11 of RLEP.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standards contained within RLEP and the Housing SEPP:

Clause	Development Standard	Proposal	Proposed variation	% variation
RLEP				
CI 4.3: Building height	23m	23.98m	0.98m	4.26%
CI 4.4: Floor space ratio	2.2:1 (2,973.52m ² GFA) – including 10% Housing SEPP bonus	2.9:1 (3,931m ² GFA)	957.48m ²	32.2%
Housing SEPP				
S68(2)(c): Communal living area	286m ²	217.58m ²	68.42m ²	23.92%
S68(2)(d): Communal open space	20% (270.32m ²)	8.59% (116.13m ²)	154.19m ²	57.03%
S68(2)(f): Landscape area	50% landscape (675.8m ²)	39.81% landscape (538.2m ²)	137.6m ²	20.36%
	25% deep soil (337.9m ²)	13.88% deep soil (187.62m ²)	150.28m ²	44.47%
S69(1)(a): Room size	12-25m ² (single)	10.57m ² (single)	1.43m ²	11.9%
	16-25m ² (double)	15.48m ² (double)	0.52m ²	3.25%

NB: The above figures are based on Council's calculations – refer to discussion at Section 9.1 of this report.

The Applicant has submitted a written request to vary the development standard for building height only and has failed to submit a written request to vary the other development standards. Refer to the discussion at Section 9.1 of this report.

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: 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 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.

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

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

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

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

Assessing officer’s comment: The applicant’s written request has not adequately demonstrated that compliance is unreasonable or unnecessary in the circumstances of the case. The proposal is inconsistent with the following objectives for building height:

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

The proposed development is not compatible with the desired future character of the locality due to the proposed height exceedance. As detailed in this report, desired future character is established by the RLEP planning controls as well as the Interim DCP.

The 23m building height standard is supported by the development guidelines contained in the Interim DCP. Pursuant to the Block B Control Plan, a maximum seven (7) storey building height is envisaged for the site, with the uppermost level recessed 2m from all sides.

The proposed eight (8) storey building exceeds the desired number of storeys by unacceptably low ceiling heights and the exclusion of areas that should be included as GFA (i.e. internal corridors and communal living rooms).

It is noted that a seven (7) storey building with 3.1m floor heights would be approximately 21.7m in height (to roof level). Any required plant and/or lift overruns could be reasonably accommodated within the additional 1.3m, achieving a compliant 23m overall building height.

As demonstrated in this report, the non-compliant building height does not provide for a development that is compatible with the scale and character of the heritage item. The contrast from the eight (8) storey building (with little separation) immediately next to the single storey heritage item results in a bulky and dominant form which overwhelms the portion of the heritage item which is retained.

The non-compliant building height, as well as the non-compliant GFA and setbacks, results in adverse impacts on the amenity of neighbouring residential properties relative to visual bulk and loss of privacy.

Noting the above, Council is not satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

- *The proposal introduces a significant amount of Diverse Housing in a desirable location with excellent connection to public transport, employment and recreational facilities.*
- *The building generally complies with relevant building envelope controls despite the inherent pressure from accommodating some of the available bonus floor space onto the site as facilitated by the incentives under the Housing SEPP.*
- *The scale of the building is 23 metres as anticipated by the controls, despite the pressure of the additional floor space as noted above.*
- *The variation in height to the building itself when the lift overrun and plant is excluded is marginal and imperceptible, at 0.3% to 0.8% only, demonstrating that it meets the purpose of the height standard.*
- *The additional height is otherwise required to facilitate equitable access to all levels by virtue of allowing a lift overrun to peak through the height plane.*
- *The additional height is otherwise required to facilitate the provision of plant on the roof where it can be naturally ventilated in lieu of relying on mechanical ventilation within the basement, as well as screening of the plant to minimise its visual impact if/when similar height buildings are constructed in the locality that have an aspect to this roof.*
- *The design satisfies the Object 1(g) of the EP&A Act 1979 which seeks to promote good design and amenity of the built environment.*
- *The proposal is consistent with the objectives of the height development standard and the objectives of the zone.*

Assessing officer's comment: The applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The written request fails to demonstrate that a breach of the building height development standard is integral to site redevelopment and why site redevelopment cannot be achieved with a compliant built form.

As abovementioned, a compliant seven (7) storey building with 3.1m floor heights would be approximately 21.7m in height (to roof level). Any required plant and/or lift overruns could be

reasonably accommodated within the additional 1.3m, achieving a compliant 23m overall building height.

Noting the above, Council is not satisfied that there are sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

It is considered that the requirements of clause 4.6(3) have not 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

Part B2: Heritage

Council is not satisfied that the proposed development meets the heritage requirements in accordance with Part B2 of RDCP. Refer to detailed assessment by Council’s Heritage Planner at Appendix 1.

Part B6: Waste Management

Council is not satisfied that the proposed development meets the waste management requirements in accordance with Part B6 of RDCP. Refer to detailed assessment by Council’s Development Engineer at Appendix 1.

8.2. Draft RDCP Part E7 – Housing Investigation Areas (dated 31 August 2023)

The Draft Part E7 Housing Investigation Areas DCP (‘the Interim DCP’) is an interim policy and has not yet been formally exhibited for community and stakeholder consultation. Whilst the Interim DCP has no statutory recognition pursuant to the *Environmental Planning & Assessment Act 1979*, the intent of the policy is to be used as a development guide in line with the increased height and FSR controls under RLEP.

Refer to discussion of key issues at Section 9.1 of this report.

9. Environmental Assessment

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

Section 4.15 ‘Matters for Consideration’	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	Refer to Sections 6 and 7 of this report.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Not applicable.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the relevant objectives and controls of RDCP and the Interim DCP.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.

Section 4.15 'Matters for Consideration'	Comments
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 inconsistent with the dominant character of the locality. The proposal will result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site has insufficient area to accommodate the proposed land use and associated structures. 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 fails to promote the objectives of the zone and will result in adverse impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

Zone Objectives

The development application should be refused because the proposed development is inconsistent with the relevant objectives of the R3 Medium Density Residential zone under RLEP, as follows:

- The proposed development exceeds the level of built form anticipated for the site. The bulk and scale of the proposed development as a result of the non-compliance with the height of buildings and FSR development standards is considered excessive and results in a building that is not compatible with the desired future character of the area.
- The proposed development fails to recognise or reflect the desirable elements of the existing streetscape and built form, including the heritage item, which is proposed to be demolished (in part).
- The proposed development results in adverse amenity impacts to neighbouring residential properties in terms of visual bulk and visual privacy impacts.
- The proposed development results in poor internal amenity for future residents.

Height of Buildings

The development application should be refused because the height of the proposed development is excessive and does not comply with the development standard in clause 4.3 of RLEP. Furthermore, the written request to vary the height of buildings development standard pursuant to clause 4.6 of RLEP is inadequate.

Pursuant to the Height of Building Map referred to in clause 4.3(2) of RLEP, the site is subject to a maximum building height of 23m.

The proposed development has a maximum building height of 23.98m, which exceeds the development standard by 0.98m (4.26% variation). The extent of non-compliance with the height of buildings development standard confirms that the proposed development is an overdevelopment of the site and results in a development of excessive bulk and scale.

As detailed in this report, the proposed development does not respond to the desirable elements of the existing streetscape and built form and is inconsistent with the desired future character of the locality. The proposal is inconsistent with the objectives of clause 4.3 of RLEP having regard to the following:

- Objective (a) as it will result in a building form that is not consistent with the desired future character of the locality.
- Objective (b) as it is not compatible with the scale and character of the heritage item at 11-13 Abbotford Street.
- Objective (c) as it will adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk and visual privacy.

Council is not satisfied that the Applicant's written request under clause 4.6 of RLEP has adequately addressed the following matters required to be demonstrated:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- That there are sufficient environmental planning grounds to justify the contravention of the development standard in clause 4.3 of RLEP.

Floor Space Ratio

The development application should be refused because the GFA of the proposed development is excessive and does not comply with the FSR development standard in clause 4.4 of RLEP and section 68(2)(a) of the Housing SEPP. The Applicant has failed to provide a written request to vary the FSR development standard pursuant to clause 4.6 of RLEP.

Pursuant to the FSR map referred to in clause 4.4(2) of RLEP, the site is subject to a maximum FSR of 2:1, which equates to a maximum GFA of 2,703.2m². Pursuant to section 68(2)(a) of the Housing SEPP, an additional 10% bonus FSR is permissible if the additional floor space is used only for the purposes of co-living housing. This equates to a maximum FSR of 2.2:1 and GFA of 2,973.52m².

The GFA plans and calculations provided by the Applicant are incorrect. The following areas have been incorrectly excluded from the calculating of GFA:

- Internal corridors (i.e. horizontal circulation) at all floor levels.
- Communal living areas at ground floor level, Level 3, and Level 5.

The internal corridors contribute to the overall building bulk and do not have an open appearance. As such, the corridors could not be classified as open breezeways.

Based on Council's calculations, the proposed development exceeds the maximum permitted FSR of 2.2:1. The extent of non-compliance with the FSR development standard confirms that the proposed development is an overdevelopment of the site and results in a development of excessive bulk and scale.

As detailed in this report, the proposed development does not respond to the desirable elements of the existing streetscape and built form and is inconsistent with the desired future character of the locality. The proposal is inconsistent with the objectives of clause 4.4 of RLEP with regard to the following:

- Objective (a) as it will result in a building form that is not consistent with the desired future character of the locality.

- Objective (b) as it is not compatible with the scale and character of the heritage item at 11-13 Abbotford Street.
- Objective (d) as it will adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk and visual privacy.

Council is not satisfied that the Applicant has provided a written request under clause 4.6 of RLEP to address the following matters required to be demonstrated:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- That there are sufficient environmental planning grounds to justify the contravention of the development standard in clause 4.4 of RLEP and section 68(2)(a) of the Housing SEPP.

Heritage

The development application should be refused because the proposed development is inconsistent with clause 5.10 of RLEP and Part B2 of RDCP and will have a detrimental impact upon the heritage significance of the local heritage item at 11-13 Abbotford Street (Item I489 – ‘Federation semi-detached cottages’).

Refer to comments by Council’s Heritage Planner at Appendix 1. It is considered that the proposed development will have an adverse impact on the heritage significance of the heritage item at 11-13 Abbotford Street.

Communal Living Area

The development application should be refused as it does not comply with the minimum communal living area requirements pursuant to section 68(2)(c) of the Housing SEPP. The Applicant has failed to provide a written request to vary the development standard pursuant to clause 4.6 of RLEP.

Pursuant to section 68(2)(c) of the Housing SEPP, communal living area must be provided at a rate of at least 30m², plus at least a further 2m² for each private room in excess of 6 private rooms. This equates to a total of 286m² for the proposed development.

The plans and calculations provided by the Applicant are incorrect. The area of the internal corridors (i.e. horizontal circulation) at ground floor level, Level 3, and Level 5 have been incorrectly included in the calculation of communal living area. Refer Figure 11.

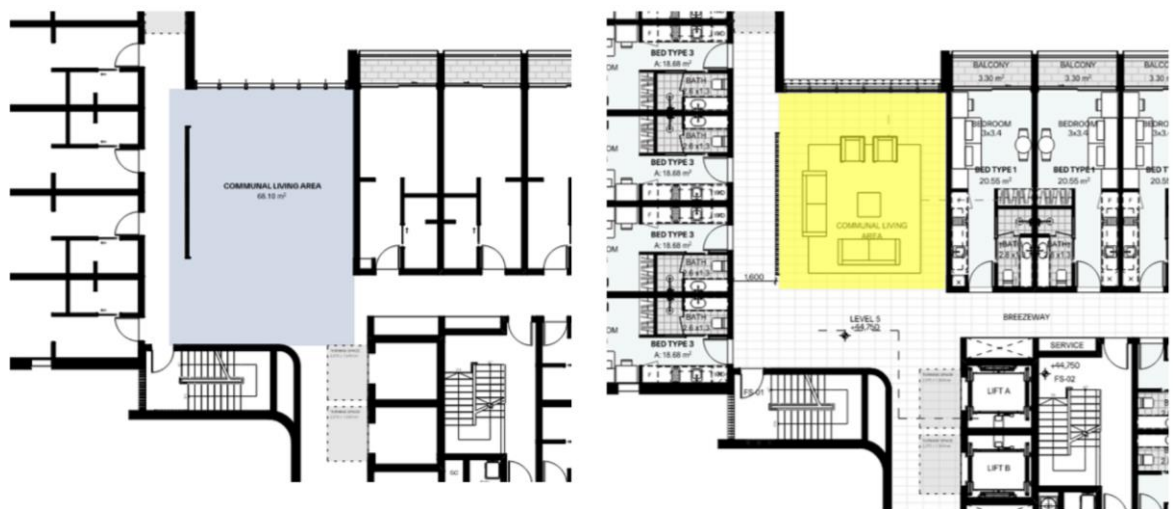


Figure 11: Communal living area calculation plan (left) and Council markup of Level 5 floor plan (Source: PBD Architects and Council Officer markup)

Based on Council's calculations, the proposed development provides 217.58m² of communal living area and so fails to comply with the minimum requirements.

Council is not satisfied that the Applicant has provided a written request under clause 4.6 of RLEP to address the following matters required to be demonstrated:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- That there are sufficient environmental planning grounds to justify the contravention of the development standard in section 68(2)(c) of the Housing SEPP.

Communal Open Space

The development application should be refused because the proposed development provides insufficient communal open space having regard to section 68(2)(d) of the Housing SEPP. The Applicant has failed to provide a written request to vary the development standard pursuant to clause 4.6 of RLEP.

Pursuant to section 68(2)(d) of the Housing SEPP, at least 20% of the site area must be provided as communal open space ("COS"), with minimum dimensions of 3m. This equates to 270.32m².

The plans and calculations provided by the Applicant are incorrect. The following areas have been incorrectly included as communal open space:

- The area around the proposed driveway (to north-west of the site) – this area is not suitable for use as COS. This area is elongated and narrow, and its amenity would be heavily compromised by vehicle noise and movement at the subject and neighbouring sites. Parts of this area fail to comply with the minimum 3m dimension requirement. Additionally, this area has poor passive surveillance and raises safety concerns due to the location of the driveway. This area has poor linkage to the indoor communal facilities and would be overlooked.
- The area around the heritage item (to south-west corner of the site) – this area is not suitable for use as COS. The narrow passages between buildings have no utility and fail to comply with the minimum 3m dimension requirement. The fire exit paths do not constitute COS. The front setback to the heritage item is highly exposed to the public domain without any privacy, and as such, is not suitable for use as COS. Much of this area does not appear to be directly accessed from the indoor communal facilities.

Based on the Respondent's calculations, the proposed development provides only 116.13m² (8.59%) of communal open space (at Level 7) and fails to comply with the minimum requirement. This results in adverse amenity impacts for future residents.

The Court, standing in the shoes of the consent authority for the purposes of hearing and determining this appeal, would not be satisfied that the Applicant has provided a written request under clause 4.6 of RLEP to address the following matters required to be demonstrated:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- That there are sufficient environmental planning grounds to justify the contravention of the development standard in section 68(2)(d) of the Housing SEPP.

Landscaped Area

The development application should be refused because the proposed development provides insufficient landscaping having regard to section 68(2)(f) of the Housing SEPP. The Applicant has failed to provide a written request to vary the development standard pursuant to clause 4.6 of RLEP.

Pursuant to section 68(2)(f) of the Housing SEPP, landscaping must be provided in accordance with the minimum landscaping requirements for multi dwelling housing under the relevant planning instrument, being Part C2 of RDCP.

Pursuant to Part C2, Chapter 2.2 of RDCP, at least 50% of the site area is to be landscaped open space and at least 25% of the site area is to be deep soil area.

The Applicant has failed to provide calculation plans for landscaped open space and deep soil area. However, based on the Respondent's calculations, the proposed development provides only 538.2m² (39.81%) of landscaped area and 187.62m² (13.88%) of deep soil area. Therefore, the proposed development fails to comply with the minimum landscaping requirements.

The submitted Landscape Plan indicates planting in the front courtyards of the ground floor co-living rooms. While some planting would be likely, the type of planting by individual residents cannot be guaranteed and it is common for low planting with no canopy trees in these spaces.

Council is not satisfied that the Applicant has provided a written request under clause 4.6 of RLEP to address the following matters required to be demonstrated:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- That there are sufficient environmental planning grounds to justify the contravention of the development standard in section 68(2)(f) of the Housing SEPP.

Room Sizes

The development application should be refused because the proposed development provides insufficient room sizes having regard to section 69(1)(a) of the Housing SEPP. The Applicant has failed to provide a written request to vary the development standard pursuant to clause 4.6 of RLEP.

Pursuant to section 69(1)(a) of the Housing SEPP, the minimum floor area of each single room must be between 12m² and 25m² and the minimum floor area of each double room must be between 16m² and 25m².

The calculations provided by the Applicant are incorrect. The area of the bathroom and kitchen, including the 600mm exclusion zone (refer Woodhouse & Danks v Ku-ring-gai Council [2021] NSWLEC 1048)], has been incorrectly included in the calculation of room size.

Based on Council's calculations, Room Type 3 (10.57m² for single room) and Room Type 4 (15.48m² for double room) fail to comply with the minimum room size requirements. Refer to Figure 12.

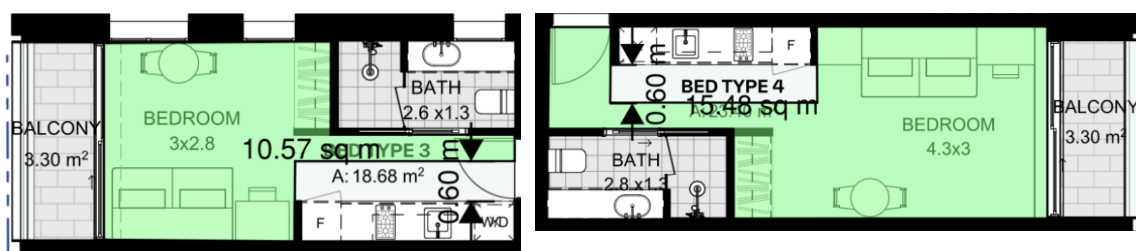


Figure 12: Extract and Council markup of Level 4 floor plan – Room Type 3 (left) and Room Type 4 (right) (Source: PBD Architects and Council Officer markup)

The room layout designs are not suitable as the main entry is through the linear kitchen. No separation is provided between kitchen facilities and circulation, resulting in poor internal amenity for future residents.

Council is not satisfied that the Applicant has provided a written request under clause 4.6 of RLEP to address the following matters required to be demonstrated:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- That there are sufficient environmental planning grounds to justify the contravention of the development standard in section 69(1)(a) of the Housing SEPP.

Setbacks

The development application should be refused because the proposed development is inconsistent with section 69(2)(a) of the Housing SEPP and does not provide adequate building setbacks for visual privacy.

Pursuant to section 69(2)(a) of the Housing SEPP, the consent authority must consider whether the proposed development is consistent with the minimum setback requirements for multi dwelling housing under the relevant planning instrument, being Part C2 of RDCP.

Pursuant to Part C2, Section 3.4.1 of RDCP, the front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. The proposed setbacks to Abbotford Street and Abbotford Lane are inconsistent with the prevailing setback line. This diminishes the visibility and prominence of the heritage items on Abbotford Street and restricts the ability to provide for private and communal gardens, including mature trees and vegetation.

Pursuant to Part C2, Section 3.4.2 of RDCP, minimum 4m side setbacks are applicable. The proposed 2.3m-3m side setbacks fail to comply with the minimum requirements and do not provide adequate separation for visual and acoustic privacy and landscaped planting.

Visual Privacy

The development application should be refused because the proposed development results in adverse visual privacy impacts to the neighbouring properties and does not comply with section 69(2)(b) of the Housing SEPP and Part 3F-1 of the Apartment Design Guide (ADG).

Pursuant to section 69(2)(b) of the Housing SEPP, the consent authority must consider whether the proposed development is consistent with the minimum building separation distances specified in Part 3F-1 of the ADG, as follows:

- Building height up to 12m (4 storeys) – 6m for habitable rooms and balconies and 3m for non-habitable rooms.
- Building height up to 25m (5-8 storeys) – 9m for habitable rooms and balconies and 4.5m for non-habitable rooms.

The proposed east-facing and west-facing openings (to balconies and habitable windows) are setback 2.3m-3m from the side boundaries, which fails to comply with the minimum ADG requirements. This results in adverse visual privacy impacts to the properties at 7 and 15 Abbotford Street and 50-52 Anzac Parade.

ADG compliant setbacks are necessary in this instance noting that the proposed co-living rooms have a single orientation, and as such, the balconies could not be screened whilst maintaining reasonable internal amenity.

Desired Future Character

The development application should be refused because the proposed development is inconsistent with section 69(2)(f) of the Housing SEPP. The proposed development is not compatible with the desired future character of the local area, particularly having regard to its excessive bulk and scale and adverse impacts to the amenity of neighbouring residential properties.

Pursuant to section 69(2)(f) of the Housing SEPP, the consent authority must consider whether the design of the building will be compatible with the desirable elements of the character of the local area, or for precincts undergoing transition, the desired future character of the precinct.

The desired future character of the locality is established, in part, by planning controls. The proposed development is not compatible with the desired future character envisaged by the applicable planning controls for the following reasons:

- The proposed development results in non-compliance with the height of buildings development standard in clause 4.3 of RLEP.
- The proposed development results in non-compliance with the FSR development standard in clause 4.4 of RLEP and section 68(2)(a) of the Housing SEPP.

The desired future character of the locality is also established by the development guidelines for the Kensington North HIA (Block B) outlined in Part E7, Chapter 9.5 of the Interim DCP.

The proposed development is inconsistent with the Block B Control Plan and fails to demonstrate that the alternative layout, setbacks, and massing result in an improved urban design, amenity, or sustainability outcome. The proposed development presents substantial variations to the Interim DCP, including storey height, setbacks, and landscape area, as follows:

Storey Height

As shown in Figure 13, the Block B Control Plan indicates a maximum seven (7) storey height for 9 Abbotford Street, with a two (2) storey podium to the western side and a 2m upper level setback above the street wall.

The proposed development is eight (8) storeys in height, and as such, is inconsistent with the desired future character of the site and locality.

The Block B Control Plan does not anticipate redevelopment of the heritage item at 11-13 Abbotford Street. However, the proposed development does not retain the heritage item, or provide any transition in scale to the heritage item, which is inconsistent with the desired future character of the site and locality.

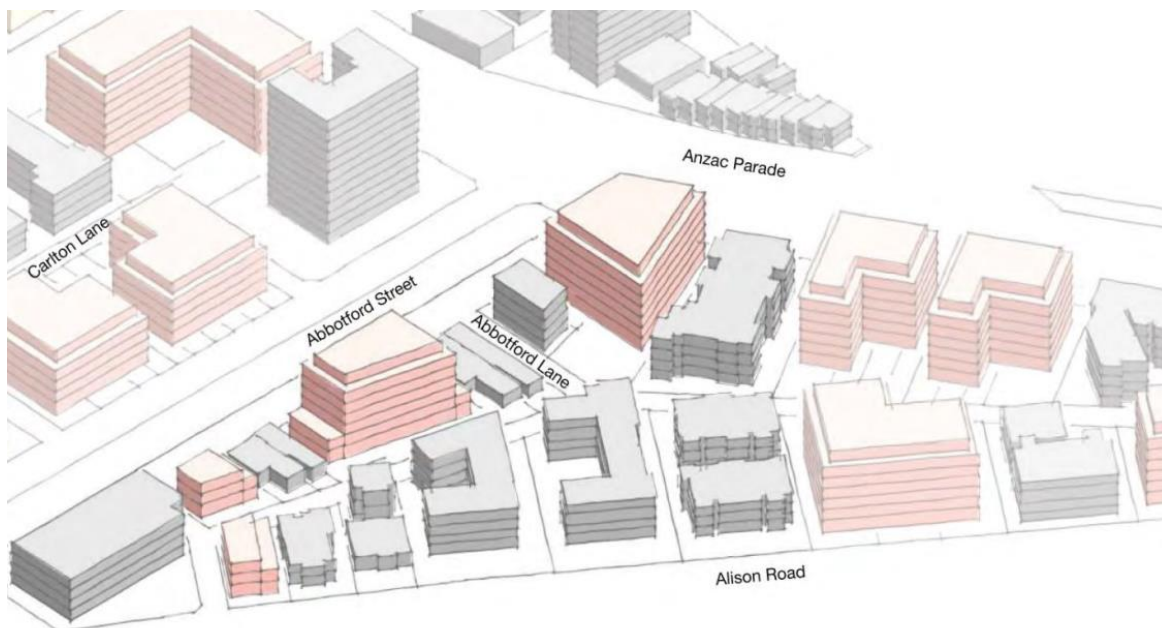


Figure 13: Block B Control Plan (Source: Randwick City Council)

The eight (8) storey built form, coupled with non-compliant building height and FSR under RLEP, contributes to excessive visual bulk impacts (to the public domain and neighbouring properties) and results in insufficient ceiling heights (and associated amenity impacts for future residents).

Setbacks

As shown in Figure 14, the Block B Control Plan establishes the following setbacks for 9 Abbotford Street:

- 4.5m front setback to Abbotford Street, and an additional 2m setback for the seventh (uppermost) storey.
- 8m rear setback to Abbotford Lane, and an additional 2m setback for the seventh (uppermost) storey.
- 3m side setback to the property at 11-13 Abbotford Street, plus an additional 4m setback above the first two (2) storeys, and an additional 2m setback for the seventh (uppermost) storey.



Figure 14: Block B Control Plan (Source: Randwick City Council)

The proposed 2.3m front setback to Abbotford Street fails to comply with the minimum 4.5m requirement and the proposed 2.7m-5m rear setback to Abbotford Lane fails to comply with the minimum 8m requirement.

The proposed setbacks conflict with the desired character of the HIA, diminish the visibility and prominence of the heritage items on Abbotford Street, and restrict the ability to provide for private and communal gardens, including mature trees and vegetation.

Additionally, the proposed development does not provide suitable setbacks to the heritage item at 11-13 Abbotford Street. The eight (8) storey building is set back approximately 1.3-1.5m from the eastern and northern facades of the heritage item, which visually dominates the heritage item. There is no built form transition to the heritage item in the form of a two (2) storey podium with upper level setbacks.

The proposed development does not recess the uppermost storey by 2m from all sides, as required by the Block B Control Plan. The proposed development is inconsistent with the Interim DCP controls which intend to minimise the visual bulk of the building when viewed from the street (i.e. to present as a six (6) storey building from most vantage points) and to minimise the extent of overshadowing to the street and neighbouring properties.

The proposed development is inconsistent with the built form objectives of Part E7, Chapter 9.5 of the Interim DCP as it has not been designed to:

- Position built form with generous setbacks to the surrounding streets, to enable well- scaled streetscapes, private and communal gardens, and deep soil permeable areas.
- Deliver residential buildings that demonstrate design excellence and respond positively to the surrounding urban and landscape context. This is resultant of the excessive height, lack of building separation, crowding of the heritage item, lack of upper level setbacks, and excessive built form massing and site coverage.
- Provide variety and interest in streetscapes through buildings that are articulated within the overall permitted development envelope. There is insufficient articulation to mitigate the scale and sheer wall character of the proposed development.
- Ensure built form respects the heritage properties at 5, 5A, 11 and 13 Abbotford Street. The proposed development demolishes a significant portion of the heritage item and does not provide any transition to soften the excessive scale and building length behind the retained portion of the heritage item.
- Position built form to wherever possible retain existing mature trees and vegetation.
- Achieve an orderly consolidation of sites to realise optimum urban and building design outcomes that are ADG compliant.

Landscaped Area

Pursuant to Part E7, Chapter 18 of the Interim DCP, the following landscaping controls apply to the site:

- Minimum 60% gross landscape area (810.96m²).
- Minimum 35% deep soil permeable area (473.06m²).
- Minimum 25% tree canopy cover (337.9m²).

The Applicant has failed to provide calculation plans for gross landscaped area, deep soil permeable area, or tree canopy cover. However, based on Council's calculations, the proposed development fails to comply with the minimum landscaping requirements.

The proposed development is inconsistent with the objectives of Part E7, Chapter 18 of the Interim DCP, and the desired future character of the locality, as the landscape scheme has not been designed to:

- Enhance the quality of life and attractiveness of the HIAs by providing landscaped spaces for shared amenity and green spaces for relief from urban environments.
- Bring about environmental benefits such as mitigating the urban heat island effect, reducing flooding impacts and improving localised air quality.
- Result in a net gain of vegetation and canopy cover with consideration for the existing vegetation within the HIAs, whether provided horizontally or vertically.

The desired future character of the locality is further established by the future character statement at Part E7, Chapter 9.5.1 of the Interim DCP, which states:

"The future desired character of the HIA is for a residential neighbourhood, that provides for a variety of medium density housing types which respond to the unique conditions of each location - for example responding to views over Centennial Park, defining the Tay Street corner and the gateway to Kensington formed by the two existing residential towers, addressing the level change between Boronia Street and Anzac Parade or providing a transition in scale to low scale and/or heritage streetscapes.

The proposed mid-rise typology will enhance the character of the neighbourhood by encouraging high quality design outcomes - urban design, architectural design and landscape design. These will be achieved through built form objectives and controls including generous setbacks for natural light, for landscaping, and controls to ensure high amenity outcomes for residents. Consolidation of sites will allow for communal open space with deep soil areas providing significant tree canopy for the area.

The Kensington North HIA will be attractive to residents through convenient access to the Light Rail, high quality recreational parkland (Centennial Park) and to the Kensington Town Centre. While the majority of the Kensington North HIA is expected to progressively redevelop, heritage listed properties, residential strata buildings of eight apartments or more, recently completed apartment buildings and established residential towers are expected to remain, in the medium term, and the block control plans reflect these assumptions.

(...)

The mid-rise (5 and 7 storey), residential apartment buildings will generally be setback between 4.5m and 6m from the street frontage, as indicated in the block control plans, to allow ground floor level apartments to have private court gardens and generally to allow landscaping to permeate the HIA. The block layout will support buildings with communal gardens incorporating deep soil areas for tree planting. This will provide residents with a green, social relaxation space and break up the scale of the HIA, as it will be interspersed with landscaped gardens. Generous setbacks and landscaped areas are required at the side boundaries of the heritage properties at 29 and 31 Alison Road, and 5, 5A, 11 and 13 Abbotford Street, to provide a transition in building height and an appropriate setting for the heritage residences.”

The proposed development is not compatible with the desired future character envisaged by the character statement for the following reasons:

- The proposed development does not provide suitable transition in scale/height to the heritage item at 11-13 Abbotford Street.
- The proposed development is not considered to demonstrate high quality design outcomes in terms of urban design, architectural design, and landscape design.
- The proposed development does not provide generous setbacks, which inhibits natural light, landscaping opportunities, and internal amenity.
- The proposed eight (8) storey built form, with minimal setbacks, is not considered a mid-rise or medium-density development.
- The proposed development provides insufficient landscaped and deep soil areas.

Internal Amenity

The development application should be refused because the proposed development does not provide suitable internal amenity for future residents.

The proposed development provides 2.65m floor-to-ceiling heights and 2.85m floor-to-floor heights at all floor levels, which results in poor internal amenity for future residents in terms of natural ventilation and solar access. The Applicant has failed to demonstrate if fire sprinklers (and other required services) can be provided within the proposed floor heights.

Additionally, the eastern portion of the proposed development has a depth of approximately 24m (measured glass-to-glass on the north-south axis).

The minimal ceiling heights and excessive building depths compromises natural ventilation to the co-living rooms and circulation spaces.

Additionally, noting that common room windows must remain closed at all times as an acoustic control measure, the Applicant has failed to demonstrate how the proposed development will achieve sufficient internal air quality.

Pursuant to section 69(1)(f) of the Housing SEPP, adequate bathroom, laundry, and kitchen facilities must be available within the co-living housing. It is unclear if the proposed 15.46m² common laundry is of sufficient size to service the proposed 141 residents.

The proposed location of the 'management room', which is directly adjacent to the loading bay, communal pedestrian entrance, and communal living area, is not suitable in terms of acoustic impacts and residential amenity. Additionally, limited solar access is provided to this room.

The communal spaces (dining room, kitchen, library, and study) at ground floor level are visually and physically disengaged from the rest of the development. As such, the viability of these communal spaces is unclear. Improved visual and physical connections to the heritage item would enable enhanced passive surveillance to support safe social interaction.

The ceiling heights of the proposed communal living rooms at Levels 3 and 5 are compromised by the presence of wet areas within the co-living rooms directly above. The amenity of the proposed communal living rooms is also compromised by the location of the fire stair that defines their southern extents. Relocation of the living rooms and/or fire stair may improve cross ventilation, daylights, and outlook, and enhance the arrival and circulation experience within the building.

Unlike other communal spaces within the proposed development, there is no visual screening provided between the communal terrace (at Level 7) and the entry to the adjacent co-living room. This results in poor internal amenity for future residents in terms of visual and acoustic privacy.

Additionally, limited solar access is provided to the proposed outdoor communal areas. As such, the viability of these communal spaces is unclear.

Public Interest

The development application should be refused because approval of the proposed development is not in the public interest having regard to the above contentions and the objections raised in the public submissions.

The development application was notified as set out in this report. The development application should be refused having regard to the matters raised in submissions that have been received by Council to the extent that these submissions are consistent with the issues set out above.

Insufficient Information

The development application should be refused because insufficient information has been submitted by the applicant, as follows:

- Insufficient information has been provided in relation to land contamination to ascertain the suitability of the site in accordance with Chapter 4 of the R&H SEPP.
- Insufficient information has been provided in relation to heritage matters:
 - Fabric survey to demonstrate the extent of original fabric to be demolished.
 - Salvage plans for all existing buildings at the site.
 - Dilapidation strategy for the retained part of the heritage item.
 - Photographic archival recording for the existing building at 11-13 Abbotford Street.
 - Details in relation to the replacement of roof tiling. The original roof tiling appears to have been replaced with concrete tiles which have deteriorated.
- The Applicant has failed to provide calculation plans for gross landscaped area, deep soil permeable area, or tree canopy cover.

- The Applicant has failed to provide accurate calculation plans for GFA, communal living area, and room size.
- The Applicant has failed to demonstrate if fire sprinklers (and other required building services) can be provided within the proposed floor and ceiling heights.
- Insufficient information has been provided to confirm whether the proposed 15.46m² common laundry is of sufficient size to service the proposed 141 residents.
- Insufficient information has been provided to ascertain the extent of overshadowing to properties on the southern side of Abbotford Street.
- The Applicant has failed to determine if the proposed development constitutes Integrated Development. Insufficient information has been provided relating to groundwater seepage and dewatering.
- Noting that common room windows must remain closed at all times as an acoustic control measure, the Applicant has failed to demonstrate how the proposed development will achieve sufficient internal air quality.
- The submitted Acoustic Report is insufficient and should be revised to consider the different types of noise emissions (including steady/quasi-steady state noise sources such as plant, traffic etc. and intermittent/fluctuating noise sources) and set an appropriate criterion for each noise type giving sufficient weight to the psychoacoustics properties of the noise type. The revised criteria should be applied to the predictive modelling to determine compliance during worst case scenario.

10. Conclusion

That the application for partial demolition, alterations, and adaptive re-use of existing buildings at No. 11-13 Abbotford Street, demolition of existing building at No. 9 Abbotford Street and the construction of an 8-storey co-living development comprising 134 co-living apartments, two (2) basement levels, communal areas and open space, spread across the three (3) properties, at No. 9-13 Abbotford Street, Kensington, for the following reasons:

1. The proposal is inconsistent with the objectives of the R3 Medium Density Residential zone in that it is not compatible with the desired future character of the locality, it fails to recognise or reflect the desirable elements of the existing streetscape and built form, (including the heritage item), and it results in adverse amenity impacts to neighbouring residential properties in terms of visual bulk and visual privacy impacts.
2. The proposed development is of an excessive height and is incompatible with the desired future character of the locality, resulting in non-compliance with the height of buildings development standard pursuant to clause 4.3 of RLEP.
3. The submitted written request to vary the height of buildings development standard pursuant to clause 4.6 of RLEP is not considered to be well founded in that it does not sufficiently demonstrate that the proposed non-compliance is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify a variation to the development standard.
4. The proposed development is of an excessive bulk and scale and is incompatible with the desired future character of the locality, resulting in non-compliance with the floor space ratio development standard pursuant to clause 4.4 of RLEP and section 68(2)(a) of the Housing SEPP. The Applicant has failed to provide a written request to vary the FSR development standard pursuant to clause 4.6 of RLEP.
5. Pursuant to clause 5.10 of RLEP and Part B2 of RDCP, the proposal will have a detrimental impact upon the heritage significance of the local heritage item at 11-13 Abbotford Street (Item I489 – ‘*Federation semi-detached cottages*’).

6. Pursuant to clause 6.11 of RLEP 2012, the proposed development does not exhibit design excellence.
7. Pursuant to section 68(2)(c) of the Housing SEPP, the proposal fails to provide sufficient communal living area.
8. Pursuant to section 68(2)(d) of the Housing SEPP, the proposal fails to provide sufficient communal open space.
9. Pursuant to section 68(2)(f) of the Housing SEPP, the proposal fails to provide sufficient landscaped area.
10. Pursuant to section 69(1)(a) of the Housing SEPP, the proposal fails to provide sufficient room sizes.
11. Pursuant to section 69(2)(a) of the Housing SEPP, the proposal fails to provide sufficient building setbacks.
12. Pursuant to section 69(2)(b) of the Housing SEPP, the proposal fails to provide sufficient building separation and visual privacy.
13. Pursuant to section 69(2)(f) of the Housing SEPP, the proposal is not compatible with the desired future character of the local area, particularly having regard to its excessive bulk and scale and adverse impacts to the amenity of neighbouring residential properties.
14. Pursuant to section 4.6 of the Resilience and Hazards SEPP, the Applicant has failed to provide sufficient information to determine whether the land is contaminated.
15. The proposed development does not provide suitable internal amenity for future residents.
16. The proposed development fails to comply with the requirements for waste management pursuant to Part B6 of RDCP.
17. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to land contamination, heritage conservation, area calculation plans, laundry facilities, shadow diagrams, groundwater seepage and dewatering, air quality, acoustic reporting, and contextual design analysis.
18. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
19. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.

Appendix 1: Referrals

1. Design Excellence Advisory Panel

1. Context and Neighbourhood Character

The subject site is within the Kensington North Housing Investigation Area. The neighborhood character of this area includes heritage items, medium rise apartment buildings and houses. Achieving a desirable future character will require a complementary balance between one and 2 storey heritage items and up to 7 storey apartment buildings. This will require adequate setbacks between buildings, built form transitions and adequate landscaping to place the proposal and, in particular, the heritage items, within a landscaped setting.

2. Built Form and Scale

The existing building alignments in Abbotford Street are:

- *Heritage item: 3.5m (approximately)*
- *Apartment building to east: 4m (approximately).*
- *The Kensington North HIA has street setbacks between 4.5m and 6m.*

The proposed street setback is 2.5m (approximately). This setback conflicts with the desired character of the HIA and diminishes the visibility and prominence of the heritage item. It is recommended to set the building back at least 4.5m from the property boundary in Abbotford Street.

The proposed 8 storey building is set back approximately 1.6m from the eastern and northern facades of the heritage item. The 8 storey walls visually "crowd" the heritage item. The setback is insufficient. In addition, there is no built form transition to the heritage item in the form of a 2 storey podium with upper levels set back. This approach to setbacks does not achieve an acceptable relationship with other buildings on the same site. The Kensington North Housing Investigation Area building envelopes show a 2 storey transition height and a 3m setback from the heritage item. This approach would provide visual separation between the 2 buildings and achieve an acceptable relationship between the buildings.

The proposal contains 2 apartments per floor with balconies facing east across the side boundary. The balconies are 3m from the side boundary. The ADG has a recommended 6m setback for balconies and living rooms across side boundaries, so that, if a future building was designed with the same approach, a 12m separation would be achieved to provide privacy. The 6m setback is necessary in this situation, as the apartments are single orientation and balconies could not be screened while maintaining reasonable internal amenity. It is recommended that balconies and living rooms be set back a minimum of 6m in this situation.

The eastern building is approximately 24m glass-to-glass, which would compromise natural ventilation to dwellings. No natural ventilation is proposed from dwellings to corridors and the amount of air circulation in the corridors is unknown if the dwellings were ventilated through the corridors. If ventilation is proposed through corridors please provide a detail that meets technical requirements.

The heritage item has 2 chimneys in the Level 1 plan and only 1 chimney indicated in the Ground Floor plan. This discrepancy should be resolved structurally and aesthetically, with the retention of the 2 chimneys above the roof level. These fireplaces will provide amenity to the spaces proposed in the heritage buildings if incorporated into the planning.

3. Density

The permissible density is 2.2: 1. Whilst the calculated FSR is 2.19: 1, in the Panel's opinion, the GFA calculations need to be reviewed and confirmed with council. No corridors or communal spaces have been included in GFA. The rationale for excluding these areas from GFA calculations was proposed to be that the ends of corridors and communal spaces are openable. At least 2 methods for achieving openability were discussed in the meeting - glass louvres above a fixed glass balustrade and vertical, closely spaced, aluminium battens. Both these approaches need to be

demonstrated that they are not classified as a wall, which would mean that the corridors and communal spaces are fully enclosed and therefore are measured as GFA.

In any case, the amenity of the corridors is poor, as they are long, relatively narrow and have low ceilings. They do not have an open appearance and could not, in the opinion of the Panel, be classified as open breezeways.

The approach taken, of not measuring corridors or communal rooms as GFA, increases the overall bulk of the building, making the setbacks unacceptable and diminishing the amenity of the proposal and potentially the amenity of future neighboring developments. It is recommended to include corridors and communal spaces in GFA, comply with the FSR and reduce the building bulk.

4. Sustainability

Solar panels are proposed. Other initiatives such as water recycling in the basement would be desirable. Ceiling fans are highly desirable, however the low ceiling heights proposed may thwart the implementation of fans.

5. Landscape

The proposed landscape design is compromised by the lack of building setbacks, in particular from Abbotford Street and the heritage item. The heritage item should be further separated from the proposed 8 storey building, with landscape being visible from the streets. Landscaping within the 3m side setbacks from the eastern boundary is necessarily compromised in scale compared to a potential 6m side setback.

The landscape plans show planting in front courtyards of ground floor dwellings. While some planting would be likely, the type of planting by individual occupants cannot be guaranteed and it is common for low planting with no canopy trees in these spaces. Greater front setbacks would allow the 1m wide communal space planting to be increased in width and for canopy trees to be provided.

6. Amenity

The amenity of some individual dwellings is poor. Double bed dwelling types, the majority of dwellings, are to have a minimum floor area of 16 m². The design of these dwellings has the entry through the linear kitchen. The amenity of this entry and exit from the apartment is not desirable, as there is no separation between kitchen uses and circulation. The Co-living design standards resolve this kitchen/circulation interface, by requiring that the calculation of the area of the dwelling not to include a distance of 600mm from the kitchen bench. It appears that that area has been included in calculations. If it were not included, the dwelling may not achieve the minimum dwelling area. It is recommended that this provision be taken into account in any future design.

Floor-to-floor heights are 2.85m. It is widely recognized, including in the Design and Building Practitioners Regulations, that sufficient allowance be made for setbacks to balconies, building structure, waterproofing of decks and roofs, ceilings and light fittings. When these elements are taken into account, the ceiling heights would be well below 2.6m and possibly 2.4m. While this complies with the Building Code of Australia, it would not comply with the ADG if it applied and, in any case, the amenity of the dwellings would be compromised with these low ceiling heights. Natural light and ventilation would be reduced with low ceilings in these single orientation dwellings.

Low floor-to-floor heights and exceedance of the LEP height limit are linked to the proposed 8 storeys. The Randwick Council provisions in the Kensington North Housing Investigation Area state a maximum height of 7 storeys. A 7 storey building could have better floor-to-floor heights and no exceedance of the height limit.

7. Safety

There are no apparent barriers to the achievement of acceptable safety standards. The Management Room would provide a certain level of safety. This is more than a management room, as it is intended to be a dwelling for the manager. This is not a place with good amenity for a dwelling and it is recommended that a manager's dwelling be located elsewhere.

8. Housing Diversity and Social Interaction

The level of amenity provided to the communal spaces within this type of development is critically important to support accessible and safe social interaction.

The proposed ground floor communal living area within the new building has good amenity and a high ceiling, which would be an attractive place for social activities.

The communal spaces proposed within the heritage building are also positive, however they are visually disengaged from the rest of the development.

The proposed communal living areas on Levels 3 and 5 will have compromised ceiling heights due to existence of wet areas within the units directly above.

Resolution of the services transitions within the ceilings below these wet areas needs to be considered in detail, and the resultant impact on ceiling height clarified to enable further review and comment on the amenity of these spaces.

Alongside this, consideration should also be given to providing a double height volume to the level 3 and 5 communal spaces to achieve a similar level of amenity as the Ground Level communal space. If this approach was to be pursued, there could also be an opportunity to lift the Level 5 communal space to Level 6 to achieve a more equitable distribution of communal spaces across the building stack.

The amenity of communal living spaces on Ground, Level 3 and Level 5 (or 6) could also be improved by the relocation of the fire stair that defines their southern extents, which would present opportunities for improved cross ventilation, daylight and views, as well as an enhanced arrival and circulation experience within the building. Better physical and visual connections to the heritage building would also enable enhanced passive surveillance to support safe social interaction.

The communal terrace has generous proportions however is overshadowed. This may be acceptable as it will receive sun in the early morning and late afternoon.

There doesn't appear to be any visual screening between the communal terrace and the entry to the adjacent unit (unlike other communal spaces in the building), which should be considered further.

9. Aesthetics

The proposal has a good circulation diagram at ground floor level, with the main pedestrian entry from Abbotford Street being on axis with the communal living area. The visual relationship with the heritage item and the emphasis of this north-south axis are opportunities which have not been fully realized, primarily due to the location of the fire stair.

Aesthetically, the design language of the curved fire stair inside corner on the southern elevation is not consistent with the rectilinear language elsewhere in the building. The opportunity exists to re-arrange the fire stair to create a rectilinear language and possibly avoid a blank fire stair wall and open up the ground floor north-south axis.

Summary and Recommendations

It is the recommendation of the panel that the proposal respond to the above items and those raised in the panel discussion and return to the panel prior to lodgment of an application.

2. Environmental Health Officer

The following information is required by Council's Environmental Health officer which will need to be provided with the amended development application for assessment:

Land contamination:

1. A Preliminary Site Contamination Investigation must be undertaken and a report, prepared by a suitably qualified environmental consultant is to be submitted to Council prior to determination of the application.

This Preliminary Investigation shall be carried out in accordance with the requirements of the NSW EPA Guidelines and is to be undertaken by a suitably qualified environmental consultant. The Preliminary Site Contamination Investigation is to identify any past or present potentially contaminating activities and must be provided to Council, in accordance with Council's Land Contaminated Land Policy. The Preliminary Site Contamination Investigation report is to be submitted to Council prior to any consent being granted.

Should the Preliminary Site Contamination Investigation be unable to justifiably conclude that the site is currently suitable for the proposed use, a Detailed Site Contamination Investigation must be undertaken by an independent appropriately qualified environmental consultant.

2. The reports are to be carried out in accordance with Council's Contaminated Land Policy 1999 and relevant NSW EPA Guidelines for Contaminated Sites. Also, as detailed in the Planning Guidelines [State Environmental Planning Policy \(Resilience and Hazards\) 2021](#) formerly: SEPP 55 – Remediation of Land, the report is to assess the nature, extent and degree of contamination upon the land. The Detailed Site Contamination report must be sufficiently detailed and be submitted to and approved by Council.

i) Should the Detailed Site Investigation Report not find any site contamination to both land and groundwater, the conclusion to the report must clearly state that 'the land is suitable for its intended land use' posing no immediate or long term risk to public health or the environment and is fit for occupation by persons, together with clear justification for the statement.

ii) Should the Detailed Site Investigation Report identify that the land is contaminated, and the land requires remedial works to meet the relevant Health Based Investigation Level, a Remediation Action Plan (RAP) is required to be submitted to and approved by Council prior to commencing remediation works.

The RAP is also required to be reviewed and be acceptable to the accredited site auditor.

The RAP is to be prepared in accordance with the relevant Guidelines made or approved by NSW Office of Environment & Heritage/Environment Protection Authority, including the Guidelines for Consultants Reporting on Contaminated Sites.

This RAP is to include procedures for the following:

- Excavation of Hydrocarbon-contaminated soil,
- Validation sampling and analysis,
- Prevention of cross contamination and migration or release of contaminants,
- Site management planning,
- Groundwater remediation, monitoring and validation,
- Procedures for any unexpected finds.

3. As construction dewatering will be required as part of this development for the duration of the excavation of the basement, a separate local approval application must be submitted to and approved by Council; in accordance with section 68 of the Local Government Act 1993, prior to the installation or carrying out of any works associated with the system. Should a

NSW EPA approved site auditor be engaged for the development they will be required to sign off on any proposed dewatering management plan (DMP) and water treatment methodology, prior to discharge. If an approved site auditor is not required, an appropriately qualified Environmental Consultant will be required to prepare and endorse the DMP and water treatment methodology.

4. Any remediation works are to be carried out in accordance with the requirements of the Contaminated Land Management Act 1997, environmental planning instruments applying to the site, guidelines made by the NSW Environment Protection Authority (EPA) and NSW Planning & Infrastructure, Randwick City Council's Contaminated Land Policy 1999 and the Protection of the Environment Operations Act 1997.
5. Should the remediation strategy including the 'capping' or 'containment' of any contaminated land, details are to be included in the Site Audit Statement (SAS) and Environmental Management Plan (EMP) to the satisfaction of the Site Auditor and Council.

Details of the SAS and EMP (including capping and containment of contaminated land) are also required to be included on the Certificate of Title for the subject land under the provisions of section 88 of the Conveyancing Act 1919.

6. In relation to any asbestos contamination, a comprehensive remediation strategy and remedial action plan must be developed, to the satisfaction of the Site Auditor and NSW Department of Health or other suitably qualified and experienced specialist to the satisfaction of the Site Auditor.

The remediation strategy and remedial action plan must demonstrate that the land will be remediated in accordance with relevant guidelines (if any) and to a level or standard where no unacceptable health risk remains from asbestos exposure, which shall be verified upon completion of the remediation works to the satisfaction of the Site Auditor.

Hazardous Materials Survey:

7. Due to the age of the existing buildings a Hazardous Materials Survey Report must be prepared by a certified Occupational Hygienist (Australia Institute of Occupational Hygienists) and submitted to the satisfaction of Council's and the Principal Certifier Private prior to any demolition work commencing at the site. The report must identify and record the type, location and extent of any hazardous materials on the site and make recommendations as to their safe management and/or removal to ensure the site is made safe for demolition, construction and future use/occupation. All asbestos removal works must be carried out by a licensed asbestos removalist who is duly licensed with SafeWork NSW. The removalist should hold either a Friable (Class A) or Non-Friable (Class B) Asbestos Removal Licence, as appropriate for the type of asbestos involved.

Acoustics:

8. The acoustic report uses the Noise Policy for Industry (NPfI) (2017) as the criteria for the entire development this is not an appropriate or merit based assessment methodology. **Section 8.2:** The Noise Policy for Industry (NPfI) is not designed for residential type buildings and the scope of the guideline for commercial premises is generally limited to noise from heating, ventilation, air conditioning, refrigeration, and energy generation equipment. The acoustic report must consider the different types of noise emissions including steady/quasi-steady state noise sources such as plant, traffic etc. and intermittent/fluctuating noise sources and set an appropriate criterion for each noise type giving sufficient weight to the psychoacoustics properties of the noise type. The revised criteria should be applied to the predictive modelling completed for this site to determine compliance during worst case scenario.

The commercial plant selection will be deferred to detailed design stage where a further acoustic review will be required prior to the issuance of a construction certificate. The initial acoustic report is preliminary in nature but as a minimum it should set the maximum Sound Power Level of any future equipment permitted based on predictive modelling taking into

account any proposed attenuation and location of existing noise sensitive receivers using CadnaA as stated in the applicant's acoustic report. It is noted that the commercial plant is to be located on the roof.

9. As discussed in the Acoustic report noise from residential air conditioners must be inaudible after 10.00pm and should be assessed to this requirement as per the Protection of the Environment Operations (Noise Control) Regulation 2017. Inaudibility should be taken as the existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) minus 10dB in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive) inside a habitable room of any affected residential accommodation.

Furthermore, noise from the car lift must be inaudible during the nighttime period, as per the intent of noise control regulations for residential plant and equipment. It is noted that the lift should be isolated from the building structure. This principle should also apply to Electric Vehicle (EV) chargers.

10. The State Environmental Planning Policy (Transport and Infrastructure) 2021 and State Environmental Planning Policy (Housing) 2021 carry equal weight in terms of the statutory planning hierarchy in NSW. In this regard internal acoustic comfort for bedrooms and living areas in co-living areas should be in line with the below:

In naturally ventilated spaces the repeatable maximum $L_{Aeq (1\text{hour})}$ should not exceed:

- i) 35 dB(A) between 10.00 pm and 7.00 am in sleeping areas when the windows are closed;
- ii) 40 dB(A) in sleeping areas when windows are open (24 hours);
- iii) 45 dB(A) in living areas (24 hours) when the windows are closed, and
- iv) 50 dB(A) in living areas (24 hours) when the windows are open.

Note: As the relevant consent authority Randwick City Council does not accept the '10dB Rule' for noise reduction through facades with open windows; as this 'rule of thumb' has been proven to be significantly flawed and can lead to excessive internal levels when applied indiscriminately (Ryan et al., 2011). Noise level attenuation must be calculated on first principles taking into consideration the size and location of the opening, room volume, façade orientation and other relevant parameters.

This development is intended for long-term accommodation that is to be provided to the same person for a period of more than 28 days, therefore there is no merit based argument for diminished internal amenity for long term occupants in habitable rooms.

11. A detailed sleep disturbance assessment for the nighttime period needs to be considered taking into consideration activities such as the opening and closing of the roller shutter door, vehicles etc. and predicted noise levels at the nearest noise sensitive receiver.

Indoor air quality:

12. As per Section 34 Air Quality of the K2K DCP DAs are to include a report from a suitably qualified air quality consultant that addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants. Where possible air intake must be sited away from busy road frontages (e.g. Anzac Parade etc.) or other polluting sources and be provided with adequate filtration to remove particulates (PM_{10} , $PM_{2.5}$). The additional load created on mechanical plant due to additional filtration must also be considered from an acoustic perspective.
13. It is noted that Common room windows must remain closed at all times as an acoustic control measure. Should this be an acoustic amenity design requirement further information is required on how the development will achieve sufficient internal air quality and required number of air changes for occupants as per above.

Construction dewatering:

14. *As construction dewatering will be required for this site the groundwater quality must be determined at the Preliminary Environmental Site Investigation Stage. If the applicant wishes to discharge groundwater into Councils stormwater they must treat all identified contaminants of concern prior to discharge. This will be conditioned under a Section 68 Local Approval.*
15. *Should no assessment of groundwater be undertaken all groundwater must be tanked offsite and disposed of at an appropriately licenced waste facility. If this is the preferred option, the applicant must provide additional information regarding onsite detention tanks to ensure sufficient storage capacity for groundwater prior to tanking offsite.*

3. Heritage Planner

The Site

The subject site is known as 9-13 Abbotford Street, Kensington its legal land parcel identity is Lots 1 and 2 of Deposited Plan 786825 and Strata Plan 12920. This relatively flat site comprises three lots. At number 11-13 Abbotford Street is a locally listed semi-detached pair under Schedule 5 of the Randwick Local Environmental Plan (LEP) 2012 (No. 1489), and then at number 9 Abbotford Street is a highly modified single-storey Federation period building that was converted into flats in the 1930s.

The listed 1908 building has a high degree of intactness as a generously planned 3-bedroom semi-detached pair on a wider block. It is a good example of the early twentieth development of Kensington, associated with the 1900 construction of the tramway spur to Randwick Racecourse. It retains many characteristic features of the Federation style, both internally and externally.

The street block, including its laneway, is bounded by Alison Road to the north, Abbotford Street to the south and Anzac Parade to the west. Abbotford street itself is divided by a wide verge the turfed verge with mature trees and car parking areas that historically formed the tram run and tram stop. It is close to Centennial Park to the north, Randwick Racecourse to the east, and to Moore Park Golf course and ES Marks Field to the west. The Randwick light rail lines also run along Alison Road and Anzac Parade adjacent to the block.

In the vicinity of the individually listed heritage item at 11-13 Abbotford Street are other individually listed items at 5-5A Abbotford Street (Parkside, a Federation semi-detached pair I102); and in the vicinity, to the rear side, at 29-31 Alison Road (The Legers a Federation dwelling I104 and a 2 storey Federation duplex I105).

Thus, the streetscape comprises a mixture of development from various periods, including Federation, Interwar and contemporary apartment building infill. Residential flat buildings typically range from three to five storeys, except for a tall apartment complex of twelve storeys, located diagonally opposite in Abbotford Street, but which is deemed to be part of the Anzac Parade streetscape presentation.

Background

- *Between February and May 2020, the items at 9-13 Abbotford Street were subject to a heritage evaluation by Extent Heritage.*
- *In June 2020, a Development Application (DA/297/2020) was received for the demolition of existing structures at this entire location (nos. 9-13) and the construction of a four storey, 86 room boarding house including basement parking, tree removal, landscaping and various associated works.*
- *The DA was referred to Extent Heritage for an assessment of the heritage significance of the properties in October 2020.*
- *In December 2020, Extent Heritage recommended to Council that a portion of the entire site - that is, 11-13 Abbotford Street - be listed as an item of local heritage for its Historic, Aesthetic, Rarity and Representative values.*

- Therefore, the DA in its then current design, involving the entire demolition of that building must be rejected following its heritage listing.
- On 1 December 2020, the applicant for the proposed development commenced Class 1 proceedings in the NSW Land and Environment Court, appealing against the apparent deemed refusal of the Development Application.
- In view of these proceedings an Interim Heritage Order was placed on the subject site on 29 January 2021.
- In July 2021 the Applicant proposed a new set of drawings which incorporated and wrapped around the forward southwest corner presentation of the heritage listed building at 11-13 Abbotford Street. Notably, the design presented in elevations as being of three-storey podium height with a fourth level step-back.
- The hearing dates were between October 2021 and January 2022, with the appeal dismissal date of 24 March 2022.

Proposal

It is now again proposed to redevelop the subject site for residential boarding house apartments, as summarised hereunder:

- Demolition of the flat building at 9 Abbotford Street.
- Demolition of the rear portion of 11-13 Abbotford Street.
- Retention and adaptive reuse of the front portion of the listed semi-detached pair and conversion of this section of the buildings into communal living spaces.
- Introduction of a new development but as now a seven-storey wrap-around residential tower with boarding rooms and two-level basement parking.
- New landscaping including pathways, communal open space and fencing.

Submission

For the purposes of this heritage assessment the Development application is accompanied by the following documentation:

- A full set of architectural drawings including open spaces and landscaping, prepared by pbd architects of Albion Street Surry Hills NSW, dated as 4 June 2024 (and received by Council 27 June 2024).
- A professionally prepared photomontage by pbd architects of Albion Street Surry Hills NSW, (and received by Council 27 June 2024).
- A Schedule of Materials and Finishes prepared by pbd architects of Albion Street Surry Hills NSW, dated as 4 June 2024 (and received by Council 27 June 2024).
- A full set of Demolition Plans, prepared by pbd architects of Albion Street Surry Hills NSW, dated as 4 June 2024 (and received by Council 27 June 2024).
- A Heritage Impact Statement professionally prepared by URBIS, dated as 29 April 2024 (and received by Council 27 June 2024).
- A Statement Environmental Effects (SEE) professionally prepared by LK PLANNING, dated as June 2024 (and received by Council 27 June 2024).

Controls

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

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

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

The Medium Density Residential section of the Randwick Development Control Plan 2023 also provides Objectives and Controls in relation to such developments, that have particular application to heritage items within character precincts.

Comments

Generally, and throughout the accompanying documentation, the consideration given to the heritage aspect of the subject site is simply stated in terms of its key presentation to the public domain. This is the chief consideration for Heritage Conservation Areas and for contributory items. However, the appreciation of individually listed items is properly defined by 'place', that is, by all aspects of the item – interior and exterior – within its total land parcel. For example, the drawings note 'heritage building' when this should be more properly labelled as the 'retained part of the heritage building'.

Likewise, it is insufficient to simply state that the form and scale of an introduced seven-storey above ground and with two levels below ground complex, would have no discernible impact on either this individually listed dwelling, or upon other listed items in the vicinity. The project involves for instance substantial demolition and excavation works, as well as obviously considerable impact on site lines within the precinct. These considerations must be specifically addressed in the Heritage Impact Statement and the Statement of Environmental Effects (for instance a dilapidation strategy, a salvage plan, a photographic inventory, a site-lines analysis).

Notwithstanding, changes in height controls and density prescriptions, the reasoning which informed the Land and Environment Court determination remains relevant. That is, a regard for heritage items, as well as for precinct character compatibility.

Therefore, the following considerations are proposed:

- The apparent scale of the development in the current drawings and the photomontage is visually and physically over-whelming the heritage item. The tower behind and in particular the projecting and soaring mid-form south wall is visually and physically dominating and intrusive to the heritage building and its curtilage.
- A more appropriate form, if any addition is to be introduced in the curtilage of the heritage item, would be a return to a scale compatible in the height proposed in the July 2021 drawings.
- The side entryway and its gable have been highlighted in the Extent Heritage report as a relatively unique aspect of the dwelling and therefore part of immediate precinct character. Therefore, the western and eastern detached dwelling should be retained, including that side entry, as far back as the fireplace and chimney and to their respective room depths. This enables a more generous appreciation of the item along the laneway and its internal and external significant fabric and layout without such a severely truncated impression and approach.
- A fabric survey is to be prepared and submitted to Council for review. This is to demonstrate the extent of original fabric proposed to be demolished.

- *It is noted that there is no salvage plan proposed for either the rear sections of the dwelling at no. 11-13 or for the dwellings at no. 9, which obviously retains many internal Edwardian features. A salvage plan needs to be included.*
- *It is noted that there is no dilapidation strategy for the retained part of the heritage building.*
- *A photographic archival recording should be included for the individually listed heritage item at 11-13 Abbotford Street.*
- *Roof tiling – it is noted that the original tiling appears to have been replaced with concrete tiles and that these are apparently deteriorated. Any future project should address the replacement of roof tiling.*

Recommendation

The proposal at its current scheme does not comply with the heritage sections of the RDCP and RLEP and is not supported from a heritage perspective. Further amendment is required for the proposal to satisfy these requirements.

That there be a visitation and inspection – internal and external - by Council Planning and Heritage Officers

That there be a meeting between the Architects and the Council Officers to discuss a way forward for the incorporation of the above comments.

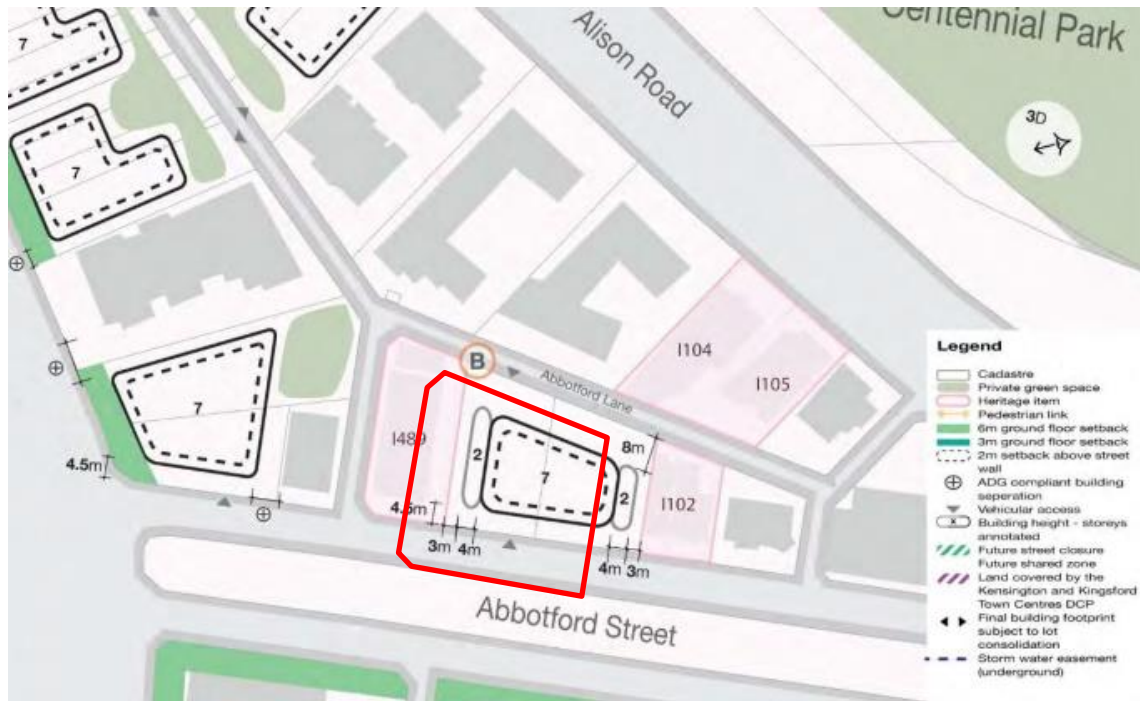
4. Strategic Planning Officer

Planning background

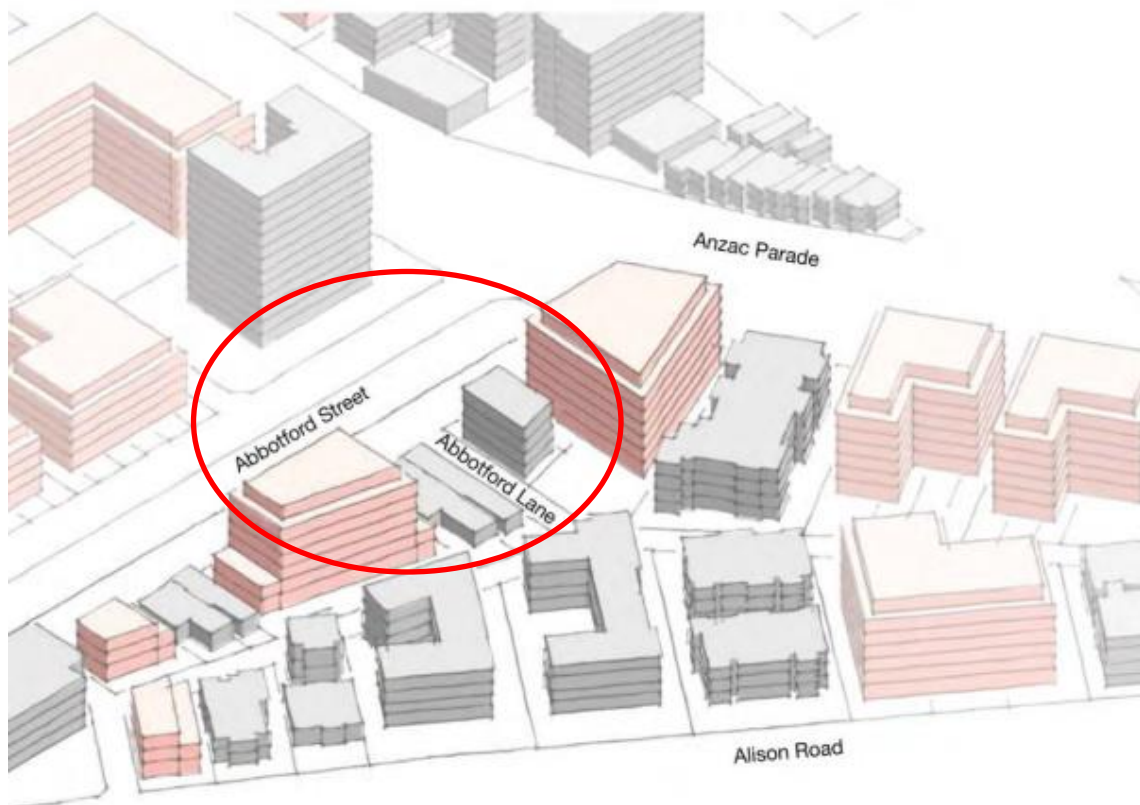
The site is not within a Heritage Conservation Area (HCA). The development includes two heritage listed semi-detached dwellings at 11 and 13 Abbotford Street (Item I489). Detailed heritage advice relating to the development is addressed by a separate RCC referral.

The site is within 200m (2-4 minute) walk of the ES Marks Light Rail stop. The consolidated development site is approx. 1,351m² area, and has an approx. 37.95m frontage to Abbotford Street. Vehicular access is available from the side and rear of the site from Abbotford Lane.

The site is located within Block B of the Kensington North HIA and is subject to the objectives and controls contained within the Randwick DCP 2013 Part E7 Housing Investigation Areas (RCC, 31 Aug 2023). The design of the development should also address the requirements of the Apartment Design Guide (ADG) that supplements the SEPP No.65 – Design Quality of Residential Apartment Development.



Source: Randwick City Council 2023



Source: Randwick City Council 2023

Zoning

The site is zoned R3 Medium Density Residential, and the proposed land use is permitted under RLEP 2012.

Height of Building (HOB)/ ceiling height

HOB/height in storeys

The maximum building height permitted for the site is 23m under RLEP 2012. Randwick DCP E7 Housing Investigation Areas chapter 5. Built Form, (e) and the Block B Control Plan permits a maximum 7 storey building on 9 Abbotford Street. The Block B Control Plan (Figure 50 – see above) does not indicate redevelopment of the heritage listed properties at 11 and 13 Abbotford Street.

The proposed demolition of the rear of the 11 and 13 Abbotford Street buildings and construction of a new co-living building extending behind will require comprehensive and detailed justification regarding the identification and preservation of the heritage building fabric, and the overall merits of the proposal in terms of respecting and preserving the prominence and integrity of the 11 and 13 Abbotford Street dwellings in the streetscape. Street frontage, side and rear setbacks are required to provide an appropriate scaled built form - stepping down of proposed new buildings to provide a suitable transition in building height, and sufficient space for landscaping in deep soil.

The subject redevelopment exceeds the maximum height of seven storeys, by one storey (a 14% exceedance). The additional storey exceeds the height limit and should be removed from the proposal.

Ceiling height

There is an inappropriate floor-to-ceiling height at Ground Floor Level and for typical residential floors (2.85m floor-to-floor instead of the Randwick DCP E7 HIA chapter 11. Floor to ceiling heights Control a) that requires a 3.3m floor-to-ceiling height (as recommended in the ADG to provide for future adaptability and flexibility of use). Control b) requires a 3.1m floor-to-floor height (2.7m floor-to-ceiling height, also aligning with the ADG).

The documentation indicates some minor height exceedances of the overall 23m height limit. Only non-habitable minor exceedances towards the middle of the building, of minor visual impact and overshadowing, for lift/stair over-runs, PV, and the like, would be considered on merit.

Density

The base density for the site under Randwick LEP 2012 is an FSR of 2:1. Under the Housing SEPP (for a Co-living development) a 10% bonus is possible, realising a maximum permitted density for the site of FSR 2.2:1. The documentation indicates a proposed density of 2.19:1, however the GFA calculation method excludes corridors or communal spaces. The definition of Gross Floor Area (GFA) in the Randwick LEP 2012 Dictionary makes clear that horizontal circulation is not excluded from the calculation of GFA. The GFA, and resulting FSR, should be recalculated on this basis.

Site amalgamation

The Lot Amalgamation requirement of a minimum street frontage of 20m is satisfied, with a site frontage of approx. 37.95m to Abbotford Street.

Massing, built form, setbacks

Block B Control Plan requires a 4.5m front setback to Abbotford Street to align with the predominant building setback along the street. This will protect the presence of the two heritage residences along Abbotford Street, and provide space for front gardens. The proposed 2.2m setback is non-compliant and the building setback should be amended.

The Block B Control Plan requires a landscaped building setback of 3m from the side boundary of the heritage property 11 Abbotford Street, and a further setback of 4m to provide a step down in height from seven to two storeys, to provide a transition in scale and a setback in building bulk from the pair of heritage single storey semi-detached dwellings.

The extent of significant heritage building fabric needs to be established through expert heritage advice. A 1.6m setback, as proposed, to the east and north of the heritage detached residences is non-compliant and inadequate. Any new building to the north or east of the heritage residences, should be setback at least 3m (for a landscape) and then a further setback of 4m at two storey height, to provide a suitable transition to a new seven storey building to the east and north. The proposed setback is non-compliant and the design of the building should be amended accordingly.

The Block B Control Plan indicates a rear setback of 8m. There is scope to adjust this setback to accommodate building mass, if suitably justified on merit, and following an assessment of the provision of Gross Landscape Area, Deep Soil and Canopy Cover, and the potential impacts on the amenity of adjoining residences, including overshadowing and privacy.

Block B Control Plan requires the top level of the building to be setback 2m from all sides to minimise the visual bulk of the building when viewed from the street (appearing as a six storey building from most vantage points) and the extent of overshadowing of the street and neighbours. The proposed zero setback is non-compliant and the design of the building should be amended accordingly.

The proposed east 3m building setback and deep soil zone to the 7 Abbotford Street boundary is acceptable and should be landscaped with planting, to provide screening, privacy and to provide a transition in building scale.

Elevation treatment/character

The proposed accommodation building street elevations and the building walls that face the heritage semi-detached dwellings are out of character with the residences and with the future desired character of the precinct and Abbotford Street streetscape. The repetitive egg-crate box-like design and the use of large scale panel wall finishes (except for the face brick of the first two storeys), give the proposed building the character of a commercial office or institutional building, at odds with the residential apartment precinct and streetscape.

The large blank wall facing south at the rear of the heritage residences is of particular concern and would benefit from reduction in height by one storey, setting back of the top floor level, additional window openings, and other architectural elements and articulation.

Room amenity/privacy

The neighbouring four storey residential flat building to the east, 7 Abbotford Street, has a series of windows that face west overlooking the development site and are approx. 3m from the east boundary. The proposed co-living development includes two rooms per level that face east and are setback 3m from the 7 Abbotford Street boundary. The visual and acoustic privacy, and proximity (6m building-to-building setback), of the living and bedroom spaces of the two buildings habitable spaces/balconies is questioned as to ADG compliance, in terms of privacy.

Landscape

Randwick DCP section E7 HIAs, chapter 18. Landscape requires a minimum Gross Landscape Area of 60% (811m²), Deep Soil Permeable Area of 35% (473m²) and a Tree Canopy Cover of 25% (338m²). Refer to the definitions in DCP section 18. Landscape.

The Applicant has calculated the Communal Open Space as being 394m². However, Gross Landscape Area is a different calculation, that would include areas in the north, east and south building setbacks. The Applicant is requested to provide all three landscape calculations for assessment.

ADG compliant planting on structure

In some instances the landscaping of the development is on structure. In these cases, the soil depth and volume are critical to the planting's long term success. The ADG Part 4P Planting on structures requirements need to be met to ensure that the proposed landscaping establishes and flourishes into the future.

Existing site and neighbouring trees

Several large trees including palm trees are present on the site, often situated along the site boundaries. Retention of existing healthy mature trees wherever possible is encouraged to retain tree canopy (shade), provide a transition in height to adjoining residences, preserve privacy on 'day one' of completion of the development and to preserve the mature front garden streetscape character.

Sustainability

Best practice environmentally sustainable design (ESD), energy efficiency, water conservation, waste and resources minimisation apply to all redevelopment in the HIAs. The building design should meet the requirements of Randwick DCP Part B3 ESD and E7 HIAs section 20 Sustainability. Sustainability design provisions, including minimum GBCA 4 Star Green Star rating (previously equivalent to 5 star) certified rating, including consideration of PV panels and battery storage, 100% renewable energy power contracts, and providing EV charging points should be considered in the building design.

Flooding

Flood management is to be in accordance with Randwick DCP section E7 HIAs, chapter 21. Water management, including assessment as to the appropriate ground floor level for habitable uses, thresholds for car park ramp entry and for the provision of Water Sensitive Urban Design (WSUD) in the development.

Parking

Minimum parking rates are to be in accordance with Randwick DCP section E7 HIAs chapter 19. Transport, parking & access (being less than the requirements of the Housing SEPP), and as the development has ready access to public transport and services. The applicable rates generally are one third less than the standard TfNSW rate, that applies elsewhere in the Randwick LGA.

Local automated waste collection system (LAWCS)

Waste management is to comply with the objectives and controls, specifically Controls k) to n), in Randwick DCP E7 HIAs chapter 20. Sustainability. The development is to incorporate a Local Automated Waste Collection System (LAWCS) in accordance with the Council's guideline: [Localised Automated Waste Collection Systems Using Mobile Vacuum Vehicles Design and Implementation Guidelines](#).

Affordable housing

Randwick DCP E7 HIAs chapter 23. Affordable housing requires all new development within the HIAs to contribute towards affordable housing to cater for a mix of income groups, including very low, low and middle income households.

Contributions are to be provided in accordance with the HIAs Affordable Housing Plan (RCC 2023). A rate of 5% applies, as a percentage of the residential Gross Floor Area. Due to the Co-living development type, the contribution is to be provided through a monetary contribution in accordance with the Plan.

5. Landscape Officer

The only issue I've identified is that some of the tree species aren't appropriate given their size at maturity (12-20m+) and the restricted space they'll be growing in due to either being shown on podium over/right next to the basement, or, their proximity to the existing dwelling and/or proposed building.

No objections raised to tree removals given combination of their size/not being significant/the exclusion zones required/scope of works.

Most proposed trees are shown close to buildings or in restricted spaces, such as directly adjacent to the basement or confined in planters, so are unlikely to be viable long-term or accommodate their mature dimensions. If they're within a 2 metre radius of a building they're automatically 'Exempt' under our own DCP, meaning they could be removed at any time without requiring our consent.

6. Development EngineerParking Layout

The development application should be amended as the small carspaces does not meet the requirements of AS 2890.1.

The proposed small carspace on basement level 1 does not meet the minimum width requirements in AS 2890.1 for small carspaces adjacent to an obstruction being 2.60m. The small carspace proposed measures only 2.53m wide.

Waste Management

The development application should be refused because the proposed development and waste management plan does not comply with the relevant controls with regards to Waste in Part B6 of the DCP and Council's 'Waste Management Guidelines for Proposed Developments'.

The applicant proposes waste collection of residential waste by a private contractor twice a week for both garbage and recyclables and once a week for FOGO resulting up to five collections per week. This is not supported as it will have significant and unnecessary amenity impacts in the rear laneways for neighbouring properties.

Section 496 of the Local Government Act 1993 requires Councils to charge a levy for residential waste services. Accordingly, Councils are obliged to collect waste from residential developments and waste management facilities shall therefore be designed to accommodate Council collection frequencies.

Furthermore, even if private collection was acceptable, at some point in the future the use of a Private Contractor may stop for some reason. In such circumstances Council may then be called upon to carry out the waste collection. It is therefore considered critical that if on-site collection is proposed then the waste management facilities must be designed to accommodate Council's waste collection vehicles and bin numbers reflecting Council's established collection frequencies and bin sizes.

The proposed loading bay will not accommodate the current length of Council's collection vehicle or provide sufficient room for swept paths.

The bin storage room will not accommodate the required number of bins based on Council's waste generation rates, bin sizes and current frequency of collection.

There is a lack of clarity in the management of FOGO waste with the Waste Management Plan indicating use of chutes, however only one chute is provided and this is indicated to be used for general waste only.

The proposed waste bin provision indicates the use of compaction for general waste, however no compaction devices have been indicated on the plans and no details are given in the Waste Management Plan. The use of any compaction devices shall be detailed.

The submitted waste management plan is therefore not acceptable in its present form and will need to be revised to reflect the above requirements.

7. Building Compliance Officer

Referral comments not provided.

8. Transport for NSW

Transport

15 August 2024

TfNSW Reference: SYD24/01341
Council's Reference: DA/530/2024 (CNR-71479)

Mr Ray Brownlee
General Manager
Randwick City Council
30 Frances Street
Randwick NSW 2031

Attention: Chahrazad Rahe



**ALTERATIONS AND ADAPTIVE REUSE TO CONSTRUCT A CO-LIVING DEVELOPMENT
9-13 ABBOTTFORD STREET, KENSINGTON**

Dear Mr Brownlee,

Reference is made to Council's referral regarding the abovementioned application which was referred to Transport for NSW (TfNSW) for comment in accordance with Clause 2.122 of the *State Environment Planning Policy (Transport and Infrastructure) 2021*.

TfNSW has reviewed the submitted information and raises no objection as the proposed development is not expected to have a significant impact on the classified road network.

For more information, please contact Narelle Gonzales, Development Assessment Officer, 0409541879, by email at development.sydney@transport.nsw.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Rachel Davis".

Rachel Davis
Senior Land Use Planner
Land Use Assessment Eastern
Planning and Programs, Greater Sydney Division

9. Ausgrid



TELEPHONE: 13 13 65
EMAIL: development@ausgrid.com.au

24-28 Campbell St
Sydney NSW 2000
All mail to
GPO Box 4009
Sydney NSW 2001
T +61 2 13 13 65
ausgrid.com.au

This letter is Ausgrid's response under section 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

Ausgrid does not object to the proposed development.

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

Ausgrid Underground Cables are in the vicinity of the development

Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.

It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Dial Before You Dig (DBYD).

In addition to DBYD the proponent should refer to the following documents to support safety in design and construction:

SafeWork Australia – Excavation Code of Practice.

Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables.

The following points should also be taken into consideration.

Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.

Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

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D93/24

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.

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

For new connections or to alter the existing electrical connection to the property from the Ausgrid network, the proponent should 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>

Should you have any enquiries, please contact Ausgrid at development@ausgrid.com.au

Regards,
Ausgrid Development Team

10. Sydney Airport Corporation

D93/24

Reg No.: 24/0581

Tuesday, 30 July 2024

To: RANDWICK CITY COUNCIL & NSW PLANNING
PORTAL**Notice to Proponent of Property Development**

Dear Sir / Madam,

Application for approval of a controlled activity pursuant to:

*s.183 Airports Act - Notification of decision under Reg 15A (2) of the Airports (Protection of
Airspace) Reg's 1996*

Proposed Activity: PROPERTY DEVELOPMENT
Location: 9-13 ABBOTFORD STREET KENSINGTON
Proponent: RANDWICK CITY COUNCIL & NSW
PLANNING PORTAL
Date: 30/07/2024

Sydney Airport received the above application from you.

This location lies within an area defined in schedules of the Civil Aviation (Buildings Control)
Regulations which limit the height of structures to 45.72 metres above existing ground height
(AEGH) without prior approval of the Civil Aviation Safety Authority.

The application sought approval for the PROPERTY DEVELOPMENT to a height of 54.5 metres
Australian Height Datum (AHD).

In my capacity as Senior Airspace Protection Officer and an authorised person of the Civil Aviation
Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, I have no
objection to the erection of this development to a maximum height of 54.5 metres AHD.

The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae,
construction cranes etc.

Sydney Airport

Sydney Airport Corporation Limited ACN 082 578 809 — The Nigel Love Building, 10 Arrivals Court, Locked Bag 5000
Sydney International Airport NSW 2020 Australia — Telephone +61 2 9667 9111 — sydneyairport.com.au

SYD Classification: Confidential

Should you wish to exceed this height a new application must be submitted.

Should the height of any temporary structure and/or equipment be greater than 45.72 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.

Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.

Information required by Sydney Airport prior to any approval is set out in Attachment A.

"Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).

The height of the prescribed airspace at this location is 90 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones:

Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).

Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.

Sincerely,



Robert King
Senior Airspace Protection Officer

Sydney Airport

- 2 -

SYD Classification: Confidential

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



May 2024



D93/24

Clause 4.6 Variation
Height of Buildings

9-13 Abbotford Street Kensington

DEVELOPMENT STANDARD ATTRIBUTES	
Environmental Planning Instrument	Randwick Local Environmental Plan 2012 (LEP)
Zoning	R3 – Medium Density Residential
Standard to be varied	Height of Buildings - Clause 4.3
Development Standard	Maximum height - 23m
Proposal	Maximum height – 23.98m
Variation	0.98m (4.26%)
OBJECTIVES	
Development Standard Objectives (Height of Buildings)	<ul style="list-style-type: none"> 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.
Zone Objectives	<ul style="list-style-type: none"> • To provide for the housing needs of the community within a medium density residential environment. • To provide a variety of housing types within a medium density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area. • To protect the amenity of residents. • To encourage housing affordability. • To enable small-scale business uses in existing commercial buildings.

☐ 0422 501 589 📞 9576 6258 🐦 @lk_planning ✉ lee@lkplanning.com.au

Extent of variation

The area of non-compliance with the height standard in the proposed development is limited to a marginal portion of the parapet of the building itself, and the elements breaching the roof slab inclusive of a lift overrun, plant and plant screening. All other building elements pertaining to the development comply with the height standard.

The lift overrun extends to a maximum height of RL54.50, resulting in a height above the existing level immediately below at RL 30.52, of 23.98m – a variation of 0.98m or 4.26% to the standard. The plant screening adjacent to the lift overrun has a matching height of RL54.50.

The parapet of the building which sits at the perimeter of the roof slab skims above and below the height standard. This is caused by the undulating existing ground levels on the site, noting that the building as a finished structure is 23.1m tall, from the ground floor slab (RL30.50) to the parapet (RL53.60). The roof slab itself fully complies with the height standard, at 22.89m at its highest measurement.

The lowest existing level on the site below the parapet is located to the east of the retained building on 11 Abbotford Street, at RL30.41. From this lowest point, the new building’s finished parapet height above the existing ground level is 23.19m. This is the parapet’s greatest numerical non-compliance with the standard, at 190mm (or 0.8%). At the rear of the site, where existing ground levels are between RL30.52 and RL30.61, the building has a finished height of 22.99m to 23.08m – either complying with the standard or exceeding it by 80mm (0.3%).

This full extent of the non-compliance is best illustrated in the height plane images below.



Figure 1: Section drawing with the height standard shown dotted in the architectural plans, highlight above in yellow for clarity.

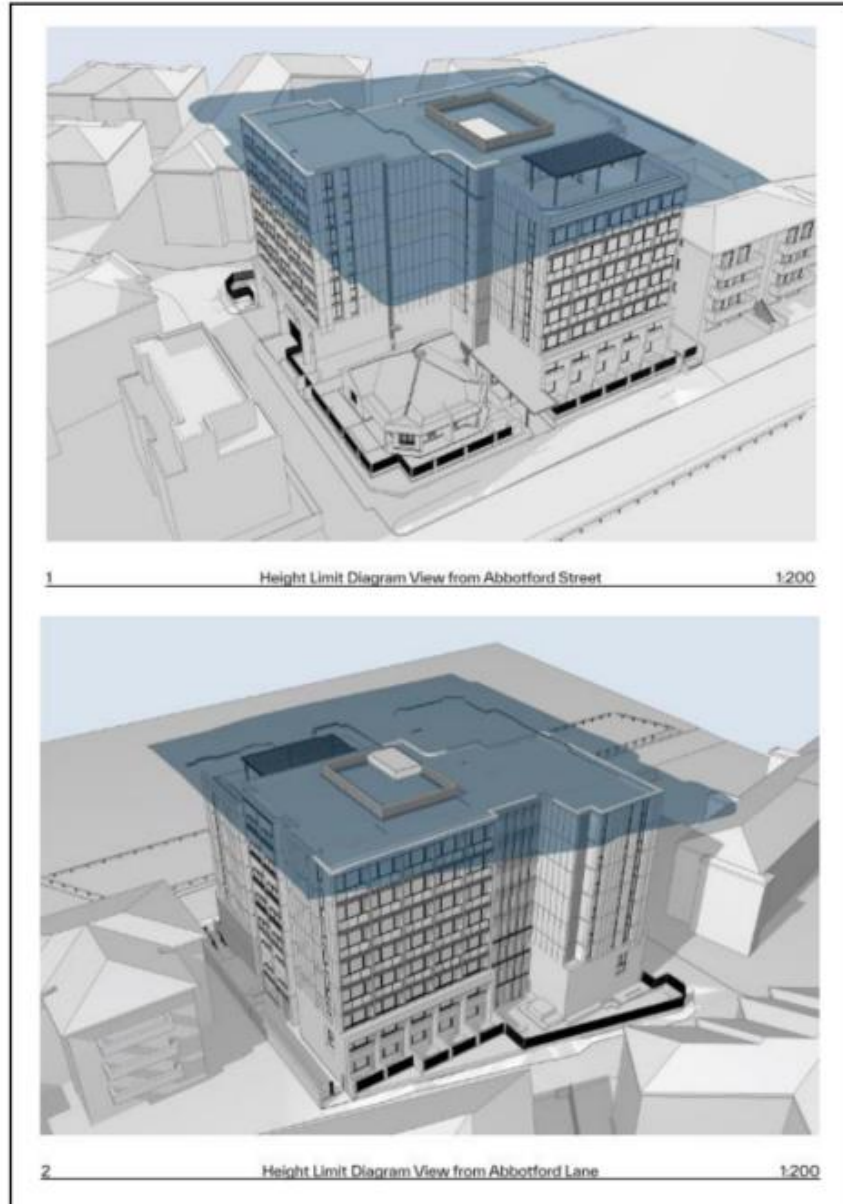


Figure 2: 3d height control plane, with elements above the height plane visible above the blue plane and all elements below complying with the standard.

<p>Clause 4.6(3)</p> <p>(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—</p> <p>(a) compliance with the development standard is <u>unreasonable or unnecessary</u> in the circumstances, and</p> <p>(b) there are <u>sufficient environmental planning grounds</u> to justify the contravention of the development standard.</p>
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Cl.4.6(3)(a) - Unreasonable or unnecessary

The position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the ways offered by *Wehbe V Pittwater Council (2007) NSWLEC 827 Preston CJ*. In this particular case, consistent with that decision, it can be demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard, as below (emphasis added):

“43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”
Wehbe V Pittwater Council (2007) NSWLEC 827 Preston CJ.

The achievement of the specific objectives is outlined overleaf:

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

The desired future character of this locality is described in the draft DCP applying to Kensington North, which is extracted below. An assumption of those controls is that some heritage listed properties were expected to remain, and the built form controls that derived from this assumption. In this case, those assumptions are at odds with known ownership patterns and application history.

9.5.1. Future character

The future desired character of the HIA is for a residential neighbourhood, that provides for a variety of medium density housing types which respond to the unique conditions of each location – for example responding to views over Centennial Park, defining the Tay Street corner and the gateway to Kensington formed by the two existing residential towers, addressing the level change between Boronia Street and Anzac Parade or providing a transition in scale to low scale and/or heritage streetscapes.

The proposed mid-rise typology will enhance the character of the neighbourhood by encouraging high quality design outcomes – urban design, architectural design and landscape design. These will be achieved through built form objectives and controls including generous setbacks for natural light, for landscaping, and controls to ensure high amenity outcomes for residents. Consolidation of sites will allow for communal open space with deep soil areas providing significant tree canopy for the area.

The Kensington North HIA will be attractive to residents through convenient access to the Light Rail, high quality recreational parkland (Centennial Park) and to the Kensington Town Centre.

While the majority of the Kensington North HIA is expected to progressively redevelop, heritage listed properties, residential strata buildings of eight apartments or more, recently completed apartment buildings and established residential towers are expected to remain, in the medium term, and the block control plans reflect these assumptions.

Stage 2 of the RDCP will provide further advice on the desired future character of the Kensington North HIA, however that has not been adopted at this time. As such, given the lack of recognition of variable ownership and development patterns, the broader controls in the RDCP dictate the emerging character of this area undergoing transition. To that end, taller tower buildings with transitional forms around heritage items are expected, as illustrated below.



RDCP 3D Perspective, with the subject site outlined in red

The proposal is therefore compatible with the emerging character of this precinct that is undergoing a substantial transition to a higher density precinct, noting the marginal non-compliance of the building with the height standard and that surrounding sites have the same development potential up to 23 metres – matching the parapet height of this development.

Objective (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 expressly retains and reuses the heritage buildings on the site, with the new building sited around the heritage item. This approach is supported by a Heritage Impact Statement and follows acceptance of a similar approach proposed in the previous development application on the site.

The new building is modulated around the heritage item and includes materiality and articulation choices that enhance the setting of the item. The communal use of the heritage building for various amenities available to all residents in the development is a particularly positive outcome.

Objective (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 development provides an acceptable level of impact to adjoining and neighbouring land. Privacy impacts are regulated through offering limited openings on the side elevations or the building, with balconies predominantly facing the rear and front of the site.

Visual bulk is mitigated through modulated setbacks and an articulated form that provides separation and visual interest to the adjoining and neighbouring buildings.

Solar access to neighbouring and adjacent buildings is consistent with the anticipated impact of increased density in accordance with Council’s controls for this precinct. There are also no views available across the site that are adversely impacted upon by the development.

Further, these attributes stated above are relevant to the entire development, not just the area of height non-compliance. On its own, the limited area being the lift overrun and plant that exceeds the height standard is entirely inconsequential to any amenity enjoyed by neighbouring or adjoining properties. The lift overrun and plant area is self-shading to the subject building’s roof and does not cause any privacy, view or visual bulk impact.

Hypothetically if the lift overrun and plant were able to be removed, there would be no additional material benefit to the adjoining properties. With these elements removed, and a marginal decrease in the parapet height, there would be no requirement to seek a variation to the development standard and by mere compliance with the control it would meet the objectives of the control. Under these circumstances, by virtue of Section 4.15(2)(a) of the EP&A Act 1979, the consent authority would not be ‘entitled to take those standards into further consideration in determining the development application’.

Clause 4.6 of the LEP has, as its underlying objective, to facilitate flexibility 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.*

This application seeks a modest extent of flexibility for the provision of a lift overrun and plant on the roof only, and an imperceptible variation for the parapet of the building of less than 1%.

The lift cannot be constructed without an overrun. The lift provides equitable and convenient access to all of units and their associated amenities. Strict compliance with the standard would require the lift to terminate its service at a lower level to delete the lift overrun, making the uppermost level the least convenient. Requiring this would provide no perceivable benefit to the adjoining or neighbouring land, but would result in a worse outcome for amenity and access arrangements for this development. As such, the variation sought achieves a better outcome for and from the development and allowing a minor degree of flexibility for the lift in this case is appropriate.

Placing plant on the roof is the most appropriate location to ensure natural ventilation. Strict compliance with the standard would require the relocation of the plant to the basement where it would be mechanically ventilated and would require increased excavation. As such, the variation sought achieves a better outcome for and from the development and allowing a minor degree of flexibility for the roof plant in this case is appropriate.

The parapet variation is inconsequential. Strict compliance could be achieved through lowering the ceiling heights marginally on every floor – 100mm per floor would create full compliance – however this unnecessarily reduces the amenity of the units themselves and would not manifest in any material benefit to neighbouring properties. Again, the variation sought to this element achieves a better outcome for and from the development and allowing a marginal degree of flexibility for the parapet in this case is appropriate.

Cl.4.6(3)(b) - Sufficient environmental planning grounds

The principal feature of the proposal that breaches the height development standard is towards the centre of the building where it is not perceivable from the street and has no material impacts on surrounding properties. The marginal breaches at the parapet line, between 0.3% and 0.8%, are imperceptible and inconsequential to meeting the objectives of the standard.

A lack of environmental impact does not in itself provide for sufficient environmental planning grounds to vary a standard, however it is noteworthy that the height breach itself does not cause any view loss, does not introduce unreasonable privacy impacts, overshadowing and does not have any impact on the streetscape or the character of the locality.

In this case there are sufficient environmental planning grounds to support a variation, including:

- The proposal introduces a significant amount of Diverse Housing in a desirable location with excellent connection to public transport, employment and recreational facilities.
- The building generally complies with relevant building envelope controls despite the inherent pressure from accommodating some of the available bonus floor space onto the site as facilitated by the incentives under the Housing SEPP.
- The scale of the building is 23 metres as anticipated by the controls, despite the pressure of the additional floor space as noted above.
- The variation in height to the building itself when the lift overrun and plant is excluded is marginal and imperceptible, at 0.3% to 0.8% only, demonstrating that it meets the purpose of the height standard.
- The additional height is otherwise required to facilitate equitable access to all levels by virtue of allowing a lift overrun to peak through the height plane.
- The additional height is otherwise required to facilitate the provision of plant on the roof where it can be naturally ventilated in lieu of relying on mechanical ventilation within the basement, as well as screening of the plant to minimise its visual impact if/when similar height buildings are constructed in the locality that have an aspect to this roof.
- The design satisfies the Object 1(g) of the EP&A Act 1979 which seeks to promote good design and amenity of the built environment.
- The proposal is consistent with the objectives of the height development standard and the objectives of the zone.

Clause 4.6(4)
<i>The consent authority must keep a record of its assessment carried out under subclause 3.</i>

Council can be satisfied that clause 4.6(4) will be met through their established administrative procedures that ensure a record is kept of their assessment.

On 1 November 2023, Clause 4.6(4) was subject to a significant amendment. The requirement under this subclause prior to this date, which required the consent authority to be satisfied the proposal will be in the public interest because it is consistent with the objective of the standard and zone, as well as concurrence requirements from the Secretary, was removed.

This ‘public interest’ test requirement was removed as it duplicated existing considerations when determining a development application or considering a variation request. Consideration of the zone objectives and public interest is already required when assessing a development application in both cl2.3 of the LEP, and s4.15(1)(e) of the EP&A Act.

The public interest test was previously confined to the requirements as set out in the decision of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. An argument under section 4.15(1)(e) of the EP&A Act that approval of a development is in the public interest is not so confined and can take into account wider considerations.

As per Initial Action, the proposal is in the public interest given satisfaction of the zone objectives below:

Zone objective	Satisfaction of objective
To provide for the housing needs of the community within a medium density residential environment.	Yes The development meets the needs identified by Council for increased density and by the State Government for Diverse Housing.
To provide a variety of housing types within a medium density residential environment.	Yes The co-living categorisation of this development contributes lower cost rental housing and smaller unit types as compared to the predominant use of surrounding developments as residential flat buildings.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Yes The adaptive reuse of the heritage building as a communal building is a particularly positive use of the site that will service the residents within this development.

Zone objective	Satisfaction of objective
To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.	Yes The desired future character for this precinct is for increased housing in a series of larger amalgamated sites, with 23m high buildings and compatibility with existing heritage items. This is achieved by the proposed development.
To protect the amenity of residents.	Yes The amenity of residents in neighbouring properties, as well as the subject site, is protected to the extent anticipated by the controls.
To encourage housing affordability.	Yes The development specific offers a form of co-living development that increases affordable rental opportunities. There will also be a financial contribution arising from the development as a condition of consent in accordance with Council's policies in excess of \$2m that will be used to support affordable housing in the LGA.
To enable small-scale business uses in existing commercial buildings.	N/A This objective is not applicable to residential development.

As for wider considerations available under s4.15(e) of the EP&A Act:

- The proposal will have no detrimental effect on the public interest, does not undermine the integrity of Council's controls, and provides an acceptable environmental planning outcome on the site.
- The proposal offers an appropriately scaled development that is compatible with the emerging character of this precinct that is in transition to higher density as anticipated by Council's controls.
- The buildings are sympathetic to the streetscape and public domain, and includes the adaptive reuse of a heritage item.
- The development delivers Diverse Housing in an area nominated for increased housing, with excellent access to public transport and infrastructure.

It is therefore in the public interest to support this proposal. This document demonstrates that the approval of the development is consistent with the requirements under *Initial Action* and due to wider considerations.

Clause 4.6(5)
<i>Repealed 1 November 2023</i>

Clause 4.6(5) was repealed on 1 November 2023, such that there is no longer a requirement to consider matters of State or regional planning significance as a result of the non-compliance (cl4.6(5)(a)) or the public benefit of maintaining the development standard (cl4.6(5)(b)).

Conclusion

This document demonstrates that in this particular case a variation pursuant to clause 4.6 of the LEP is justified as:

- (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.

As such, the consent authority can be satisfied that the above justification adequately addresses clause 4.6(3) of the LEP.

Clause 4.6(4) as amended on 1 November 2023 is satisfied by Council's internal reporting procedures. There is no longer a requirement to demonstrate the proposal is in the public interest because it is consistent with the zone or standard objectives.

Notwithstanding this, this variation request addresses the public interest test in response to clause 2.3 of the LEP, and section 4.15(1)(e) of the EP&A Act. This request

The public interest test was previously confined to the requirements as set out in the decision of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. An argument under section 4.15(1)(e) of the EP&A Act that approval of a development is in the public interest is not so confined and can take into account wider considerations.

This document demonstrates that the approval of the development is consistent with the requirements under *Initial Action* and due to wider considerations.

Clause 4.6(5) was repealed on the same date, such that there is no longer a requirement to consider matters of State or regional planning significance as a result of the non-compliance, nor the public benefit of maintaining the development standard.

The variation therefore is acceptable having regards to the matters for consideration under clause 4.6 of the LEP.

Responsible officer: Julia Warren, Senior Environmental Planning Officer

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