

Randwick Local Planning Panel (Public) Meeting

Thursday 13 March 2025



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, 13 March 2025 at 1pm

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

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D8/25

Subject: 8-14 McCauley Street, Matraville (DA/250/2024/A)

D8/25

Executive Summary

- Proposal:** Section 4.55(2) Modification to the approved development for the addition of 3 prime mover parking spaces (without trailers).
- Ward:** South Ward
- Applicant:** Mr K Malouf
- Owner:** Blue Aurora Partner Pty Ltd, Eric Alpha App Corporation 1 Pty Ltd, Eric Alpha App Corporation 2 Pty Ltd, Eric Alpha App Corporation 3 Pty Ltd, Eric Alpha App Corporation 4 Pty Ltd.
- Cost of works:** Nil
- Reason for referral:** More than 10 unique submissions by way of objection were received.

Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. DA/250/2024 for the addition of 3 prime mover parking spaces (without trailers), at No. 8-14 McCauley Street, Matraville NSW 2036, in the following manner:

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
A03, Rev. F – Truck Parking Plan	5S Projects Consulting Engineers Pty Ltd	18/03/2024	07/06/2024
A04, Rev. F – Car Parking Details	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
A05, Rev. F – Wire Chain Fence	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
A06, Rev. F – Acoustic Fence and Gate	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
A07, Rev. F – Amenities Building Layout	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
A08, Rev. F – Igloo Dome Structure	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
Works As Executed Layout Plan	5S Projects Consulting Engineers Pty Ltd	18/04/2024	01/05/2024

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

- EXCEPT where amended by:**
- Council in red on the approved plans; and/or
 - Other conditions of this consent; and/or

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- the following Section 4.55 plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.55 plans and detailed in the Section 4.55 application:

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
A03, Rev. C – Truck Parking Plan	Price & Speed	30/01/2025	30/01/2025

- **Amend Condition 4 to read:**

Approved Site Plan

4. As indicated on the approved site plan, the site shall accommodate a maximum of 8 x prime movers (with trailers), 3 x prime movers (without trailers), and 10 x cars (for employees) at any one time.

- **Amend Condition 65 to read:**

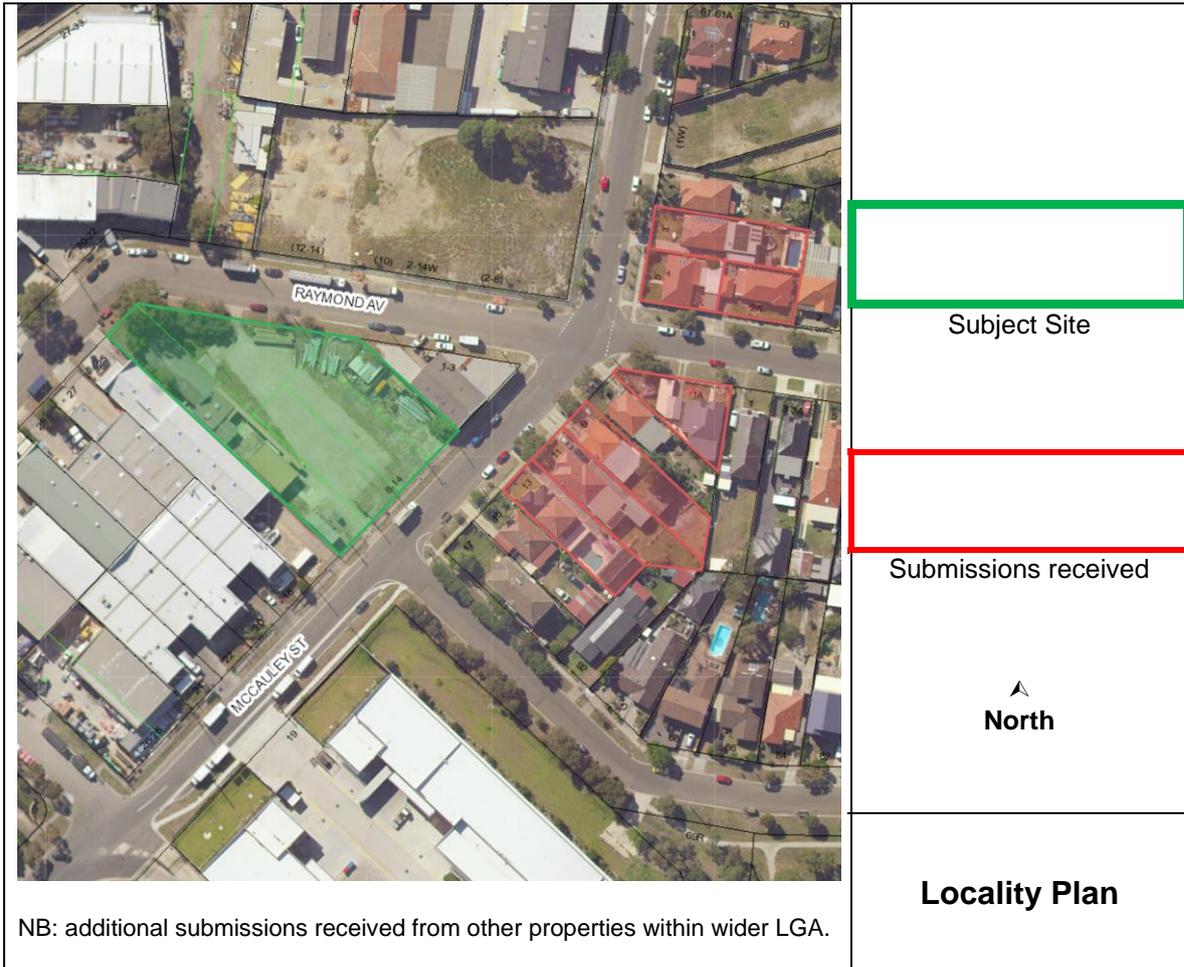
Operational Conditions

65. Notwithstanding the description in the application to the use of the premises inter alia as a truck depot, the premises are to operate as truck parking with ancillary servicing and activities. The use and operation of the premises shall accord with the following:

- (a) The operator(s) shall ensure that no on-street queuing or parking of vehicles occurs outside the premises.
- (b) *A maximum of 8 prime movers (with trailers), 3 prime movers (without trailers), and 10 cars are to be accommodated on the site at any one time in accordance with the endorsed plans.*
- (c) All trucks must turn off engines when vehicles are stationary, other than required for servicing. All trucks must turn off stationary external motors such as refrigeration units if attached to the vehicle.
- (d) Approved traffic routes shall be complied with at all times.
- (e) There is to be no air brake or compression brake testing for trucks on the site.
- (f) The site shall be provided with clear signage outlining site vehicle movement requirements to minimise noise in accordance with acoustic requirements and operational management plans.
- (g) All truck repairs/ servicing shall be undertaken in proposed work areas.
- (h) *The premises shall not be used as a container depot.*
- (i) All work/repair areas shall be graded and drained to sewer in accordance with Sydney Water requirements. If required Sydney Water licence shall be obtained prior to commencement of operational work on the site.
- (j) All repair areas or storage areas for chemicals shall be stored and provided with bunding in accordance with NSW EPA and Safe work requirements.
- (k) Emergency spill kits for pollution incidents shall be kept on the site adjacent to work areas. Staff shall be instructed in their location and use.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/250/2024/A - 8-14 McCauley Street, MATRAVILLE NSW 2036 - DEV - Randwick City Council



D8/25

1. Executive Summary

This application is referred to the Randwick Local Planning Panel (RLPP) because the original DA was approved by the RLPP and more than ten (10) unique submissions by way of objection were received for the subject application.

The proposal seeks to modify Development Application No. DA/250/2024 pursuant to section 4.55(2) of the *Environmental Planning and assessment Act 1979* (EP&A Act) for the addition of three (3) prime mover parking spaces (without trailers) at the site.

DA/250/2024 was approved by the RLPP on 11 July 2024 for the use of the site as a truck depot, installation of two pre-fabricated buildings (for vehicle maintenance, administration and driver amenities), erection of boundary fencing, an acoustic barrier, associated civil and landscaping works.

The proposal is recommended for approval.

2. Site Description and Locality

The subject site is located at 8-14 McCauley Street, Matraville and is legally described as Lots 2-5, 20-21 in Sec A DP 8313. The site has an area of 3,510m² and is irregular in shape. The site has a 48.76 frontage to McCauley Street (to the east) and a combined 76.46m frontage to Raymond Avenue (to the north and west).

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As shown in Figures 1-3, the site is currently operating as a truck depot. Surrounding development comprises a mix of industrial premises (to north, south, and west of site) and residential dwellings (to east of site, on opposite side of McCauley Street).



Figure 1: Subject site, viewed from McCauley Street (*Source: Council officer*)



Figure 2: Subject site, viewed from Raymond Avenue (*Source: Council officer*)



Figure 3: Subject site, viewed from Raymond Avenue (Source: Council officer)

3. Details of Current Approval

The original development application was approved by the RLPP on 11 July 2024 for the following development:

“Use of the site as a truck depot, installation of two pre-fabricated buildings (for vehicle maintenance, administration and driver amenities), erection of boundary fencing, an acoustic barrier, associated civil and landscaping works.”

4. Proposal

The current application seeks to modify the consent for the addition of three (3) prime mover parking spaces (without trailers) to the south of the site. Refer to Figure 4.

The proposal seeks to amend Conditions 4, 65(b) and (h), as outlined below:

4. Approved Site Plan

As indicated on the approved site plan, the site shall accommodate a maximum of 8 x prime movers (with trailers), 3 x prime movers (without trailers), and 10 x cars (for employees) at any one time.

65. Operational Conditions

Notwithstanding the description in the application to the use of the premises inter alia as a truck depot, the premises are to operate as truck parking with ancillary servicing and activities. The use and operation of the premises shall accord with the following:

- (a) The operator(s) shall ensure that no on-street queuing or parking of vehicles occurs outside the premises.*
- (b) A maximum of 8 prime movers (with trailers), 3 prime movers (without trailers), and 10 cars are to be accommodated on the site at any one time in accordance with the endorsed plans.*

(...)

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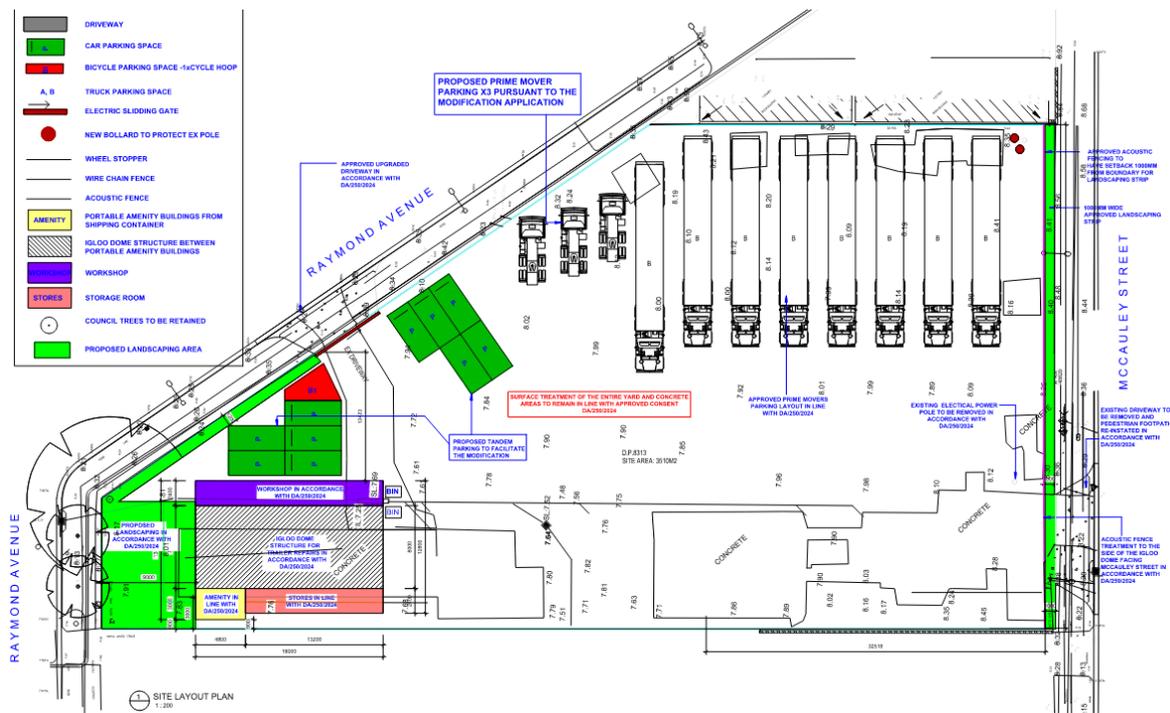


Figure 4: Proposed site plan (Source: Price & Speed Containers)

Container Depot

Concern has been raised by neighbouring landowners regarding compliance with Condition 65(h) of the existing consent, which reads as follows:

- (h) *There is to be no container storage or container transfer on the premises. The premises shall be used for the storage and repair/servicing of empty trucks only.*

The intent of this condition was to clarify that, consistent with section 5.18 of the Transport and Infrastructure SEPP, the site shall not be used as a container depot. For clarity, Condition 65(h) shall be modified to read as follows:

- (h) *The premises shall not be used as a container depot.*

No concern is raised by Council and/or the Applicant regarding this change.

Amended Plans

It is noted that the originally proposed plans sought consent for four (4) additional prime movers. However, in response to concerns from Council’s Development Engineer in relation to swept path movements, the number of additional prime movers was reduced to three (3).

Re-notification of the amended plans was not deemed necessary as the amended proposal would likely result in a lesser impact to neighbouring properties.

5. Section 4.55 Assessment

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, Council may only agree to a modification of an existing Development Consent if the following criteria have been complied with:

- a) it is satisfied that the development to which the consent as modified relates is *substantially the same development* as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- b) it has consulted with any relevant public authorities or approval bodies, and

- c) it has notified the application & considered any submissions made concerning the proposed modification

1. Substantially the Same Development

The proposed modifications are not considered to result in a development that will fundamentally alter the originally approved development.

2. Consultation with Other Approval Bodies or Public Authorities:

The development is not integrated development or development where the concurrence of another public authority is required.

3. Notification and Consideration of Submissions:

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

- 3 McCauley Street (2 x submissions)
- 5 McCauley Street (2 x submissions)
- 9 McCauley Street
- 11 McCauley Street
- 13 McCauley Street
- 1A Harold Street
- 2A Harold Street
- 93 Perry Street (2 x submissions)
- 97 Perry Street
- 6 Blaxland Street

Issue	Comment
Noise and vibration impacts.	<p>The submitted Acoustic Letter (prepared by Koikas Acoustic dated 16 December 2024) confirms that the proposed increase in the number of trucks will have no significant impact to surrounding residents. The proposed modification will comply with the relevant noise conditions included in the previous Acoustic Report (relating to DA/250/2024).</p> <p>Council's Environmental Health Officer has reviewed the proposed modification and raises no concerns. Refer to discussion at Section 6 of this report.</p>
Operator is currently breaching conditions of existing consent.	<p>The alleged breaches of the existing consent (DA/250/2024) are under investigation by Council's Compliance team.</p> <p>On 11 February 2025, Council's Compliance Officer issued a Notice of Intention to serve an Order. This provides the owner an opportunity to present representations to Council on why a Compliance Order should not be issued, ensuring the premises operate in accordance with the conditions of DA/250/2024.</p>

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Issue	Comment
Traffic and parking impacts.	Council's Development Engineer has reviewed the proposed modification (as amended) and raises no concerns. Refer to discussion at Section 6 of this report.
Acoustic barrier and landscaping have not been constructed.	A construction certificate for DA/250/2024, which included installation of the acoustic wall and landscaping, has not yet been issued.
Pedestrian safety.	Council's Development Engineer has reviewed the proposed modification (as amended) and raises no concerns. Refer to discussion at Section 6 of this report.
Property value impacts.	Not relevant to planning assessment.

6. Referral comments

Development Engineering

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

"Development Engineering has reviewed the amended parking layout and swept paths and have noted that the changes will result in an increase of prime mover parking on the site.

Should the Section 4.55 application be approved the following engineering conditions shall be amended: 4 & 65."

Environmental Health

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

"Proposed vehicle movements predicted to be no more than 1 or 2 a day.

Acoustic Addendum from Kokias Acoustics dated 16th December 2024.

Previous approved DA/250/2024 required all ingress/egress for vehicles via Raymond Avenue.

Acoustic validation and complaints management required to address noise issues.

Noise wall and shielding previously approved.

Based on conclusions in Koikas Acoustic report dated 16Th December 2024 which determined no discernible impact and existing approved conditions no additional conditions are proposed."

7. Section 4.15 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	SEPP (Transport and Infrastructure) 2021 The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of T&I SEPP relating to Port Botany.

Section 4.15 'Matters for Consideration'	Comments
	<p>SEPP (Biodiversity and Conservation) 2021 The proposed modification does not involve the removal of any additional vegetation (including any trees).</p> <p>SEPP (Resilience and Hazards) 2021 Chapter 4 of the SEPP establishes a statewide planning approach for the remediation of contaminated land. The site was considered suitable for the development in the approval of the original consent.</p> <p>Randwick Local Environmental Plan 2012 Not applicable to subject site, which is mapped within the Port Botany SEPP area.</p>
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 development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social, or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and the T&I SEPP. Further, the proposed modifications will not adversely affect the character or amenity of the locality. Therefore, the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social, or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8. Conclusion

The application is recommended for approval for the following reasons:

- a) The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- b) The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/250/2024/A

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Development Consent Conditions



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Folder /DA No:	DA/250/2024/A
Property:	8-14 McCauley Street, MATRAVILLE NSW 2036
Proposal:	Section 4.55(2) Modification to the approved development for the addition of 3 prime mover parking spaces (without trailers).
Recommendation:	Approval

Modification Summary

Application Number (PAN#)	Determination Date	Modification Description
PAN-494880	13 March 2025	Amend Conditions 1, 4, and 65 to reflect the updated number of vehicles permitted on the site at any one time.

GENERAL CONDITIONS

Condition

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
A03, Rev. F – Truck Parking Plan	5S Projects Consulting Engineers Pty Ltd	18/03/2024	07/06/2024
A04, Rev. F – Car Parking Details	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
A05, Rev. F – Wire Chain Fence	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
A06, Rev. F – Acoustic Fence and Gate	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
A07, Rev. F – Amenities Building Layout	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
A08, Rev. F – Igloo Dome Structure	5S Projects Consulting Engineers Pty Ltd	18/03/2024	12/04/2024
Works As Executed Layout Plan	5S Projects Consulting Engineers Pty Ltd	18/04/2024	01/05/2024

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

EXCEPT where amended by:

 Condition

- Council in red on the approved plans; and/or
- Other conditions of this consent; and/or
- the following Section 4.55 plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.55 plans and detailed in the Section 4.55 application:

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
A03, Rev. C – Truck Parking Plan	Price & Speed	30/01/2025	30/01/2025

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

(Condition amended – 13 March 2025 – DA/250/2024/A – PAN-494880)

2. **Works Without Consent**

The works that have already been constructed on site (as shown on the Works As Executed Layout Plan dated 18 April 2024) do not form part of this consent. This consent grants approval for the use of the as-built structures only and does not include approval for the works carried out prior to the issue of the development consent.

Condition Reason: To clarify that the consent only relates to the use of the unauthorised works.

3. **Vehicle Movements**

Trucks shall only enter and exit the premises via Raymond Avenue. No trucks are permitted to access the site via McCauley Street.

All truck movements into the site must be conducted by turning right from Raymond Avenue. All truck movements out of the site must be conducted by turning left onto Raymond Avenue.

Trucks accessing and exiting the site are not permitted to travel along the part of McCauley Street between Perry Street and the southern end of Raymond Avenue.

Condition Reason: To protect the acoustic amenity of neighbouring properties.

4. **Approved Site Plan**

As indicated on the approved site plan, the site shall accommodate a maximum of 8 x prime movers (with trailers), 3 x prime movers (without trailers), and 10 x cars (for employees) at any one time.

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

(Condition amended – 13 March 2025 – DA/250/2024/A – PAN-494880)

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

 Condition

5. **Consent Requirements**

The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated

	Condition
	documentation. Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.
6.	External Colours, Materials & Finishes The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape. Any metal roof sheeting is to be pre-painted to limit the level of reflection and glare. Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development. Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.
7.	Security Deposits The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i> : <ul style="list-style-type: none">• \$5,000.00 - Damage / Civil Works Security Deposit Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure. The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works. To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works. Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.
8.	Sydney Water All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation. The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met. The Tap in™ service provides 24/7 access to a range of services, including:

Condition

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

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

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

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

9. **Building Code of Australia**

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

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

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

10. **Design Alignment Levels**

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

- **100mm above the top of the kerb at all points opposite the kerb, along the Raymond Avenue site frontage.**

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

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

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6888.

Condition Reason: To ensure all relevant approvals for traffic and parking works are obtained and designed in accordance with Council requirements.

11. **Design Alignment Levels**

The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$900** calculated at

	Condition
	<p>\$60.00 (as of 1st July 2023) per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.</p> <p>Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements, to Council standard, and to ensure payment of fees to Council.</p>
12.	<p>Carspace Design</p> <p>The gradient of the internal carspace must be designed and constructed to not exceed a grade of 1 in 20 (5%) and the levels of the carspace must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate documentation.</p> <p>Condition Reason: To ensure all carspaces are designed and constructed in accordance with the relevant requirements.</p>
13.	<p>Stormwater Drainage</p> <p>Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.</p> <p>The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval.</p> <p>Condition Reason: To control and manage stormwater run-off.</p>
14.	<p>Stormwater Drainage</p> <p>Stormwater runoff from the (redeveloped portion) site shall be discharged either:</p> <ul style="list-style-type: none">(a) To the kerb and gutter along the McCauley Street site frontage by gravity (preferably without the use of a charged system); OR(b) To Council's underground drainage system in McCauley Street; OR(c) To a suitably sized infiltration area. As a guide the infiltration area shall be sized based on a minimum requirement of 1 m² of infiltration area (together with 1 m³ of storage volume) for every 20 m² of roof/impervious area on the site. <p>Infiltration areas must be located a minimum of 3.0 metres from any structure (note: this set back requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure) and 2.1 metres from any adjacent side or rear boundary.</p> <p>Prior to the use of infiltration in rear draining lots (where there is no formal overland escape route to Council's kerb and gutter/street drainage system), a geotechnical investigation will be required to determine whether the ground is suitable for infiltration. Should rock and/or a water table be encountered within two metres of the proposed base of the infiltration pit, or the ground conditions comprise low permeability soils such as clay, infiltration will not be appropriate.</p> <p>NOTE: Should the ground conditions preclude the use of infiltration (Option c), consideration may be given to the use of a charged system or a pump out system to drain that portion of the site that cannot be drained by gravity to the kerb and gutter at the McCauley Street frontage of the property.</p>

Condition

Should a charged system be required to drain any portion of the site, the charged system must be designed such that;

- (a) There are suitable clear-outs/inspection points at pipe bends and junctions.
- (b) The maximum depth of the charged line does not exceed 1m below the gutter outlet.

Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the required discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1 in 100 year, 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with Randwick City Council's Stormwater Code.

All pump out water must pass through a stilling pit, located within the site, prior to being discharged by gravity to the kerb and gutter.

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

15. **Footings adjacent to drainage easements**

All proposed footings located adjacent to the proposed/existing drainage easement shall either be:

- (a) Founded on rock, or;
- (b) Extend below a 30 degrees line taken from the level of the pipe invert at the edge of the drainage easement (angle of repose).

Structural details demonstrating compliance with this condition shall be submitted with the construction certificate application.

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

16. **Landscape Plan**

A formal Landscape Plan prepared by a qualified professional in the Landscape industry (must be eligible for membership with AILD, AILA or equivalent) must be submitted to, and be approved by, the Principal Certifier, **prior to CC/commencement of site works** detailing the following:

- (a) A Planting Plan & Plant Schedule which includes proposed species, botanic and common names, pot size at the time of planting, quantity/density, location, dimensions at maturity and any other details required to describe the works.
- (b) A predominance of species that are not reliant on high quantities of moisture and fertilizer for survival.
- (c) A high-quality selection and arrangement of decorative species throughout the western side setback, rear of Igloo Dome to assist with presentation of the development to the streetscape.
- (d) Dedicated garden areas around the perimeter of the northwestern aspect of the workshop, along the fence line, measuring from existing mature tree to the proposed new driveway on Raymond Ave, to which, evergreen

Condition

screen planting and decorative lower growing species shall be provided so as to soften the appearance of dividing/boundary fences as well as improve screening and amenity between this site and the adjacent warehouses.

- (e) 1 x 25 litre (pot size at the time of planting) feature tree within the southwestern side setback of the site, adjacent the Pro Works mechanical workshop, measuring centrally between the existing mature tree, boundary fences and within the southwestern aspect of the Igloo Dome, selecting species which will attain a minimum height of between 4-7 metres at maturity, with tree planting to be in deep soil and be sited at least 2.5m from any part of the dwelling;
- (f) 2 x 25 litre (pot size at the time of planting) native evergreen canopy trees within the northwestern aspect of the workshop, plotted along the fence line, measuring 7 metres east of existing mature tree then second tree to be plotted 7 metres further east towards the proposed new driveway on Raymond Ave, selecting species which will attain a minimum height of 4-6 metres at maturity with all tree planting to be in deep soil and be sited at least 2.5m from any part of the dwelling;
- (g) A dedicated deep soil garden bed, measuring a minimum width of 1 metre must be provided across the width of the rear western boundary, measuring 1 metre from either side of the mature tree, to which a continuous evergreen screening hedge shall be planted, using stock with a minimum pot size at the time of planting of 200mm, and selecting a species which will attain a minimum height of between 3-4 metres at maturity, to assist with future screening, privacy and amenity between this development site and adjoining western Ave footpath, and warehouses, plantings will also be planted along the southern edge boundary, close to the neighbouring Pro Works mechanical workshop.

Condition Reason: To ensure residential amenity and that appropriate landscaping is provided.

17. **Tree Management**

To ensure retention of mature *Eucalyptus robusta* (Swamp Mahogany) within the far western corner of the subject site, 10 metres high, protected under the DCP, the following measures are to be undertaken:

- (a) All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk canopy SRZ, TPZ to be clearly and accurately shown on all plans in relation to the proposed works.
- (b) Prior to the commencement of any site works, the Principal Certifier must ensure that an AQF Level 5 Consulting Arborist (who is eligible for membership with a nationally recognized organization/association) has been engaged as 'the Project Arborist' for the duration of works and will be responsible for both implementing and monitoring these conditions of development consent, the Tree Protection/Management Plan/Recommendations/Specification any other instructions issued on-site.
- (c) All Construction Certificate plans must show that the rear western concrete slab, which was poured prior to DA, must finish a minimum distance of 9 metres away, as shown on (5S Projects Consulting Engineers, Dwg Works as Executed Layout, REV 4), measured off the outside edge of its trunk at ground level, to the edge of slab.

Condition
(d) Where there is a difference in level between this site and an adjoining property, and the soil level where the trees are growing is higher than the subject site, if the soil profile is to be exposed for any period of time, temporary shoring must be provided along the common boundary so as to prevent failure of the soil and trees, with a suitable system to be approved by the PCA, prior to installation.
(e) Prior to the commencement of any site works, the trunk of this tree is to be physically protected by wrapping layers of geo-textile, underfelt, carpet, hessian or similar, from ground level to a height of 2m, to which, 2m lengths of 50mm x 100mm hardwood timbers, spaced at 150mm centres shall be placed around its circumference, and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.
(f) This tree must be physically protected with the installation of 1.8-metre-high steel mesh/chainwire fencing panels, which shall be secured to the boundary fence to its west, measuring 3 metres from the trunk to completely enclose the tree for the duration of works.
(g) This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER" .
(h) If additional trunk or branch protection is required, this can be provided by wrapping layers of geo-textile, underfelt, carpet, hessian or similar around affected areas, to which, lengths of evenly spaced hardwood timbers shall then be placed around their circumference and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.
(i) To prevent soil/sediment being washed over the/ir root system/s, erosion control measures must be provided at ground level around the perimeter of the TPZ.
(j) Where major roots with a diameter of 50mm or more are encountered and Council's officer determines they must be retained, a cantilevered, pier and beam style footing must be used for these areas.
(k) The Construction Certificate plans must acknowledge that the site inspection may result in the need to alter the design away from a traditional strip footing, with a suitably qualified engineer to have an alternative design approved by the Principal Certifier, prior to installing the footings.
(l) Where roots with a diameter of less than 50mm are found which are in direct conflict with the approved works, and permission is given for their pruning, they may be cut cleanly using hand-held tools only, with the affected area to then be backfilled with clean site soil as soon as practically possible.
(m) Where roots are encountered which are in direct conflict with the approved works, they may be cut cleanly using only hand-held tools, not machinery, with the affected area to then be backfilled with clean site soil as soon as practically possible.
(n) Ground levels within the TPZ s must not be altered by more than 200mm, with no other structures such as continuous strip footings, planter boxes or similar to be located in this area, which is to remain as undisturbed, deep soil.

Condition

- (o) Ground protection comprising strapped together rumble boards, sheets of plywood or similar shall be provided on top of the mulched area of 100mm deep and must remain in place for the duration of works, until such time as the approved landscaping is being installed.
- (p) The applicant is not authorised to perform any other works to this tree and must contact Council's Landscape Development Officer on 9093-6633 should clearance pruning or similar be necessary. If approval is given, it can only be performed by Council, wholly at the applicants cost, GIVING UP TO SIX WEEKS NOTICE, with payment to be received prior to pruning or any Occupation Certificate.
- (q) Within the TPZ's there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.
- (r) The Principal Certifier/and Project Arborist must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.

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

18. **Acid Sulphate Soil Investigation**

A preliminary acid sulphate soil investigation is to be undertaken to confirm that the land is not affected by acid sulphate soils. The report is to be submitted to Council prior to the issue of the construction certificate.

Should the assessment determine that the land is affected by acid sulphate soils, an Acid Sulphate Soils Management Plan is to be prepared for the development prior to the commencement of excavation to outline necessary management and mitigation measures to the satisfaction of the certifying authority.

Condition Reason: To ensure the management of acid sulphate soils.

19. **Acoustic Recommendations**

All design acoustic recommendations detailed in the Acoustic Report prepared by Koikas Acoustics P/L (Project No. 6129, dated 26/04/2024) including proposed acoustic walls/fencing shall be incorporated into construction certificate plans. Details of compliance shall be provided by the acoustic consultant to the certifying authority prior to the issuing of a construction certificate.

Condition Reason: To protect the acoustic amenity of neighbouring properties.

20. **Traffic conditions**

The vehicular access driveways and carpark areas, (including, but not limited to, the ramp grades and carpark layout) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with these requirements.

Condition Reason: To ensure all driveways and carpark areas are designed and constructed in accordance with the relevant requirements.

21. **Waste Management Plan (WMP)**

A Waste Management Plan detailing the waste and recycling storage and removal strategy for the development, is required to be submitted to and approved by Council's Lead Specialist Strategic Waste.

Condition

The Waste Management Plan (WMP) is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Developments and must include the following details (as applicable):

- The use of the premises and the number and size of occupancies.
- The type and quantity of waste to be generated by the development.
- Demolition and construction waste, including materials to be re-used or recycled.
- Details of the proposed recycling and waste disposal contractors.
- Waste storage facilities and equipment.
- Access and traffic arrangements.
- The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials.

Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's website at:
https://www.randwick.nsw.gov.au/_data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf

Condition Reason: To ensure that waste and recycling is appropriately managed.

22. **Public Utilities**

A Public Utility Impact Assessment must be carried out to identify all public utility services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the building works.

The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other authorities to adjust, repair or relocate their services as required.

Condition Reason: To ensure that necessary arrangements are made for public utility services.

23. **Undergrounding of Site Power**

Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Raymond Avenue. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.

Condition Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground.

BEFORE BUILDING WORK COMMENCES

Condition

24. **Building Certification & Associated Requirements**

The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):

- a) a *Construction Certificate* must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the *Environmental Planning*

Condition

and Assessment Act 1979 and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

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

- b) a Registered (Building) Certifier must be appointed as the *Principal Certifier* for the development to carry out the necessary building inspections and to issue an occupation certificate; and
- c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the Principal Certifier and Council must be notified accordingly (in writing); and
- d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and
- e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.

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

25. **Dilapidation Reports**

A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a Professional Engineer, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site, and any other property or public land which may be affected by the works, to the satisfaction of the *Principal Certifier* for the development.

The dilapidation report must be submitted to the Principal Certifier, Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).

Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.

26. **Construction Noise & Vibration Management Plan**

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies. A *Construction Noise & Vibration Management Plan* must be developed and implemented throughout demolition and construction work.

- (a) The *Construction Noise & Vibration Management Plan* must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority *Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline* (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.

Condition

- (b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.
- (c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.
- (d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.

A copy of the Construction Noise & Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.

- (e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.

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

27. Construction Site Management Plan

A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective site fencing and hoardings
- location of site storage areas, sheds, plant & equipment
- location of building materials and stock-piles
- tree protective measures
- dust control measures
- details of sediment and erosion control measures
- site access location and construction
- methods of disposal of demolition materials
- location and size of waste containers/bulk bins
- provisions for temporary stormwater drainage
- construction noise and vibration management
- construction traffic management details
- provisions for temporary sanitary facilities
- measures to be implemented to ensure public health and safety.

The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.

A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.

Condition	
	<p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
28.	<p>Construction Site Management Plan A <i>Sediment and Erosion Control Plan</i> must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.</p>
29.	<p>Public Liability The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p>
30.	<p>Street Tree Management The applicant must submit a payment of \$230 to cover the following costs:</p> <p>(a) A loss of amenity fee in recognition that the only reason this established native tree is being removed from public property is to accommodate the development of the property, with a replacements in front of this site, within either side of the new driveway, is not possible due to line of site issues which may cause vehicles leaving the site from oncoming traffic, with the presence of other trees along the verge, would see as sufficient in an area of busy traffic, with this fee to be used towards additional public plantings in the surrounding area. (NO GST)</p> <p>This fee must be paid into Tree Amenity Income at the Cashier on the Ground Floor of the Administrative Centre prior to a Construction Certificate being issued for the development.</p> <p>The applicant must contact Council's Landscape Development Officer on 9093-6633 (quoting the receipt number) to arrange for planting of replacement street trees elsewhere in the LGA.</p> <p>After this, any further enquiries regarding scheduling/timing or completion of works are to be directed to Council's South Area Tree Preservation & Maintenance Coordinator on 9093-6687.</p> <p>Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.</p>
31.	<p>Construction Traffic Management A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.</p> <p>The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:</p> <ul style="list-style-type: none">• A description of the demolition, excavation and construction works

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Condition	
	<ul style="list-style-type: none"> • A site plan/s showing the site, roads, footpaths, site access points and vehicular movements • Any proposed road and/or footpath closures • Proposed site access locations for personnel, deliveries and materials • Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site) • Provision for loading and unloading of goods and materials • Impacts of the work and vehicular movements on the road network, traffic and pedestrians • Proposed hours of construction related activities and vehicular movements to and from the site • Any activities proposed to be located or impact upon Council's road, footways or any public place • Measures to maintain public safety and convenience <p><i>The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.</i></p> <p>Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.</p> <p>All conditions and requirements of the NSW Police, Roads & Maritime Services, State Transit Authority and Council must be complied with at all times</p> <p>Condition Reason: To ensure a Construction Site Traffic Management Plan is prepared.</p>
32.	<p>Civil Works</p> <p>A separate written approval from Council is required to be obtained in relation to all works which are located externally from the site within the road reserve/public place, in accordance with the requirements of the Roads Act 1993. Detailed plans and specifications of the proposed works are to be submitted to and approved by the Director of City Services prior to commencing any works within the road reserve/public place.</p> <p>All works within the road reserve/public place must be carried out to the satisfaction of Council and certification from a certified practicing engineer is to be provided to Council upon completion of the works.</p> <p>Relevant Council assessment and inspection fees, as specified in Council's adopted Pricing Policy, are required to be paid to Council prior to commencement of the works.</p> <p>Condition Reason: To ensure approval is obtained in relation to all works which are located externally from the site.</p>

DURING BUILDING WORK

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

Condition

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

The sign must be—

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

This section does not apply in relation to—

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

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

34. Restriction on Working Hours

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm • (maximum) • Saturday - No work permitted • Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

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

35. Noise & Vibration

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the

Condition	
	<p><i>Construction Noise & Vibration Management Plan</i>, prepared for the development and as specified in the conditions of consent.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
36.	<p>Construction Site Management</p> <p>Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:</p> <ol style="list-style-type: none"> Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing. Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting. All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible. Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land. Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time. Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings. <p><i>Notes:</i></p> <ul style="list-style-type: none"> <i>Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.</i> <i>A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.</i> <p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p>
37.	<p>Public Safety & Site Management</p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ol style="list-style-type: none"> Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. Sediment and erosion control measures must be provided to the site and be

Condition

maintained in a good and operational condition throughout construction.

- d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- g) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- h) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- i) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

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

38. **Excavations and Support of Adjoining Land**

In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 74 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.

39. **Building Encroachments**

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

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

40. **Survey Report**

A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:

- prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,
- prior to construction (pouring of concrete) of new floor levels,

Condition	
	<ul style="list-style-type: none"> • prior to issuing an Occupation Certificate, and • as otherwise may be required by the Principal Certifier. <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p> <p>Condition Reason: To ensure compliance with approved plans.</p>
41.	<p>Road/Asset Opening Permit</p> <p>A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.</p> <p>The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development. For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.</p> <p>Condition Reason: To ensure works are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p>
42.	<p>Traffic Management</p> <p>Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 – Traffic Control Devices for Works on Roads, at all times.</p> <p>All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.</p> <p>Condition Reason: To ensure adequate provisions are made to ensure pedestrian safety and traffic flow.</p>
43.	<p>Stormwater Drainage</p> <p>Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.</p> <p>The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.</p> <p>A separate written approval from Council is required to be obtained in relation to any proposed discharge of groundwater into Council's drainage system external to the site, in accordance with the requirements of Section 138 of the Roads Act 1993.</p> <p>Condition Reason: To ensure compliance with the consent and relevant standards, and adequate management of stormwater.</p>
44.	<p>Street Tree Management</p> <p>Approval is granted for the removal of the immature Tuckeroo tree within the northern Raymond Ave council verge, plotted east of the existing driveway, in direct conflict with works, can be removed during works, an amenity fee has been added, and with this fee to be used towards additional public plantings in the surrounding</p>

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

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition
<p>45. Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
<p>46. Post-construction Dilapidation Report</p> <p>A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.</p> <p>The dilapidation report shall detail whether:</p> <ul style="list-style-type: none">(a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and(b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent. <p>The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.</p> <p>Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>
<p>47. Sydney Water Certification</p> <p>A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required, will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).</p> <p>Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.</p> <p>The Section 73 Certificate must be submitted to the Principal Certifier and the</p>

Condition	
	Council prior to the issuing of an Occupation Certificate.
	Condition Reason: To ensure the development satisfies Sydney Water requirements.
48.	<p>Waste Management Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.</p> <p>Trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to Council prior to commencing operation of the business.</p> <p>The operator of the business must also arrange for the recycling of appropriate materials and make the necessary arrangements with an authorised waste services contractor accordingly.</p> <p>Condition Reason: To ensure that waste and recycling is appropriately managed.</p>
49.	<p>Waste Management Any liquid trade waste materials are to be disposed of in accordance with the requirements of the Sydney Water, Trade Waste Department (i.e. via a grease trap) and details of compliance are to be submitted to the Certifier prior to the commencement of any works.</p> <p>Condition Reason: To ensure that waste and recycling is appropriately managed.</p>
50.	<p>Street and/or Sub-Address Numbering Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.</p> <p>If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.</p> <p><i>Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.</i></p> <p>Condition Reason: To ensure properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.</p>
51.	<p>Council's Infrastructure, Vehicular Crossings, street verge The applicant must meet the full cost for a Council approved contractor to:</p> <p>(a) Construct a splayed 14.7m wide concrete vehicular crossing and layback at kerb opposite the Raymond Avenue vehicular entrance to the site to Council's specifications and requirements.</p> <p>(b) Remove the redundant concrete vehicular crossing and layback in McCauley Street and reinstate the area with 1.3m wide concrete footpath,</p>

Condition

turf and integral kerb and gutter to Council's specifications and requirements.

The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.

All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:

- (a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
- (b) Works on Council land must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
- (c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

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

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

52. **Stormwater Drainage**

Should an infiltration area or pump-out system be provided, a works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):

- The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
- Details of infiltration/absorption systems; and
- Details of pumping systems installed (including wet well volumes).

Should a infiltration area or pump-out system be provided, a "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite infiltration/pump-out system is maintained and that no works which could affect the design function of the infiltration/pump-out system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not

Condition

be released, varied or modified without the consent of the Council.

Notes:

- (a) The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- (b) The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.
- (c) Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.

Condition Reason: To ensure compliance with the consent and relevant standards, and adequate management of stormwater.

53. **Carparking**

The proposed carpark shall be finished in a manner fit for its intended use. The car spaces shall be formalised with line-marking and numbering/labelling with such works completed prior to the issuing of an occupation certificate.

Condition Reason: To ensure that the carpark is fit for its intended use.

54. **Stormwater Drainage**

A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration system is maintained and that no works which could affect the design function of the detention/infiltration system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- (a) The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- (b) The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.
- (c) Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.

A works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):

- Finished site contours at 0.2metre intervals;
- The location of any detention basins/tanks with finished surface/invert levels;
- Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
- Volume of storage available in any detention areas;

	Condition
	<ul style="list-style-type: none">• The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;• Details of any infiltration/absorption systems; and• Details of any pumping systems installed (including wet well volumes). <p>The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.</p> <p>The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To ensure compliance with the consent and relevant standards, and adequate management of stormwater.</p>
55.	<p>Undergrounding of Power</p> <p>The Principal Certifier shall ensure that power supply to the completed development has been provided as an underground (UGOH) connection from the nearest mains distribution pole in Raymond Avenue. All work is to be to the requirements and satisfaction of Ausgrid and at no cost to Council.</p> <p>Condition Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground.</p>
56.	<p>Operational Noise Management Plan</p> <p>An Operational Noise Management Plan shall be developed and implemented for the operations of the business, which outlines how the operations of the business will address the following;</p> <ul style="list-style-type: none">• Ensure compliance with the relevant conditions of approval,• Include all operational noise recommendations in the Acoustic Report prepared by Koikas Acoustics P/L (Project No. 6129, dated 26/04/2024).• Ensure compliance with relevant noise criteria and minimise noise emissions and associated nuisances,• Minimise the potential environmental and amenity impacts upon nearby residents,• Clearly state how the on-site operations will be effectively managed to comply with conditions of consent,• Effectively manage and respond to resident complaints,• Encourage and educate external carrier vehicles on quiet noise practices e.g., implementation of broadband-type (squawker) reversing alarms on vehicles, no idling on site when waiting to enter/exit the premises and one way driving routes where possible to reduce the need for the use of reversing alarms. <p>The operational noise management plan shall be reviewed/approved by the acoustic consultant for the application and include any recommended acoustic measures required, prior to the issue of the occupational certificate. A copy of the plan shall be forwarded to Council once approved and be complied with at all times.</p> <p>Condition Reason: To protect the acoustic amenity of neighbouring properties.</p>
57.	<p>Staff Noise Awareness Programme</p> <p>A staff noise awareness programme is to be developed by the acoustic consultant</p>

Condition	
	<p>and implemented which aims to minimise noise emissions from general operations. The programme should be included as part of plan of management and address noise emissions from the following;</p> <ul style="list-style-type: none"> • Care during the truck movements on the site, including site signage requirements. • Care during the truck servicing/repairs • Immediate reporting and repair of any machinery defects which may cause excess noise generation. • Clear instruction to truck operators of required vehicle movement paths. <p>Condition Reason: To protect the acoustic amenity of neighbouring properties.</p>
58.	<p>Acoustic Report An acoustic report/compliance statement shall be prepared by a suitably qualified and experienced consultant in acoustics, must be provided to Council prior to the occupation certificate being issued for the development, which demonstrates and confirms that all acoustic design requirements have been satisfied.</p> <p>Condition Reason: To protect the acoustic amenity of neighbouring properties.</p>
59.	<p>Landscaping Certification Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the submitted Landscape Plans.</p> <p>Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.</p> <p>That part of the nature-strip upon Council's footway which is damaged during the course of the works shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.</p> <p>Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.</p>

OCCUPATION AND ONGOING USE

Condition	
60.	<p>Operational Hours The base operational hours of the premises are as follows:</p> <ul style="list-style-type: none"> • 7:00am and 10:00pm, Monday to Sunday (inclusive). • Truck repairs and servicing between 7:00am and 6:00pm only. • At all other times, no operation or use is permitted. <p>Condition Reason: To ensure that the approved use is operated within the approved hours of operation, to ensure safety and security and protect the amenity of surrounding areas.</p>
61.	<p>Extended Operational Hours – Reviewable Condition Notwithstanding Condition 60 above, the extended operational hours of the premises are as follows:</p>

Condition

- 24-hours, Monday to Sunday (inclusive).
- Truck repairs and servicing between 7:00am and 6:00pm only.

The extended operational hours will be reviewed by Council in six months and at the end of twelve months from the date of this consent. Appropriate supporting evidence (including but not limited to, relevant acoustic validation measurement/report as per Condition 62 below) must be provided at the end of these review periods to demonstrate compliance with all conditions of this consent as part of the review.

Should the application fail to validate 24-hour operations as complying with required noise level criteria, the hours of operation shall revert to the base hours (as per Condition 60 above).

Condition Reason: To ensure that the approved use is operated within the approved hours of operation, to ensure safety and security and protect the amenity of surrounding areas.

62. **Acoustic Validation Reports**

Acoustic validation reports, prepared by a suitably qualified and experienced consultant in acoustics, must be provided to Council **within 6 and at 12 months after commencement of use**, which demonstrates and confirms that the relevant provisions of the *Protection of the Environment Operations Act 1997*, Industrial Noise Policy and the noise criteria and requirements contained in this consent has been satisfied (including any relevant approved acoustic report/s and recommendations). The assessment and report should include all relevant fixed and operational noise sources.

The report should include but not be limited to:

- All relevant fixed and operational noise sources operating simultaneously e.g., traffic noise off and onsite, mechanical plant and equipment, truck repairs/servicing, forklift movements etc
- Vehicle noise including truck noise using the premises during the approved 24-hour operation,
- Noise from vehicles trucks using the proposed development during the day/evening nighttime period including assessment of reversing alarms,
- Noise validation with required noise criteria shall be provided for the proposed development and all operations over the 24-hour period,
- Assessment of compliance must be based on nearest sensitive receivers.
- Shall include, but not be limited to assessment of sleep disturbance during the nighttime period.
- The acoustic report shall include assessment of any noise complaints received by Council or the operator during the 12-month trial period.

Any recommended measures for acoustic improvement must be implemented and form part of this consent.

Condition Reason: To protect the acoustic amenity of neighbouring properties.

63. **Noise Levels**

The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the

	Condition
	<p>background (L_{A90}), 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed as an $L_{Aeq, 15 \text{ min}}$ and adjusted in accordance with the NSW Environmental Protection Authority's Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).</p> <p>Condition Reason: To protect the acoustic amenity of neighbouring properties.</p>
64.	<p>Public Nuisance</p> <p>The use and operation of the premises shall not give rise to an environmental health or public nuisance.</p> <p>There are to be no emissions or discharges from the premises which give rise to a public nuisance or result in an offence under the <i>Protection of the Environment Operations Act 1997</i> and <i>Regulations</i>.</p> <p>Condition Reason: To protect the amenity of neighbouring properties.</p>
65.	<p>Operational Conditions</p> <p>Notwithstanding the description in the application to the use of the premises inter alia as a truck depot, the premises are to operate as truck parking with ancillary servicing and activities. The use and operation of the premises shall accord with the following:</p> <ul style="list-style-type: none"> (a) The operator(s) shall ensure that no on-street queuing or parking of vehicles occurs outside the premises. (b) A maximum of 8 prime movers (with trailers), 3 prime movers (without trailers), and 10 cars are to be accommodated on the site at any one time in accordance with the endorsed plans. (c) All trucks must turn off engines when vehicles are stationary, other than required for servicing. All trucks must turn off stationary external motors such as refrigeration units if attached to the vehicle. (d) Approved traffic routes shall be complied with at all times. (e) There is to be no air brake or compression brake testing for trucks on the site. (f) The site shall be provided with clear signage outlining site vehicle movement requirements to minimise noise in accordance with acoustic requirements and operational management plans. (g) All truck repairs/ servicing shall be undertaken in proposed work areas. (h) The premises shall not be used as a container depot. (i) All work/repair areas shall be graded and drained to sewer in accordance with Sydney Water requirements. If required Sydney Water licence shall be obtained prior to commencement of operational work on the site. (j) All repair areas or storage areas for chemicals shall be stored and provided with bunding in accordance with NSW EPA and Safe work requirements. (k) Emergency spill kits for pollution incidents shall be kept on the site adjacent to work areas. Staff shall be instructed in their location and

	Condition
	use. Condition Reason: To ensure that the premises is operated within the approved consent, to ensure safety and security and protect the amenity of surrounding areas. (Condition amended – 13 March 2025 – DA/250/2024/A – PAN-494880)
66.	Vehicle Movements Trucks shall only enter and exit the premises via Raymond Avenue. No trucks are permitted to access the site via McCauley Street. All truck movements into the site must be conducted by turning right from Raymond Avenue. All truck movements out of the site must be conducted by turning left onto Raymond Avenue. Trucks accessing and exiting the site are not permitted to travel along the part of McCauley Street between Perry Street and the southern end of Raymond Avenue. Condition Reason: To protect the acoustic amenity of neighbouring properties.
67.	Incident Reporting The operator(s) must establish and maintain a formal and documented system for the recording and resolution of complaints made to the premises by residents. All complaints are to be attended to in a courteous and efficient manner and referred promptly to the management. The appropriate remedial action, where possible, is to be implemented immediately and the operator(s) is to contact the complainant within 48 hours to confirm details of action taken. Upon reasonable prior notice, the management must make available the incident book to the Council officers. Condition Reason: To protect the acoustic amenity of neighbouring properties.

Development Application Report No. D9/25

Subject: 8 Ormond Gardens, Coogee (DA/1013/2024)

Executive Summary

Proposal:	Construction of a 5-storey residential flat building with basement level, five (5) residential apartments, eight (8) car parking spaces, associated ancillary and landscaping works and Strata subdivision (Infill Affordable Housing) (Variation to Maximum Building Height and Maximum Floor Space Ratio development standards).
Ward:	East Ward
Applicant:	Patchy Properties Pty Ltd
Owner:	Patchy Properties Pty Ltd
Cost of works:	\$7,767,444.00
Reason for referral:	The development contravenes the development standards for building height, floor space ratio, affordable housing component, and affordable housing parking space rate by more than 10%; the development is subject to Chapter 4 'Design of residential apartment development' of the Housing SEPP 2021 as the proposed development is for the erection of a new building that is 3 or more storeys and contains at least 4 dwellings; and 20 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/1013/2024 for construction of a 5-storey residential flat building with basement level, five (5) residential apartments, eight (8) car parking spaces, associated ancillary and landscaping works and Strata subdivision, at No. 8 Ormond Gardens, Coogee NSW 2034, for the following reasons:

1. Pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives of the R3 Medium Density Residential zone in that it is inconsistent the desirable elements of the existing streetscape and built form, fails to protect the amenity of residents, and fails to encourage housing affordability.
2. Pursuant to the provisions of section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives and controls of the Randwick Development Control Plan 2013:
 - Part B2: Heritage
 - Part B4: Landscaping and Biodiversity
 - Part B6: Recycling and Waste Management
 - Part B7: Transport, Traffic, Parking and Access
 - Part C2: Medium Density Residential
3. Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is inconsistent with the existing streetscape context and character of development in the locality, resulting in adverse impacts on the built environment. Furthermore, the proposal will result in detrimental social or economic impacts on the locality, in terms of providing sufficient affordable housing.

4. Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is considered to not be in the public interest as the proposal is inconsistent with the objectives of the zone and will result in significant adverse environmental, social or economic impacts on the locality.
5. Pursuant to section 16(1) of the Housing SEPP, the proposed development fails to comply with the floor space ratio development standard for in-fill affordable housing.
6. Pursuant to section 16(2) of the Housing SEPP, the proposed development fails to comply with the affordable housing component development standard for in-fill affordable housing.
7. Pursuant to section 16(3) of the Housing SEPP, the proposed development fails to comply with the height of building development standard for in-fill affordable housing.
8. Pursuant to section 19(2)(a) of the Housing SEPP, the proposed development fails to comply with the site area development standard for in-fill affordable housing.
9. Pursuant to section 19(2)(e) of the Housing SEPP, the proposed development fails to comply with the affordable housing parking space rate development standard for in-fill affordable housing.
10. Pursuant to section 20(3)(a) of the Housing SEPP, the proposed development is incompatible with the desirable elements of the character of the local area.
11. Pursuant to section 4.6 of the Resilience and Hazards SEPP, the applicant has failed to adequately demonstrate whether the land on the subject site is contaminated.
12. Pursuant to clause 4.6 of RLEP 2012, the applicant has failed demonstrate that the matters of the clause have been adequately addressed and that consent should be granted to the development application, which contravenes:
 - The building height development standard in clause 4.3 of RLEP 2012 and is section 16(3) of Housing SEPP.
 - The floor space ratio development standard in clause 4.4 of RLEP 2012 and in section 16(1) of Housing SEPP.
 - The site area development standard in section 19(2)(a) of Housing SEPP.

The applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.

13. Pursuant to clause 4.6 of RLEP 2012, the applicant has failed to submit a written request to vary the affordable housing component and affordable housing parking space rate, pursuant to section 16(2) and section 19(2)(e) of the Housing SEPP, respectively. The applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
14. Pursuant to clause 5.10 of the RLEP 2012, the proposed development will have a detrimental impact and effect on heritage significance of two heritage items, being I65 'Catley's Wall' and I66 'Inter-war residential flat building'.
15. Pursuant to clause 6.2 of the RLEP 2012, the proposed development will have a likely detrimental impact on heritage items or features of the surrounding land.
16. Pursuant to clause 6.11 of the RLEP 2012, the proposed development fails to exhibit design excellence.

Attachment/s:

Nil

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 <p>N.b. 20 (twenty) submission received during the notification period, including the following:</p> <ul style="list-style-type: none"> • 3x from 7 Ormond Gardens • 4x from 108 Brook Street • 4x from 114-116 Brook Street • The Coogee Precinct Committee • 2x confidential submissions 	
	Subject Site
	Submissions received
 <p>North</p>	
Locality Plan	

1. Executive summary

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

- The development contravenes the development standard for building height by more than 10%.
- The development contravenes the development standard for floor space ratio by more than 10%.
- The development contravenes the development standard for affordable housing component by more than 10%.
- The development contravenes the development standard for affordable housing parking space rate by more than 10%.
- The development is subject to Chapter 4 'Design of residential apartment development' of the Housing SEPP 2021 as the proposed development is for the erection of a new building that is 3 or more storeys and contains at least 4 dwellings.
- 20 unique submissions by way of objection were received.

The proposal seeks development consent for construction of a 5-storey residential flat building with basement level, five (5) residential apartments, eight (8) car parking spaces, associated ancillary and landscaping works and Strata subdivision.

The key issues associated with the proposal relate to building height, floor space ratio, affordable housing component, design excellence, heritage conservation, contamination, site area, car parking, local area compatibility, setbacks and visual privacy, communal open space, private open space, solar access, acoustic privacy, view sharing, resident amenity, deep soil and landscaping, external wall height, and earthworks.

The Key Issues section of the report provides outlines the main issues with the proposed development relating to the site planning, building envelope and residential amenity impacts.

Council notes that on 23 January 2025, the applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Council's deemed refusal of the development application.

Therefore, the proposal is recommended for refusal.

2. Site Description and Locality

The site is located at 8 Ormond Gardens, Coogee, and is legally described as Lot 8, DP 20035. An aerial photograph of the site is provided at Figure 1.

The site has an area of 424.8m² and is generally rectangular in shape, with a 26.15m frontage to Ormond Gardens (to the south), a 11.58m frontage to Brook Street (to the east), a 29.2m northern side boundary, and a 14.64m western side boundary. The site also contains a curved splay corner between the Ormond Gardens and Brook Street boundaries being 4.31 in length (to the south-east).

The site rises approximately 2m in a westerly direction from the Brook Street frontage to the western side boundary.

The site is currently vacant with some small landscaping to the western and southern sides of the site. The northern side of the site is occupied by a sandstone retaining wall known as 'Catley's Wall', which is a local heritage 'I65' in accordance with Randwick Local Environmental Plan 2012 ("RLEP"). Other retaining walls are located along the boundaries of the site to all sides. See Figures 1 and 2 for images of the subject site of this development.

The site is within Zone R3 Medium Density Residential under the provisions of RLEP.

Surrounding development comprises mixed residential and commercial development, including dwelling houses, residential flat buildings, commercial premises, and mixed-use development. To the north of the site at 108 Brook Street is a four storey residential flat building, a local heritage item 'I66 - Inter-war residential flat building' as identified in the RLEP 2012, comprising 14x units.

To the west of the site at 7 Ormond Gardens is a two storey residential flat building comprising 4x units. To the east of the site is Coogee Oval, which includes community facility buildings for recreational uses.

The subject site is located within the Coogee Bay Basin area. The site is within the immediate locality of Coogee Beach and the local centre situated around the eastern section of Coogee Bay Road and the Coogee Bay Hotel. The area has regular bus services transporting commuters to large commercial hubs at Randwick Junction, Bondi Junction and Eastgardens.

D9/25



Figure 1: Photo of the subject site enclosed in temporary fencing (Source: Randwick City Council)

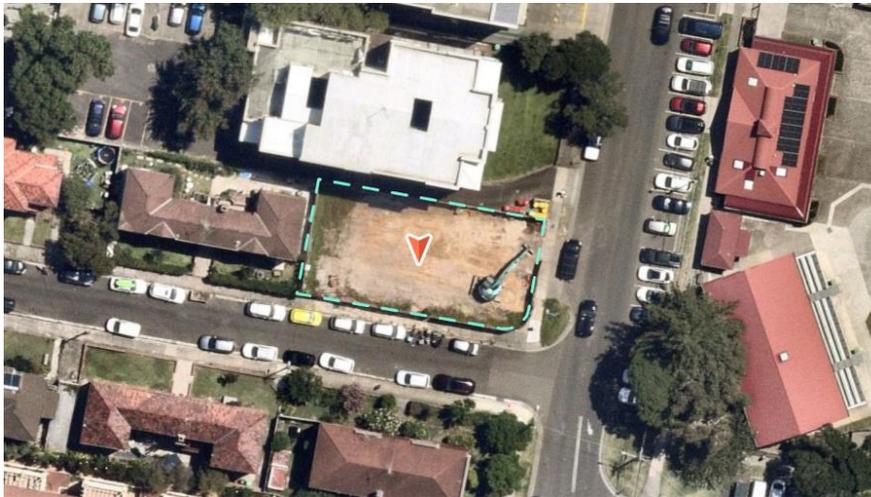


Figure 2: Aerial photograph of the subject site in January 2025 (Source: Nearmap)

3. Relevant History

Historical Applications

Building Application No. BA/626/1941 was approved for a residential flat building containing 4 units.

Development Application No. DA/131/2002 was approved on 09 December 2002 for the demolition of the existing three storey residential flat building and development of a new multi-unit dwelling of 4 apartments with parking for 7 vehicles, landscaping and strata subdivision. This subject development application was never activated.

Development Application No. DA/1027/2007 was approved on 18 April 2008 for alterations & additions to existing multi-unit housing development including internal alterations, addition of 2 studio apartments at new upper level, exterior refurbishment including new decks at each level, addition of 2 additional hard stand car park spaces & strata subdivision. Two subsequent Construction Certificates were issued in relation to this subject development application, being CC/166/2013 and CC/517/2015.

Pre-Lodgment Application No. PL/31/2023 was withdrawn on 23 January 2024 for the demolition of existing unit development and construction of 4 new units with basement parking.

Demolition of Previous Building on Site

On 28 February 2024, following receiving complaints regarding the condition of the previous building on site, Council issued a Notice of Intention to Give an Order to (1) demolition of the dilapidated building and associated scaffolding and building attachments, and (2) removal of the demolished materials and associated scaffolding and building attachments, from the site.

On 25 March 2024, Council issued an Order to demolish and remove the dilapidated building, associated scaffolding and building attachments located at the abovementioned premises.

On 20 June 2024, Council's Building Compliance team confirmed that the building demolition had been completed.

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On 30 October 2024, the applicant provided a view impact analysis.

On 30 October 2024, Council requested additional information from the applicant including information on the Registered Housing Provider, Clause 4.6 Statements, Flooding, and a BCA Compliance Report.

On 04 November 2024, the applicant provided information on the Registered Housing Provider, 2x Clause 4.6 Statements, and a BCA Compliance Report.

On 14 November 2024, Council conducted a site visit. See Figure 3 below showing the existing site condition from this site visit.

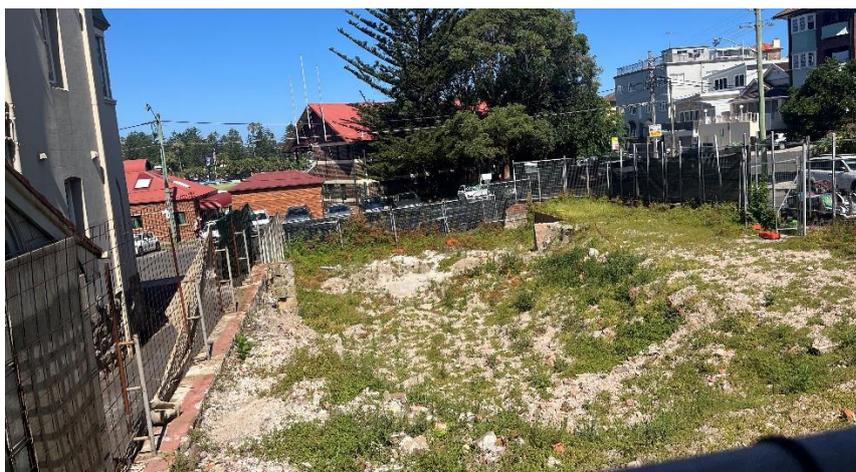


Figure 3: Photo of the subject site from 7 Ormond Gardens looking east (Source: Randwick City Council)

On 18 December 2024, the applicant and Council met online to discuss Council's preliminary assessment of the development application and identified issues.

On 20 December 2024, Council issued an additional information request outlining the preliminary issues relating to the development application.

On 23 January 2025, the applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against Council's deemed refusal of the development application.

Recent Site Works

Between 22 January 2025 and 24 January 2025, Council received multiple requests to investigate suspected unauthorised works being carried out on the subject site, including removal of debris and addition of soil fill on the site. Figure 4 below is a photograph of the site taken on 22 January 2024.

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Figure 4: Photo of the subject site from Brook Street looking west (Source: Randwick City Council)

On 4 February 2025, Council’s Building Compliance team attended the site again following further requests to investigate. Figures 5 and 6 below are photographs of the site taken on this date. The photographs appear to show that the site has been filled with soil.



Figure 5: Photo of the subject site from Ormond Gardens looking north (Source: Randwick City Council)

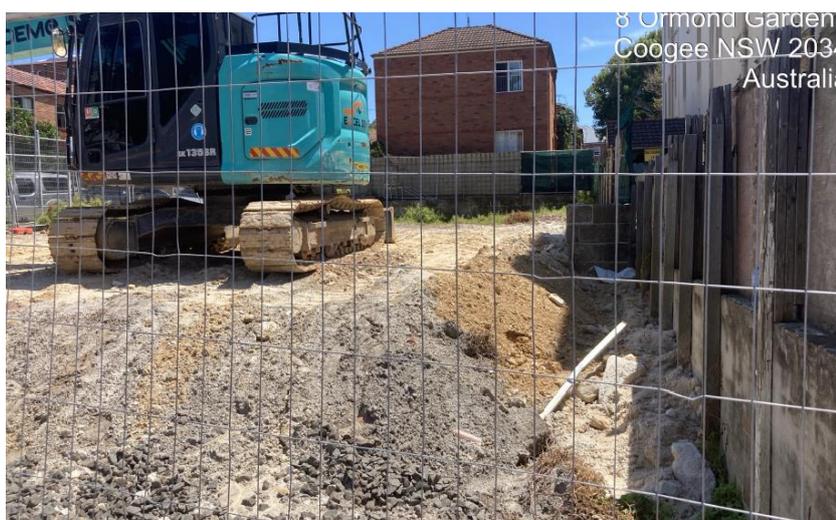


Figure 6: Photo of the subject site from Brook Street looking west (Source: Randwick City Council)

To date, Council’s Building Compliance team is currently investigating these works to determine if the subject works being completed are permitted as exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

4. Proposal

The proposal seeks development consent for construction of a 5-storey residential flat building with basement level, five (5) residential apartments, eight (8) car parking spaces, associated ancillary and landscaping works and Strata subdivision.

Specifically, the proposed development includes:

- Basement: 8x vehicle spaces, bin storage room, plant and pump room, storage.
- Ground floor: 1x 2-bedroom affordable housing unit, building lobby, driveway to basement below, plant room/services, rainwater tank room, 4x bicycle racks.
- First to fourth floors: 1x 3-bedroom unit with an eastern balcony to each level.
- Roof: Solar PV panels, A/C condensers, lift overrun and services.

The development data for the proposed development is as follows:

- Five (5) storey residential flat building height.
- Maximum building height of 17.34m.
- Gross floor area (“GFA”) of 630.5m², equating to floor space ratio (“FSR”) of 1.48:1.

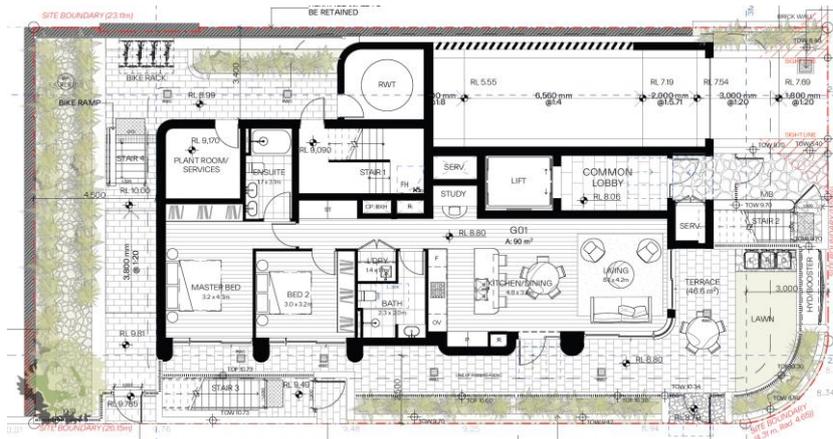


Figure 7: Proposed ground floor plan – 8 Ormond Gardens, Coogee (Source: PBD Architects)

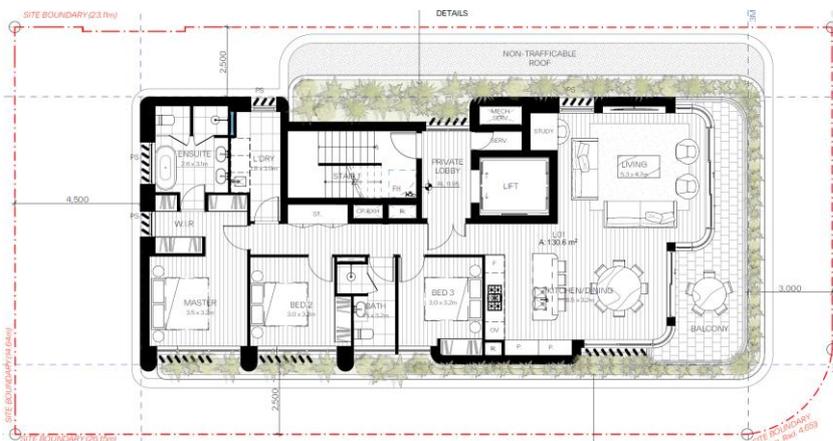


Figure 8: Proposed typical first-third floor plan – 8 Ormond Gardens, Coogee (Source: PBD Architects)

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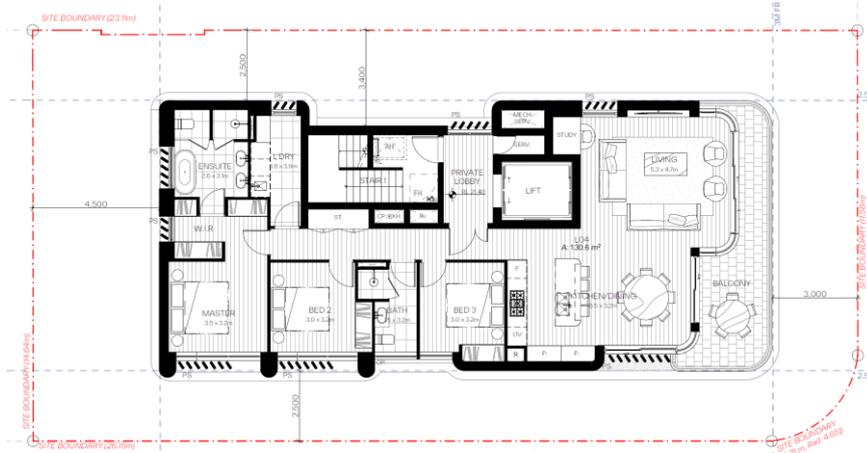


Figure 9: Proposed fourth floor plan – 8 Ormond Gardens, Coogee (Source: PBD Architects)



Figure 10: Proposed southern elevation to Ormond Gardens – 8 Ormond Gardens, Coogee (Source: PBD Architects)



Figure 11: Proposed eastern elevation to Brook Street – 8 Ormond Gardens, Coogee (Source: PBD Architects)

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with Council’s Community Engagement Strategy. The following submissions were received as a result of the notification process and have been paraphrased and summarised below:

- 2 Ormond Gardens.
- 4 Ormond Gardens.
- 3x unique submission from 7 Ormond Garden.
- 90 Brook Street.
- 98 Brook Street.
- 7/108 Brook Street.
- 9/108 Brook Street.
- 10/108 Brook Street.
- Resident of 108 Brook Street.
- 2x unique submissions from 7/114-116 Brook Street.
- 8/114-116 Brook Street.
- 10/114-116 Brook Street.
- 12/89 Mount Street and on behalf of the Strata Corporation for the building.
- 12/5 Glenwood Avenue.
- The Coogee Precinct Committee.
- 2x submission who have requested to remain confidential.

Issue	Comment
<p><u>Overdevelopment (Height and FSR)</u></p> <ul style="list-style-type: none"> - Exceedance of height, floor space and minimum open space requirements result in overdevelopment. Visual bulk and impacts neighbourhood character - Out of scale with adjoining RFBs in Ormond Gardens and Brook Street to the south. - The RFBs in Ormond Gardens are consistent with current planning controls, there is no basis for applicant’s assertion that the buildings will be redeveloped. Not sympathetic to the scale of buildings in Ormond Gardens - Inconsistent with village style buildings in Coogee, to Brook Street and Ormond Gardens. - Not in keeping with character of the area. - Does not comply with site area. Along with variations to height and FSR, is excessive and incompatible with local character. - It is essential zoning be adhered to. Allowing buildings higher than the R3 allowance would set concerning precedent and undermine established zoning regulations. 	<p>Agreed, Council does not support such significant variations to the building height and FSR, which results in an overdevelopment of the subject site (of which is undersized as required under the Housing SEPP).</p> <p>Whilst the development is permitted in the R3 zone with consent, Council is not satisfied that the proposed development is in keeping with the existing streetscape.</p>
<p><u>Heritage</u></p> <ul style="list-style-type: none"> - The building’s excessive bulk compromises heritage values of Lachlan apartments. - Development will obstruct view lines to Lachlan Flats from the south. - How will the “Porte Cochere” of Lachlan Building be protected? What fencing will be in this section? - Too close to heritage retaining wall. Proximity risks overshadowing and detracting from the heritage value of the Lachlan building. - Excavation close to heritage wall, will it be affected? - No respect of heritage buildings in Ormond Gardens 	<p>Council’s Heritage Planner is not satisfied that the proposed development respects the adjoining Lachlan Building at 108 Brook Street as well as Catley’s Wall (including how it will be protected).</p> <p>See Appendix 1 for a detailed assessment.</p>

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Issue	Comment
<p><u>Affordable Housing Justification</u></p> <ul style="list-style-type: none"> - The provision for affordable housing does not override the requirement to adhere to planning controls. - This proposal is not about providing additional housing but to provide expense apartments. - 5 apartments across 5 floors are a poor use of space, does not assist with housing targets. - Council needs more units, the development should provide more units and less high end luxury apartments. 	<p>Council is not satisfied that sufficient floor area has been reserved for the affordable housing component, in accordance with the Housing SEPP. See detailed assessment below.</p>
<p><u>Landscaped Space</u></p> <ul style="list-style-type: none"> -The buildings in Ormond Gardens have front and rear gardens - Lack of landscape space is incompatible with the area’s established character. Surrounding properties have larger landscaped areas, providing a balance of built and open spaces. Additional landscaping required. -New canopy trees should be planted. - Landscaping should be retained at the rear. - Lack of green spaces diminishes aesthetic qualities of the development. - Impacts stormwater absorption and natural cooling. 	<p>Agreed, insufficient area has been reserved for deep soil areas on the site with sufficient planting and canopy trees. This will impact upon the streetscape, amenity for future residents, and stormwater absorption.</p>
<p><u>Setback</u></p> <ul style="list-style-type: none"> - The site has an Ormond Gardens address. The building should be setback the same as the original building, in line with the other Ormond Gardens buildings. Impacts streetscape. - Will impact enjoyment of front gardens to Ormond Gardens. - Important to maintain for streetscape appearance and to protect neighborhood amenity. - 4.5m rear setback is a shortfall of the 5m required, impact visual bulk and privacy. 	<p>Agreed, the proposed development fails to respect the predominant front setback to the Ormond Gardens frontage.</p> <p>The development does comply with the 4m side setback control to the western boundary (N.b. as a corner lot, no rear boundary). However, the development does not comply with the northern side setback to the ground floor.</p>
<p><u>Visual Privacy Impacts</u></p> <ul style="list-style-type: none"> - Overlooking impacts from the southern façade windows. - Increase in building footprint impacts privacy - Balconies, terraces and windows will infringe on privacy of adjoining neighbours. - Loss of privacy will be significant as windows in Ormond Gardens start at 90cm height, meaning the 4th and 5th floor apartments will have a clear view of people in living and bedrooms. - Increase in FSR closer to boundaries results in additional privacy impacts to neighbouring properties. 	<p>Windows and balconies to the street frontages are sufficiently setback from neighbours across the road reserves.</p> <p>The proposal provides minimal habitable windows to the northern and western side elevations. These windows are provided with paneling, of which the details are unclear as to whether they will provide sufficient privacy to the northern and western adjoining neighbours at 108 Brook Street and 7 Ormond Gardens respectively.</p>

Issue	Comment
<p><u>Acoustic Privacy Impacts</u></p> <ul style="list-style-type: none"> - Ormond Gardens is currently quiet. Aircon and heating/cooling systems will create new pollution. More information is required for noise impacts from these services. - Exceeding building envelope controls would result in higher density, leading to increased noise levels. This would disrupt the peaceful nature of the neighbourhood and affect quality of life. - Carpark exhaust to roof should be controlled by carbon monoxide sensors so that it runs only when required. Should also be acoustically treated. - Noise during construction and operation, impacting quality of life. - No information on what will be in ground floor plant room. The room should have acoustic treatment. 	<p>Agreed, the development will result in acoustic impacts.</p> <p>The applicant has failed to provide an Acoustic Report that considers the noise impacts of the development on neighbouring dwellings.</p>
<p><u>Solar Impacts</u></p> <ul style="list-style-type: none"> -The development will impact natural light received by the building at 114-116 Brook Street. Dwellings orientate to the north towards Ormond Gardens. Reduced northern light will affect the wellbeing of residents and financial implications to value. - Shadows from the fifth floor will cast shadows on 1 & 2 Ormond Gardens - Additional height and close proximity will further reduce open sky and 2 Ormond Gardens, reducing daily direct sun by 50% for most of the year. - Shadow diagrams show identical shadowing from the original building and new. This cannot be accurate. 	<p>Agreed, the solar diagrams are insufficient in the following ways:</p> <ul style="list-style-type: none"> • The extent of shadows from the compliance building envelope and the proposed development. • The shadow diagrams only show 8am, 12pm and 4pm, instead of hourly solar impacts. • The shadow diagrams of 8am, 12pm and 4pm are cutoff. • The sun eye diagrams are not labelled with the respective room uses. <p>As such, Council cannot undertake a comprehensive solar assessment.</p>
<p><u>Views Sharing Impacts</u></p> <ul style="list-style-type: none"> - The development will reduce views to 10/108 Brook Street, several units in our building including Unit 12, 89 Mount Street, the front gardens to Ormond Gardens (include 7 Ormond Gardens), 5 Glenwood Avenue, diminishing views towards Coogee Beach and Coogee Oval. 	<p>Council’s Assessing Officer has visited neighbouring sites and can confirm that the development will impact views. The Applicant has failed to provide a comprehensive view sharing assessment to determine the view impact of the proposed development.</p>
<p><u>Traffic</u></p> <ul style="list-style-type: none"> -Ormond Gardens is cul-de-sac, increased traffic from additional residents would exacerbate congestion and pose safety risks. The current infrastructure cannot support the additional residents. 	<p>The garage entrance to the basement parking is to Brook Street, which will not impact traffic flow in Ormond Gardens. An increase in traffic impacts has not been raised by Development Engineering as an issue of the proposed development.</p>

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Issue	Comment
<p><u>Fencing</u></p> <ul style="list-style-type: none"> - No description of fencing. - Request fencing be timber rather than Colorbond or similar, in keeping with other fencing in Ormond Gardens. - Unclear fencing treatment to Catleys Wall 	<p>Agreed, the proposed development fails to provide sufficient detail on fencing proposed to the side boundaries.</p>
<p><u>Environmental and Health Impacts</u></p> <ul style="list-style-type: none"> - The construction and increased density could have adverse environmental impacts including removal of vegetation, increased run off, impact on wildlife. - The construction of the development will impact the wildlife from removal of vegetation and increased traffic noise. - The development result in wind tunnelling. - This proposal undermines the assurance for character and liveability based on due diligence carried out by other owners - Impact on mental health and wellbeing from overdevelopment of site and visual impacts. 	<p>Council is satisfied that the proposed development will not adversely impact upon the environment and health of the area and residents, noting that a development on this vacant site is reasonable and expected. That being said, the scale of the development is not supported.</p> <p>Council is satisfied that the development will not result in any adverse wind tunnelling impacts.</p>
<p><u>Previous Development</u></p> <ul style="list-style-type: none"> - The previous DA approval which maintained building controls consisted of 4x apartments, with min 2 bedrooms to each. With all the additional floor area, only provide 5x apartments. Poor use of site and space. - We believe it better to re-purpose old buildings than demolish and build new. 	<p>Noted.</p>
<p><u>Street Reference</u></p> <ul style="list-style-type: none"> -The site is Ormond Gardens and not Brook Street. 	<p>Noted.</p>

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

The aims of Chapter 2 are:

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

The proposed development does not involve the removal of any vegetation (including any trees). As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.2. SEPP (Housing) 2021

Chapter 2 – Affordable Housing

Chapter 2, Division 1 of the Housing SEPP relates to development for the purpose of in-fill affordable housing. An assessment of the proposal against the relevant standards is provided in the table below.

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
15C Development to which division applies		
(1) This division applies to development that includes residential development if—		
(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and	Residential flat buildings are permitted under RLEP 2012.	Yes, complies
(b) the affordable housing component is at least 10%, and	Yes, >10% of floor area reserved for the affordable housing component.	Yes, complies
(c) all or part of the development is carried out— (i) or development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.	Located in an accessible area, in accordance with 400m walking distance of a bus stop used by a regular bus service, within the meaning of the <i>Passenger Transport Act 1990</i> , that has at least 1 bus per hour servicing the bus stop between— (i) 6am and 9pm each day from Monday to Friday, both days inclusive, and (ii) 8am and 6pm on each Saturday and Sunday.	Yes, complies
(2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division.	Affordable housing not required in another policy, EPI or planning agreement.	Yes, complies
16 Affordable housing requirements for additional floor space ratio		
(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).	RLEP FSR = 0.9:1 FSR w Bonus = 1.17:1 Proposed FSR = 1.48:1 (or 630.5m ²)	No, see Clause 4.6 Assessment below
(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows— $\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$	Additional FSR = 0.58:1 As Percentage = 32.5% (being 64.9% (630.5sqm being proposed GFA/ 382.32sqm being max GFA of 0.9:1 FSR DS) / 2)	No, see Clause 4.6 Assessment below

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Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
	Proposed = 14.3%, based on the affordable housing component being 90.45m ² and the GFA being 630.5m ²	
(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).	Same height and FSR bonus under the SEPP. RLEP Height = 12m Height w Bonus = 15.6m Proposed Height = 17.34m (to the solar panels) and 16.89m (to the roof parapet).	No, see Clause 4.6 Assessment below
(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.	N/A	N/A
18 Affordable housing requirements for additional building height		
(1) This section applies to development that includes residential development to which this division applies if the development— (a) includes residential flat buildings or shop top housing, and (b) does not use the additional floor space ratio permitted under section 16.	The proposed development is for a residential flat building however uses section 16.	N/A
(2) The maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height of up to 30% , based on a minimum affordable housing component calculated in accordance with subsection (3).	N/A	N/A
(3) The minimum affordable housing component, which must be at least 10%, is calculated as follows— $\text{affordable housing component} = \frac{\text{additional building height}}{2} \text{ (as a percentage)}$	N/A	N/A
19 Non-discretionary development standards—the Act, s 4.15		
(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—		
(a) a minimum site area of 450m ² ,	Site area = 424.8m ²	No, see Clause 4.6 Assessment below
(b) a minimum landscaped area that is the lesser of— (i) 35m ² per dwelling, or (ii) 30% of the site area,	Min = 127.44sqm (30% of 424.8sqm), lesser than 175sqm (5x dwellings).	Yes, complies

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
	Proposed = 48% (221.3m ²)	
(c) a deep soil zone on at least 15% of the site area, where— (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,	As per clause 19(3), not applicable as Section 4 applies. See below.	N/A
(d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,	As per clause 19(3), not applicable as Section 4 applies. See below.	N/A
(e) the following number of parking spaces for dwellings used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,	Min = 0.5 (or 1) Proposed = 0 spaces have been allocated to the 2-bedroom unit (as per draft strata plans).	No, see Clause 4.6 Assessment below
(f) the following number of parking spaces for dwellings not used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	Min = 6 spaces (being 4 x 1.5) Proposed = 8 spaces	Yes, complies
(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,	ADG Min 2 bed = 70sqm Min 3 bed = 90sqm Proposed 2 bed = 92sqm Proposed 3 bed = 133.6sqm	Yes, complies
(h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,	N/A	N/A
(i) if paragraphs (g) and (h) do not apply, the following minimum floor areas— (i) for each dwelling containing 1 bedroom—65m ² , (ii) for each dwelling containing 2 bedrooms—90m ² , (iii) for each dwelling containing at least 3 bedrooms— 115m ² plus 12m ² for each bedroom in addition to 3 bedrooms.	N/A	N/A
(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.	As above, (2)(c) and (d) do not apply.	Yes, complies
20 Design requirements		
(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under	N/A	N/A

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Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.		
(2) Subsection (1) does not apply to development to which Chapter 4 applies.	N/A	N/A
(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with— (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	The proposed building is not compatible with the desirable elements of the character of the local area. See Key Issues for a detailed assessment.	No
21 Must be used for affordable housing for at least 15 years		
(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development— (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider.	Should the DA have been supported, these requirements should have been imposed via conditions of consent.	To be conditioned.
(2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.	N/A	N/A
22 Subdivision permitted with consent		
Land on which development has been carried out under this division may be subdivided with development consent.	The proposed development including strata subdivision, of which no issues are raised.	Yes, complies

Chapter 4 – Design of Residential Apartment Developments

Chapter 4 of the Housing SEPP seeks to improve the design of residential apartment development. The proposed development is subject to Chapter 4 of the Housing SEPP as it involves erection of a new building that is 3 or more storeys and contains at least 4 dwellings.

The proposed development is subject to the provisions of Chapter 4 in that the development is for the purposes of residential flat building, consisting of the erection of a new building that is 5 storey in height and contains 5 dwellings (pursuant to section 144 of the Housing SEPP).

Section 147 of the Housing SEPP requires the consent authority to consider:

- a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,
- b) the Apartment Design Guide,
- c) any advice (if any) obtained from the design review panel.

Design Excellence Advisory Panel (DEAP)

The Design Excellence Advisory Panel functions as design review panel for the purposes of Chapter 4 of the Housing SEPP.

The DA was referred to the Design Excellence Advisory Panel for advice concerning the design quality of the development. The DEAP has advised that the proposal needed to address and establish the suitability of the proposal with its immediate context, as well as issues relating to scale and setbacks, pressure on the ground floor plan, landscaping, and the configuration of the respective private open spaces.

The detailed comments provided by the DEAP are provided in Appendix 1 of this report.

Design Quality Principles

The comments provided by the DEAP (refer to Appendix 1 of this report) detail how each of the nine quality design principals have been considered in the proposal.

Apartment Design Guide

The table below provides an assessment of the proposal against the relevant design criteria contained in Parts 3 and 4 of the Apartment Design Guide (ADG). In cases where the development does not satisfy the relevant criteria, the design guidance has been used to determine whether the proposal still meets the relevant objectives. See Appendix 5 for the full ADG compliance table.

Non-discretionary Development Standards

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

Standard	Proposal	Compliance
Part 4: Design of residential apartment development		
148 Non-discretionary development standards for residential apartment development		
(2) The following are non-discretionary development standards—		
(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,	The proposed development provides sufficient car parking specified in Part 3J of the Apartment Design Guide.	Yes, complies
(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,	The proposed development provides sufficient minimum internal area for the 2 and 3 bedroom units.	Yes, complies
(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.	The proposed development provides sufficient minimum ceiling heights being >2,7m to each floor.	Yes, complies

6.3. SEPP (Sustainable Buildings) 2022

A BASIX Certificate No. 1759230M has been submitted, prepared by HYA Engineering Pty Ltd, dated 08 August 2024, satisfying the requirements of the *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022. The submitted BASIX Certificate includes a BASIX materials index which calculates the embodied emissions and therefore the consent authority can be satisfied the embodied emissions attributable to the development have been quantified.

6.4. SEPP (Resilience and Hazards) 2021

Chapter 4 'Remediation of land'

Chapter 4 of SEPP (Resilience and Hazards) 2021 applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.

Clause 4.6 of SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Council's Environment Health Officer asserts that land contamination guidelines recommend for consent authorities to consider other potential sources from nearby or neighbouring properties, or in nearby groundwater, and whether that contamination needs to be considered in the assessment and decision-making process. See details comments in Appendix 1 of this report.

The previous residential building has been demolished and the site is currently vacant eliminating any obstacles to intrusive testing.

While this site has been a residential use since 1943, it is considered that a Preliminary Site Contamination Investigation (PSI) should be undertaken by a suitably qualified environmental consultant to prior to the determination of the development application, as the proposal intends to excavate a new basement that will intersect with the water table. The site is downstream from a petrol filling station and may be impacted by off-site groundwater contamination

The applicant has failed to provide a PSI as part of the development application. As such, Council is not satisfied that Clause 4.6 of the R&H SEPP has adequately considered whether the land on the subject site is contaminated, and it is recommended that the development application be refused.

6.5. Randwick Local Environmental Plan 2012 (RLEP)

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

The site is zoned R3 Medium Density Residential under Randwick Local Environmental Plan 2012.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

Residential flat buildings are permissible in the R3 Zone, subject to development consent.

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

- The proposed development is inconsistent the desirable elements of the existing streetscape and built form as the proposed development is excessive in bulk and scale in relation to development in the locality and to the adjoining heritage building at 108 Brook Street.
- The proposed development fails to adequately protect the amenity of residents, as the development is poorly designed for future residents, and results in adverse visual amenity, solar access, privacy and view impacts to neighbouring residents.
- The proposed development fails to encourage housing affordability as it does not provide sufficient floor area for the affordable housing component in accordance with section 16(2) of Housing SEPP.

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

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

Description	Standard	Proposed	Compliance (Yes/No/NA)
Clause 4.3: Height of Building (Maximum)	12m (as per RLEP 2012) 15.6m (+30% as per Housing SEPP)	Applicant = 17.07m. Council = 17.34m to the solar panels and 16.89m to the roof parapet.	No, see Clause 4.6 assessment below.
Clause 4.4: Floor Space Ratio (Maximum)	0.9:1 (as per RLEP 2012) 1.17:1 (+30% as per Housing SEPP) Site area = 424.8m ² (as per survey) Max GFA = 497.02m ²	Max FSR = 1.17:1 Applicant = 1.46:1 (or 620.4m ²) Council = 1.48:1 (or 630.5m ²) Discrepancies between the Applicant and Council calculations are minor differences to all floors.	No, see Clause 4.6 assessment below.

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6.5.1. Clause 4.6 - Exceptions to development standards

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

6.5.2. Clause 5.10 - Heritage conservation

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

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

The northern side of the site is occupied by a sandstone retaining wall known as 'Catley's Wall', which is a local heritage 'I65' in accordance with RLEP. In addition, adjoining the site of the north at 108 Brook Street is a four storey residential flat building comprising 14x units, a local heritage item 'I66 - Inter-war residential flat building' as identified in RLEP.

The proposed basement footprint and the extent of excavation along the side boundary adjacent to the heritage-listed "Catley's Wall" sandstone retaining wall and the "Lachlan" building has failed to be adequately addressed. Additional clarification and information in the Geological Investigation Report is necessary to determine the potential impact of the excavation on the structural integrity of the heritage items and fabric, especially "Catley's Wall".

In addition, the proposed height, bulk, and setback (including the vehicle entry and side setback from heritage item) of the proposed development will have an adverse impact on the streetscape character and the setting of the heritage items. See detailed heritage referral comments in Appendix 1 below.

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

6.5.3. Clause 6.2 - Earthworks

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

Clause 6.2(3) of the RLEP requires the consent authority to consider the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development, and the effect of the development on the existing and likely amenity of adjoining properties.

As noted above, the proposed basement footprint and the extent of excavation along the side boundary adjacent to the heritage-listed "Catley's Wall" sandstone retaining wall and the "Lachlan" building has failed to be adequately addressed. Additional clarification and information in the Geological Investigation Report is necessary to determine the potential impact of the excavation on the structural integrity of the heritage items and fabric, especially "Catley's Wall".

Therefore, Council is not satisfied that Clause 6.2 of RLEP has been met and it is recommended that the development application be refused.

6.5.4. *Clause 6.4 - Stormwater management*

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

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

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

6.5.5. *Clause 6.8 - Airspace operations*

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

The proposed development will penetrate the Limitation or Operations Surface, being 17.34m in height. Council received a letter with the submitted development from the Sydney Airport Corporation Limited, who confirmed that they raised no objection to the proposed development, subject to conditions.

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

6.5.6. *Clause 6.10 - Essential services*

Clause 6.10 requires the consent authority to be satisfied that essential services are available or that adequate arrangements have been made to make them available. These services include water and electricity supply, sewage disposal and management, stormwater drainage or on-site conservation, and suitable vehicular access.

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

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

6.5.7. *Clause 6.11 - Design excellence*

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

The proposed development seeks consent for a building with a height of 17.34m. Therefore, Clause 6.11 is applicable.

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

Clause	Proposal	Complies
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	The proposed development does not exhibit design excellence as it does not provide a high standard of architectural design, materials and detailing, in that the development fails to comply with considerations relating to building design controls in terms of internal amenity and access issues, compromised lobby area, location of plant and services to the ground floor, and other minor matters. See DCP Compliance table in Appendix 6 of this report for details.	No
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	The proposal does not exhibit design excellence as it does not have the form and external appearance that will improve the quality and amenity of the public domain, in that the development fails to comply with considerations relating to heritage conservation, building height, floor space ratio, setbacks, building design considerations, building entrances, landscaping and building entrances and garage presentation. Such considerations are detailed throughout this report.	No
(c) how the proposed development responds to the environmental and built characteristics of the site and whether it achieves an acceptable relationship with other buildings on the same site and on neighbouring sites,	The proposal does not exhibit design excellence as it does not respond to the environmental and built characteristics of the site and achieve an acceptable relationship with other buildings on neighbouring sites, in that the development fails to comply with considerations relating to heritage conservation, building height, floor space ratio, setbacks, building design considerations, and landscaping. Such considerations are detailed throughout this report.	No
(d) whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security, resource, energy and water efficiency, renewable energy	The proposal does not exhibit design excellence having regard to meeting sustainable design principles in terms of sunlight, privacy, and safety and security, in that the development fails to comply with considerations relating to building entrances and access, landscaping, solar access, and privacy	No

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sources and urban heat island effect mitigation,	issues. Such considerations are detailed throughout this report.	
(e) whether the proposed development detrimentally impacts on view corridors and landmarks.	The proposal does not exhibit design excellence having regard to whether the proposed development detrimentally impacts on view corridors and landmarks, in that the development fails to undertake a detailed view impact assessment.	No

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

7. Clause 4.6 Exception to a Development Standard

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

Clause	Standard	Proposed	Proposed variation	Proposed variation (%)
RLEP 2012: Clause 4.3 - Height of Building (Maximum) & Housing SEPP: Section 16(3) - Additional Building Height	12m (as per RLEP 2012) 15.6m (+30% as per Housing SEPP)	Applicant = 17.07m. Council = 17.34m to the solar panels and 16.89m to the roof parapet.	1.74m	11.2%
RLEP 2012: Clause 4.4 - Floor Space Ratio (Maximum) & Housing SEPP: Section 16(1) - Additional Floor Space Ratio	0.9:1 (as per RLEP 2012) 1.17:1 (+30% as per Housing SEPP) Site area = 424.8m ² (as per survey) Max GFA = 497.02m ²	Applicant = 1.46:1 (or 620.4m ²) Council = 1.48:1 (or 630.5m ²) Discrepancies between the Applicant and Council calculations are minor differences to all floors.	133.48m ²	27%
Housing SEPP: Section 16(2) - Affordable Housing Component	AHC = additional FSR as a percentage / 2	Min AHC = 32.5% (being 64.9% (630.5sqm being proposed GFA/ 382.32sqm being max GFA of 0.9:1 FSR DS) / 2) Proposed = 14.3% (based on the affordable housing component being 90.45m ² and the GFA being 630.5m ²).	18.2%	56%
Housing SEPP: Section 19(2)(a) – Site Area	Min = 450m ²	Proposed = 424.8m ²	25.2m ²	5.6%
Housing SEPP: Section 19(2)(e) – Affordable	Min = 0.5 spaces per 2-bedroom affordable housing dwelling	Proposed = 0	0.5 (or 1)	100%

Clause	Standard	Proposed	Proposed variation	Proposed variation (%)
Housing Parking Space Rate				

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Height of Building

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

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

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

Council notes that the submitted clause 4.6 statement is incorrect in identifying the maximum proposed building height of the development. The applicant notes the maximum building height as 17.07m. However, Council correctly calculates the maximum building height as 17.34m to the solar panels and 16.89m to the roof parapet, measured from the existing ground level. In addition, the submitted clause 4.6 statement fails to detail that the proposal seeks to vary the maximum building height bonus development standard permitted under section 16(3) of the Housing SEPP. Therefore, the clause 4.6 statement is incorrect and the variation to support the building height development standard cannot be granted by the consent authority.

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

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

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

Applicant's comments:

The applicant's written justification demonstrates that this objective is satisfied by noting that the subject site is surrounded by 4- to 5-storey buildings, that despite the FSR non-compliance, the proposal will comfortably fit in with the local area's character including the 4 storey heritage building at 108 Brook Street, 5 storey mixed use development at 102-104 Brook Street, as well as other large scale development to the south along Brook Street and

Coogee Bay Road. The applicant also identifies 1 Ormond Gardens as an anomaly building that could be redeveloped. The applicant finally notes that the height department is limited to the lift overrun and front roof part to Brook Street, being relatively minor (1.47m) and are recessed which will not generate any adverse streetscape, visual bulk, or amenity impacts.

Assessing officer's comments:

Council disagrees with the applicant that the proposed development has a scale and size that is compatible with the desired future character of the locality. Whilst 102-104 Brook Street is 5 storeys, this is not the predominant streetscape character to Brook Street. In addition, this building respects the adjoining heritage building at 108 Brook Street in term of its scale, of which this development fails to in towering above this building. Furthermore, the applicant fails to consider the development within its primary street context to Ormond Gardens, of which only comprises 2 storey buildings, largely ignoring how the proposed development sits within this streetscape. The development also fails to demonstrate if the lift overrun and solar panels to the roof will be visible from the higher side of the streetscape, in particular to the southern side of Brook Street.

The proposed development has a massing and scale that is inconsistent with this described character, with a built form that exceeds several of the building envelope controls, including but not limited to FSR, site area, and setbacks. Together with the significant Height of Building variation, the building envelope has a size and scale of development that is incompatible with the desired future character of the locality. Furthermore, the proposed development fails to provide sufficient landscaping, failing to balance the built form with sufficient planting as envisioned on this site.

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

Applicant's comments:

The applicant's written justification demonstrates that this objective is satisfied by noting that the subject site adjoins 2 heritage items to the north, being I65 - "Catley's Wall", sandstone retaining wall and I66 – "Inter-war residential flat building". The applicant relies upon the HIS prepared by Weir Phillips Heritage Planning that the development is compatible with the adjoining heritage items, in that the development has a contemporary expression that will sit comfortably in the setting of the heritage items with an appropriate neutral colour scheme.

Assessing officer's comments:

Council disagrees with the applicant that the proposed development has a scale and character that is compatible with the adjoining heritage items, in that the proposed development will have an adverse impact on the streetscape character and the setting of the heritage items, which will visually dominate the heritage item at 108 Brook Street Coogee and Catley's Wall. The height variation sought to the front of the building, in particular, has a direct visual impact on the 108 Brook Street, detracting from this heritage building.

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

Applicant's comments:

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

- Overshadowing: The submitted solar diagrams show that the proposal will not result in additional overshadowing to the adjoining properties to the north and west, in particular to 1 Ormond Gardens to the opposite side of the Ormond Gardens. The components that vary the height standard will not result in additional overshadowing.
- Views: The proposed development has been designed so as not to have an unreasonable impact on views from the public domain or surrounding properties. Refer to the View Loss Assessment submitted with this DA.

- Privacy: The building height departure is limited to the top of the lift overrun and to the top part of the front of Level 4, of which will not impact upon privacy of neighbouring properties.

Assessing officer's comments:

Council disagrees with the applicant that the proposed development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views:

- In terms of visual bulk, the additional building height contributes to a size and scale of development that is not in keeping with the desired future character. In addition, the services that do not comply appear to be visible from the streetscape (which the applicant has failed to demonstrate).
- In terms of privacy, Council agrees the height variation does not adversely impact upon the privacy of neighbouring dwellings.
- In terms of solar access, the applicant has failed to submit a complete set of solar diagrams that demonstrate the full extent of solar impact on neighbours, in particular showing that the height variation does not adversely contribute to further solar impacts.
- In terms of views, the applicant has failed to submit a detailed view impact assessment that considers the exact impact of the development on nearby neighbouring views.

Assessing officer's summary:

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

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

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

- The building height departure is limited to the top of the lift overrun and to the top part of the front of Level 4. The remainder of the development complies with the building height standard. Refer to the extract of the Height Plane Diagram above.
- The 5-storey scale of development is consistent with that anticipated by the height limit associated with the 15.6m height generated by the SEPP height incentive.
- The site falls approximately 2m from the rear south-western corner of the site (RL10) to the front north-eastern corner of the site (RL8). Greater excavation occurs at the front of the site towards Brook Street. The height variation at the front part of the building is partly due to the slope of the site, which has been established in the land and environment court judgement of *Merman Investments v Woollahra Council* [2021] as constituting sufficient environmental ground.
- The building height variation is attributed to the latest BCA requirements, which require more floor-to-floor height (i.e. slab thickness) to achieve the ADG 2.7m ceiling height requirement.
- The building height variation ensures amenity for the unit on the Ground Floor.
- The building height non-compliance is minor (1.47m) and will be indiscernible from the streetscape and surrounding properties.
- The components of the development that do not comply with the building height control (i.e. the top of the lift overrun and top part of the front of Level 4) will not generate any adverse streetscape, visual bulk or amenity impacts.
- Despite the building height non-compliance, the proposed height is compatible with neighbouring 5-storey buildings to the north and development to the south, taking into

account that the land rises to the south of the site. The bulk and scale of the proposal are compatible with the locality's existing and desired future character.

- The external facades are articulated and indented to minimise the perceived bulk and scale of the building height non-compliance.
- A reduction of the proposed building height would provide an indiscernible benefit to the streetscape and would reduce the amenity of the building.
- The non-compliant building height facilitates the provision of affordable housing on the site.
- The proposed exceedance of the height control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity, and a reduction in this height would not create additional benefit for adjoining properties or the locality.
- As demonstrated in the Shadow Diagrams submitted with this application, the components of the development that do not comply with the building height control (i.e. the top of the lift overrun and top part of the roof at the front of Level 4) will not result in additional overshadowing to the adjoining properties to the north and west. Opposite the subject site on the southern side of Ormond Gardens is a 2-storey residential flat building at No. 1 Ormond Gardens. Level 4 is setback 2.5m from the site's Ormond Gardens (southern) boundary, resulting in approximately 20m distance from the 2-storey residential flat building at No. 1 Ormond Gardens. Due to the generous distance separation, the components of the development that do not comply with the building height control (i.e. the top of the lift overrun and top part of the roof at the front of Level 4) will have limited overshadowing impacts on the building to the south in the morning only. Refer to the Shadow Diagrams submitted with this application.
- The proposed development has been designed so as not to have an unreasonable impact on views from the public domain or surrounding properties. Refer to the View Loss Assessment submitted with this DA.
- The building height departure is limited to the top of the lift overrun and to the top part of the front of Level 4. The remainder of the development complies with the building height standard. The top of the lift overrun will not result in any adverse privacy impacts to neighbouring properties. The front of Level 4, which does not comply with the building height control, has been designed and sited to ensure adequate privacy to the adjoining properties in terms of location, orientation, internal layout and building materials used. The front of Level 4, which does not comply with the building height control, is appropriately setback, thereby providing adequate separation from the adjoining properties. Windows of the front of Level 4 has been appropriately sited and designed to minimise any potential overlooking.
- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the SEPP (Housing) 2021, including deep soil, solar access, cross ventilation, private open space, apartment and room sizes, storage and car parking. The excess building height, thereby, does not compromise the ability to meet or outperform the above criteria.
- The proposal includes a high-quality landscape design that includes planting a variety of trees, shrubs, and turf. Landscaping is provided within the front, side and rear setback areas on the Ground Floor, including a consolidated deep soil area at the rear of the site and planter landscaping along the northern, eastern and southern parts of Level 1. Refer to the Landscape Plan prepared by Wyer & Co Landscape Architect submitted with this application. The proposed landscaping will enhance the amenity and visual setting of the proposed development and soften the visual built form of the proposal, notwithstanding the building height non-compliance.
- The proposal is consistent with the R3 Medium Density zone objectives and the building height objectives.
- The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represent the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

Assessing officer's comment:

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

- The variation being sought is significant, being 7.7%, in addition to the building height bonus granted under the Housing SEPP.
- The building height variation will result in adverse visual bulk impacts to the streetscape and neighbouring sites, of which is not envisioned in the DCP.
- The proposed development fails to comply with other building envelope controls including FSR, site area, and setbacks. The variation to the building height further accentuates this non-compliance, in total creating a building envelope that is not envisioned in respecting the existing streetscape character.
- The lift overrun and solar panels appear to be visible from the street, in particular to the higher southern side of Brook Street, of which the applicant has failed to demonstrate in photomontages. The impact of these structures as a result of the height variation are currently unclear.
- Whilst the site does have a topographical change of approximately 2m, the building on the site should respond to this by reducing the top floor to respond to the site conditions, respect the adjoining heritage building and minimise the streetscape presentation of this 5 storey building.
- The proposed development fails to offset the additional building height by providing a sufficient affordable housing component, which fails to comply with the development standard in the Housing SEPP.
- The proposed site is sufficient in size in accommodating a residential flat building with an affordable housing component, in accordance with the 450sqm minimum site area as required under the Housing SEPP.
- The proposed development fails to provide sufficient deep soil zones and planting (including canopy trees) on the site to balance the visual impact of the building height variation being sought.
- The applicant has failed to adequately demonstrate the adverse solar impacts of the variation to the building height development standard, in not providing shadow diagrams showing the impact of proposed development.
- The applicant has failed to adequately demonstrate the adverse view impacts of the development on existing views from neighbouring dwellings in any detail.

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

Conclusion

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

7.2. Floor Space Ratio

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

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

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

Council notes that the submitted clause 4.6 statement is incorrect in identifying the proposed FSR of the development. The applicant notes the proposed FSR as 1.46:1 (GFA: 620.4m²). However, Council correctly calculates the proposed FSR as 1.48:1 (GFA: 630.5m²), being minor discrepancies across all floor plans. In addition, the submitted clause 4.6 statement fails to detail that the proposal seeks to vary the FSR bonus development standard permitted under

section 16(1) of the Housing SEPP. Therefore, the clause 4.6 statement is incorrect and the variation to support the building height development standard cannot be granted by the consent authority.

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

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

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

Applicant's comments:

The applicant's written justification demonstrates that this objective is satisfied by noting that the subject site is surrounded by 4- to 5-storey buildings, that despite the FSR non-compliance, the proposal will comfortably fit in with the local area's character including the 4 storey heritage building at 108 Brook Street, 5 storey mixed use development at 102-104 Brook Street, as well as other large scale development to the south along Brook Street and Coogee Bay Road. The applicant also identifies 1 Ormond Gardens as an anomaly building that could be redeveloped. The applicant finally notes that the FSR non-compliance will be indiscernible from the streetscape and surrounding properties and will not generate any adverse streetscape, visual bulk or amenity impacts.

Assessing officer's comments:

Council disagrees with the applicant that the proposed development has a scale and size that is compatible with the desired future character of the locality. Whilst 102-104 Brook Street is 5 storeys, this is not the predominant streetscape character to Brook Street. In addition, this building respects the adjoining heritage building at 108 Brook Street in term of its scale, of which this development fails to in towering above this building. Furthermore, the applicant fails to consider the development within its primary street context to Ormond Gardens, of which only comprises 2 storey buildings, largely ignoring how the proposed development sits within this streetscape.

The proposed development has a massing and scale that is inconsistent with this described character, with a built form that exceeds several of the building envelope controls, including but not limited to height of building, site area, and setbacks. Together with the significant FSR variation, the building envelope has a size and scale of development that is incompatible with the desired future character of the locality. Furthermore, the proposed development fails to provide sufficient landscaping, failing to balance the built form with sufficient planting as envisioned on this site.

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

Applicant's comments:

The applicant's written justification demonstrates that this objective is satisfied by noting that the external facades are articulated and indented to minimise the perceived bulk and scale of the FSR non-compliance. In terms of environmental and energy needs, the applicant notes that 80% of the proposed units (four out of the five units) will receive 3 hours of solar access to the living rooms on 21 June, and 100% (five of the five apartments) will be naturally cross-ventilated. In addition, the applicant notes that the proposal includes north-facing and west-facing privacy screen blades to allow solar access into the living rooms, laundries, ensuites and walk-in-robos without looking back onto the northern and western neighbours.

Assessing officer's comments:

Council disagrees with the applicant that the proposed development is well articulated in that the building has large blank wall sections, in particular to the northern and western facades. In terms of responding to environmental and energy needs, the proposed development fails to orientate rooms and private open space to maximise upon solar

access, which then results in a development that unduly relies upon mechanical ventilation and lighting.

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

Applicant's comments:

The applicant's written justification demonstrates that this objective is satisfied by noting that the subject site adjoins 2 heritage items to the north, being I65 - "Catley's Wall", sandstone retaining wall and I66 – "Inter-war residential flat building". The applicant relies upon the HIS prepared by Weir Phillips Heritage Planning that the development is compatible with the adjoining heritage items, in that the development has a contemporary expression that will sit comfortably in the setting of the heritage items with an appropriate neutral colour scheme.

Assessing officer's comments:

Council disagrees with the applicant that the proposed development has a scale and character that is compatible with the adjoining heritage items, in that the proposed development will have an adverse impact on the streetscape character and the setting of the heritage items, which will visually dominate the heritage item at 108 Brook Street Coogee and Catley's Wall.

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

Applicant's comments:

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

- Overshadowing: The submitted solar diagrams show that the proposal will not result in additional overshadowing to the adjoining properties to the north and west, in particular to 1 Ormond Gardens to the opposite side of the Ormond Gardens.
- Views: The proposed development has been designed so as not to have an unreasonable impact on views from the public domain or surrounding properties. Refer to the View Loss Assessment submitted with this DA.
- Privacy: The proposed development has been designed and sited to ensure adequate privacy between the proposed residential apartments and the adjoining properties, including by the location of the development on the site (including driveway, lobby and POS), adequate setbacks, the internal layout, the building materials used, siting of windows and balconies (in particular to street frontages).

Assessing officer's comments:

Council disagrees with the applicant that the proposed development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views:

- In terms of visual bulk, the additional FSR contributes to a size and scale of development that is not in keeping with the desired future character.
- In terms of privacy, setback variations will impact upon acoustic privacy (in particular of the garage entrance), and lack of window paneling details.
- In terms of solar access, the applicant has failed to submit a complete set of solar diagrams that demonstrate the full extent of solar impact on neighbours.
- In terms of views, the applicant has failed to submit a detailed view impact assessment that considers the exact impact of the development on nearby neighbouring views.

Assessing officer's summary:

In conclusion, the applicant's written request has incorrectly calculated the proposed FSR and the variation to support the FSR development standard cannot be granted by the consent authority. Furthermore, the applicant has also failed to adequately demonstrate that compliance with the FSR development standard is unreasonable or unnecessary in the

circumstances of the case. Therefore, it is recommended that the proposed development be refused.

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

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

- Despite the FSR non-compliance, the proposal is compatible with neighbouring 5-storey buildings to the north and development to the south, taking into account that the land rises to the south of the site. The bulk and scale of the proposal are compatible with the locality's existing and desired future character.
- The 5-storey scale of development is consistent with that which would be anticipated by the height limit associated with the 15.6m height that is generated by the SEPP height incentive.
- The external facades are articulated and indented to minimise the perceived bulk and scale of the FSR non-compliance.
- The 5-storey scale is consistent with that contemplated by the FSR incentive, being for 5-storeys, notwithstanding the FSR variation.
- The FSR non-compliance will be indiscernible from the streetscape and surrounding properties and will not generate any adverse streetscape, visual bulk or amenity impacts.
- A reduction of the proposed building bulk would provide an indiscernible benefit to the streetscape and would reduce the amenity of the building. All units are over 90m² in size; a reduction of unit sizes will result in the detriment of amenity for the residents. The proposal will result in a high-quality outcome.
- The non-compliant FSR facilitates the provision of affordable housing on the site.
- The proposed exceedance of the FSR control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in FSR would not create additional benefit for adjoining properties or the locality.
- As demonstrated in the Shadow Diagrams submitted with this application, the proposal will not result in additional overshadowing to the adjoining properties to the north and west. Opposite the subject site on the southern side of Ormond Gardens is a 2-storey residential flat building at No. 1 Ormond Gardens. The proposed development is setback 2.5m from the Ormond Gardens (southern) boundary of the site, which results in approximately 20m distance separation from the 2-storey residential flat building at No. 1 Ormond Gardens. Due to the generous distance separation, the proposal will have limited overshadowing the building to the south in the morning only. Refer to the Shadow Diagrams submitted with this application.
- The proposed development has been designed so as not to have an unreasonable impact on views from the public domain or surrounding properties. Refer to the View Loss Assessment submitted with this DA.
- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the SEPP (Housing) 2021, including deep soil, solar access, cross ventilation, private open space, apartment and room sizes, storage and car parking. The excess FSR does not compromise the ability to meet or outperform the above criteria.
- The proposal includes a high-quality landscape design that includes planting a variety of trees, shrubs, and turf. Landscaping is provided within the front, side and rear setback areas on the Ground Floor, including a consolidated deep soil area at the rear of the site and planter landscaping along the northern, eastern and southern parts of Level 1. Refer to the Landscape Plan prepared by Wyer & Co Landscape Architect submitted with this application. The proposed landscaping will enhance the amenity and visual setting of the proposed development and soften the visual built form of the proposal, notwithstanding the FSR non-compliance.
- The proposal is consistent with the R3 Medium Density Residential zone objectives and the FSR objectives.

- The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represent the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

Assessing officer's comment:

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

- The variation being sought is significant, being 27%, in addition to the FSR bonus granted under the Housing SEPP.
- The FSR variation will result in adverse visual bulk impacts to the streetscape and neighbouring sites, of which is not envisioned in the DCP.
- The proposed development fails to comply with other building envelope controls including Height of Building, site area, and setbacks. The variation to the FSR further accentuates this non-compliance, in total creating a building envelope that is not envisioned in respecting the existing streetscape character.
- The proposed size of the units far exceeds the minimum internal floor area required under the ADG, being 1) Min 2 bed = 70sqm, proposed = 92sqm, and 2) Min 3 bed = 90sqm, proposed = 133.6sqm. A reduction in floor area to each dwelling would not impact upon the amenity of each dwelling within the building.
- The proposed development fails to offset the additional FSR by providing a sufficient affordable housing component, which fails to comply with the development standard in the Housing SEPP.
- The proposed site is sufficient in size in accommodating a residential flat building with an affordable housing component, in accordance with the 450sqm minimum site area as required under the Housing SEPP.
- The proposed development fails to provide sufficient deep soil zones and planting (including canopy trees) on the site to balance the visual impact of the FSR variation being sought.
- The applicant has failed to adequately demonstrate the adverse solar impacts of the variation to the building FSR development standard, in not providing shadow diagrams showing the impact of proposed development.
- The applicant has failed to adequately demonstrate the adverse view impacts of the development on existing views from neighbouring dwellings in any detail.

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

Conclusion

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

7.3. Affordable Housing Component

The applicant has failed to provide a written request to vary the Affordable Housing Component development standard applying to the site under section 16(2) of the Housing SEPP.

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

On this basis, the requirements of clause 4.6(3) have not been satisfied and development consent should not be granted for development that contravenes the minimum Affordable Housing

Component development standard. Therefore, it is recommended that the proposed development be refused.

7.4. Site Area

The applicant's written justification for the departure from the Site Area development standard is contained in Appendix 4.

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 site area development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

Council notes that the submitted clause 4.6 statement is incorrect in identifying the proposed FSR of the development. The applicant notes the subject site area as 437m². However, the applicant's submitted survey plan notes that the subject site area is 424.8m². Therefore, the clause 4.6 statement is incorrect and the variation to support the site area development standard cannot be granted by the consent authority.

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

The Housing SEPP does not contain objectives in relation to the site area development standard are in accordance with section 19(2)(a) of the Housing SEPP. Therefore, the applicant has addressed each of the section 3 'principles' of the Housing SEPP, as follows:

(a) *enabling the development of diverse housing types, including purpose-built rental housing,*

Applicant's comments:

The minor variation in lot size facilitates the provision of affordable rental housing, noting that 1 of the five apartments will be dedicated to affordable housing for a 15-year period.

(b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*

Applicant's comments:

The variation will facilitate the provision of affordable housing. A registered housing provider will manage the affordable rental unit, which will provide housing to vulnerable members of the community.

(c) *ensuring new housing development provides residents with a reasonable level of amenity,*

Applicant's comments:

The variation to the site area requirement does not compromise the ability to provide a reasonable level of amenity for the residents. This is achieved through the provision of compliant unit sizes, compliant private open space, ADG compliant solar access, compliant cross ventilation, compliant room sizes, and compliant parking.

(d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*

Applicant's comments:

The variation in the lot size enables the provision of 5 high-quality units located within walking distance of numerous bus services, recreation areas (Coogee Oval is immediately opposite the site whilst Coogee Beach and shops are within 250m) On this basis, the variation in the lot size will provide for the delivery of housing where established infrastructure and services are located.

(e) *minimising adverse climate and environmental impacts of new housing development,*

Applicant's comments:

The appropriate nature of the development will not generate any adverse climate or environmental impacts. Solar access is retained to the units to the south and west through the provision of compatible setbacks. The front, side, and rear setbacks and a contextually compatible building height reasonably maintain solar access to the units in the south across Ormond Gardens. On this basis, the lot size variation will not be responsible for any adverse climate and environmental impacts.

(f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

Applicant's comments:

The lot size variation enables the provision of a 5-storey residential flat building, which will sit comfortably alongside the residential flat building of a similar height to that proposed, to the immediate north (Lachlan) and the substantial 5-storey mixed-use development further north at 102-104 Brook Street. The 5-storey form of development is consistent with the height and scale envisaged by the State Policy when considering the 30% additional height associated with the Policy. The additional 30% height generates a height of 15.4m, equivalent to a 5-storey scale building. The proposed 5-storey built form is consistent with the Policy.

(g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

Applicant's comments:

N/A.

(h) *mitigating the loss of existing affordable rental housing.*

Applicant's comments:

N/A - the site is vacant.

The applicant has also included the following assessment:

1. Desired Future Character is achieved notwithstanding the variation

The 5-storey residential flat building is consistent with the scale of development that is associated with the State Policy (i.e. 15.4m). Such height will sit comfortably alongside the established 4-storey residential flat building to the north and the 5-storey mixed-use development further north. The height is also compatible with the nearby similar scaled built form to the south towards Coogee Bay Rd.

2. Absence of Unreasonable Impact from the Variation

The proposed lot size variation is not responsible for any unreasonable external impacts on the streetscape, public domain, or any adjoining property's amenity. In this regard, the siting and design of the built form on the subject site do not unreasonably generate any adverse amenity impacts in relation to:

- Visual bulk
- Overshadowing
- Visual or acoustic privacy
- Loss of views

Assessing officer's comments:

Council disagrees with the applicant that the proposed development is consistent with the principles of the Housing SEPP, in that the development far seeks variations to several development standards in the SEPP, including height of building, FSR, affordable housing component, car parking, and site area. The number of variations sought, and the extent of each variation does not adequately demonstrate the compliance with the development standard is

acceptable. In addition, the applicant has failed to balance the number of variations with a sufficient affordable housing component, further demonstrating inconsistency with the principles and policy.

In terms of site area, a variation to this development standard results in poor amenity for the future occupants, adverse impacts on adjoining neighbours, and results in a building envelope that dominates the streetscape and site.

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

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

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

- Minor and indiscernible nature of the variation: the minor extent of the variation (a mere 13sqm/2.97%) is considered to be negligible variation to the minimum lot size. Such extent of variation is akin to the provision of an extra metre of site depth at the rear of the site. On this basis, variation is considered to be of an indiscernible nature.
- Provision of affordable housing is facilitated by endorsement of the variation: it is reiterated that the variation in the lot size will facilitate the provision of a high-quality, affordable housing unit. This will assist with the provision of housing in an area where affordable housing is in high demand.

Assessing officer's comment:

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

- The variation being sought is not considered minor, being 5.6%, based on the site area of 424.8m². The impact of this variation is evident in the compromised amenity of the future residents in terms of lobby areas and access, dominance of the building within the street context and the lack of deep soil zones to balance the visual impact of the development.
- As noted above, the proposed development fails to offset the insufficient site area by providing a sufficient affordable housing component, based on the other variations being sought to development standards in the Housing SEPP, including building height and FSR.

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

Conclusion

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

7.5. Affordable Housing Parking Space Rate

The applicant has failed to provide a written request to vary the affordable housing parking space rate development standard applying to the site under section 19(2)(e) of the Housing SEPP.

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

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

8. Development Control Plans and Policies

8.1. Randwick Comprehensive DCP 2013

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

Council is not satisfied that the development complies with the RDCP 2013. The relevant provisions of the DCP are addressed in the Key Issues section of the report and Appendix 6.

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and Key Issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 6 and the discussion in Key Issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	<p><u>Affordable Housing Development</u> The applicant has provided the name of the registered community housing provider who will manage the affordable housing component of the development, being Bridge Housing Limited, in accordance with section 26 of the EP&A Regulations.</p> <p><u>Contravention of Development Standards</u> The applicant has failed to provide a document that sets out the grounds to contravene the development standards of the minimum Affordable Housing Component under section 16(2) of Housing SEPP and the minimum affordable housing parking space rate</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>under section 19(2)(e) of Housing SEPP, in accordance with section 35B of the EP&A Regulations.</p> <p><u>Housing and Productivity Contribution</u> The proposed development is subject to a housing and productivity contribution (HPC) in accordance with section 7.28 of the <i>EP&A Act 1979</i>. The Applicant lodged the development application without the imposition of the HPC. Council asserts that the HPC is applicable in accordance with the Act and Regulations.</p>
<p>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>	<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 existing streetscape context and character of development in the locality, resulting in adverse impacts on the built environment.</p> <p>Furthermore, the proposal will result in detrimental social or economic impacts on the locality, in terms of not providing sufficient affordable housing.</p>
<p>Section 4.15(1)(c) – The suitability of the site for the development</p>	<p>The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.</p>
<p>Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation</p>	<p>The issues raised in the submissions have been addressed in this report.</p>
<p>Section 4.15(1)(e) – The public interest</p>	<p>The proposal fails to promote the objectives of the zone and will result in significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.</p>

9.1. Discussion of Key Issues

Site Planning

The proposed development contains a number of site planning issues and non-compliances with the relevant planning policies, including:

- Insufficient site area for a residential flat building in accordance with the Housing SEPP (450sqm required, site is only 424.8sqm).
- Insufficient deep soil area capable of supporting large planting and canopy trees in accordance with Part C2 of RDCP (7% required, only 6.7% provided over a sewer line).
- Insufficient communal open space provided in accordance with the ADG (no communal open space provided, which may be acceptable in this location however has failed to be offset by providing larger POS areas and compromised lobby/communal areas).

Based on these non-compliances, Council is of the opinion that the proposed development fails to address sufficient site planning considerations that will impact upon the streetscape and amenity of residents and neighbours. For these reasons, the proposal is recommended for refusal.

Building Envelope

The proposed development contains a number of building envelope issues and non-compliances with the relevant planning policies, including:

- Variation to the Height of Building Development Standard in accordance with the Housing SEPP (17.34m to the solar panels and 16.89m to the roof parapet, varying 15.6m maximum height).
- Variation to the FSR Development Standard in accordance with the Housing SEPP (1.48:1 FSR, varying the 1.17:1 maximum FSR).
- Insufficient front setback to both Ormond Gardens and Brook Street in accordance with Part C2 of RDCP (fails to align with predominant building lines to each side).
- Insufficient side setbacks in accordance with Part C2 of RDCP (2.5m minimum side setback, only 0.55m to ground floor northern side).
- Variation to the external wall height control in accordance with Part C2 of RDCP (10.5m control, proposed 15.3m wall).

The proposed building is also not compatible with the existing streetscape in terms of its 5 storey presentation to both Brook Street and Ormond Gardens. In addition, the development fails to respect the adjoining heritage items with a form that visually dominates both the Lachlan building and the Catley's sandstone retaining wall.

The variations sought to the building envelope will result in visual bulk, solar access, privacy and view impacts, of which the extent of solar and views have not been demonstrated sufficiently by the applicant (as detailed throughout this report).

The applicant has also failed to provide a sufficient affordable housing component (minimum 32.5% required, only 14.3% provided) to offset the excessive building envelope and variations sought to the Housing SEPP development standards.

Residential Amenity

The proposed development fails to provide sufficient amenity to the future residents of the building in the following ways:

- Pursuant to Part 4A-1 of ADG, a maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. The proposed development provides only 20% of apartments with a minimum of 2 hours direct sunlight to private open spaces. The 3-bedroom apartments fail to receive sufficient solar access to the main 2.4m southern usable depth portion of the balcony areas, impacting upon the amenity of the future occupants of each dwelling. The lack of sufficient private open space is further exacerbated by a lack of any communal open space on the site. The proposed development includes a total of 20% of apartments that receive no direct sunlight between 9 am and 3 pm at mid winter, being to the ground floor G01 dwelling living room windows. The lack of direct sunlight to a sufficient number of apartments results in poor amenity of future occupants of the building which increases reliance on artificial lighting and heating and reduces energy efficiency.
- Pursuant to Part 4D-3 of the ADG, bedrooms have a minimum dimension of 3m (excluding wardrobe space). The Bedroom 3 room to levels 1-4 have a width of 2.9m (excluding wardrobe space), which does not provide sufficient amenity for future occupants.
- Pursuant to Part 4E-1 of ADG, 3-bedroom apartments are required to have a minimum area of 12m² and a minimum depth of 2.4m. The proposed development provides the 3-bedroom apartments with an eastern-facing balcony where only the main usable portion has a depth of 2.4m and area of 9.3m², to the southern side of the balcony area. The 3-bedroom apartment balconies are poorly configured with a substantial section of the balcony being only 1m in width to the north, which is largely unusable and results in poor amenity of the future occupants. The lack of sufficient private open space is further exacerbated by a lack of any communal open space on the site.
- Pursuant to Part 4G-1 of the ADG, in addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided: 8m³ for 2-bedroom apartments; and 10m³ for 3+ bedroom apartments. The Applicant has included areas of storage in the kitchen, living room and laundry calculated at a height of 2.4m which should not be included in the storage calculation. Each dwelling has inadequate storage in accordance with the cubic requirements impacting upon the amenity of future occupants.

- Pursuant to clause 4.2 in Part B7 of RDCP, bicycle parking for residents should be located close to building entry/exits and lifts and be given priority over other parking uses to ensure they are well located, designed and ultimately used (avoid locating bicycle parking in hidden niches). The bike storage racks located within the north-western corner of the site are poorly accessible from the common lobby and are open to weather conditions, leading to a likely low use. A more accessible location for the bicycle parking should be provided to an area easily accessible from the street, and with undercover storage for both residents and visitors.
- Pursuant to clause 5.2 in Part C2 of RDCP, provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls. The proposed development should incorporate clerestory windows to bathrooms without any windows where possible for greater natural light and ventilation.
- Pursuant to clause 5.6 in Part C2 of RDCP, provide direct, secure access between the parking levels and the main lobby on the ground floor. The proposed main fire staircase does not provide access to the basement parking level. In addition, the staircase is not connected to the main lobby and lift. This will result in poor amenity, safety and access to future occupants of the building.
- Pursuant to clause 7.7 in Part C2 of RDCP, provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter. The 3-bedroom dwellings have not been provided with an appropriate clothes drying area.
- The private open space to the ground floor 2-bedroom unit has poor amenity as it is largely located on the southern side of the building with a large portion a width of 1m. The area also appears to be overlooked from the street, in particular, to the higher western side of Ormond Gardens.
- The location of the mailboxes has failed to be shown on the submitted architectural plans.
- The proposal fails to provide incidental communal nooks within the development that allow casual interaction amongst the residents, including design options such as seating within the common corridors and pathways.
- The proposed common lobby area to the building is narrow and compromised in size. A more generous and amenable pedestrian entry foyer is to be provided to support sufficient amenity for the future occupants of the building.
- The proposed dwelling G01 is not provided with direct access to the internal core and lobby, as well as to the basement level, compromising upon the amenity of the future occupants of this dwelling.
- The proposal includes x2 fire staircases to the basement level, both of which are provided within the front setback area to Brook Street and Ormond Gardens respectively. Such staircases detract from the streetscape presentation of the building without any planting to soften such structures, of which can be relocated within the site and continue to provide this important required access.
- The rainwater tank room and plant room to the ground floor level result in a poor design outcome of the level, in particular noting the site area for a residential flat building is less than the 450m² development standard in the Housing SEPP.
- The eastern courtyard area of dwelling G01 provides a residential bin storage area. This storage area is not required as the basement bin storage area is satisfactory for all dwellings within the building. This additional bin storage area will result in poor amenity and health impacts on future occupants of this dwelling.

Therefore, Council is not supportive of the development noting the extensive amenity impacts it will have on the amenity of future residents, and is therefore recommended for refusal.

10. Conclusion

That the application for the construction of a 5-storey residential flat building with basement level, five (5) residential apartments, eight (8) car parking spaces, associated ancillary and landscaping works and Strata subdivision be refused for the following reasons:

1. Pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives of the R3 Medium Density Residential zone in that it is inconsistent the desirable elements of the existing streetscape and built form, fails to protect the amenity of residents and fails to encourage housing affordability.
2. Pursuant to the provisions of section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development fails to comply with the objectives and controls of the Randwick Development Control Plan 2013:
 - Part B2: Heritage
 - Part B4: Landscaping and Biodiversity
 - Part B6: Recycling and Waste Management
 - Part B7: Transport, Traffic, Parking and Access
 - Part C2: Medium Density Residential
3. Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is inconsistent with the existing streetscape context and character of development in the locality, resulting in adverse impacts on the built environment. Furthermore, the proposal will result in detrimental social or economic impacts on the locality, in terms of providing sufficient affordable housing.
4. Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the application is considered unacceptable in that the proposed development is considered to not be in the public interest as the proposal is inconsistent with the objectives of the zone and will result in significant adverse environmental, social or economic impacts on the locality.
5. Pursuant to section 16(1) of the Housing SEPP, the proposed development fails to comply with the floor space ratio development standard for in-fill affordable housing.
6. Pursuant to section 16(2) of the Housing SEPP, the proposed development fails to comply with the affordable housing component development standard for in-fill affordable housing.
7. Pursuant to section 16(3) of the Housing SEPP, the proposed development fails to comply with the height of building development standard for in-fill affordable housing.
8. Pursuant to section 19(2)(a) of the Housing SEPP, the proposed development fails to comply with the site area development standard for in-fill affordable housing.
9. Pursuant to section 19(2)(e) of the Housing SEPP, the proposed development fails to comply with the affordable housing parking space rate development standard for in-fill affordable housing.
10. Pursuant to section 20(3)(a) of the Housing SEPP, the proposed development is incompatible with the desirable elements of the character of the local area.
11. Pursuant to section 4.6 of the Resilience and Hazards SEPP, the applicant has failed to adequately demonstrate whether the land on the subject site is contaminated.
12. Pursuant to clause 4.6 of RLEP 2012, the applicant has failed demonstrate that the matters of the clause have been adequately addressed and that consent should be granted to the development application, which contravenes:
 - The building height development standard in clause 4.3 of RLEP 2012 and is section 16(3) of Housing SEPP.
 - The floor space ratio development standard in clause 4.4 of RLEP 2012 and in section 16(1) of Housing SEPP.
 - The site area development standard in section 19(2)(a) of Housing SEPP.

The applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.

13. Pursuant to clause 4.6 of RLEP 2012, the applicant has failed to submit a written request to vary the affordable housing component and affordable housing parking space rate, pursuant to section 16(2) and section 19(2)(e) of the Housing SEPP, respectively. The applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
14. Pursuant to clause 5.10 of the RLEP 2012, the proposed development will have a detrimental impact and effect on heritage significance of two heritage items, being I65 'Catley's Wall' and I66 'Inter-war residential flat building'.
15. Pursuant to clause 6.2 of the RLEP 2012, the proposed development will have a likely detrimental impact on heritage items or features of the surrounding land.
16. Pursuant to clause 6.11 of the RLEP 2012, the proposed development fails to exhibit design excellence.

Appendix 1: Referrals

1. External Referral Comments:

1.1. Randwick Design Excellence Advisory Panel (DEAP)

Principle 1 – Context and Neighbourhood Character

The Panel commends the architect for providing a high-quality submission including architectural drawings, 3D views, photomontages and a design verification statement as part of the DA submission. However, the Panel recognises that there are imperative pressure points within the proposal which need to be addressed – to establish suitability of the proposal with its immediate context. These pressure points are discussed below:

1. A significant floor space ratio exceedance beyond the maximum permissible control. The Panel understands a maximum floor space ratio of 1.17:1 applies to the proposal, which includes the bonus achievable through the state government affordable housing provisions. However, the proposed floor space ratio of 1.48:1 creates a substantial variation with an additional 120m² (comparable to a large-sized apartment).
2. Furthermore, a relatively minor height exceedance is noted. A maximum height of 16.89m is applicable based on the housing bonus and 17.34m is proposed in this instance.
3. The development pressure is evident in the ground floor configuration which has constrained lobby areas and compromised amenity (refer Principle 2 – Built Form and Scale for details).
4. A shortfall is noted in the landscape design as part of constrained deep soil zone and lack of a communal open space, contrary to the guidance offered by the NSW ADG (refer Principle 5 – Landscape for details).
5. And lastly, there are potential views impacts for the neighbours within the western residential properties and the impacts need to be investigated to Council's satisfaction.

Principle 2 – Built Form and Scale

General comment: the proposal is designed as a podium-tower form, typically an urban response to larger and denser urban sites.

1. Setback from Ormond Gardens: While the Panel offers in principle support for the setback from Brook Street and the separation distances proposed from the western and northern properties, the Panel is unconvinced with the 2.5m setback proposed along Ormond Gardens. The applicant should provide further urban design justification on how a reduced front setback (in comparison with No. 6 and 7 Ormond Gardens) should be supported in this instance, particularly through views impact analysis – showing the extent of views impact on the existing neighbours to the west.
2. Suggested Design Strategies: As part of the discussion, the Panel offers the below strategies which could be adopted to alleviate the concerns raised by the Panel. Nevertheless, the Panel has an advisory-only role, and it is up to the applicant's team to address these matters up to Council's satisfaction.
 - a. The Panel discussed the planters along the building perimeter, which have potential access and maintenance issues - could these be removed and the area gained could applied to apartment reconfiguration.
 - b. Whether the apartment layouts could be reconfigured to create bigger and more amenable balconies while reducing the internal apartment floor areas, given the value and importance of the available water views to Coogee Bay, Thompsons Bay, and Gordons Bay. Orienting larger balconies to the north could start alleviate some of the before-mentioned pressures presented to the heritage item at No. 108 Brooke Street due to the reduced setbacks to Brooke Street.
 - c. Or whether one of the residential levels could be eliminated to match with the maximum permissible floor space ratio and height controls.

3. Ground Floor Configuration: Additionally, the applicant should consider reconfiguration of the ground floor layout to allow:
 - a. A more generous and amenable pedestrian entry foyer,
 - b. Access to the lift and stair via a common lobby,
 - c. Relocation of bins (from the front setback) to the basement,
 - d. A more accessible location for the bicycle parking to an area easily accessible from the street, and with undercover storage for both residents and visitors.
 - e. Reduction in the overall height of the garage door opening to reduce its presence in the streetscape,
 - f. Relocation of the rainwater tank within the basement or possibly below the driveway, to free-up the ground floor plan for more important functions, and
 - g. Structural investigation to ensure retention of the heritage significant sandstone wall along the northern boundary.

Principle 3 – Density

The Panel does not support the density proposed at the subject site and has expressed concerns and offered recommendations in Principles 1 and 2 of this DEAP Report.

Principle 4 – Sustainability

With the revised proposal, the applicant should ensure the following Environmentally Sustainable Design (ESD) principles are incorporated within the development:

1. Use of ceiling fans within all rooms and communal living areas as a low energy alternative to mechanical A/C systems.
2. Given the extreme site coverage, by both basement and building, all water falling on the site should be collected, stored, treated and reused in gardens, toilets and laundries.
3. Inclusion of an appropriate photovoltaic system, and confirmation on 2D and 3D drawings.
4. Full building electrification including provision for EV charging points within the basement carpark.

Principle 5 – Landscape

1. The Panel appreciates that the subject site is constrained in its area, however, strongly encourages the applicant achieves a minimum 7 percent deep soil area consistent with the NSW ADG Part 3E Deep soil zones. Furthermore, the deep soil setback should include a variety of shrubs and small-medium sized trees, to utilise the deep soil area and enhance the interface with the neighbours. The Panel has some concerns with the paved pathway access to the sewer manhole along the deep soil zone, even though this is noted as permeable as this restricts the opportunities for planting within this area.
2. The Panel recommends that if the applicant wishes to retain planting on residential levels then the planters should be provided with access for maintenance and green-waste removal. Alternatively, the planter boxes could be removed and the area the resultant area be used in replanning of the apartments. In general, planting should not be applied as external decoration, but rather adjacent to external spaces where it contributes to amenity.
3. The Panel discussed that lack of communal open space within a relatively small development could be supported in this instance, if the applicant demonstrates consistency with the recommendations offered in this report. In particular, much more generous balconies could be provided to each apartment to offset the absence of genuine communal open space.

4. Additionally, the applicant should explore the possibility of creating incidental communal nooks within the development that allow casual interaction amongst the residents. For example, seating within the common corridors and pathways.
5. The Panel notes that privacy for the ground floor apartment, particularly from Ormond Gardens, needs to be better considered in the design of walls and planting to ensure adequate screening from the street.

Principle 6 – Amenity

The Panel appreciates and supports the well-considered internal apartment layouts for the building, achieving consistency with the guidance offered within the ADG.

Principle 7 – Safety

No discussion.

Principle 8 – Housing Diversity and Social Interaction

Revised architectural drawings should include details of pre and post adaptation layouts, and the pre and post changes should avoid any structural, plumbing or building services amendments.

Principle 9 - Aesthetics

The Panel is generally supportive of the proposed architectural expression, though there does seem to be many details that might present challenges in both construction and maintenance – the horizontal ribs along the façade being one example.

Given the visibility of the development, and the nature of building proposed, attention should be given to balcony drainage, to ensure drains, gutters, heads, sumps and downpipes are incorporated into the built structure, rather than applied onto wall and ceiling surfaces. Developed architectural drawings should fully describe the design intent and include details of each primary façade type in the form of 1:20 or 1:50 sections, elevations or using appropriate 3D methods.

1.2. Sydney Water Corporation

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

1.3. Sydney Airport Corporation Limited

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

2. Internal Referral Comments:

2.1. Heritage Planning

The proposed development fails to comply with the Objectives (a) and (b) of Clause 5.10 of the RLEP 2012; and Clause 5.10(4) of the RLEP 2012 requires the consent authority to consider the effect of the proposed development on the heritage significance of the heritage items. Adjacent to the site at 108 Brook Street are two heritage-listed items – a sandstone retaining wall ("Catley's Wall") and an Edwardian-style residential flat building "Lachlan" (circa 1910) with Art Nouveau motifs.

- Concerns have been raised regarding the proposed basement car park footprint and the extent of excavation along the side boundary adjacent to the heritage-listed "Catley's" sandstone retaining wall and the "Lachlan" building. Additional clarification

and information in the Geological Investigation Report is necessary to determine the potential impact of the excavation on the structural integrity of the heritage items and fabric, especially "Catley's Wall".

The proposed development fails to comply with Part B2 Heritage Sections 2.1, 2.2 [objectives (a) and (a), and controls (i), (ii), and (iii)], 2.3 [objective (b) and control (xiii)], and 2.4 [objectives (a), (b), and (c), and controls (i), (ii), (iii), and (iv)] of RDCP 2023.

- Concerns raised on the proposed height, bulk, and setback (including the vehicle entry and side setback from heritage item), which are likely to have an adverse impact on the streetscape character and the setting of the heritage item.
- The proposal must not visually dominate the heritage item at 108 Brook Street Coogee and Catley's Wall. The proposal must reduce the height and/or bulk (including the vehicle entry and side setback from heritage item) of the development to minimise the adverse impact on the heritage item and streetscape character.
- Amended plans are to be prepared and submitted to Council for review and approval.

2.2. Development Engineering

Parking Provision

The development is for 5 units comprising of 1 x 2-bedroom + 4 x 3-bedroom dwellings generating a parking demand of 8 spaces when adopting the parking rates in Part B7 of the DCP.

Although 8 spaces have been provided in compliance with the DCP the draft strata plan indicates the allocation as 2 spaces each to Units 1-4. This is unacceptable for the following reasons;

- No carspace has been allocated to Unit 5 being the 2-bedroom unit (1 required)
- No visitor space has been provided (1 required).
- The accompanying traffic report does not address the variation to the DCP with regards to allocation.

Parking Layout

The carpark layout appears to generally comply with AS 2890.1 and is satisfactory.

There is a minor non-compliance on the internal driveway. In accordance with AS 2890.1 grade changes shall not exceed 12.5%. The grade change at the bottom of the ramp changes forms a 1 in 4 grade (25%) to a grade of 1:20 (5%) and so exceeds this amount. The design requires revision.

Flooding

The site is only mildly flood affected and mainly restricted to the road reserve. The proposed development will not be impacted. No issues from a flooding perspective.

Drainage

The site is located in the lower reaches of the Coogee Bay catchment where On-site Detention (OSD) is not required. The concept drainage plans reflect this and are generally satisfactory.

Waste Management

The development will require a minimum of 7 x 240L bins comprising of 3 garbage (red lid), 3 recycling (yellow lid) and 1 FOGO (green lid).

The submitted plans demonstrate compliance with this requirement with space for 7 bins provided.

2.3. Environmental Health

Acoustic Issues

Internal acoustic comfort

The Housing SEPP and the Apartment Design Guideline (ADG) apply to this development, accordingly, internal acoustic comfort and natural ventilation to all habitable rooms must be achieved concurrently as per *Objective 4B-1 (1) and Objective 4B-1 (2)* of the ADG.

It is acknowledged that the proposed residential apartments are naturally ventilated, but no acoustic report has been provided to determine the internal noise levels of the new development and ensure that façade construction is capable of achieving acceptable levels of internal acoustic amenity to all habitable rooms.

1. Randwick City Council internal noise levels for naturally ventilated habitable rooms mandate an $L_{Aeq\ 1\ hour}$ criteria; compliance with this criterion must be demonstrated prior to approval. Compliance during worst case scenario must be demonstrated:-

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

- 35 dB(A) between 10.00pm and 7.00am in sleeping areas when windows are closed; and/or an alternative means of passive ventilation has been provided; (Plenums, wintergardens, louvers, attenuated ducting etc.)
- 40 dB(A) in sleeping areas when windows are open (24 hours);
- 40 dB(A) in living areas when windows are closed (24 hours) and/or an alternative means of passive ventilation has been provided; (Plenums, wintergardens, louvers, attenuated ducting etc.)
- 50 dB(A) in living areas when windows are open (24 hours).

Be advised that should the windows open criteria not be achieved an alternative method of passive ventilation must be provided to all habitable rooms and the chosen method included on amended plans.

2. Randwick City Council will 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.

Preliminary mechanical plant noise assessment

1. Assessment of all residential plant noise emissions should be undertaken, and compliance demonstrated during the worst case scenario. Inaudibility should be demonstrated for the nighttime period as per the requirements outlined in the *Protection of the Environment Operations (Noise Control) Regulation 2017*.

Inaudibility should be taken as the existing internal $L_{A90, 15\ minute}$ (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.

2. Should the applicant nominate air conditioners, pumps etc. will not be used during the nighttime period this will be conditioned as part of the consent (if approved).
3. Merit based daytime/evening criteria should be nominated and justified by the Acoustic Consultant.

Furthermore, noise from any additional residential plant or equipment must be inaudible during the nighttime period (if in use), as per the intent of noise control regulations for residential plant and equipment i.e. pumps, car lifts, EV chargers etc.

Contaminated Land Issues

Preliminary Environmental Site Investigation

1. A consent authority should not approve any development until they are satisfied that the land is not contaminated, Council cannot be satisfied of this until a preliminary environmental site investigation is conducted as per the requirements outlined in section 4.6 of the [State Environmental Planning Policy \(Resilience and Hazards\) 2021](#).
2. The applicant is required to undertake a preliminary Environmental Site Investigation and consider both on-site and off-site contamination sources that may have affected the site; including potential impacts from nearby petrol filling station. The report must conclude that it is suitable for the proposed use. Failing this, a detailed site investigation and remediation action plan will be required.

The existing residential premises has been demolished and the site is currently vacant eliminating any obstacles to intrusive testing.

While this site has been a residential use since 1943 a Preliminary Environmental Site Investigation will be required as the proposal intends to excavate a new basement and will intersect with the water table. Given that the site is downstream from a petrol filling station and may be impacted by off-site groundwater contamination.

Appendix 2: Applicant's written request seeking to justify the contravention of the Height of Building Development Standard under Clause 4.3 of RLEP and Section 16(3) of Housing SEPP

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Statement of Environmental Effects

8 Ormond Gardens, Coogee

APPENDIX 1

**CLAUSE 4.6 VARIATION REQUEST TO BUILDING HEIGHT DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.3 OF RANDWICK LEP 2012**

8 Ormond Gardens, Coogee

Construction of a 5-storey residential flat building comprising of 5 units (1 x 2-bedroom and 4 x 3-bedroom), basement parking and associated subdivision and associated works (Infill Affordable Housing)

PREPARED BY

ABC PLANNING PTY LTD

OCTOBER 2024

CLAUSE 4.6 VARIATION REQUEST TO BUILDING HEIGHT DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.3 OF RANDWICK LEP 2012

This Clause 4.6 variation request has been prepared to accompany the development application for the construction of a 5-storey residential flat building comprising of 5 units (1 x 2-bedroom and 4 x 3-bedroom), basement parking and associated subdivision and associated works (Infill Affordable Housing) at 8 Ormond Gardens, Coogee.

The site is zoned R3 Medium Density Residential under the provisions of Randwick LEP 2012.

The proposed development includes the construction of a 5-storey residential flat building comprising of:

- Driveway leading from Brook Street to the Basement Level
- 8 basement level parking spaces
- Storage rooms, a bin room and a plant / services room on the Basement Level
- Pedestrian path leading from Brook Street to the lobby area on the Ground Floor
- Pedestrian entry leading from Ormond Gardens to the rear of the site
- Total of 5 units (1 x 2-bedroom and 4 x 3-bedroom). Unit G01 (1 x 2-bedroom unit) will be provided as affordable housing
- Bin holding area at the front of the site
- Bike rack, plant/services room and rainwater tank at the rear of the site
- Landscaping around the perimeters of the building on the Ground Floor, including a consolidated deep soil area at the rear of the site and planter landscaping along the northern, eastern and southern parts of Level 1

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

Clause 4.6 Exceptions to development standards

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

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

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

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

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- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- (5) *(Repealed)*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *(Repealed)*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4,*
- (caa) *clause 5.5,*
- (ca) *clause 6.27(4),*
- (cb), (cc) *(Repealed)*
- (cd) *clause 6.31.*

This Clause 4.6 variation has been prepared in accordance with the 'Guide to Varying Development Standards' prepared by the Department of Planning and Environment in 2023.

This Clause 4.6 variation request outlines the nature of the exceedance to the building height development standard and provides an assessment of the relevant matters in Clause 4.6 of the Randwick LEP 2012.

This Clause 4.6 variation request demonstrates that compliance with the development standard relating to building height is unreasonable or unnecessary in the circumstances and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying Clause 4.6(3) of the Randwick LEP 2012. This Clause 4.6 variation request also demonstrates that the proposed development will be consistent with the objectives of the height of buildings development standard and the zoning of the site.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.3 of the Randwick LEP 2012 and the associated building height map (refer to extract below).



Figure 37: Building Height Map

Clause 4.3 of Randwick LEP 2012 and the associated building height map prescribes a maximum building height limit of 12m for a development on the site. Clause 16(3) of the SEPP (Housing) 2021 permits a 30% uplift above the base height, thereby allowing for a building height limit of 15.6m.

The proposed development's maximum building height is 17.07m, representing a 9.4% (1.47m) variation from the Building Height Development Standard.

The building height departure is limited to the top of the lift overrun and to the top part of the front of Level 4. The remainder of the development complies with the building height standard. Refer to the extract of the Height Plane Diagram below.

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Figure 38: Extract of the height plane diagram demonstrating that the component of the development above the height control is limited to the top of the lift and the top of the front of Level 4; the remainder of the development complies with the building height standard

Justification for Contravention of the Development Standard

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

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

5-Part test

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

The 5-Part Test is summarised as follows:

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

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

5. zoning of the land on which the development is proposed was unreasonable or inappropriate.

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

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

Consistency with the objectives of the building height development standard in the LEP	
Objectives	Assessment
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	<p>The subject site is surrounded by 4—to 5-storey buildings. Despite the building height non-compliance, the proposal will comfortably fit in with the local area's character.</p> <p>Adjoining the site to the north is a 4-storey heritage-listed residential flat building at No. 108 Brook Street. Further to the north is a 5-storey mixed-use development at Nos. 102-104 Brook Street.</p> <p>Opposite the site on the southern side of Ormond Gardens is an outdated 2-storey residential flat building at No. 1 Ormond Gardens. This site is an anomaly as it can be developed to a height of 12m or 15.6m under the SEPP. The land rises to the south. Further south of the site are residential flat buildings, mixed-use developments along Brook Street, and shops and services along Coogee Bay Road. The proposed development will be compatible with development to the south.</p> <p>The building height departure is limited to the top of the lift overrun and the top part of the roof at the front of Level 4. The remainder of the development complies with the building height standard.</p> <p>The building height non-compliance is minor (1.47m) and will be indiscernible from the streetscape and surrounding properties.</p> <p>The development's components that do not comply with the building height control (e.g., the top of the lift overrun and the top part of the roof at the front of Level 4) are recessed and will not generate any adverse streetscape, visual bulk, or amenity impacts.</p>
(b) to ensure that development is compatible with the scale and character of contributory buildings in a	<p>Adjoining the site to the north at No. 108 Brook Street are the following heritage items:</p> <ul style="list-style-type: none"> • I65 - "Catley's Wall", sandstone retaining wall and • I66 - Inter-war residential flat building

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<p>conservation area or near a heritage item,</p>	<p>A Heritage Impact Statement prepared by Weir Phillips Heritage Planning is submitted with this application. The Heritage Impact Statement concludes the following:</p> <p><i>"The proposed building is well-designed with a clearly contemporary expression that will sit comfortably in the setting of the heritage items which is characterised by recent infill similar to that proposed.</i></p> <p><i>The proposed building will be constructed of high-quality materials presented in a neutral colour scheme. Where the proposed building adjoins heritage items, the scheme has mitigated the physical impact by using a secant wall pile methodology for the excavation of the basement and the construction of the building. The proposed works will, overall, result in a new residential flat building that makes a better contribution to the setting of the heritage item than the existing dilapidated building does.</i></p> <p><i>The proposed works fulfil the aims and objectives of the Randwick LEP 2012 and the Randwick DCP 2013 by improving the quality and diversity of housing options in Coogee while respecting the heritage significance of the area in which it lies."</i></p>
<p>(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.</p>	<p>The proposed exceedance of the height control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy, or loss of visual amenity, and a reduction in this height would not create additional benefits for adjoining properties or the locality.</p> <p><u>Overshadowing:</u> As demonstrated in the Shadow Diagrams submitted with this application, the components of the development that do not comply with the building height control (i.e. the top of the lift overrun and top part of the roof at the front of Level 4) will not result in additional overshadowing to the adjoining properties to the north and west.</p> <p>Opposite the subject site on the southern side of Ormond Gardens is a 2-storey residential flat building at No. 1 Ormond Gardens. Level 4 is setback 2.5m from the Ormond Gardens (southern) boundary of the site, resulting in approximately 20m distance from the 2-storey residential flat building at No. 1 Ormond</p>

	<p>Gardens. Due to the generous distance separation, the components of the development that do not comply with the building height control (i.e. the top of the lift overrun and top part of the roof at the front of Level 4) will have limited overshadowing impacts on the building to the south in the morning only. Refer to the Shadow Diagrams submitted with this application.</p> <p><u>View Loss:</u> The proposed development has been designed so as not to have an unreasonable impact on views from the public domain or surrounding properties. Refer to the View Loss Assessment submitted with this DA.</p> <p><u>Privacy:</u> The building height departure is limited to the top of the lift overrun and to the top part of the front of Level 4. The remainder of the development complies with the building height standard.</p> <p>The top of the lift overrun will not result in any adverse privacy impacts to neighbouring properties.</p> <p>The front of Level 4, which does not comply with the building height control, has been designed and sited to ensure adequate privacy to the adjoining properties in terms of location, orientation, internal layout, and building materials used.</p> <p>The front of Level 4, which does not comply with the building height control, is appropriately setback, thereby providing adequate separation from the adjoining properties.</p> <p>Windows of the front of Level 4 has been appropriately sited and designed to minimise any potential overlooking.</p>
Consistency with the objectives of the R3 Medium Density Residential zone	
Objectives	Assessment
<ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a medium density residential environment.</i> • <i>To provide a variety of housing types within a medium density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> 	<p>The site is zoned R3 Medium Density Residential under the provisions of Randwick LEP 2012.</p> <p>The proposed building height variation does not raise any inconsistency with the ability of the proposal to achieve the objectives of the R3 Medium Density Residential zone.</p> <p>The proposal is consistent with the objectives of the R3 zone as follows:</p>

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<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • Despite the building height variation, the proposed development will meet the community's housing needs within a medium-density residential environment. • The proposal includes a mix of 2-bedroom and 3-bedroom units, including affordable housing, which will assist in promoting housing choice, flexibility and affordability. • The proposal will not inhibit other land uses that provide facilities or services to meet the day-to-day needs of residents. • The sensitive design ensures the area's medium-density residential character and the streetscape's amenity are maintained. The proposed height, scale, and external finishes will be in keeping with the neighbourhood and streetscape. The proposed landscaping will add amenity to the area and ensure that the development sits well within the local context. • Each of the proposed units has a high-quality design with open plan layouts, pleasant outlooks, good-sized rooms, access to sunlight, daylight, ventilation, storage, on-site parking, and private open space areas. • The proposed development will not unreasonably impact the amenity of neighbouring and nearby properties in terms of overshadowing, privacy and view loss. <p>Therefore, it is considered that the proposed development satisfies the zone objectives, notwithstanding the height variation.</p>
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Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk are of an appropriate form and scale, compatible with surrounding development and the desired future character for the locality, and meet the objectives of the development standard.

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

As outlined in the 'Guide to Varying Development Standards' prepared by the Department of Planning and Environment in 2023, the term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide, as exemplified by the court cases (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [10]).

Assessment: Environmental planning grounds justifying the contravention of the building height development standard include:

- The building height departure is limited to the top of the lift overrun and to the top part of the front of Level 4. The remainder of the development complies with the building height standard. Refer to the extract of the Height Plane Diagram above.
- The 5-storey scale of development is consistent with that anticipated by the height limit associated with the 15.6m height generated by the SEPP height incentive.
- The site falls approximately 2m from the rear south-western corner of the site (RL10) to the front north-eastern corner of the site (RL8). Greater excavation occurs at the front of the site towards Brook Street. The height variation at the front part of the building is partly due to the slope of the site, which has been established in the land and environment court judgement of *Merman Investments v Woollahra Council* [2021] as constituting sufficient environmental ground.
- The building height variation is attributed to the latest BCA requirements, which require more floor-to-floor height (i.e. slab thickness) to achieve the ADG 2.7m ceiling height requirement.
- The building height variation ensures amenity for the unit on the Ground Floor.
- The building height non-compliance is minor (1.47m) and will be indiscernible from the streetscape and surrounding properties.
- The components of the development that do not comply with the building height control (i.e. the top of the lift overrun and top part of the front of Level 4) will not generate any adverse streetscape, visual bulk or amenity impacts.
- Despite the building height non-compliance, the proposed height is compatible with neighbouring 5-storey buildings to the north and development to the south, taking into account that the land rises to the south of the site. The bulk and scale of the proposal are compatible with the locality's existing and desired future character. Refer to the extract of the photomontage below, which demonstrates that the proposed development is compatible with the height and bulk of buildings along the streetscape.



Figure 39: Extract of the photomontage demonstrating that the proposed development is compatible with the bulk and height of buildings along the streetscape

- The external facades are articulated and indented to minimise the perceived bulk and scale of the building height non-compliance.
- A reduction of the proposed building height would provide an indiscernible benefit to the streetscape and would reduce the amenity of the building.
- The non-compliant building height facilitates the provision of affordable housing on the site.
- The proposed exceedance of the height control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity, and a reduction in this height would not create additional benefit for adjoining properties or the locality.
- As demonstrated in the Shadow Diagrams submitted with this application, the components of the development that do not comply with the building height control (i.e. the top of the lift overrun and top part of the roof at the front of Level 4) will not result in additional overshadowing to the adjoining properties to the north and west. Opposite the subject site on the southern side of Ormond Gardens is a 2-storey residential flat building at No. 1 Ormond Gardens. Level 4 is setback 2.5m from the site's Ormond Gardens (southern) boundary, resulting in approximately 20m distance from the 2-storey residential flat building at No. 1 Ormond Gardens. Due to the generous distance separation, the components of the development that do not comply with the building height control (i.e. the top of the lift overrun and top part of the roof at the front of Level 4) will have limited overshadowing impacts on the building to the south in the morning only. Refer to the Shadow Diagrams submitted with this application.
- The proposed development has been designed so as not to have an unreasonable impact on views from the public domain or surrounding properties. Refer to the View Loss Assessment submitted with this DA.
- The building height departure is limited to the top of the lift overrun and to the top part of the front of Level 4. The remainder of the development complies with the building height standard. The top of the lift overrun will not result in any adverse privacy impacts to neighbouring properties. The front of Level 4, which does not comply with the building height control, has been designed and sited to ensure adequate privacy to the adjoining properties in terms of location, orientation, internal layout and building materials used. The front of Level 4, which does not comply with the building height control, is appropriately setback, thereby providing adequate separation from the adjoining properties. Windows of the front of Level 4 has been appropriately sited and designed to minimise any potential overlooking.
- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the SEPP (Housing) 2021, including deep soil, solar access, cross ventilation, private open space, apartment and room sizes, storage and car parking. The excess building height, thereby, does not compromise the ability to meet or outperform the above criteria.

- The proposal includes a high-quality landscape design that includes planting a variety of trees, shrubs, and turf. Landscaping is provided within the front, side and rear setback areas on the Ground Floor, including a consolidated deep soil area at the rear of the site and planter landscaping along the northern, eastern and southern parts of Level 1. Refer to the Landscape Plan prepared by Wyer & Co Landscape Architect submitted with this application. The proposed landscaping will enhance the amenity and visual setting of the proposed development and soften the visual built form of the proposal, notwithstanding the building height non-compliance.
- The proposal is consistent with the R3 Medium Density zone objectives and the building height objectives.
- The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represent the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

The proposal will provide a suitable design and amenity in terms of the built environment and represent the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act). The building envelope and design of the proposal respond appropriately to the unique opportunities and constraints of the site. On the above basis, it is considered that there are sufficient environmental grounds to permit the building height variation in this instance.

Conclusion

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

The proposal is consistent with the objects of Section 1.3 of the EP& A Act by promoting the following:

- economic welfare of the community and a better environment (Section 1.3(a))
- orderly and economic use and development of land (Section 1.3(c))
- delivery and maintenance of affordable housing (Section 1.3(d))
- protect the environment (Section 1.3(e))
- sustainable management of built heritage (Section 1.3(f))
- good design and amenity of the built environment (Section 1.3 (g))
- proper construction and maintenance of buildings, including the protection of the health and safety of their occupants (Section 1.3(h))

The proposed development will be in the public interest because it is consistent with the objectives of the height of buildings development standard under the Randwick LEP 2012.

For reasons mentioned herein, this Clause 4.6 variation request is forwarded in support of the development proposal at 8 Ormond Gardens, Coogee and is requested to be looked upon favourably by the consent authority.

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Appendix 3: Applicant's written request seeking to justify the contravention of the Floor Space Ratio Development Standard under Clause 4.4 of RLEP and Section 16(1) of Housing SEPP

Statement of Environmental Effects

8 Ormond Gardens, Coogee

APPENDIX 2

**CLAUSE 4.6 VARIATION REQUEST TO FLOOR SPACE RATIO DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.4 OF RANDWICK LEP 2012**

8 Ormond Gardens, Coogee

Construction of a 5-storey residential flat building comprising of 5 units (1 x 2-bedroom and 4 x 3-bedroom), basement parking and associated subdivision and associated works (Infill Affordable Housing)

PREPARED BY

ABC PLANNING PTY LTD

OCTOBER 2024

CLAUSE 4.6 VARIATION REQUEST TO FLOOR SPACE RATIO DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.4 OF RANDWICK LEP 2012

This Clause 4.6 variation request has been prepared to accompany the development application for the construction of a 5-storey residential flat building comprising of 5 units (1 x 2-bedroom and 4 x 3-bedroom), basement parking and associated subdivision and associated works (Infill Affordable Housing) at 8 Ormond Gardens, Coogee.

The site is zoned R3 Medium Density Residential under the provisions of Randwick LEP 2012.

The proposed development includes the construction of a 5-storey residential flat building comprising of:

- Driveway leading from Brook Street to the Basement Level
- 8 basement level parking spaces
- Storage rooms, a bin room and a plant / services room on the Basement Level
- Pedestrian path leading from Brook Street to the lobby area on the Ground Floor
- Pedestrian entry leading from Ormond Gardens to the rear of the site
- Total of 5 units (1 x 2-bedroom and 4 x 3-bedroom). Unit G01 (1 x 2-bedroom unit) will be provided as affordable housing
- Bin holding area at the front of the site
- Bike rack, plant/services room and rainwater tank at the rear of the site
- Landscaping around the perimeters of the building on the Ground Floor, including a consolidated deep soil area at the rear of the site and planter landscaping along the northern, eastern and southern parts of Level 1

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

Clause 4.6 Exceptions to development standards

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

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

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- (5) *(Repealed)*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *(Repealed)*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4,*
- (caa) *clause 5.5,*
- (ca) *clause 6.27(4),*
- (cb), (cc) *(Repealed)*
- (cd) *clause 6.31.*

This Clause 4.6 variation has been prepared in accordance with the 'Guide to Varying Development Standards' prepared by the Department of Planning and Environment in 2023.

This Clause 4.6 variation request outlines the nature of the exceedance to the FSR development standard and provides an assessment of the relevant matters in Clause 4.6 of the Randwick LEP 2012.

This Clause 4.6 variation request demonstrates that compliance with the development standard relating to FSR is unreasonable or unnecessary in the circumstances and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying Clause 4.6(3) of the Randwick LEP 2012. This Clause 4.6 variation request also demonstrates that the proposed development will be consistent with the objectives of the FSR development standard and the zoning of the site.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.3 of the Randwick LEP 2012 and the associated FSR map (refer to extract below).

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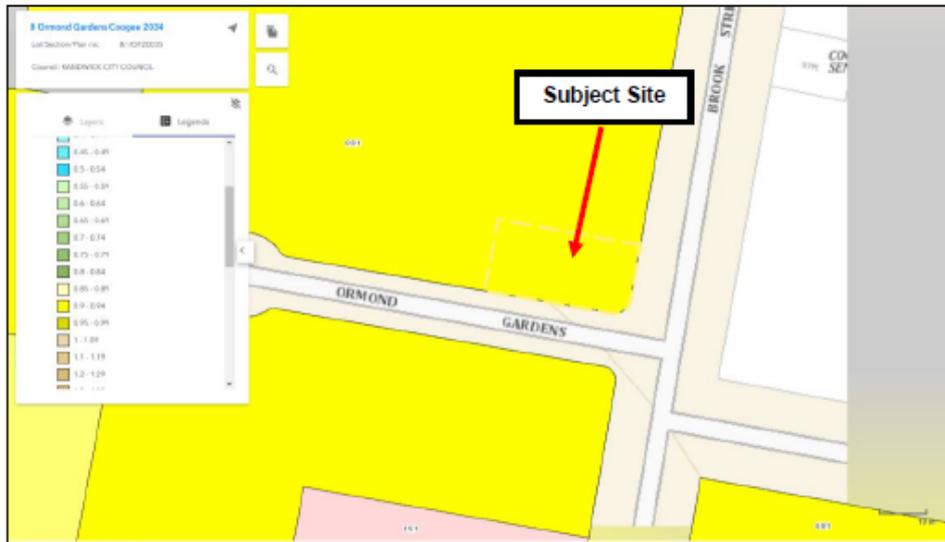


Figure 40: Floor Space Ratio Map

Clause 4.4 of Randwick LEP 2012 and the associated FSR map prescribe an FSR of 0.9:1. Clause 16(1) of the Housing SEPP permits a 30% uplift above the base FSR, thereby allowing for an FSR of 1.17:1 (GFA: 496.5m²).

The proposed development has an FSR of 1.46:1 (GFA: 620.4m²), representing a 24.95% (123.9m²) variation from the FSR Standard.

Justification for Contravention of the Development Standard

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

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

5-Part test

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

The 5-Part Test is summarised as follows:

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

- 6. *objectives of the development standard are achieved notwithstanding the non-compliance*
- 7. *underlying objective or purpose is not relevant to the development*

- 8. *underlying objective or purpose would be defeated or thwarted if compliance was required*
- 9. *development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
- 10. *zoning of the land on which the development is proposed was unreasonable or inappropriate.*

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

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

Consistency with the objectives of the floor space ratio development standard in the LEP	
Objectives	Assessment
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	<p>The subject site is surrounded by 4—to 5-storey buildings. Despite the FSR non-compliance, the proposal will comfortably fit in with the local area's character.</p> <p>Adjoining the site to the north is a 4-storey heritage-listed residential flat building at No. 108 Brook Street. Further to the north is a 5-storey mixed-use development at Nos. 102-104 Brook Street.</p> <p>Opposite the site on the southern side of Ormond Gardens is an outdated 2-storey residential flat building at No. 1 Ormond Gardens. This site is an anomaly as it can be developed to a height of 12m or 15.6m under the SEPP. The land rises to the south. Further south of the site are residential flat buildings, mixed-use developments along Brook Street, and shops and services along Coogee Bay Road. The proposed development will be compatible with development to the south.</p> <p>The FSR non-compliance will be indiscernible from the streetscape and surrounding properties and will not generate any adverse streetscape, visual bulk or amenity impacts.</p>
(b) to ensure that buildings are well articulated and respond to environmental and energy needs,	<p>The external facades are articulated and indented to minimise the perceived bulk and scale of the FSR non-compliance.</p> <p>80% of the proposed units (4 out of the five units) will receive 3 hours of solar access to the living rooms on 21 June.</p> <p>The proposal includes north-facing and west-facing privacy screen blades to allow solar access into the living rooms, laundries, ensuites and walk-in-robos without looking back onto the northern and western neighbours.</p> <p>100% (5 of the five apartments) will be naturally cross-ventilated.</p>

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<p>(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</p>	<p>Adjoining the site to the north at No. 108 Brook Street are the following heritage items:</p> <ul style="list-style-type: none"> • I65 - "Catley's Wall", sandstone retaining wall and • I66 - Inter-war residential flat building <p>A Heritage Impact Statement prepared by Weir Phillips Heritage Planning is submitted with this application. The Heritage Impact Statement concludes the following:</p> <p><i>"The proposed building is well-designed with a clearly contemporary expression that will sit comfortably in the setting of the heritage items which is characterised by recent infill similar to that proposed.</i></p> <p><i>The proposed building will be constructed of high-quality materials presented in a neutral colour scheme. Where the proposed building adjoins heritage items, the scheme has mitigated the physical impact by using a secant wall pile methodology for the excavation of the basement and the construction of the building. The proposed works will, overall, result in a new residential flat building that makes a better contribution to the setting of the heritage item than the existing dilapidated building does.</i></p> <p><i>The proposed works fulfil the aims and objectives of the Randwick LEP 2012 and the Randwick DCP 2013 by improving the quality and diversity of housing options in Coogee while respecting the heritage significance of the area in which it lies."</i></p>
<p>(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</p>	<p>The proposed exceedance of the FSR control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy, or loss of visual amenity, and a reduction in this FSR would not create additional benefits for adjoining properties or the locality.</p> <p><u>Overshadowing:</u> As demonstrated in the Shadow Diagrams submitted with this application, the proposal will not result in additional overshadowing to the adjoining properties to the north and west.</p> <p>Opposite the subject site on the southern side of Ormond Gardens is a 2-storey residential flat building at No. 1 Ormond Gardens. The proposed development is setback 2.5m from the site's Ormond Gardens (southern) boundary, which results in an approximately 20-m distance from the 2-storey residential flat building at No. 1 Ormond Gardens. Due to the generous distance separation, the proposal will have limited overshadowing of the building to the south in the morning only. Refer to the Shadow Diagrams submitted with this application.</p> <p><u>View Loss:</u> The proposed development has been designed so as not to have an unreasonable impact on</p>

	<p>views from the public domain or surrounding properties. Refer to the View Loss Assessment submitted with this DA.</p> <p><u>Privacy:</u> The proposed development has been designed and sited to ensure adequate privacy between the proposed residential apartments and the adjoining properties. The proposal has considered the location of the development on the site, the internal layout and the building materials used.</p> <p>The location of the driveway, lobbies and private open space areas have been carefully planned to ensure minimal privacy impact on adjoining properties.</p> <p>The proposal has appropriate setbacks, thereby providing adequate separation from the adjoining properties.</p> <p>Windows and balconies have been appropriately sited and designed to minimise any potential overlooking.</p> <p>The balconies are orientated to the front, limited in size, and screened to alleviate the impact of privacy on neighbouring properties.</p>
Consistency with the objectives of the R3 Medium Density Residential zone	
Objectives	Assessment
<ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a medium density residential environment.</i> • <i>To provide a variety of housing types within a medium density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> • <i>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.</i> • <i>To protect the amenity of residents.</i> • <i>To encourage housing affordability.</i> • <i>To enable small-scale business uses in existing commercial buildings.</i> 	<p>The site is zoned R3 Medium Density Residential under the provisions of Randwick LEP 2012.</p> <p>The proposed FSR variation does not contradict the proposal's ability to achieve the objectives of the R3 Medium-Density Residential zone.</p> <p>The proposal is consistent with the objectives of the R3 zone as follows:</p> <ul style="list-style-type: none"> • Despite the FSR variation, the proposed development will provide for the community's housing needs within a medium-density residential environment. • The proposal includes a mix of 2-bedroom and 3-bedroom units, including affordable housing, which will assist in promoting housing choice, flexibility and affordability. • The proposal will not inhibit other land uses that provide facilities or services to meet the day-to-day needs of residents. • The sensitive design ensures the area's medium-density residential character and the streetscape's amenity are maintained. The proposed height, scale, and external finishes will be in keeping with the neighbourhood and streetscape. The proposed landscaping will add amenity to the area and ensure that the development sits well within the local context.

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	<ul style="list-style-type: none"> • Each of the proposed units is of a high-quality design with open plan layouts, pleasant outlooks, good-sized rooms, access to sunlight, daylight, ventilation, storage, on-site parking and private open space areas. • The proposed development will not unreasonably impact on the amenity of neighbouring and nearby properties in terms of overshadowing, privacy and view loss. <p>Therefore, it is considered that the proposed development satisfies the zone objectives, notwithstanding the FSR variation.</p>
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Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk are of an appropriate form and scale, compatible with surrounding development and the desired future character for the locality, and meet the objectives of the development standard.

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

As outlined in the 'Guide to Varying Development Standards' prepared by the Department of Planning and Environment in 2023, the term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide, as exemplified by the court cases (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [10]).

Assessment: Environmental planning grounds justifying the contravention of the FSR development standard include:

- Despite the FSR non-compliance, the proposal is compatible with neighbouring 5-storey buildings to the north and development to the south, taking into account that the land rises to the south of the site. The bulk and scale of the proposal are compatible with the locality's existing and desired future character. Refer to the extract of the photomontage below, which demonstrates that the proposed development is compatible with the height and bulk of buildings along the streetscape.
- The 5-storey scale of development is consistent with that which would be anticipated by the height limit associated with the 15.6m height that is generated by the SEPP height incentive.



Figure 41: Extract of the photomontage demonstrating that the proposed development is compatible with the bulk and height of buildings along the streetscape

- The external facades are articulated and indented to minimise the perceived bulk and scale of the FSR non-compliance.
- The 5-storey scale is consistent with that contemplated by the FSR incentive, being for 5-storeys, notwithstanding the FSR variation.
- The FSR non-compliance will be indiscernible from the streetscape and surrounding properties and will not generate any adverse streetscape, visual bulk or amenity impacts.
- A reduction of the proposed building bulk would provide an indiscernible benefit to the streetscape and would reduce the amenity of the building. All units are over 90m² in size; a reduction of unit sizes will result in the detriment of amenity for the residents. The proposal will result in a high-quality outcome.
- The non-compliant FSR facilitates the provision of affordable housing on the site.
- The proposed exceedance of the FSR control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in FSR would not create additional benefit for adjoining properties or the locality.
- As demonstrated in the Shadow Diagrams submitted with this application, the proposal will not result in additional overshadowing to the adjoining properties to the north and west. Opposite the subject site on the southern side of Ormond Gardens is a 2-storey residential flat building at No. 1 Ormond Gardens. The proposed development is setback 2.5m from the Ormond Gardens (southern) boundary of the site, which results in approximately 20m distance separation from the 2-storey residential flat building at No. 1 Ormond Gardens. Due to the generous distance separation, the proposal will have limited overshadowing the building to the south in the morning only. Refer to the Shadow Diagrams submitted with this application.
- The proposed development has been designed so as not to have an unreasonable impact on views from the public domain or surrounding properties. Refer to the View Loss Assessment submitted with this DA.

- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the SEPP (Housing) 2021, including deep soil, solar access, cross ventilation, private open space, apartment and room sizes, storage and car parking. The excess FSR does not compromise the ability to meet or outperform the above criteria.
- The proposal includes a high-quality landscape design that includes planting a variety of trees, shrubs, and turf. Landscaping is provided within the front, side and rear setback areas on the Ground Floor, including a consolidated deep soil area at the rear of the site and planter landscaping along the northern, eastern and southern parts of Level 1. Refer to the Landscape Plan prepared by Wyer & Co Landscape Architect submitted with this application. The proposed landscaping will enhance the amenity and visual setting of the proposed development and soften the visual built form of the proposal, notwithstanding the FSR non-compliance.
- The proposal is consistent with the R3 Medium Density Residential zone objectives and the FSR objectives.
- The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represent the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

The proposal will provide a suitable design and amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act and the building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site. On the above basis, it is considered that there are sufficient environmental grounds to permit the FSR variation in this instance.

Conclusion

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

The proposal is consistent with the objects of Section 1.3 of the EP& A Act by promoting the following:

- economic welfare of the community and a better environment (Section 1.3(a))
- orderly and economic use and development of land (Section 1.3(c))
- delivery and maintenance of affordable housing (Section 1.3(d))
- protect the environment (Section 1.3(e))
- sustainable management of built heritage (Section 1.3(f))
- good design and amenity of the built environment (Section 1.3 (g))

- proper construction and maintenance of buildings, including the protection of the health and safety of their occupants (Section 1.3(h))

The proposed development will be in the public interest because it is consistent with the objectives of the FSR development standard under the Randwick LEP 2012.

For reasons mentioned herein, this Clause 4.6 variation request is forwarded in support of the development proposal at 8 Ormond Gardens, Coogee and is requested to be looked upon favourably by the consent authority.

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Appendix 4: Applicant's written request seeking to justify the contravention of the Site Area Development Standard under Section 19(2)(a) of Housing SEPP

Clause 4.6 – Lot Size

8 Ormond Gardens, Coogee



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WITHOUT PREJUDICE

CLAUSE 4.6 TO CLAUSE 19.2(a) OF STATE ENVIRONMENTAL PLANNING
POLICY(SEPP) (HOUSING) 2021

EXCEPTIONS TO DEVELOPMENT STANDARDS – MINIMUM SITE AREA

*Construction of a 5-storey residential flat building comprising of 5 units (1 x 2-bedroom and 4
x 3-bedroom), basement parking and associated strata subdivision and associated works
(Infill Affordable Housing)*

8 Ormond Gardens, Coogee

PREPARED BY

ABC PLANNING PTY LTD

November 2024

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for the construction of a 5-storey residential flat building comprising of 5 units (1 x 2-bedroom and 4 x 3-bedroom), basement parking and associated strata subdivision and associated works (Infill Affordable Housing) at 8 Ormond Gardens, Coogee.

Clause 4.6 allows the consent authority to grant consent for development even though the development contravenes a non-discretionary development standard imposed by SEPP Housing 2021. The clause aims to provide appropriate flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement in *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*, and more recently the decision of *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*.

In the SJD decision, the Court at [73] held that "*it should be noted cl 4.6 of [LEP] is as much a part of [LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.*" The court statement is considered to apply to the non-discretionary standards within the SEPP Housing 2021.

Clause 4.6 is reproduced in full immediately below, and each aspect of the clause is addressed in this written request.

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Clause 4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular Standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 19.2 (a) of the SEPP (Housing) 2021 - a *minimum site area of 450m²*. The subject lot size is 437m², representing a 13sqm or 2.97% variation from the 450m² standard.

Justification for Contravention of the Development Standard

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

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

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

Consistency with the Principles of the SEPP Housing 2021 Policy, notwithstanding the 13sqm lot size variation

<i>(a) enabling the development of diverse housing types, including purpose-built rental housing,</i>	The minor variation in lot size facilitates the provision of affordable rental housing, noting that 1 of the five apartments will be dedicated to affordable housing for a 15-year period.
<i>(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,</i>	The variation will facilitate the provision of affordable housing. A registered housing provider will manage the affordable rental unit, which will provide housing to vulnerable members of the community.
<i>(c) ensuring new housing development provides residents with a reasonable level of amenity,</i>	The variation to the site area requirement does not compromise the ability to provide a reasonable level of amenity for the residents. This is achieved through the provision of compliant unit sizes, compliant private open space, ADG compliant solar access, compliant cross ventilation, compliant room sizes, and compliant parking.
<i>(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</i>	The variation in the lot size enables the provision of 5 high-quality units located within walking distance of numerous bus services, recreation areas (Coogee Oval is immediately opposite the site whilst Coogee Beach and shops are within 250m) On this basis, the variation in the lot size will provide for the delivery of housing where established infrastructure and services are located.
<i>(e) minimising adverse climate and environmental impacts of new housing development,</i>	The appropriate nature of the development will not generate any adverse climate or environmental impacts. Solar access is retained to the units to the south and west through the provision of compatible setbacks. The front, side, and rear setbacks and a contextually compatible building height reasonably maintain solar access to the units in the south across Ormond Gardens. On this basis, the lot size variation will not be responsible for any adverse climate and environmental impacts.
<i>(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,</i>	The lot size variation enables the provision of a 5-storey residential flat building, which will sit comfortably alongside the residential flat building of a similar height to that proposed, to the immediate north (Lachlan) and the substantial 5-storey mixed-use development further north at 102-104 Brook Street. The 5-storey form of development is consistent with the height and scale

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	envisaged by the State Policy when considering the 30% additional height associated with the Policy. The additional 30% height generates a height of 15.4m, equivalent to a 5-storey scale building. The proposed 5-storey built form is consistent with the Policy.
(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	N/A
(h) mitigating the loss of existing affordable rental housing.	N/A-the site is vacant.

Desired Future Character is achieved notwithstanding the variation

Assessment: The 5-storey residential flat building is consistent with the scale of development that is associated with the State Policy (i.e. 15.4m). Such height will sit comfortably alongside the established 4-storey residential flat building to the north and the 5-storey mixed-use development further north. The height is also compatible with the nearby similar scaled built form to the south towards Coogee Bay Rd, as shown in the streetscape elevation below:

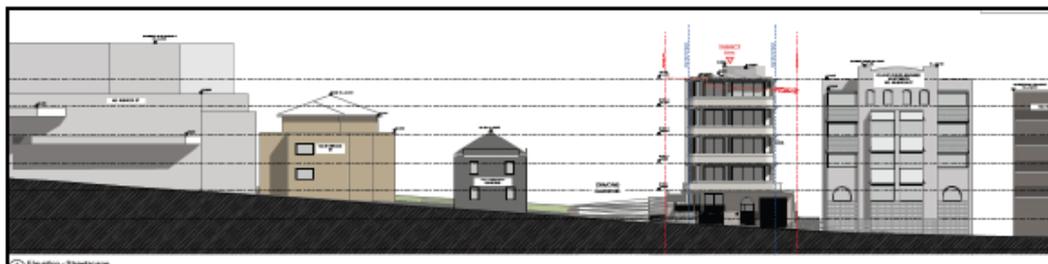


Figure 1: Excerpt of streetscape elevation showing the appropriate infill nature of the subject development between the approved development to the south and the established development to the north.

Absence of Unreasonable Impact from the Variation

Assessment: The proposed lot size variation is not responsible for any unreasonable external impacts on the streetscape, public domain, or any adjoining property's amenity. In this regard, the siting and design of the built form on the subject site do not unreasonably generate any adverse amenity impacts in relation to:

- Visual bulk
- Overshadowing
- Visual or acoustic privacy
- Loss of views

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

Consistency with the objectives of the Standard	
Objectives Nil	Assessment N/A
Consistency with the objectives of the Zone R3 Medium Density Residential	
Objectives	Assessment
<ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a medium density residential environment.</i> • <i>To provide a variety of housing types within a medium density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> • <i>To maximise public transport patronage and encourage walking and cycling.</i> 	<p>The proposed lot size variation does not generate any inconsistency with the zone objectives as the variation enables the provision of housing (including affordable housing) within a medium-density residential environment.</p> <p>The variation in the lot size and provision of 5 apartments (including one affordable rental housing unit for 15 years) facilitates the provision of various housing types, including 2-bedroom and 3-bedroom apartments.</p> <p>The provision of limited parking, as required by the State Policy, assists in maximising the use of public transport whilst encouraging walking and cycling. The subject site is within walking distance of numerous bus services and recreation areas (Coogee Oval and Goldstein Reserve are to the east across Brook Street), whilst Coogee shops and restaurants are 100m to the south. On this basis, the variation in the lot size will provide for the delivery of housing where established infrastructure and services are located.</p>

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

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

Assessment:

Minor and indiscernible nature of the variation

The minor extent of the variation (a mere 13sqm/2.97%) is considered to be negligible variation to the minimum lot size. Such extent of variation is akin to the provision of an extra metre of site depth at the rear of the site. On this basis, variation is considered to be of an indiscernible nature.

Provision of affordable housing is facilitated by endorsement of the variation.

It is reiterated that the variation in the lot size will facilitate the provision of a high-quality, affordable housing unit. This will assist with the provision of housing in an area where affordable housing is in high demand.

Other Matters for Consideration

4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular Standard and the objectives for development within the zone in which the development is proposed to be carried out

Assessment: The above assessment demonstrates that the proposed lot size does not conflict with the objectives of the R3 Medium Density Residential zone.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

Nevertheless, the Council may wish to consider the concurrence requirements.

(b) the public benefit of maintaining the development standard

Assessment: Maintaining the development standard would not benefit the public, as the variation in the lot size standard enables the provision of affordable housing in a location convenient to services, transport, and recreation areas.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not any additional matters beyond those discussed above that need to be considered.

Generally, as to concurrence, for the reasons outlined above – and particularly having regard to the site-specific nature of this clause 4.6 variation request – there is nothing about this proposed lot size variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. No other relevant matters are requested to be taken into consideration before granting concurrence.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the development proposal at 8 Ormond Gardens, Coogee and is requested to be looked upon favourably by Council.

Appendix 5: ADG Compliance Table

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Clause	Design Criteria	Proposal	Compliance												
Part 3: Siting the Development															
3D-1	Communal and Public Open Space														
	Communal open space has a minimum area equal to 25% of the site.	None provided.	No												
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	See above.	No												
3E-1	Deep Soil Zones														
	Deep soil zones are to meet the following requirements: 7% site area without a minimum dimension.	Proposed = 6.7% to a paved area over a sewer main.	No												
3F-1	Visual Privacy														
	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="336 983 817 1417"> <thead> <tr> <th>Building Height</th> <th>Habitable Rooms and Balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Proposed building is setback 4.5m from western boundary and 2.5m from northern boundary (except for the ground floor which is only 550mm).</p> <p>However, complies with DCP, see below.</p>	No
Building Height	Habitable Rooms and Balconies	Non-habitable rooms													
Up to 12m (4 storeys)	6m	3m													
Up to 25m (5-8 storeys)	9m	4.5m													
Over 25m (9+ storeys)	12m	6m													
3J-1	Bicycle and Car Parking														
	<p>For development in the following locations:</p> <ul style="list-style-type: none"> on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 	N/A	N/A												

Clause	Design Criteria	Proposal	Compliance
	<p>Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>		
Part 4: Designing the Building			
4A	Solar and Daylight Access		
	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter.</p>	<p>4/5 units (80%) receive living room solar access.</p> <p>2.4m width of balconies do not receive 2hours of solar, only northern section which is 1m in width.</p>	No
	<p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	<p>Unit 1 (20%) receives no direct sunlight to living room.</p>	No
4B	Natural Ventilation		
	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p>	<p>100% comply with cross ventilation.</p>	Yes
	<p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>Complies, all less <18m.</p>	Yes
4C	Ceiling Heights		
	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> • Habitable Rooms – 2.7m • Non-habitable – 2.4m • Attic spaces – 1.8m at edge with min 30 degree ceiling slope • Mixed use areas – 3.3m for ground and first floor <p>These minimums do not preclude higher ceilings if desired.</p>	<p>F2C = 2.87m.</p>	Yes
4D	Apartment Size and Layout		
	<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> • Studio - 35m² • 1 bedroom - 50m² • 2 bedroom - 70m² • 3 bedroom - 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms</p>	<p>Proposed 2 bed = 92sqm Proposed 3 bed = 133.6sqm</p>	Yes

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Clause	Design Criteria	Proposal	Compliance															
	<p>increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m² each.</p>																	
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Complies	Yes															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Complies	Yes															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Complies	Yes															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Complies	Yes															
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All comply except for typical bedroom 3 which is only 2.9m in width.	No															
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	Complies	Yes															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Complies	Yes															
4E	Private open space and balconies																	
	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Minimum area</th> <th>Minimum depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4 m²</td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>8 m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10 m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom</td> <td>12 m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum area	Minimum depth	Studio	4 m ²	-	1 bedroom	8 m ²	2m	2 bedroom	10 m²	2m	3+ bedroom	12 m²	2.4m	Proposed 3-bedroom = only 9.3sqm with 2.4m widths.	No.
Dwelling type	Minimum area	Minimum depth																
Studio	4 m ²	-																
1 bedroom	8 m ²	2m																
2 bedroom	10 m²	2m																
3+ bedroom	12 m²	2.4m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Proposed 2-bedroom = 22sqm at 3m widths.	Yes															
4F	Common Circulation and Spaces																	

Clause	Design Criteria	Proposal	Compliance
	The maximum number of apartments off a circulation core on a single level is eight.	1 unit off the core.	Yes
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A	N/A
4G	Storage		
	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> • Studio apartments - 4m³ • 1 bedroom apartments - 6m³ • 2 bedroom apartments - 8m³ • 3+ bedroom apartments - 10m³ <p>At least 50% of the required storage is to be located within the apartment.</p>	<p>Applicant includes study, pantry, and laundry. Should be areas just for storage.</p> <p>Only 4 cbm in 2 & 3bed units.</p>	No

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Appendix 6: DCP Compliance Table

6.1 Part B2: Heritage

Council is not satisfied that the proposed development meets the heritage requirements in accordance with Part B2 of RDCP 2013. Refer to detailed assessment by Council's Heritage Planner in the Appendix 1 section of this report.

6.2 Part B3: Ecologically Sustainable Development

Council is satisfied that the proposed development meets the relevant ESD requirements in accordance with Part B3 of RDCP 2013.

6.3 Part B4: Landscaping and Biodiversity

Council is not satisfied that the proposed development meets the landscape requirements in accordance with Part B4 of RDCP 2013. Insufficient planting has been provided within the deep soil zone of the site, which is only minor and features no canopy trees.

6.4 Part B5: Preservation of Trees and Vegetation

Council is satisfied that the proposed development meets the tree preservation requirements in accordance with Part B5 of RDCP 2013.

6.5 Part B6: Recycling and Waste Management

Council is not satisfied that the proposed development meets the waste requirements in accordance with Part B6 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer in the Appendix 1 section of this report.

6.6 Part B7: Transport, Traffic, Parking and Access

Council is not satisfied that the proposed development meets the parking requirements in accordance with Part B7 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer in the Appendix 1 section of this report.

6.7 Part B8: Water Management

Council is satisfied that the proposed development meets the water management requirements in accordance with Part B8 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer in the Appendix 1 section of this report.

6.8 Part C2: Medium Density Residential

Note: Section 149 of Chapter 4 'Design of residential apartment development' of the Housing SEPP states the following:

(1) A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—

- (a) visual privacy*
- (b) solar and daylight access,*
- (c) common circulation and spaces,*
- (d) apartment size and layout,*
- (e) ceiling heights,*
- (f) private open space and balconies,*
- (g) natural ventilation,*
- (h) storage.*

(2) This section applies regardless of when the development control plan was made.

Consequently, where the Randwick DCP provides controls in relation to the matters listed in subsection (1), the assessment has been made against the relevant controls in parts 3 and 4 of the ADG, rather than those in RDCP 2013.

DCP Clause	Control	Proposal	Compliance
2. Site Planning			
2.1	Site Layout Options		
	Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> • Two block / courtyard example • T-shape example • U-shape example • Conventional example 	Conventional configuration, appropriate for the subject corner allotment.	Yes
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area is to be landscaped open space.	Proposal = 51.1%	No
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	Proposed = 6.7%	No
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.	Paved, not capable of large planting.	No
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.	None provided.	No
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.	N/A	N/A
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.	Satisfactory.	Yes
3. Building Envelope			
3.4	Setbacks		
3.4.1	Front setback		
	(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.	The proposed setbacks to Ormond Gardens and Brook Street are inconsistent with the prevailing setback line to each streetscape.	No
	(ii) Where a development is proposed in an area identified as being under transition in		

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DCP Clause	Control	Proposal	Compliance
	the site analysis, the front setback will be determined on a merit basis. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.		
3.4.2	Side setback		
	Residential flat building (i) Comply with the minimum side setback requirements stated below: - Less than 12m: Merit assessment - 14m ≤ site frontage width < 16m: 2.5m - 20m and above: 4.0m (ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to: - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. (iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.	Northern setback = largely 2.5m except for ground floor section. Western setback = 4.5m.	No Yes
3.4.3	Rear setback		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.	No rear setback as two street frontages.	N/A
4. Building Design			
4.1	Building façade		
	(i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and	Black wall sections on northern and western elevations.	No

DCP Clause	Control	Proposal	Compliance
	<p>contribute to the proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p> <p>(vi) Conceal building services and pipes within the balcony slabs.</p>		
4.2	Roof design		
	<p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. 	<p>Flat roof. Style in keeping with building at 102-104 Brook Street.</p> <p>Lift overrun and services will be visible from street to higher side (south) of Brook.</p>	<p>Yes</p> <p>No</p>

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DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, “green roof”) is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
4.4	External wall height and ceiling height		
	<p>(ii) Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.</p>	<p>12m applies, wall heights should be 1.5m less than max building height.</p> <p>Does not comply.</p>	<p>No</p>
4.5	Pedestrian Entry		
	<p>(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.</p>	<p>Satisfactory.</p>	<p>Yes</p>
	<p>(ii) Present new development to the street in the following manner:</p> <ul style="list-style-type: none"> - Locate building entries so that they relate to the pedestrian access network and desired lines. - Design the entry as a clearly identifiable element in the façade composition. - Integrate pedestrian access ramps into the overall building and landscape design. - For residential flat buildings, provide direct entries to the individual dwellings within a development from the street where possible. - Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably integrated into a wall adjacent to the primary entry (and at 90 degrees to the street rather than along the front boundary). - Provide weather protection for building entries. <p>Postal services and mailboxes</p> <p>(i) Mailboxes are provided in accordance with the delivery requirements of Australia Post.</p> <p>(ii) A mailbox must clearly mark the street number of the dwelling that it serves.</p> <p>(iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.</p>	<p>No access to G01 via main lobby and building core.</p> <p>Location of mailboxes unclear.</p> <p>Entry not a clear element in streetscape.</p>	<p>No</p>
4.9	Colours, materials and finishes		

DCP Clause	Control	Proposal	Compliance
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. (v) Avoid the following materials or treatment: <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts (vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration. (vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.	Schedule does not show roof elements and their finish. Will be visible from street and neighbours. Blank wall forward of staircase to Ormond Garden side, introduce planting or fencing treatment forward of it.	No
4.12	Earthworks Excavation and backfilling		
	(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification. (ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site. (iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.	Works within building envelope generally satisfactory for basement level, see below issues with proximity of works to boundary and heritage retaining wall.	Yes
	Retaining walls (iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries. (v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the neighbouring properties and the public domain. (vi) Where it is necessary to construct retaining walls at less than 900mm from the side or rear boundary due to site	Earthworks adjoining heritage retaining wall and within 900mm of northern side setback.	No

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DCP Clause	Control	Proposal	Compliance
	conditions, retaining walls must be stepped with each section not exceeding a maximum height of 2200mm, as measured from the ground level (existing).		
5. Amenity			
5.1 Solar access and overshadowing			
Solar access for surrounding development			
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June. (ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June. (iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.	Solar impact unclear on southern neighbours, aerial plans incomplete.	No
5.2 Natural ventilation and energy efficiency			
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	Development should incorporate clerestory windows to bathrooms without windows.	No
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	Satisfactory.	Yes
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.	Satisfactory.	Yes
5.3 Visual privacy			
	(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences. (iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.	The northern and western façade windows are provided with panelling, of which the details are unclear as to whether they will provide sufficient privacy to the northern and western adjoining neighbours at 108 Brook Street and 7 Ormond Gardens respectively.	Insufficient information

DCP Clause	Control	Proposal	Compliance
	(v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 		
5.4	Acoustic privacy		
	(i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 	The common lift is located adjoining the living rooms to each dwelling. The layout should be altered so as to locate the lift away from common walls with any dwelling in the building.	No
5.5	View sharing		
	(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain. (vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.	The applicant has failed to provide a detailed and comprehensive view impact assessment that considers the existing views to be obstructed by the development application.	No

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DCP Clause	Control	Proposal	Compliance
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.	Satisfactory.	Yes
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	Lobby with lift is not connected to G01 and the fire staircase.	No
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	Satisfactory.	Yes
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	Satisfactory.	Yes
	(vi) Resident car parking areas must be equipped with security grilles or doors.	Satisfactory.	Yes
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	None provided.	No
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	Satisfactory.	Yes
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks.	Lack of surveillance over western landscaped area.	No
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	Satisfactory.	Yes
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	Satisfactory.	Yes
6.	Car parking and access		
6.1	Location		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	Parking from Brook Street (secondary frontage), but acceptable as in keeping with streetscapes.	Yes, on merit
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	Lack of northern side separation.	No
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.	Planter width only 450mm.	No

DCP Clause	Control	Proposal	Compliance
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.	N/A	N/A
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage. (c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.	Basement parking acceptable.	Yes
6.2	Configuration		
	(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.	Appears compliant.	Yes
	(ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible.	3.3m driveway width.	Yes
	(iv) Provide basement or semi-basement car parking consistent with the following requirements: (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car	Basement naturally ventilated but door needs to be open for greater ventilation. More substantial planting needed to northern side.	No

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DCP Clause	Control	Proposal	Compliance
	park that are visible from the public domain.		
7. Fencing and Ancillary Development			
7.2	Front Fencing		
	(i) The fence must align with the front property boundary or the predominant fence setback line along the street.	Fencing located on boundaries.	Yes
	(ii) The maximum height of front fencing is limited to 1200mm, as measured from the footpath level, with the solid portion not exceeding 600mm, except for piers. The maximum height of front fencing may be increased to 1800mm, provided the upper two-thirds are partially open, except for piers.	Front fence includes wall sections >1.8m in height.	No
	(viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians.	Fencing splayed to driveway.	Yes
7.3	Side and Rear Fencing		
	(i) The maximum height of side, rear or common boundary fences is limited to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing).	Does not form part of DA.	N/A
	(ii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits.		
	(iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment.		
	(iv) Side or common boundary fences must be finished or treated on both sides.		
7.7	Laundry facilities		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.	No clothesline to G01 terrace.	No
	(ii) Provide internal laundry for each dwelling unit.	Laundry to each unit.	Yes
	(iii) Provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter.	No drying area indicated for each unit.	No
7.8	Air conditioning units:		
	<ul style="list-style-type: none"> Avoid installing within window frames. If installed in balconies, screen by suitable balustrades. Air conditioning units must not be installed within window frames. 	Screened to roof.	Yes

6.9 Section F3: Sydney Airport Planning and Noise Impacts

Council is satisfied that the proposed development meets the Sydney Airport planning and noise requirements in accordance with Part B5 of RDCP 2013.

Responsible officer: William Joannides, Environmental Planning Officer

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