

Randwick Local Planning Panel (Electronic) Meeting

Thursday 8 May 2025



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC) MEETING

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Team on Thursday, 8 May 2025

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D19/25

Subject: 9 Sully Street, Randwick (DA/1251/2024)


Executive Summary

Proposal:	Alterations and additions to existing residential dwelling including attic extension, rear extensions and construction of a new carport and bin storage area.
Ward:	East Ward
Applicant:	Haven Advocates Pty Ltd
Owner:	Ms M N Glass and Mr N C Glass
Cost of works:	\$467,200.00
Reason for referral:	The development contravenes the development standard for building height by more than 10%

Recommendation

- A. That the RLPP is satisfied that the applicants written requests to vary the development standard relating to height of building in Clause 4.3 of Randwick Local Environmental Plan 2012 have demonstrated that;
- i. Compliance with the relevant development standard is unnecessary and unreasonable in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development standards.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/1251/2024 for alterations and additions to existing residential dwelling including attic extension, rear extensions and construction of a new carport and bin storage area, at No. 9 Sully Street, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/1251/2024 - 9 Sully Street, RANDWICK NSW 2031 - DEV - Randwick City Council

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for building height by more than 10%.

The proposal seeks consent for alterations and additions to an existing dwelling including an attic addition, rear extensions, and construction of a new carport and bin storage area.

The key issues associated with the proposal relate to non-compliance with the building height development standard pursuant to clause 4.3 of Randwick Local Environmental Plan (RLEP) 2012. The proposed variation is supported as the proposal is consistent with the objectives of the development standard and the R2 zone. The applicant’s written request has adequately addressed the matters for consideration pursuant to clause 4.6 of RLEP 2012.

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The subject site is located at 9 Sully Street, Randwick and is legally described as Lot 6 in DP 9338. The site has an area of 490.78m² and is generally rectangular in shape. The site is located on the western side of Sully Street and has a 14.02m street frontage. The topography of the site falls by approximately 8.7m from the front (east) to the rear (west).

As shown in Figures 1-3, the site is currently occupied by a part two (2) and part three (3) storey dwelling. Surrounding development comprises residential development ranging from two (2) to four (4) storeys.



Figure 1: Existing development at subject site, viewed from Sully St (Source: Council officer)



Figure 2: Existing garage at subject site, viewed from Sully St (Source: Council officer)

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Figure 3: Existing development at subject site, viewed from rear yard (*Source: Council officer*)

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of Council's records did not reveal any recent or relevant applications for the site.

4. Proposal

The proposal seeks development consent for alterations and additions to an existing dwelling. As shown in Figures 4-7, the proposed works include:

- Internal reconfigurations and rear extensions to accommodate:
 - Lower ground level – non-habitable undercroft area.
 - Ground level – two (2) bedrooms, bathroom, rumpus room, study, and balcony.
 - Level 1 – two (2) bedrooms, bathroom, living room, dining room, kitchen, laundry, and balcony.
- Upper level addition (Level 2) to accommodate two (2) bedrooms, bathroom, and rumpus room.
- Demolition of existing garage and construction of new carport and bin storage area.

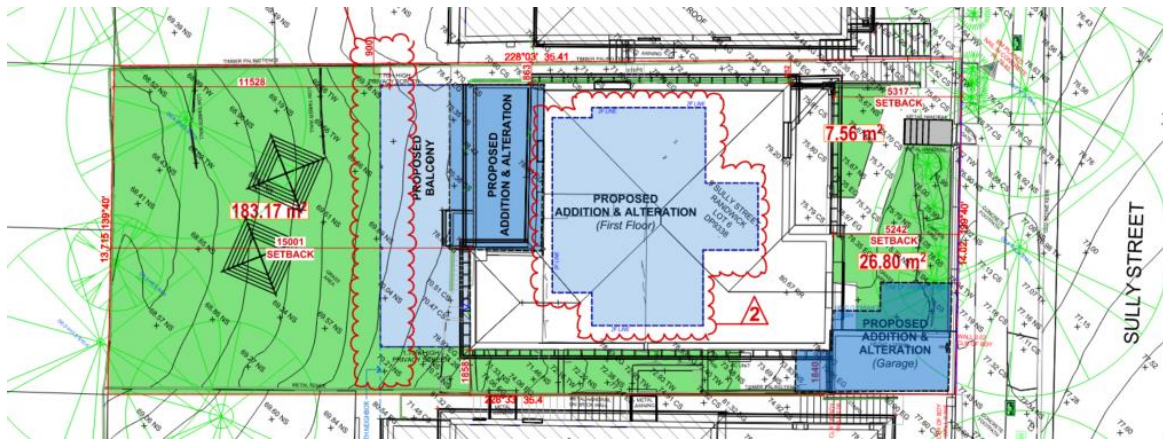


Figure 4: Proposed site plan (Source: Perfect Square Design)

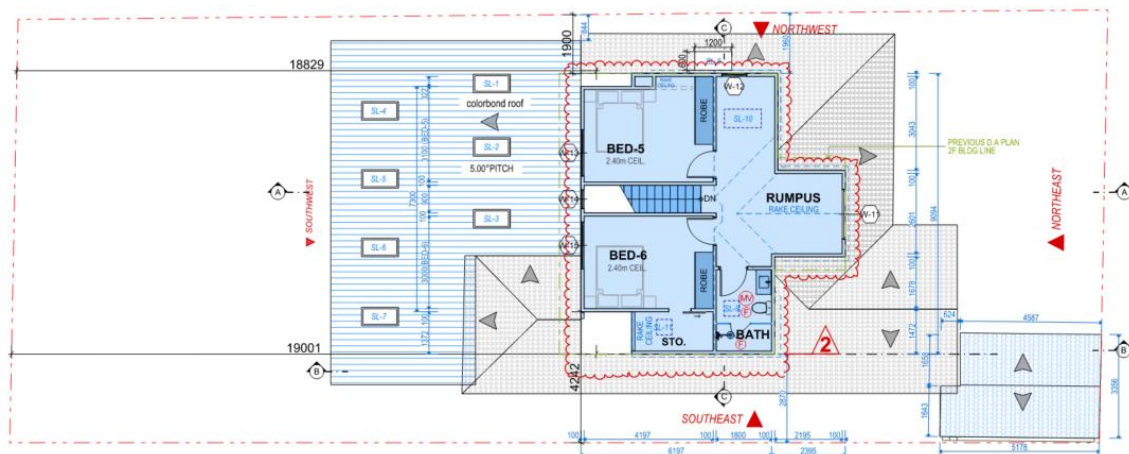


Figure 5: Proposed Level 2 (upper level addition) floor plan (Source: Perfect Square Design)

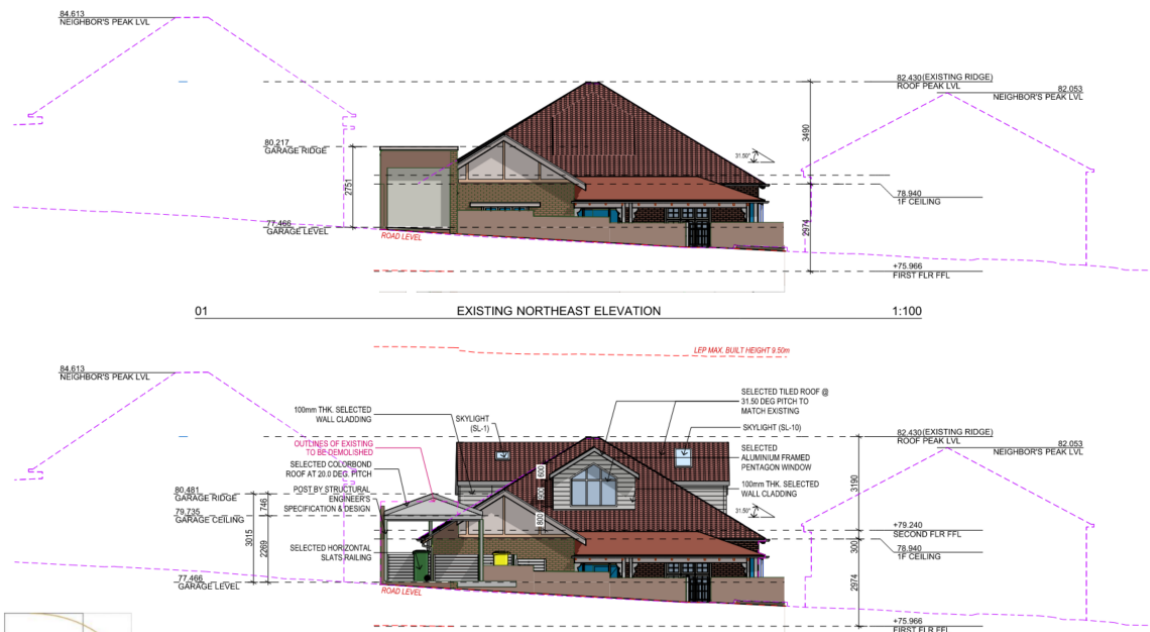


Figure 6: Existing and proposed northeast (street) elevation plans (Source: Perfect Square Design)

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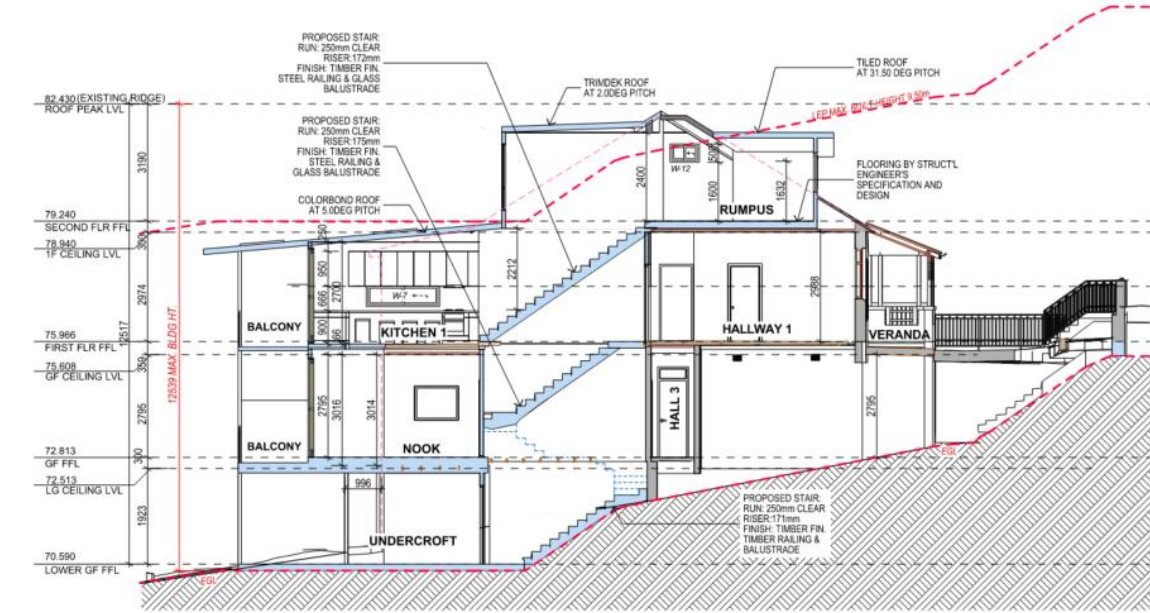


Figure 7: Proposed section plan (Source: Perfect Square Design)

Amended Plans

On 20 March 2025, Council requested amended plans and documentation relating to building height, gross floor area, shadow diagrams, and visual privacy.


Amended plans were submitted by the Applicant on 15 April 2025 to address Council's concerns. The overall bulk of the proposed upper level addition has been reduced to minimise overshadowing and visual bulk impacts to neighbouring properties.

5. Notification

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

- 17 Meymott Street.
- 19 Meymott Street.
- 21 Meymott Street.
- 3/7 Sully Street.

Issue	Comment
Privacy impacts associated with rear extension – request for privacy screening measures.	Refer to discussion at Key Issues section of this report.
Lack of detail regarding tree removal.	No consent is sought or granted for any tree removal.
Building height non-compliance.	Refer to clause 4.6 assessment at Section 7 of this report.
Overshadowing impacts.	Refer to discussion at Key Issues section of this report.

Issue	Comment
Rear setback non-compliance.	<p>The proposed rear setback (10.5m) complies with the minimum 8m control pursuant to Part C1, Section 3.3.3 of RDCP 2013.</p> <p>In accordance with the DCP requirements, the rear setback is generally consistent with the predominant rear setback line. Amended plans were submitted to align the rear balconies with the rear alignment of the adjacent building at No. 11 Sully St – refer to extract of amended site plan below. The proposal has been designed to maintain reasonable view sharing, visual privacy, and solar access.</p>
	
Building design and materials are inconsistent with streetscape character.	The proposed building design and materials are considered to respond appropriately to the context of the site. The proposal is compatible with the character of the locality, which comprises development of varying scale, architectural style, and typology.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

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

6.2. SEPP (Biodiversity and Conservation) 2021

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

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

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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.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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

6.4. Randwick Local Environmental Plan (RLEP) 2012

The site is zoned R2 Low Density Residential under Randwick Local Environmental Plan 2012. The proposal, being for a dwelling, is permissible with Council's consent.

The proposed ground floor level has a separate entrance and appears to present as a secondary dwelling. However, the Applicant has confirmed that consent is sought for a single dwelling only. For avoidance of doubt, a condition is included to clarify that the premises may be used as a single dwelling only. No consent is granted for any dual or multi-occupancy uses.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.

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

Description	Council Standard	Proposed	Compliance
Cl. 4.3 Height of Building (Maximum)	9.5m	12.539m (RL 82.43 roof ridge above RL 69.89 existing ground)	No
Cl. 4.4 Floor Space Ratio (Maximum)	0.65:1 (319m ² GFA)	0.64:1 (314.48m ² GFA)	Yes

6.4.1. Clause 4.4 – Floor space ratio (FSR)

Pursuant to clause 4.4 of RLEP 2012, a maximum FSR of 0.65:1 applies to the subject site. The proposal provides 314.48m² of GFA, equating to a compliant FSR of 0.64:1.

The Applicant has advised that the proposed undercroft area at lower ground level will not be a habitable space. There are no enclosing walls greater than 1.4m height, and as such, this area does not constitute GFA. Similarly, the undercroft area under the front carport is not enclosed by any walls greater than 1.4m height, and as such, this area does not constitute GFA.

For avoidance of doubt, a condition is included to ensure that these areas may not be enclosed and may not be used for any habitable purposes.

6.4.2. Clause 4.6 – Exceptions to development standards

The non-compliance with the building height development standard is discussed in Section 7.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standard contained RLEP 2012:

Clause	Development Standard	Proposal	Proposed Variation	Proposed Variation (%)
Cl. 4.3 Height of Building (Maximum)	9.5m	12.539m	3.039m	31.9%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The applicant’s written request seeks to justify the contravention of the building height development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case, as follows:

- *Despite the building height variation, the proposal is a considered design that is compatible with the character of the adjoining and surrounding properties and does not cause any significant impacts to the amenity of the site or surrounding area.*
- *The applicable development standard does not take into account that the site is already subject to a building height variation. Consequently, compliance is impossible to achieve.*
- *There is no consistent pattern of building heights in the streetscape as the locality is undergoing transition and the area is subject to steep topography.*
- *It is recognised the majority of the existing roof complies with the maximum building height.*
- *The broad building height application does not exclude the possibility of high-quality built form that is compatible with the surrounding streetscape and does not impact upon the amenity of surrounding properties.*
- *Strict compliance with the building height standard would reduce the opportunity for the orderly and economic development of the subject site.*

The applicant’s written request also demonstrates that the proposal is consistent with the objectives of the development standard, as follows:

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

Comment: The proposal is considered to be appropriate for the site due to the existing slope which extends from the front to the rear. The area subject to the variation is the new level. Due to the minor nature of the proposal, it maintains the overall building envelope, the building height and associated variation can achieve this objective.

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

Comment: The site is not located within a heritage conservation area and is it not located near a contributory building or heritage item. Therefore, this objective does not apply to the proposal.

(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.

Comment: Considering the variation is isolated to the centre of the existing roof, there are no adverse amenity impacts generated by the building height, in terms of views, overshadowing, privacy and visual bulk. The majority of the dwelling complies with the height maximum. These aspects are discussed in detail below in relation to environmental planning grounds.

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

The proposed variation is primarily resultant of the sloping topography of the site, as well as the height of the existing dwelling, which does not comply with the 9.5m development standard. Refer to height plane diagrams of the existing and proposed dwelling at Figure 8.

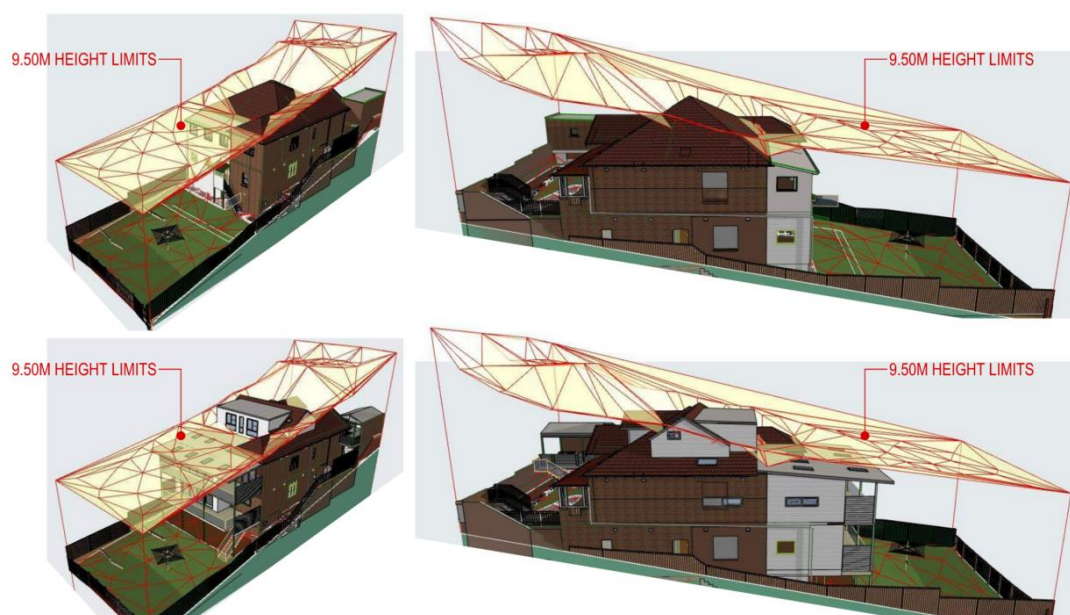


Figure 8: Existing (top) and proposed (bottom) height plane diagrams (Source: Perfect Square Design)

The proposed dwelling will generally present as a one (1) to two (2) storey dwelling to Sully Street. The side dormers are well integrated with the existing roof form and are suitably recessed from the front façade. Similarly, the rear dormer is suitably setback behind the main roof form and so will not be visible from the street or the surrounding public domain – refer Figure 9. The ridge height (RL 82.43) provides a suitable transition between the height of the adjoining dwellings at No. 7 Sully St (RL 82.05) and No. 11 Sully St (RL 84.61).

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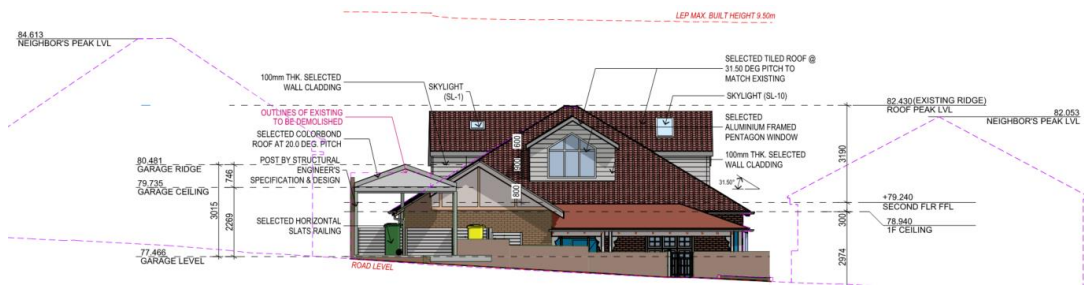


Figure 9: Proposed street elevation (Source: Perfect Square Design)

The proposal is considered to respond appropriately to the context of the site and is compatible with the character of the locality, which comprises development of varying scale, architectural style, and typology. For example, the proposed part three (3) and part four (4) storey dwelling is generally consistent with the height and form of the dwelling at No. 13 Sully Street, which was approved under DA/271/2021 – refer Figure 10.

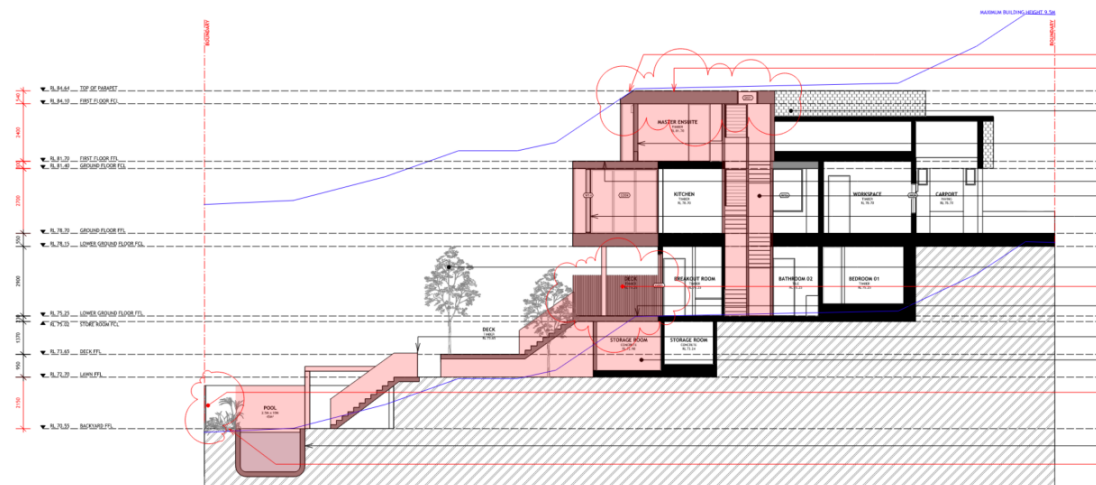


Figure 10: Section plan of dwelling at 13 Sully St (DA/271/2021) (Source: Design Tribe Projects)

Additionally, as demonstrated in this report, the non-compliant portion of the dwelling is unlikely to result in adverse impacts to neighbouring properties relative to view loss, overshadowing, or visual privacy.

On this basis, compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

- The proposed alterations and additions have been designed in response to the characteristics and constraints of the site.
- The proposed height and associated variation do not lead to any view impacts from private or public land.
- Visual and acoustic privacy has been carefully considered in the design as depicted on the architectural plans.
- The proposed alterations and the associated building height variation does not lead to any additional environmental impacts in terms of removal of significant trees or landscaping. The proposal is confined to the existing building footprint and therefore maintains existing landscaping and trees.
- Despite the existing and proposed variation, the proposal can comply with the relevant DCP provisions for solar access. As per the shadow diagrams, there are no adverse impacts and therefore the height variation is supportable.

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

The overall height, bulk, and scale of the proposed dwelling is compatible with surrounding development and will not result in adverse amenity impacts to neighbouring properties. As demonstrated in this report, the non-compliant portion of the dwelling is unlikely to result in view loss, overshadowing, or visual privacy impacts.

The proposed upper addition comprises dormer elements, which are well integrated with the existing roof form. The upper addition is setback from all boundaries to minimise visual bulk as viewed from the street and neighbouring properties.

It is noted that the proposed alterations and additions are restricted by the existing dwelling, which is proposed to be retained. As shown in Figure 11, the height of the existing dwelling exceeds the 9.5m development standard. The proposal does not seek to increase the uppermost ridge height (RL 82.43) of the existing dwelling. The below markup shows the non-compliant portion of the existing dwelling (shaded green) relative to the proposed addition (shaded yellow).

On this basis, there are sufficient environmental planning grounds to justify contravening the building height development standard.

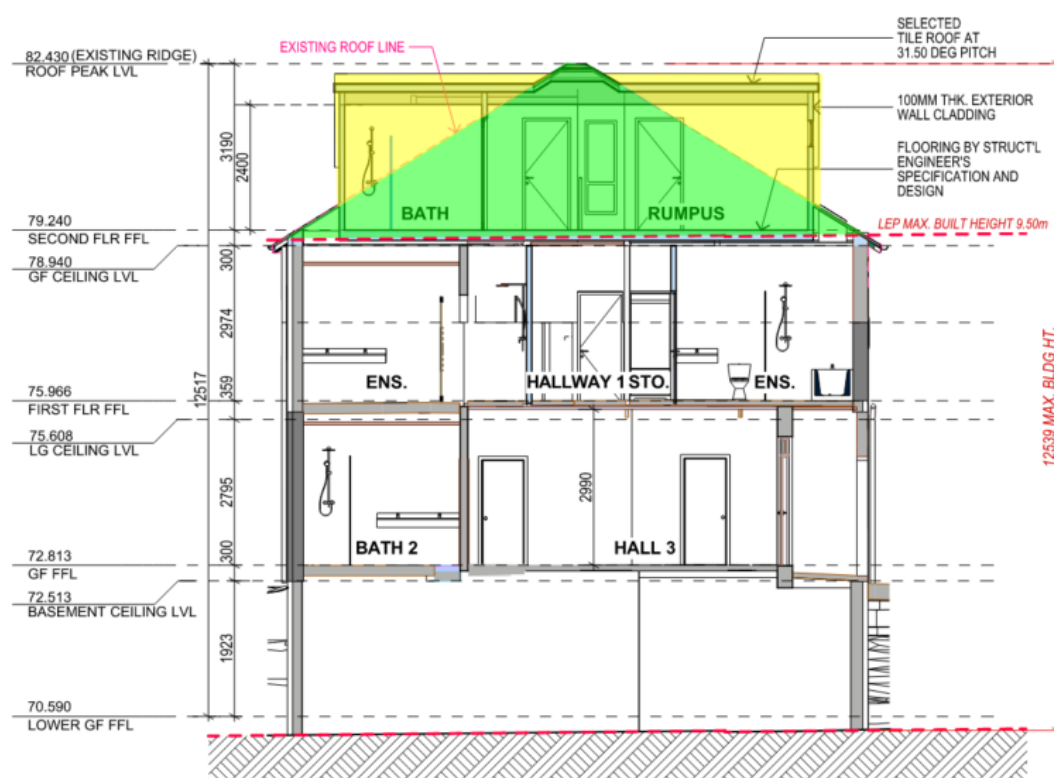


Figure 11: Council markup of proposed section plan (Source: Perfect Square Design)

Conclusion

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

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8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	Refer to discussion at Sections 6 and 7.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Not applicable.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. Refer to Appendix 3.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality. The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social, or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Key Issues

Storey Height

Part C1, Section 3.2 of RDCP 2013 establishes a maximum two (2) building height control. Any habitable space located above the first floor level must be integrated into the building roof form and roofline. The DCP states that an alternative design that varies from the two (2) storey height and street frontage may be acceptable having regard to the following considerations:

- Site topography.
- Site orientation.
- Allotment configuration.
- Flooding requirements.
- Allotment dimensions.
- Potential impacts on the visual amenity, solar access, privacy and views of the adjoining properties.

The proposed dwelling comprises part three (3) and part four (4) storeys. However, noting the sloping topography of the site, the dwelling will generally present as a one (1) to two (2) storey dwelling to Sully Street. The proposed streetscape presentation is similar to the design of the dwelling at No. 24 Sully Street (refer Figure 12), which includes an upper addition setback behind the front roof apex.



Figure 12: Existing dwelling at No. 24 Sully Street (*Source: Council officer*)

The proposal is considered to respond appropriately to the context of the site and is compatible with the character of the locality, which comprises development of varying scale, architectural style, and typology. For example, the proposal is generally consistent with the height and scale of the part three (3) and four (4) storey dwelling at No. 13 Sully Street, which was approved under DA/271/2021 – refer Figure 10 at Section 7.1 of this report.

Consistent with the DCP requirements, the proposed upper addition (comprising an attic and dormer elements) is well integrated with the existing roof form and is setback from all boundaries. The proposal does not seek to increase the uppermost ridge height (RL 82.43) of the existing dwelling.

Despite numeric non-compliance with the two (2) storey height control, the proposal is consistent with the objectives of Part C1, Section 3.2 of RDCP 2013, as follows:

- The proposal has been designed to minimise the bulk, scale, and visual impact of the dwelling as viewed from the street and from neighbouring dwellings.
- The proposal generally maintains a two (2) storey street frontage to Sully Street.
- The upper level addition comprises dormer elements and is suitably integrated with the roof of the dwelling.

- As demonstrated in this report, the proposal has been designed to maintain suitable amenity for neighbouring properties in terms of solar access, visual privacy and views.
- The form and massing of the development is respectful of the site’s irregular topography.

Ceiling Height

Pursuant to Part C1, Section 3.2 of RDCP 2013, the minimum floor to ceiling height for living areas is 2.7m. The proposal provides compliant (2.9m) ceiling heights at ground and first floor levels. Reduced ceiling heights (2.2m to 2.4m) are provided at second floor level. Minor numeric non-compliance is acceptable on merit noting that compliance with relevant NCC requirements will be maintained. The reduced ceiling heights are resultant of the requirements for the upper attic level to be integrated with the roof form. Suitable amenity will be afforded to the bedrooms and rumpus room, notwithstanding the non-compliance.

Side Setbacks

Pursuant to Part C1, Section 3.3.2 of RDCP 2013, the following setbacks are applicable:

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

No change is proposed to the existing side setbacks of the dwelling (0.9m to north-west and 1.8m to south-east). Continuation of an existing non-compliance is acceptable on merit as insistence on strict compliance with the DCP controls would result in an irregular built form.

The proposed second floor level is suitably setback 2.8m from the south-east boundary and 1.9m from the north-west boundary. Noting the reduced footprint of the second floor level, the non-compliant element is limited to a minor portion of the site.

Notwithstanding numeric non-compliance, the proposal is acceptable as it achieves the objectives of Part C1, Section 3.3 of RDCP 2013, as follows:

- A consistent rhythm of street setbacks and front gardens is maintained to Sully Street to contribute to the character of the neighbourhood.
- The form and massing of the proposed development complements and enhances the streetscape character and generally maintains a two (2) storey street frontage.
- Adequate separation is provided between neighbouring buildings for visual and acoustic privacy and solar access.
- Adequate areas are provided for private open space and deep soil planting.
- View sharing will be maintained between the subject site, neighbouring properties, and the public domain.

Solar Access

Pursuant to Part C1, Section 5.1 of RDCP 2013, a portion of the north facing living area windows and private open space areas must receive at least three (3) hours of sunlight between 8am and 4pm, midwinter.

RDCP 2013 allows for variation to the abovementioned controls on a merit assessment, having regard to the following factors:

- Degree of meeting the FSR, height, setbacks and site coverage controls.

- Orientation of the subject and adjoining allotments and subdivision pattern of the urban block.
- Topography of the subject and adjoining allotments.
- Location and level of the windows in question.
- Shadows cast by existing buildings on the neighbouring allotments.

As demonstrated in the submitted shadow diagrams, the proposal will result in some minor additional overshadowing of the property at No. 11 Sully Street. Notwithstanding, at least three (3) hours of sunlight will be provided to a portion of the rear yard in the afternoon (at midwinter). Additionally, the upper north-facing windows will receive at least three (3) hours of sunlight between 10am and 1pm (at midwinter). The lower north-facing windows appear to be bathroom windows (or similar) and do not appear to include living room windows.

The proposed dwelling complies with the maximum FSR development standard as required by RLEP 2012, as well as the maximum site coverage and minimum deep soil area controls as required by RDCP 2013. The extent of overshadowing resulting from the development is consistent with that which is envisaged under the relevant planning controls for the site. The extent of proposed overshadowing is largely dictated by the orientation of the subject and adjoining sites and the subdivision pattern of the urban block.

On this basis, the proposal is considered to be consistent with Part C1, Section 5.1 of RDCP 2013. The proposal achieves the objectives of Part C1, Section 5.1, as outlined below:

- The proposed works are sited and designed to maximise solar access to the dwelling living areas and private open space.
- The proposal retains reasonable levels of solar access to neighbouring dwellings and their private open space.
- Adequate daylight is provided to dwellings to minimise the need for artificial lighting.

Visual Privacy

Part C1, Section 5.3 of RDCP 2013 seeks to ensure that development minimises overlooking or cross-viewing of neighbouring dwellings to maintain reasonable levels of privacy.

Windows

On the north-west elevation, the proposal seeks to replace two (2) windows to the kitchen and pantry at first floor level (windows W6 and W7). The new windows are suitably offset from adjoining windows to prevent any direct overlooking to the property at No. 7 Sully Street. At second floor level, the proposed rumpus room window (window W12) is unlikely to result in any visual privacy impacts as the window would likely only overlook the roof of the property.

On the south-east elevation, the proposal seeks to replace the bathroom window at ground floor level (window W2). The window will be suitably screened by way of existing boundary fencing, so as to prevent direct overlooking to the neighbouring property at No. 11 Sully Street.

On the rear (south-west) elevation, the proposed new bedroom windows at second floor level (windows W13, W14, and W15) are suitably setback more than 18m from the rear boundary. Significant separation is provided between these windows and adjoining properties fronting Meymott Street. In this regard, additional privacy measures are not considered necessary in this instance.

Balconies

Concerns were raised in the public submissions regarding potential overlooking impacts from the rear (south-west) balconies.

Privacy screening (1.7m height) is provided to the north-west and south-east sides of the rear balconies. The proposed screening is considered suitable to prevent overlooking to/from the adjoining properties at Nos. 7 and 11 Sully Street.

However, the Applicant has not adequately demonstrated that suitable visual privacy will be afforded to the adjoining properties to the rear (i.e. those fronting Meymott Street). Whilst it is acknowledged that existing vegetation provides some screening, the DCP states that vegetation must not be used as the sole privacy protection measure.

As such, a condition is included to ensure that full height operable privacy louvres are provided to the rear edge of the balconies. As shown in Figure 13, the screen must have a minimum width of 3.3m.

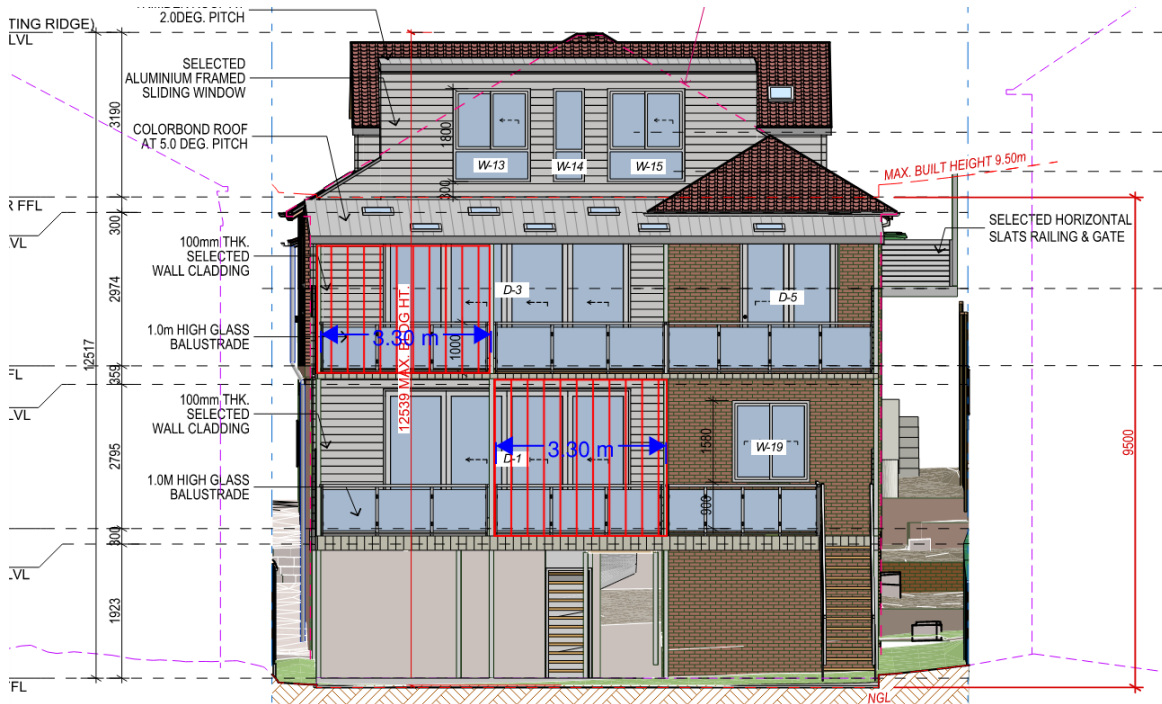


Figure 13: Markup of rear elevation plan, showing conditioned privacy screens in red (Source: Perfect Square Design)

Car Parking Facilities

Part C1, Section 6.2 of RDCP 2013 provides development controls for parking facilities forward of the front façade alignment.

Where the provision of parking facilities behind the front façade alignment is not feasible, parking facilities may be provided within the front setback areas as an uncovered single car space, or a single carport. Landscaping must be able to be incorporated into the site frontage.

The proposal seeks to replace an existing single garage with a single carport. As per the existing arrangement, the carport is located within the front setback area (with nil setbacks to the front and side boundaries) and will be accessed via Sully Street.

No concerns are raised regarding the siting of the proposed carport forward of the front façade alignment. In fact, the proposed carport provides a better streetscape outcome relative to the existing garage as it is less visually obtrusive – refer Figure 14. Noting the irregular sloping of the site, it would not be feasible to provide on-site parking elsewhere on the site.



Figure 14: Model of existing (left) and proposed (right) development (*Source: Perfect Square Design*)

Consistent with the DCP requirements, suitable landscaping is incorporated into the site frontage. Additionally, the carport complies with the relevant DCP controls which limit the height of carports to 3m (to roof pitch).

On this basis, the proposed car parking facilities are considered suitable.

10. Conclusion

That the application for alterations and additions to existing residential dwelling including attic extension, rear extensions and construction of a new carport and bin storage area be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- Suitable conditions are included to protect the visual privacy of neighbouring properties.

Appendix 1: Referrals

1. Development Engineer

Parking Comments

The submitted plans show the deletion of the existing garage which is only just over 5.00m's in length and replacing it with a slightly wider car space/carport structure.

Drainage Comments

Stormwater runoff from the (redeveloped portion) site shall be discharged either:

- a) *To the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system);*
and/or
- b) *To a suitably sized infiltration area.*

2. Landscape Officer

There is a row of mature, 8-10m tall Gleditsia triacanthos (Honey Locust) on the Council nature strips along both sides of Sully Street, including one centrally across the width of this development site, to the west of the existing informal vehicle entry, then one past the eastern site boundary, in front of the neighbouring property at no.11.

As a group they are a feature of the streetscape and are automatically protected by the DCP due to their location on public property, with the inspection of 24/01/25 noting the presence of surface roots adjacent the roadway, across/beneath the western side of the informal layback and crossing which is made up of grass and brick pavers, and are being driven over every time a vehicle uses this access.

As these plans show the current inadequate garage being demolished and replaced with a wider, open style carport, Council's Development Engineer has required that the current unauthorised bricks/pavers also be replaced and upgraded into a formal, concrete vehicle crossing, and as this will be wider, will then be in direct conflict with the roots described above, so will need to be severed.

When scaled off the submitted survey, the existing access is around 3200mm from its trunk, with Council's Engineer confirming that an offset of 2400mm can be maintained from its trunk at ground level, which while encroaching its TPZ, is still deemed satisfactory, as any disturbance will be an amount this tree can sustain, as can be seen with many other examples elsewhere in this street and nearby, and on this basis, relevant protection conditions and a bond have been imposed.

Other works associated with the dwelling will be contained within the existing footprint, so will pose no direct threat to other trees; however, the Stormwater Management Plan shows a new 4m x 4m infiltration tank being excavated centrally into the rear setback, near established trees both within this site and on neighbouring properties, but as setbacks of several metres will still be provided, combined with the ample deep soil in this area which slopes down to the west, should be sufficient to avoid any major impacts, so if a hydraulic consultant/engineer does deem this component necessary, conditions simply specify that it be positioned to provide the greatest offset possible from these trees.

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



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**Request to Vary Building Height Under Clause 4.6 of
Randwick Local Environmental Plan 2012**

**Proposed Alterations and Additions at
9 Sully Street, Randwick**

April 2025



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Disclaimer

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Introduction

This request made under Clause 4.6 of the Randwick Local Environmental Plan 2012 accompanies a proposal for alterations and additions at 9 Sully Street, Randwick. It should be read in conjunction with the Statement of Environmental Effects prepared by Navon Planning. The proposal involves a variation to Clause 4.3 Height of building under the Randwick LEP 2012. This request to vary the development standard is considered appropriate for the proposal as will be discussed below.

The Site and Surrounding Area

The subject site at 9 Sully Street, Randwick is rectangular in shape and has a frontage of 14.02m, a rear boundary of 13.715m with variable side boundaries of 35.41m (north) and 35.4m (south) to form a total site area of 486.9sqm. The legal description of the site is Lot 6 DP 9338. The land has a steep topography from the front to the rear of the site by approximately 7.5m. The existing building is three storeys and when viewed from the street, the building appears as single storey, and when viewed from the rear, it is three storeys. There is an existing single garage fronting the street.

Adjoining the site to the north and south are three storey residential flat buildings. The surrounding residential area includes a mix of semi-detached dwellings, detached dwellings, and residential flat building of various styles characteristic of the Randwick area.



Figure 1: The site and surrounding area



The Proposed Variation

The Randwick LEP 2012 include provisions for exception to development standards as follows.

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 Secretary has been obtained.*

In accordance with Clause 4.6 (4)(a)(i), this written request addresses the matters required to be demonstrated by Clause 4.6 (3) relating to the proposed variation to the Height of Buildings. The provisions of the Randwick LEP 2012 under 4.3 are read as follows:



4.3 Height of buildings

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

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) Despite subclause (2), the maximum height of a dwelling house or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.

According to the Randwick LEP 2012, the **building height (or height of building)** means

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The proposal comprises a maximum building height of up to 12.539m and therefore seeks a variation to the maximum 9.5m building height under the Randwick LEP 2012. It is recognised there is an existing variation of 950mm (10%). The proposed variation will be 3.039m (31.9%). The majority of the roof complies with the maximum 9.5m. Figures 2 and 3 below demonstrate the extent of the existing and proposed building height variation.

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Figure 2: North-west elevation

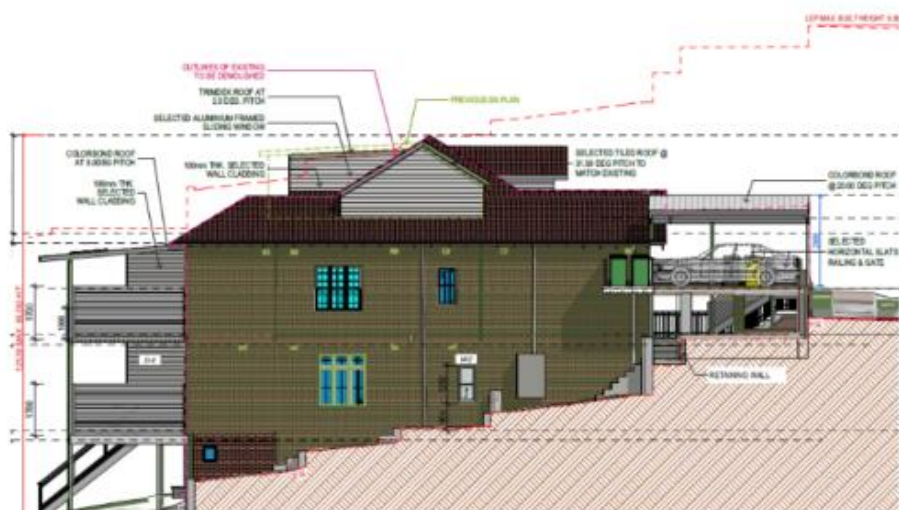


Figure 3: South-east elevation

9 Sully Street, Randwick

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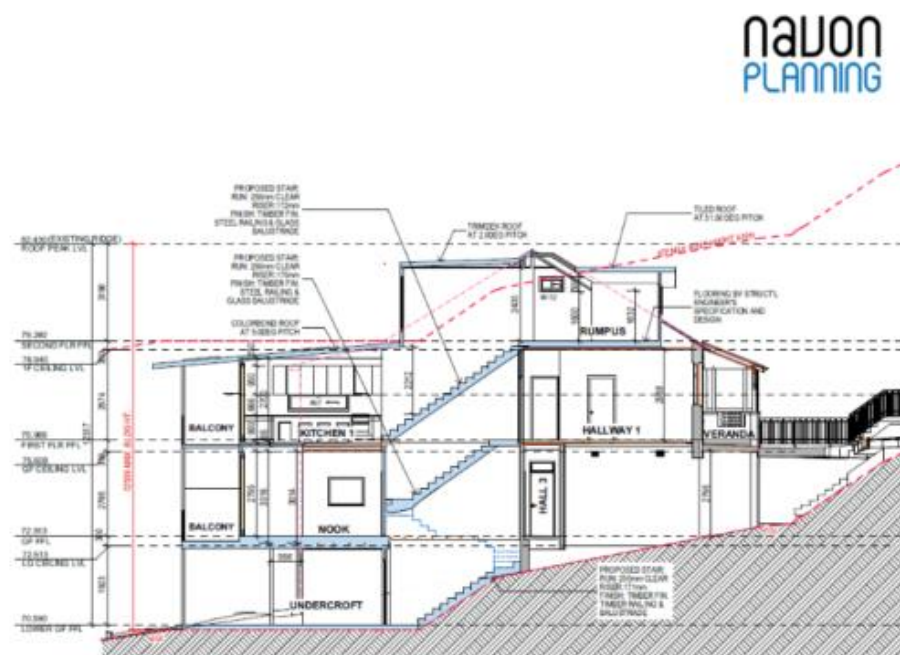


Figure 4: Section showing proposed variation

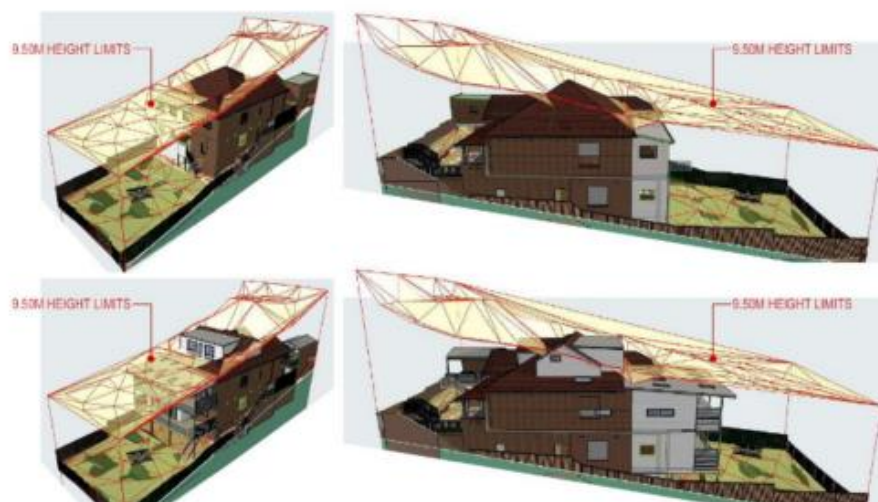


Figure 5: Height blanket



The assessment in this report addresses the Clause 4.6 criteria demonstrating the proposed building height variation:

- is consistent with the objectives of the building height development standard
- is consistent with the objectives of the R2 low density residential zone
- results in a better planning outcome
- is justified on environmental planning grounds

Consistent with the Height of Buildings Objectives

Clause 4.3 of the Randwick LEP 2012 includes objectives for height of buildings standard. These objectives are addressed in relation to the proposal as follows:

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

Comment: The proposal is considered to be appropriate for the site due to the existing slope which extends from the front to the rear. The area subject to the variation is the new level. Due to the minor nature of the proposal, it maintains the overall building envelope, the building height and associated variation can achieve this objective.

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

Comment: The site is not located within a heritage conservation area and is it not located near a contributory building or heritage item. Therefore, this objective does not apply to the proposal.

(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.

Comment: Considering the variation is isolated to the centre of the existing roof, there are no adverse amenity impacts generated by the building height, in terms of views, overshadowing, privacy and visual bulk. The majority of the dwelling complies with the height maximum. These aspects are discussed in detail below in relation to environmental planning grounds.



Consistent with the R2 Low Density Residential Zone Objectives

The land use table of the Randwick LEP 2012 includes objectives for the site's R2 low density residential zoning. These objectives in relation to the proposal and the associated building height variation are addressed below.

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

Comment: The proposal maintains the existing three storey dwelling and seeks to improve the internal and external amenity for the residents, by also incorporating an additional level. It will become a more user-friendly home, compatible with the existing low density character of the site and surrounding area.

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

Comment: Not applicable.

- *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.*

Comment: The proposed alterations and the associated building height variation maintains the existing streetscape and does not introduce any negative design outcomes. The area is undergoing transition and the intention of this proposal is to enhance the aesthetics and longevity of the building while also improving amenity for the residents.

- *To protect the amenity of residents.*

Comment: Not applicable.

- *To encourage housing affordability.*

Comment: As discussed previously, the proposal facilitates a more user-friendly home to meet the needs of a contemporary family. Therefore the alterations encourage affordable housing opportunities.



- *To enable small-scale business uses in existing commercial buildings.*

Comment: Not applicable.

Results in a Better Planning Outcome

The proposal is expected to generate a better planning outcome for the following reasons:

- The proposed variation to the building height provides a high level of internal and external amenity for the residents without any significant impacts to the amenity of adjoining properties in terms of solar access, views, and visual and acoustic privacy.
- The proposed additional level is isolated in the middle of the roof, is setback from the street, and therefore inconspicuous.
- It is recognised the majority of the existing roof complies with the maximum building height and therefore provides no additional bulk or amenity impacts.
- The proposal to maintain the pitched roof form is considered to be a better design and planning outcome, compared to a flat roof which would increase the extent of the variation. A flat roof would create an undesirable design outcome as the dwelling would be incongruous with the pitched roof of the nearby buildings.

Therefore the proposed variation will result in a better planning outcome for the site and surrounding area.

Justification on Environmental Planning Grounds

In accordance with Clause 4.6 (3)(b) of the Randwick LEP 2012, the following environmental planning grounds are sufficient in justifying the proposed variation of the building height:

- The proposed alterations and additions have been designed in response to the characteristics and constraints of the site.
- The proposed height and associated variation do not lead to any view impacts from private or public land.

- Visual and acoustic privacy has been carefully considered in the design as depicted on the architectural plans.
- The proposed alterations and the associated building height variation does not lead to any additional environmental impacts in terms of removal of significant trees or landscaping. The proposal is confined to the existing building footprint and therefore maintains existing landscaping and trees.
- Despite the existing and proposed variation, the proposal can comply with the relevant DCP provisions for solar access. As per the shadow diagrams, there are no adverse impacts and therefore the height variation is supportable.



Figure 5: Existing and proposed shadowing



Unreasonable and Unnecessary Building Height Development Standard

Wehbe V Pittwater Council (2007) NSWLEC 827 sets out the methods of establishing why compliance with the development standards are unreasonable or unnecessary. One of these methods is demonstrating consistency with the objectives of the relevant development standard which has been provided above. In addition, the application of the height of buildings provision to the proposal is considered unreasonable and unnecessary, consistent for the following reasons:

- Despite the building height variation, the proposal is a considered design that is compatible with the character of the adjoining and surrounding properties and does not cause any significant impacts to the amenity of the site or surrounding area.
- The applicable development standard does not take into account that the site is already subject to a building height variation. Consequently, compliance is impossible to achieve.
- There is no consistent pattern of building heights in the streetscape as the locality is undergoing transition and the area is subject to steep topography.
- It is recognised the majority of the existing roof complies with the maximum building height.
- The broad building height application does not exclude the possibility of high-quality built form that is compatible with the surrounding streetscape and does not impact upon the amenity of surrounding properties.
- Strict compliance with the building height standard would reduce the opportunity for the orderly and economic development of the subject site.

Conclusion

Based on the above assessment, the proposal at 9 Sully Street, Randwick can achieve full compliance with the objectives and intentions of both Clause 4.3 Height of buildings and the R2 Low Density Residential zone under the Randwick LEP 2012. This report also validates the proposal can be justified to provide a better planning outcome and the building height development standard is unreasonable and unnecessary given the existing site conditions and the desired future character of the area.

The proposed variation will not lead to any unreasonable amenity impacts to the surrounding residential properties in terms of visual and acoustic privacy, landscaping, views, and overshadowing. The proposed alterations have been carefully designed to provide a high standard of amenity for the



residents and will enhance the existing streetscape. Therefore, the proposed building height variation should therefore be considered favourably by Council.

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Appendix 3: DCP Compliance Table – Part C1 Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 490.78m ²	
2.4	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Proposed = 190.8m ² (38%) NB: Council calculation to include area of carport.	Yes
2.5	Deep soil permeable surfaces		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces	Proposed = 40% (195.7m ²)	Yes
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	Capable of complying, subject to condition.	Yes, subject to condition.
2.7	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Proposed = >7m x 7m	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.65:1	0.64:1 (314.48m ²)	Yes
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 12.539m	No, refer Clause 4.6
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: – Topography – Site orientation – Lot configuration – Flooding – Lot dimensions – Impacts on visual amenity, solar access, privacy and views of adjoining properties.	Refer to discussion at Key Issues section of this report.	On merit, refer Key Issues
3.3	Setbacks		
3.3.1	Front setbacks		
	i) Average setbacks of adjoining (if none then	No change to existing front setbacks. The	Yes

DCP Clause	Controls	Proposal	Compliance																								
	<p>no less than 6m) Transition area then merit assessment.</p> <p>ii) Corner allotments: Secondary street frontage:</p> <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites - Should align with setbacks of adjoining dwellings <p>iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.</p>	proposed upper level addition is suitably setback 8.3m from the front boundary.																									
3.3.2	<p>Side setbacks</p> <table border="1"> <thead> <tr> <th colspan="4">Minimum side setbacks</th> </tr> <tr> <th>Existing primary frontage width</th><th>Building heights 0m to 4.5m</th><th>Building heights >4.5m to 7m</th><th>Building heights >7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height - 7m)</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.5m + 2 \times (\text{building height} - 7m)$</td></tr> <tr> <td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.8m + 2 \times (\text{building height} - 7m)$</td></tr> </tbody> </table>	Minimum side setbacks				Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m	Less than 6m	Merit assessment			6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	Refer to Key Issues section of this report.	On merit, refer Key Issues
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12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$																								
3.3.3	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts 	Proposed = 10.5m	Yes																								
4	Building design																										
4.1	General																										
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	The proposed alterations and additions are consistent with the characteristics of the streetscape and surrounding natural and built environment.	Yes																								
4.5	Roof design and features																										

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DCP Clause	Controls	Proposal	Compliance
	<p><i>Dormers</i></p> <ul style="list-style-type: none"> i) Dormer windows do not dominate ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. iii) Multiple dormers consistent iv) Suitable for existing <p><i>Clerestory windows and skylights</i></p> <ul style="list-style-type: none"> v) Sympathetic to design of dwelling <p><i>Mechanical equipment</i></p> <ul style="list-style-type: none"> vi) Contained within roof form and not visible from street and surrounding properties. 	The proposed upper level addition comprises dormer elements, which are suitably integrated within the existing roof form.	Yes
4.6	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone 	The selected colours and materials (comprising cladding and Colorbond roof) are suitable.	Yes
4.7	Earthworks		
	<ul style="list-style-type: none"> i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vii) cut and fill for POS is terraced <i>where site has significant slope:</i> viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas. 	Minimal earthworks are proposed.	Yes
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. 	Suitable solar access will be provided to living room windows and POS areas.	Yes
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours	Refer to discussion at Key Issues section of	On merit, refer Key Issues

DCP Clause	Controls	Proposal	Compliance
	<p>of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> • Degree of meeting the FSR, height, setbacks and site coverage controls. • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. • Topography of the subject and adjoining allotments. • Location and level of the windows in question. • Shadows cast by existing buildings on the neighbouring allotments. 	this report.	
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) Living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p>	Internal habitable spaces will achieve adequate natural lighting and ventilation.	Yes
5.3	Visual Privacy		
	Windows		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. 	Refer to discussion at Key Issues section of this report.	On merit, refer Key Issues

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Creating a recessed courtyard (minimum 3m x 2m). ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard) 		
	Balcony		
	<ul style="list-style-type: none"> iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space. 	Refer to discussion at Key Issues section of this report.	On merit, refer Key Issues
5.4	Acoustic Privacy		
	<ul style="list-style-type: none"> i) Noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	The proposed alterations and additions are not likely to result in additional acoustic impacts.	Yes
5.5	Safety and Security		
	<ul style="list-style-type: none"> i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access) 	As per the existing arrangement, the main dwelling entry is located on the front elevation. Habitable room window openings are provided to the street.	Yes
5.6	View Sharing		
	<ul style="list-style-type: none"> i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. 	Noting the nature and siting of proposed works, the proposal is unlikely to result in any view sharing impacts to neighbouring properties.	Yes
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	All dwellings		
	i) Maximum 1 vehicular access	The proposal seeks to	Yes

DCP Clause	Controls	Proposal	Compliance
	ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard. v) Tandem parking may be considered vi) Avoid long driveways (impermeable surfaces)	replace an existing single garage with a single carport, which is acceptable. As per the existing arrangement, the carport is located within the front setback area and will be accessed via Sully Street.	
6.2	Parking Facilities forward of front façade alignment		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) - Compliments architectural character of dwelling ie roof pitch and finishes.	Refer to discussion at Key Issues section of this report.	On merit, refer Key Issues
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: - Nil side setback on adjoining property; - Streetscape compatibility; - Safe for drivers and pedestrians; - Amalgamated driveway crossing.	Consistent with the siting of the existing garage, the proposed carport has nil setbacks to the front and side boundaries.	Yes
6.4	Driveway Configuration		
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	Proposed = 3.3m single driveway – acceptable on merit noting that site has suitable width (>12m) to accommodate the driveway. The wider driveway allows for	Yes

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DCP Clause	Controls	Proposal	Compliance
		bins to be moved to/from the street whilst a car is in the carport.	
6.6	Carport Configuration		
	<ul style="list-style-type: none"> i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to dwelling iii) 3m (single) 6m (double) maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) Front gate allowed (minimum 30% open) viii) Gate does not open to public land 	Proposed = 3m height (pitched roof), 2.2m wall height, 3.3m width, 6.7m length	Yes

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/1251/2024

Development Consent Conditions



Folder /DA No:	DA/1251/2024
Property:	9 Sully Street, RANDWICK NSW 2031
Proposal:	Alterations and additions to existing residential dwelling including attic extension, rear extensions and construction of a new carport and bin storage area.
Recommendation:	Approval

GENERAL CONDITIONS

Condition

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Page 6, Rev. H – Site Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 7, Rev. H – Lower Ground Floor Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 9, Rev. H – Demolition Ground Floor Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 10, Rev. H – Proposed Ground Floor Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 12, Rev. H – Demolition First Floor Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 13, Rev. H – Proposed First Floor Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 14, Rev. H – Garage Floor Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 15, Rev. H – Proposed Second Floor Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 17, Rev. H – Demolition Roof Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 18, Rev. H – Proposed Roof Plan	Perfect Square Design	15/04/2025	15/04/2025
Page 20, Rev. H – North-east elevation	Perfect Square Design	15/04/2025	15/04/2025
Page 22, Rev. H – North-west elevation	Perfect Square Design	15/04/2025	15/04/2025
Page 24, Rev. H – South-east elevation	Perfect Square Design	15/04/2025	15/04/2025
Page 26, Rev. H – South-west elevation	Perfect Square Design	15/04/2025	15/04/2025
Page 27, Rev. H – Section A	Perfect Square Design	15/04/2025	15/04/2025

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Condition			
Page 28, Rev. H – Section B	Perfect Square Design	15/04/2025	15/04/2025
Page 29, Rev. H – Section C	Perfect Square Design	15/04/2025	15/04/2025
Page 32, Rev. H – Landscape Plan	Perfect Square Design	15/04/2025	15/04/2025
BASIX Certificate No.	Dated	Received by Council	
A1766206_02	15/04/2025	15/04/2025	

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

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

2. **Amendment of Plans & Documentation**

The approved plans and documents must be amended in accordance with the following requirements:

- a. A full height operable (i.e. sliding) privacy screen having a length of 3.3m shall be provided to the rear edge of the balconies at ground and first floor levels. The screen shall be constructed with fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
- b. At least four (4) canopy trees shall be provided on the site.

Amended plans must be submitted to and approved by Council's Manager Development Assessment prior to issue of any construction certificate for the development.

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

3. **Undercroft Areas**

No consent is granted for the enclosure of the undercroft area at lower ground level or the undercroft area beneath the carport. These areas shall not be used for any habitable purposes at any time.

Condition Reason: To clarify the scope of approved works.

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
4.	<p>Consent Requirements</p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
5.	<p>External Colours, Materials & Finishes</p> <p>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</p>

	Condition
	<p>the building and the streetscape.</p> <p>Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessment prior to issue of any construction certificate for the development.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
6.	<p>Section 7.12 Development Contributions</p> <p>In accordance with the applicable Randwick City Council S7.12 Development Contributions Plan, based on the development cost of \$467,200 the following applicable monetary levy must be paid to Council: \$4,672.00.</p> <p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> $IDC = ODC \times CP2/CP1$ <p>Where:</p> <p>IDC = the indexed development cost</p> <p>ODC = the original development cost determined by the Council</p> <p>CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment</p> <p>CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p>
7.	<p>Long Service Levy Payments</p> <p>Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with section</p> <p><i>At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p>
8.	<p>Security Deposits</p> <p>The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in</p>

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	Condition
	<p>accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none"> • \$1,000.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
9.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
10.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p>

Condition	
	<p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
11.	<p>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
12.	<p>Excavation Earthworks and Support of Adjoining Land</p> <p>Details of proposed excavations and support of the adjoining land and buildings are to be prepared and be included in the construction certificate, to the satisfaction of the appointed Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported.</p>
13.	<p>Design Alignment Levels</p> <p>The design alignment level (the finished level of concrete, paving or the like) at the property boundary for the carport slab shall be as follows:</p> <ul style="list-style-type: none"> • A maximum of 100mm above the back of the existing Council footpath level, at any point opposite the carport entrance. <p>The design alignment levels at the property boundary as issued by Council and their relationship to the Council footpath must be indicated on the building plans for the construction certificate (<u>a construction note on the plans is considered satisfactory</u>). The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.</p> <p>Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.</p> <p>The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of \$191. This amount is to be paid prior to a construction certificate being issued for the development.</p> <p>Condition Reason: To ensure all relevant approvals for traffic and parking works are obtained and designed in accordance with Council requirements.</p>
14.	<p>Stormwater Drainage</p> <p>Surface water from building work and structures must satisfy the following requirements (as applicable), to the satisfaction of the Certifier and details are to be included in the construction certificate:-</p>

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Condition	
a)	Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);
b)	The surface water/stormwater is to be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;
c)	Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance;
d)	External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;
e)	Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.

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.

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.

Stormwater runoff from the (redeveloped portion) site shall be discharged either:

- a) To the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system); and/or
- b) 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.

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.

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.

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

15.

Street Tree Protection Measures

To ensure retention of the *Gleditsia triacanthos* (Honey Locust) that is located out on the Sully Street verge, centrally across the width of this development site, to the

Condition
<p>west of the existing informal vehicle entry in good health, the following measures are to be undertaken:</p>
<ul style="list-style-type: none"> a. All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk and canopy to be clearly and accurately shown on all plans in relation to the site and new works. b. All Construction Certificate plans must include distances in millimetres to confirm that a minimum setback of 2400mm will be provided between the western edge of any new vehicle crossing to the trunk of this tree at ground level. c. This tree must be physically protected by the installation of 1.8 metre high steel mesh/chainwire fencing panels, which shall be located a minimum distance of 2500mm to its southeast, 1m to its northwest, then along the kerb to its east and public footpath to its west to completely enclose the tree for the duration of works. d. 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". e. 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. f. The applicant is not authorised to perform any other works to this tree and must contact Council's Landscape Development Officer on 9093-6613 should clearance pruning or similar be necessary. If approval is given, it can only be performed by Council, wholly at the applicants cost, GIVING UP TO SIX WEEKS NOTICE, with payment to be received prior to pruning or any Occupation Certificate. g. Within the TPZ there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements. h. Following removal of the existing brick pavers, but prior to excavating/forming up for a new layback, vehicle crossing or similar, Council's Landscape Development Officer (9093-6613) must firstly be contacted to arrange for the clean pruning of those surface roots that are already present in this area, along the western side of the current access, before these external civil works can proceed further. i. Any root pruning must be completed by Council, wholly at the applicant's cost, prior to providing a new layback or crossing, with any instructions issued by Council's Officers to be complied with. j. A refundable deposit in the form of cash, credit card, cheque for an amount of \$1,000.00 must be paid into via Council's Customer

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Condition
<p>Service Centre, prior to a Construction Certificate being issued for the development to ensure compliance with the conditions listed in this consent, and preservation of the tree.</p> <p>The refundable deposit will be eligible for refund following an Occupation Certificate, subject to completion and submission of Council's 'Security Deposit Refund Application Form' and pending a satisfactory inspection by Council's Landscape Development Officer (9093-6613).</p> <p>Any contravention of Council's conditions relating to the tree at any time during works or prior to an Occupation Certificate may result in Council claiming all or part of the lodged security in order to perform any rectification works necessary, as per the requirements of 4.17 (6) of the Environmental Planning and Assessment Act 1979.</p>

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

16.

Protection of rear trees

To also ensure the retention of those trees located in both the rear setback of this site, as well as on neighbouring properties, close to common boundaries in good health, the following measures are to be undertaken:

- a. All documentation submitted for the Construction Certificate application must show their position in relation to the site and any new works.
- b. If a hydraulic consultant/engineer does require an infiltration tank, as is depicted on the Stormwater Management Plan – Lower Ground Floor Level by Neilly Davies Consulting Engineers, sheet no SW02, dated 16/12/24, then all Construction Certificate plans must show that it will be positioned centrally in the rear setback, at the maximum offset possible from these trees, with distances in millimetres between excavations and each of their trunks to be shown.
- c. To prevent soil/sediment being washed over their root systems, erosion control measures must be provided at ground level, between these works and the trees, as needed.
- d. Where roots are encountered which are in direct conflict with these 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.
- e. Any altering, battering or similar of existing ground levels within their TPZ's must be graded to ensure smooth transitions to surrounding surfaces.
- f. 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 within their TPZ's, with all Site Management Plans to comply with these requirements.

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

BEFORE BUILDING WORK COMMENCES

	Condition
17.	<p>Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <ul style="list-style-type: none">a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ul style="list-style-type: none">b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; andc) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); andd) 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; ande) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works. <p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
18.	<p>Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p>
19.	<p>Dilapidation Reports</p> <p>A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified person to the satisfaction of the appointed Registered Certifier for the development, in the following cases:</p> <ul style="list-style-type: none">• excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the zone of influence of the footings of any dwelling, associated garage or other structure located upon an adjoining premises;

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Condition

- | |
|---|
| <ul style="list-style-type: none"> • demolition or construction of new dwellings; additions to dwellings or outbuildings, which are sited up to or less than 900 mm from a site boundary (e.g. a semi-detached dwelling, terraced dwelling or other building sited less than 900mm from the site boundary); • excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises; and • as may be required by the Principal Certifier for the development. |
|---|

The dilapidation report shall include details of the current condition and status of any dwelling, or other structures located upon the adjoining premises and shall include relevant photographs of the structures.

The dilapidation report must be submitted to the Principal Certifier, the 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.

20. **Construction Site Management Plan**

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

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

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

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

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

21. **Sediment and Erosion Control Plan**

A *Sediment and Erosion Control Plan* must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by

	Condition
	Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.
	Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.
22.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
23.	<p>Public Utilities</p> <p>A <i>Public Utility Impact Assessment</i> must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.</p> <p>The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>

DURING BUILDING WORK

	Condition
24.	<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> <ol style="list-style-type: none"> showing the name, address and telephone number of the principal certifier for the work, and showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ol style="list-style-type: none"> maintained while the building work is being carried out, and removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or

Condition

- 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.

25.

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

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.

26.

Construction Site Management

Temporary site safety fencing must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works.

Temporary site fences must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.

Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.

All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

Notes:

- Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.
- A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.

Condition
<p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p> <p>27. Public Safety & Site Management Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ul style="list-style-type: none"> a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction. d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council. f) Noise and vibration from the work shall be minimised and appropriate strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines. g) 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. h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land. i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council. j) 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. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details. <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p> <p>28. Excavations and Support of Adjoining Land In accordance with section 4.17 (11) of the <i>Environmental Planning and</i></p>

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Condition	
	<p><i>Assessment Act 1979</i> and section 74 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.</p> <p>Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.</p>
29.	<p>Building Encroachments</p> <p>There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p>
30.	<p>Survey Report</p> <p>A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</p> <ul style="list-style-type: none"> • prior to construction (pouring of concrete) of footings for the building and boundary retaining structures, • prior to construction (pouring of concrete) of new floor levels, • prior to issuing an Occupation Certificate, and • as otherwise may be required by the Principal Certifier. <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p> <p>Condition Reason: To ensure compliance with approved plans.</p>
31.	<p>Road / Asset Opening Permit</p> <p>A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.</p> <p>The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development.</p> <p>For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.</p> <p>Condition Reason: To ensure works are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
32.	<p>Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p>

Condition	
	Condition reason: Statutory requirement. To ensure the site is authorised for occupation.
33.	<p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>
34.	<p>Council's Infrastructure, Vehicular Crossings, street verge</p> <p>The applicant must meet the full cost for a Council approved contractor to:</p> <ul style="list-style-type: none"> a) Reconstruct/extend the vehicular crossing opposite the carport entrance to the site, if required. The works are to be to Council's specifications and requirements. <p>The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:</p> <ul style="list-style-type: none"> b) 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 8 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details. c) 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. d) 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. <p>That part of the nature-strip upon Council's footway which is damaged during 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 rectification of any damage to public infrastructure</p>

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Condition	
	and that works are completed in accordance with Council's requirements with Council's approval.
35.	<p>Stormwater Drainage</p> <p>The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development approval. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.</p> <p>Should an infiltration area 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):</p> <ul style="list-style-type: none"> • The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes; • Details of infiltration/absorption systems. <p>Condition Reason: To ensure compliance with the consent and relevant standards, and adequate management of stormwater.</p>

OCCUPATION AND ONGOING USE

Condition	
36.	<p>Use of Premises</p> <p>The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.</p> <p>Condition reason: To ensure the development is used for its intended purpose.</p>
37.	<p>External Lighting</p> <p>External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>
38.	<p>Waste Management</p> <p>Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.</p> <p>Condition Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste.</p>
39.	<p>Plant & Equipment</p> <p>Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>
40.	<p>Use of parking spaces</p> <p>The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.</p>

Condition	
Condition Reason: To ensure that adequate parking facilities to service the development are provided on site, and to prevent leasing out of car spaces to non-residents.	
DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES	
Condition	
41.	<p>Demolition Work</p> <p>A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <p>a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy.</p> <p>b) The Demolition Work Plan must include the following details (as applicable):</p> <ul style="list-style-type: none">• The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor• Details of hazardous materials in the building (including materials containing asbestos)• Method/s of demolition (including removal of any hazardous materials including materials containing asbestos)• Measures and processes to be implemented to ensure the health & safety of workers and community• Measures to be implemented to minimise any airborne dust and asbestos• Methods and location of disposal of any hazardous materials (including asbestos)• Other measures to be implemented to ensure public health and safety• Date the demolition works will commence/finish. <p>The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.</p> <p>If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.</p> <p><i>Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.</i></p> <p><i>A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.</p>

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DURING DEMOLITION WORK

	Condition
42.	<p>Demolition Work</p> <p>Any demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard - AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a demolition work plan, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations • A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress", • Council is to be given at least two days written notice of demolition works involving materials containing asbestos, • Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request, • A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works. <p>Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.</p> <p><i>A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

Development Application Report No. D20/25

Subject: 1/184 Storey Street, Maroubra (DA/78/2025)


Executive Summary

Proposal:	Alterations and additions to an existing part one and two storey dwelling (Unit 1) including a new first floor addition.
Ward:	Central Ward
Applicant:	John Spiteri
Owner:	Julie Carroll and Paul Pisanos
Cost of works:	\$845,706.00
Reason for referral:	Variation to the FSR development standard by more than 10%

Recommendation

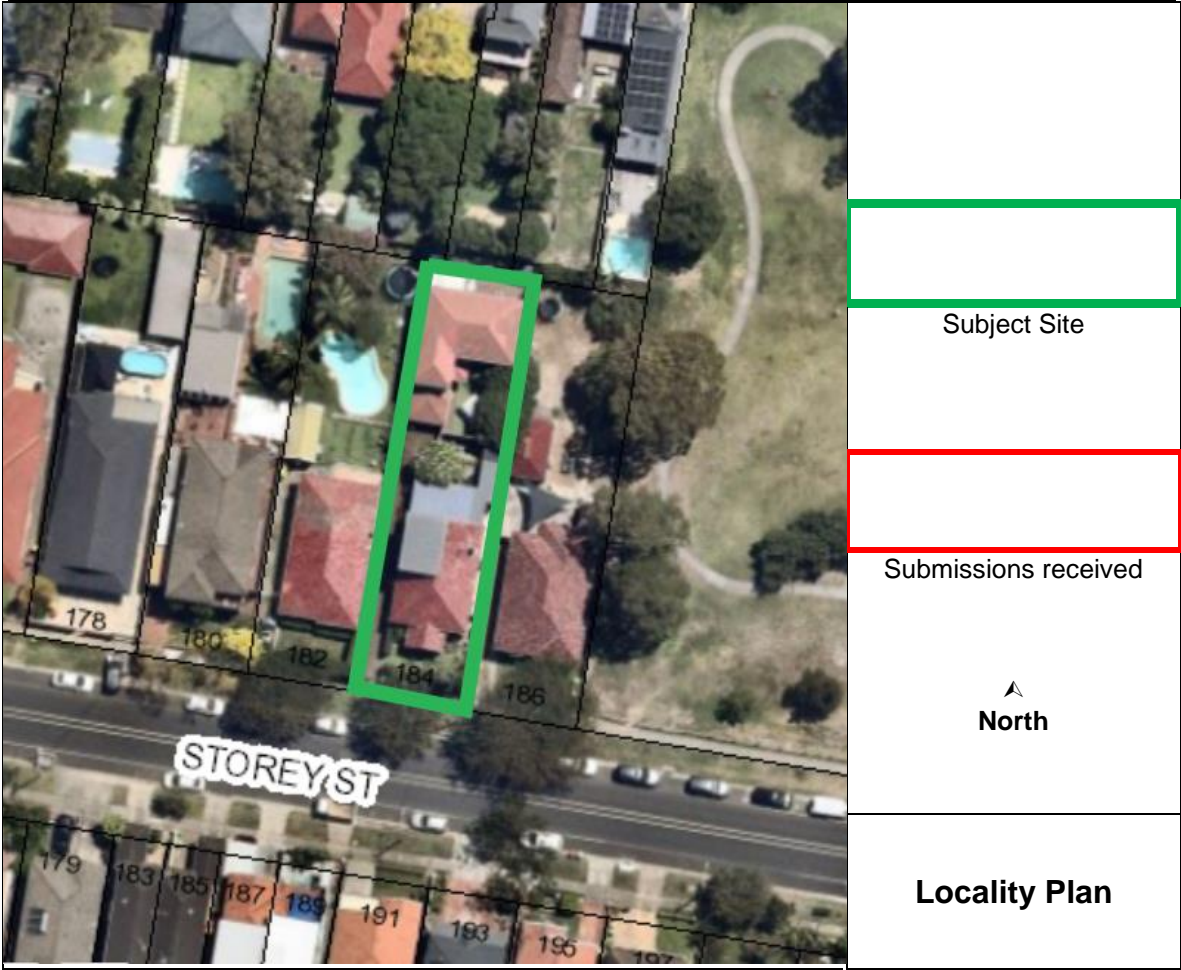
- A. That the RLPP is satisfied that the applicants written requests to vary the development standard relating to floor space ratio in Clause 4.4 of Randwick Local Environmental Plan 2012 have demonstrated that;
- i. Compliance with the relevant development standard is unnecessary and unreasonable in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development standards.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 78/2025 for alterations and additions to an existing part one and two storey dwelling (Unit 1) including a new first floor addition at No. 1/184 Storey Street, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA782025 - 1 184 Storey Street, MAROUBRA NSW 2035 - DEV - Randwick City Council

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1. Executive summary

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

The proposal is for alterations and additions to Unit 1 an existing part one and two storey dwelling house, including a new first floor addition. The site contains a detached dual occupancy development, which has been strata subdivided. Unit 1, the subject of this application, is located at the front of the site. Unit 2 is located at the rear.

The subject site is zoned R2 Low Density Residential under the Randwick Local Environmental Plan (LEP) 2012, which prohibits 'detached dual occupancies.' Despite a prohibition on detached dual occupancies in the R2 zone, the dual occupancy development, having been in continuous operation since its construction in 1989, operates under the benefit of the existing use provisions in ss4.65 and 4.66 of the *Environmental Planning and Assessment Act 1979* (NSW).

A key issue in this assessment is the non-compliance with the Floor Space Ratio (FSR) development standard under the LEP. The variation to the FSR standard is 18%. The applicant has submitted a written request seeking an exception to the FSR development standard under Clause 4.6 of the LEP.

The size and scale of the proposed development is compatible with the desired future character of the locality. Additionally, it will not result in any adverse impacts on the amenity of the adjoining residential properties or within the streetscape. Accordingly, the Clause 4.6 written request has adequately demonstrated that strict compliance with the FSR development standard is

unreasonable or unnecessary in this case. In addition, there are sufficient environmental planning grounds to justify exceeding the standard.

On that basis, the requirements of Clause 4.6(3) of the RLEP have been satisfied, and it is recommended that development consent is granted despite the FSR exceedance.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is located on the northern side of Storey Street, Maroubra, between Cooper Street and Garden Street. The site is rectangular in shape with a 12.45m frontage, a side boundary depth of 48.77m and a total site area of 609.38m².

The site contains two dwellings (detached dual occupancy). Unit 1 the subject of this application is at the front of the site and Unit 2 at the rear. Unit 1 contains a first-floor addition albeit smaller than proposed under this application. Unit 2 contains a substantial first-floor addition. The dwellings have been strata subdivided and share an existing driveway along the western boundary of the site. Refer to **Figures 1 and 2**.

The adjoining property to the east at 186 Storey Street contains a single storey detached dwelling house. The adjoining property to the west at 182 Storey Street contains a single storey detached dwelling. The surrounding area is characterised by one and two storey detached dwelling houses.



Figure 1 – Existing dwelling viewed from the street.



Figure 2 – Unit 2 at the rear of the site.

3. Relevant history

On 7 September 1989, Council approved the construction of a single storey dwelling behind the existing dwelling (detached dual occupancy) under DA284/1989.

On 12 December 1991, Council approved strata subdivision into two lots SC/8/1990.

On 25 July 2012, Council approved alterations and additions including first floor rumpus room and construction of new front fence for Unit 1 (DA/417/2012).

On 27 November 2015, Council approved alterations and first floor addition to the existing dwelling Unit 2 at the rear (DA/606/2015).

4. Proposal

The proposal is for alterations and additions to Unit 1 an existing part one and two storey dwelling, including a new first floor addition (existing strata subdivided detached dual occupancy). Refer to **Figures 3 to 6**.

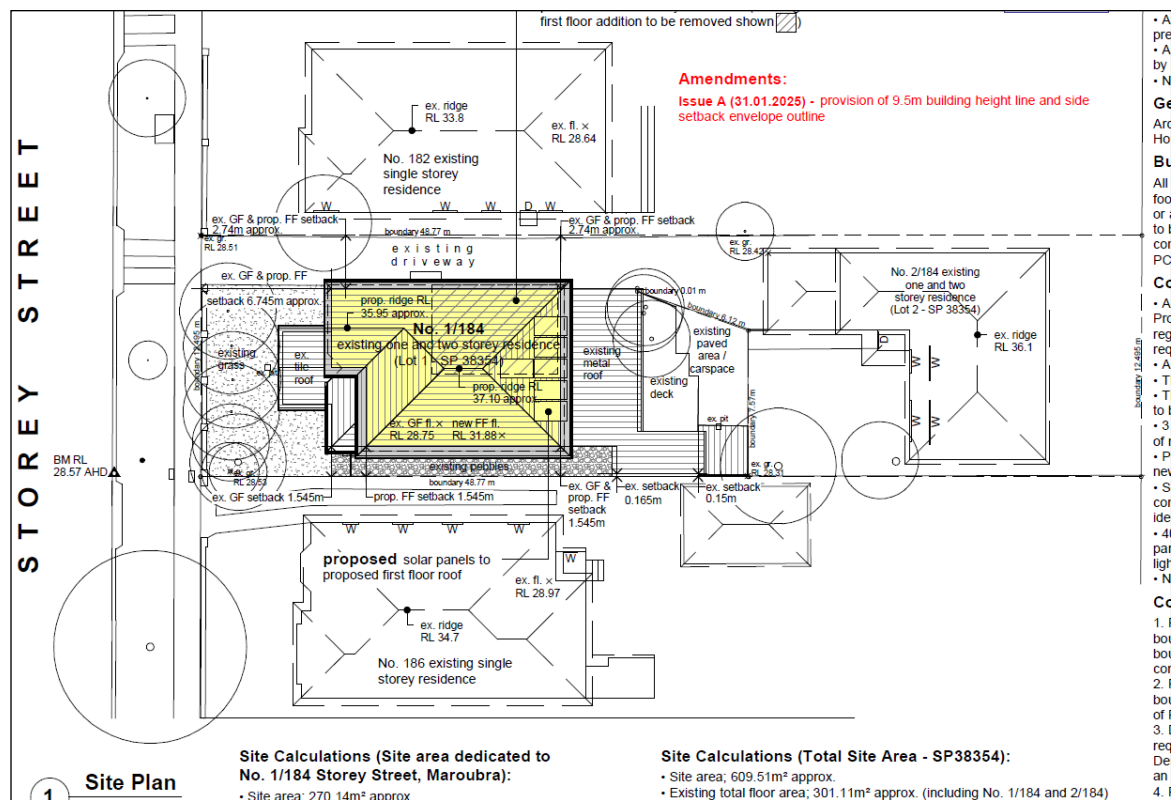


Figure 3 – Site Plan

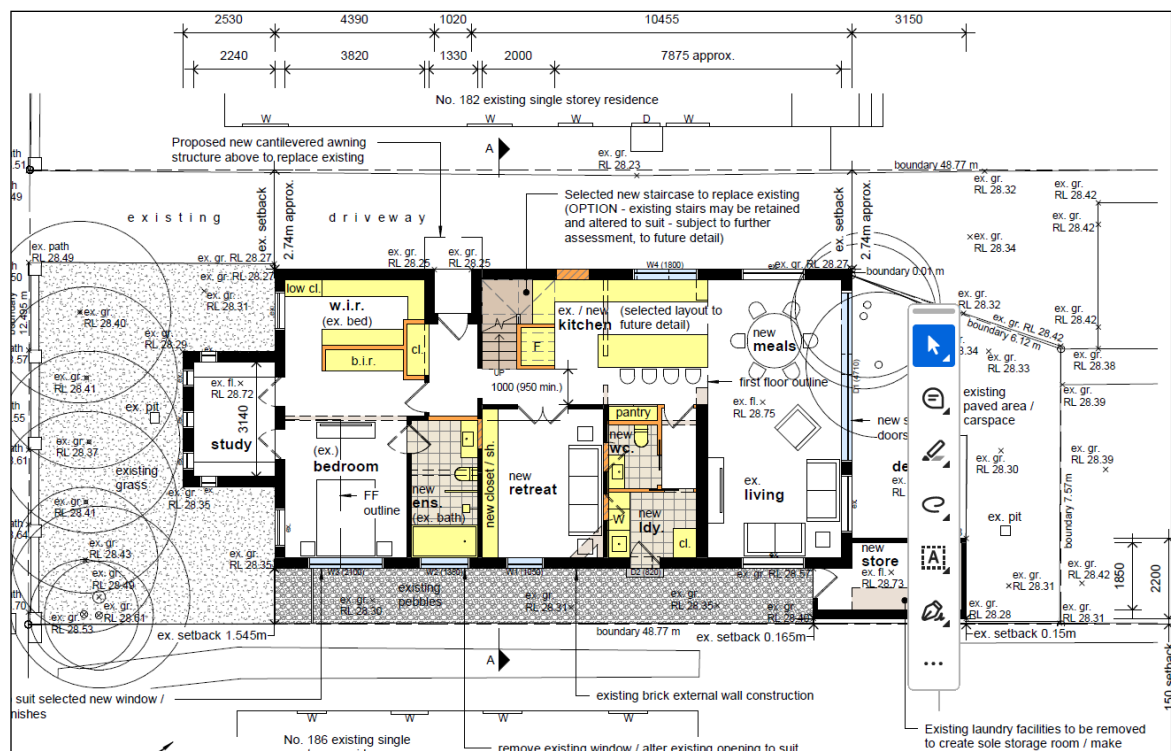


Figure 4 – Ground Floor Plan

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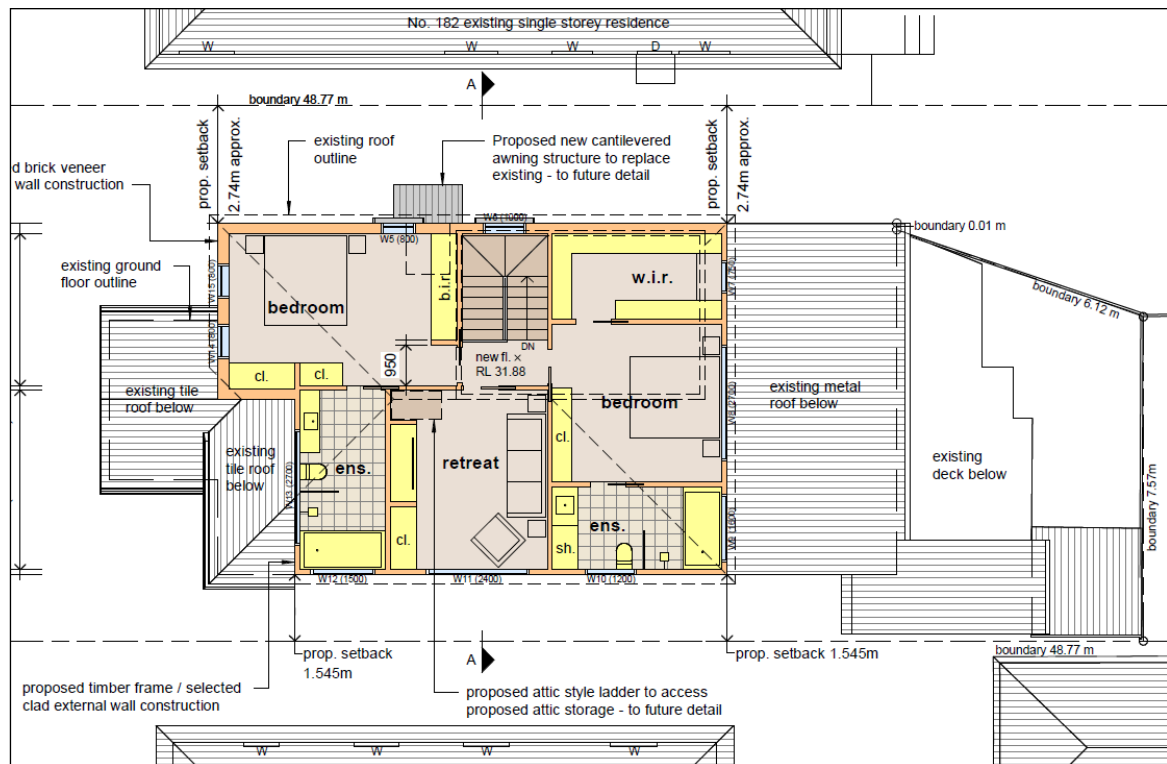


Figure 5 – First Floor Plan

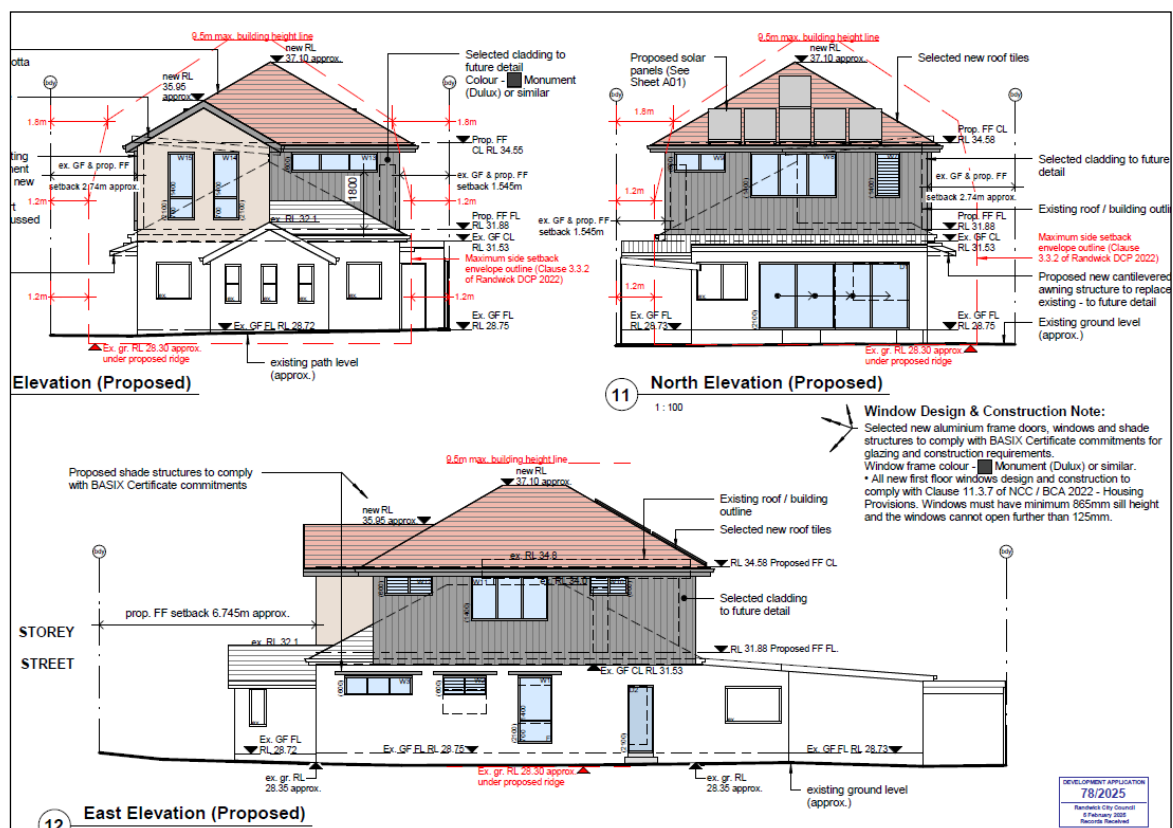


Figure 6 – Elevations

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No submissions were received during the notification process.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

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

6.2. SEPP (Biodiversity and Conservation) 2021

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

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

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

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The subject site is zoned R2 Low Density Residential as identified on the Land Zoning Map of RLEP 2012. Pursuant to the Land Use Table within Part 2 of the LEP, 'detached dual occupancies' are not permissible within the R2 zone. Consequently, the continued use of the site for purposes of detached dual occupancies relies upon EUR. Refer to **Section 9.1** of this report.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.

The following development standards in the LEP apply to the proposal:

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.5:1	0.59:1	No
CI 4.3: Building height (max)	9.5m	8.75m	Yes

6.4.1. Clause 4.6 - Exceptions to development standards

The non-compliances with the FSR development standard is discussed in section 7 below.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standard contained within the LEP:

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.5:1 (The FSR exceptions under Clause 4.4A do not apply to detached dual occupancy development).	0.59:1 Existing GFA Unit 1 = 145.81m ² Unit 2 = 155.3m ² Total GFA = 301.11m ² Existing FSR = 0.49:1 Proposed GFA Unit 1 = 205.98m ² Unit 2 = 155.3m ² Total GFA = 361.28m ² Proposed FSR = 0.59:1 Site Area = 609.38m ² (the FSR calculation is based on the entire site area, including Unit 2).	56.59 m ²	18%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The objectives of the FSR standard are set out in Clause 4.4 (1) of RLEP 2012.

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

The applicant has addressed the FSR objectives, as follows:

- *The proposal will maintain two x low-density detached dwelling houses, only one of which is viewable from the streetscape which will be consistent with the bulk and scale for similar sized allotments of land;*
- *The proposal will maintain flexible housing for the residents/family;*
- *The proposal will maintain the availability of residential accommodation and housing choice/type on residentially zoned land;*
- *The finished design provides for a renovated building that will not be visually intrusive or bulky when viewed from the surrounding public domain and is not incompatible within the adjoining/ surrounding locational built form or context; and*
- *There will be no unreasonable amenity impacts to neighbours or environmental impacts upon the public domain.*

Assessing officer's comment:

The objective of the FSR development standard (in conjunction with the other development controls under the LEP), is to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity of the neighbouring residents or surrounding area.

In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 (*Woollahra v SJD*), Chief Justice Preston, at paragraph [52], stated that when assessing the "desired future character of an area," it is important to consider not only the zone objectives, permissible uses, and development standards, but also the existing built elements and approved developments in the locality.

The applicant's Clause 4.6 written request states the proposal will be consistent with the bulk and scale of the similar sized allotments. The nearby properties of 180 and 176 Storey Street

contain two storey detached dwelling houses. Based on a rudimentary measurement using Council's mapping system, these sites have an existing FSR of approximately 0.55:1 to 0.6:1.

The proposed development is therefore of a size and scale that is compatible with the existing development in the immediate vicinity of the site, noting also that the existing detached dwelling at the rear of the subject site is also two storeys. The proposal will therefore be compatible with the desired future character of the locality and consistent with Objective (a).

The BASIX certificate (submitted by the applicant) shows that the development meets the relevant water and energy saving targets. The proposal is consistent with Objective (b).

The proposal would not adversely impact the amenity of the adjoining dwellings and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views (Refer to **Section 9.1** of this report). The proposal is consistent with Objective (d).

In conclusion, the applicant's written request has adequately demonstrated that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

- *the development allows for the continued use of the site for purposes of a dwelling-house (despite it being one of a "detached dual occupancy development") as envisaged under the R2 Low Density Residential zone;*
- *the siting and location of the non-compliant FSR will not impact adversely upon the existing streetscape which is filled with dwelling-houses that enjoy a higher permissible FSR;*
- *the proposal improves the amenity for residents of the site and will not cause any adverse amenity impacts upon the adjoining and surrounding properties;*
- *the extent of the FSR area breach is not associated with an increased or excessive finished built form; and*
- *flexibility in this instance will allow for the site to be developed with no discernible impacts beyond a fully compliant scheme.*

Assessing officer's comment:

The proposed first floor addition will be reasonably located within the footprint of the existing dwelling. The proposal will not impact the existing landscaping and unbuilt areas of private open space. Furthermore, the design of the first-floor addition will suitably maintain the amenity and privacy of the surrounding residents.

The proposed addition is consistent with the streetscape character and maintains landscaped setbacks and creates an improved and spacious internal layout with good internal amenity for the occupants, resulting in a better outcome for and from the development.

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p>

Section 4.15 'Matters for Consideration'	Comments
and economic impacts in the locality	The proposal will not result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of Key Issues

Existing Use Rights

The subject site is zoned R2 Low Density Residential as identified on the Land Zoning Map of RLEP 2012. Pursuant to the Land Use Table within Part 2 of the LEP, 'detached dual occupancies' are not permissible within the R2 zone. Consequently, the continued use of the site for purposes of detached dual occupancies relies upon 'existing use rights' (EUR).

The Applicant claims the site benefits from EUR pursuant to Division 4.11 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Section 4.65 of Division 4.11 of the EP&A Act requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. As well, under Section 4.66, the use is presumed to be abandoned, unless the contrary is established, if the use ceases for a continuous period of 12 months.

Based on a search of past reports and approvals, the existing building is considered to have been approved and constructed around 1989. The existing detached dual occupancy has been subject to several development applications and a strata subdivision application since its construction, thereby legitimising the use as a detached dual occupancy on the site.

The most recent application acknowledges that the subject site benefits from EUR and therefore it is considered that the use of the building was lawfully granted and in existence prior to the implementation of the Randwick LEP 2012. There is no evidence to suggest that the approved use has been discontinued for any period of over 12 months since its commencement.

In view of the above, it is considered that EUR pertains to the site under Part 4, Division 4.11 of the EP&A Act and Part 5 of the EP&A Regulation 2000, and the subject application therefore may be considered and determined under the "existing use" provisions.

Section 4.67 of the EP&A Act provides that any provisions in an instrument that would derogate from the "incorporated provisions" of the Act would have no force or effect. This effectively means that provisions (objectives, controls or standards) of an environmental planning instrument that would restrict the redevelopment of the site do not apply. In the absence of such provisions, the Land and Environment Court has established a planning principle for urban development (*Fodor Investments v Hornsby Shire Council*, 2005), which establishes criteria for the assessment of proposals on land with EUR. Assessment against the planning principal is provided below:

Planning Principal 1

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

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

Key issues associated with the bulk and scale of the development include the following:

Floor Space Ratio (FSR)

The R2 zoning of RLEP 2012 contemplates low density housing, including dwelling houses and dual occupancy development. The existing development in the immediate vicinity of the site is characterised by 1-2 storey dwelling houses. A maximum FSR of 0.5:1 applies to detached dual occupancy development (Clause 4.4A does not apply to detached dual occupancy development). The proposed development will result in an FSR of 0.59:1 (based on the entire site, including Unit 2).

The size and scale of the development will be compatible with that of surrounding development. The proposed first floor addition will be setback to the boundaries to minimise its impacts to surrounding neighbours in terms of visual bulk, privacy or overshadowing. On that basis, the proposed development is consistent with the objectives of the FSR development standard. Refer to Clause 4.6 assessment above.

Building Height

A maximum height of 9.5m applies to the site under Clause 4.3 of RLEP. The proposed first floor addition will be 8.75m from the highest point of the new roof to existing ground level below. The proposal therefore complies with the maximum building height development standard. The overall height, bulk and scale will be consistent with the desired character of this low-density zoned area.

Setbacks

Part 3.3.2 of the RDCP establishes a building envelope based the primary frontage width and external wall height of the proposed development. The siting, location and footprint of the existing dwelling will remain unchanged. The front, rear and western side setbacks of the first-floor addition fit within the building envelope control. However, the eastern side setback is 1.545m, which does not comply with the required 1.6m setback. Despite the minor non-compliance, the proposal will maintain sufficient separation to the adjoining for privacy, natural lighting and ventilation.

In conclusion, the development provides a bulk and scale (as expressed by height, floor space ratio and setbacks) that is similar to the existing building form and the surrounding built form character and is acceptable in this regard.

Planning Principal 2***What is the relevance of the building in which the existing use takes place?***

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.

The existing building on site is already used for residential purposes and the development seeks to continue that use. On that basis, it will be consistent with the use of the existing building and its built form relationship with surrounding development.

Planning Principal 3

What are the impacts on adjoining land?

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

Overshadowing

The solar access and overshadowing controls under Section 5.1 of RDCP require a portion of the north-facing living area windows of neighbouring dwellings to receive a minimum of three hours of direct sunlight between 8:00am and 4:00pm at the winter solstice. The private open space of neighbouring dwellings must receive a minimum of three hours of direct sunlight between 8:00am and 4:00pm. The area covered by sunlight must be capable of supporting passive recreation activities.

The site enjoys a north-south orientation and additional overshadowing created by the proposed first floor addition will primarily fall on the roof of the adjoining properties and the adjacent street. The adjoining residential properties to the east and west will continue to receive minimum 3 hours direct solar access at the winter solstice to the north facing windows and private open space. The proposal is acceptable in terms of overshadowing.

Visual Bulk

When considered in the context of the relationship of the existing development surrounding the site, which includes predominantly one and two storey dwellings, the proposal maintains a commensurate scale to the surrounding development and would not result in any significant adverse visual bulk impacts to the adjoining properties.

Landscape Area

Part C1 Section 2.4 of RDCP 2013 contains landscaping and permeable surface objectives and controls to enhance permeability of surface water and infiltration of stormwater and improve the environmental performance of the development and maintain visual amenity between the development and neighbours.

Landscaped areas within the site are effectively distributed and achieve a suitable visual balance between the existing buildings and areas of open space. The proposal will not reduce the existing landscape area on the site.

Privacy

Part C1 Section 5.3 of RDCP contains objectives and controls to ensure development minimises overlooking or cross viewing to the neighbouring dwellings to maintain reasonable levels of privacy.

Western Elevation

W6 serves a stairwell and therefore does not pose a privacy risk. W5 serves a bedroom, which is generally low usage, and its small size would not result in any adverse privacy impacts.

Northern Elevation

Windows 7 and 9 are highlight windows to walk-in-robe and ensuite and therefore would not result in any adverse privacy impact. Window 8 serves a bedroom which is generally low usage and is sufficiently setback from the boundary to minimise potential privacy impacts.

Eastern Elevation

Windows 10 and 12 are to ensuite bathrooms. Window 11 will serve a secondary living area. A condition is included in the recommended development consent requiring a privacy screen to this window.

In conclusion, the proposal will not give rise to any adverse amenity impacts to the surrounding properties in terms of visual bulk, overshadowing, privacy or view loss (no identified view corridors impacted), subject to conditions.

Planning Principal 4

What is the internal amenity?

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

The proposed development shall provide improved internal amenity for occupants of the Unit 1 by facilitating additional floorspace and a more efficient internal layout.

The proposal has been assessed against the planning principles established by the NSW Land and Environment Court in relation to EUR. The proposal is unlikely to have any unreasonable impacts upon adjoining properties or the streetscape.

Floor Space Ratio

A maximum FSR of 0.5:1 applies to the site under the LEP. The proposed development will have a GFA of 361.28m² which equates to an FSR of 0.59:1, contravening the FSR development standard by 18%.

The applicant submitted a written request seeking an exception to the development standard in accordance with Clause 4.6 of RLEP. The applicant's written request has adequately demonstrated that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed first floor addition is compatible with the built form character, retains appropriate landscaped setbacks and separation, and creates a spacious and efficient layout and amenity for the occupants, resulting in a better outcome for and from the development.

The requirements of Clause 4.6(3) of RLEP have been satisfied and that development consent may be granted for development that contravenes the FSR development standard.

10. Conclusion

That the application seeking approval for alterations and additions to Unit 1 an existing part one and two storey dwelling house including a new first floor addition be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The proposal does not adversely impact the amenity of the adjoining dwellings and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

An application has been received for alterations and additions to the front dwelling of an existing Dual Occupancy (battle-axe layout) at the above site.

This report is based on the following plans and documentation:

- *Architectural Plans by J Spiteri and dated 31.01.25;*
- *Statement of Environmental Effects by GPL Planning;*
- *Detail & Level Survey by Ballenden Surveyors.*

General Comments

The submitted plans show the existing dwelling (1/184 Storey St) as a 3-bedroom dwelling with a first floor rumpus room. The proposed alterations and additions show a 3-bedroom dwelling still with 1-bedroom downstairs with a reconfigured layout and 2-bedrooms on a new first floor addition each with their own en-suite.

Landscape Comments by P O'Sullivan

There are no existing trees, covered by Part B5 (Preservation of Trees and Vegetation) in Council's DCP 2013, that will be affected by this proposal, however Street Tree Protection condition has been included

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

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CLAUSE 4.6 VARIATION STATEMENT TO THE "FLOOR SPACE RATIO" DEVELOPMENT STANDARD FOR DA/78/2025

1/184 STOREY STREET, MAROUBRA

PROPOSED ALTERATIONS AND ADDITIONS TO UNIT 1 - AN EXISTING PART ONE AND TWO STOREY DWELLING HOUSE INCLUDING A NEW FIRST FLOOR ADDITION

1. INTRODUCTION

This is a written request to vary a development standard to accompany Development Application (DA) 78/2025 which proposes to undertake *alterations and additions to Unit 1 being an existing part one and two storey dwelling house, including a new first floor addition* at No. 184 Storey Street, Maroubra. This request should also be read in conjunction with the plans and Statement of Environmental Effects (SoEE) prepared by 'GPL Planning'.

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

2. NAME OF THE PLANNING INSTRUMENT AND DEVELOPMENT STANDARD

Instrument applying to the land?

Randwick Local Environmental Plan 2012 (LEP)

Zoning of the land and its objectives

The land/site is zoned *R2 Low Density Residential*, and the objectives of the zone are:

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

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- To protect the amenity of residents.
- To encourage housing affordability.
- To enable small-scale business uses in existing commercial buildings.

The use of the site for purposes of the existing detached dual occupancy development relies upon "existing use rights". The existing use of the site is explained in the accompanying Statement of Environmental Effects.

The Development Standard sought to be varied and details of variation

Clause 4.4 "floor space ratio" as provided in the Randwick LEP 2012 is the development standard sought to be varied. Cl.4.3 states [our underline & bold]:

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



Area D = 0.5:1

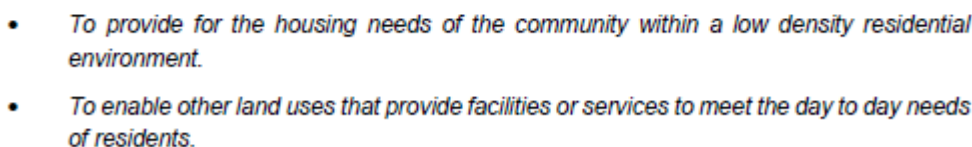
The current proposal envisages a maximum FSR of 0.59:1 (or 361.28m²). This represents a total breach of 56.59m² (or **18.57%**).

It is worth noting that in accordance with cl.4.4A of the Randwick LEP, dwelling houses, semi-detached dwellings and dual occupancies (attached) on R2 or R3 land and having a site area >600m² [like the subject site], are permitted to have a higher maximum FSR of 0.6:1 (365.6m²) – see image below.

CL4.6-FSR

Unit 1, 184 Storey Street, MAROUBRA

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- *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.*

The proposed departure from the maximum floor space ratio standard (0.5:1) is deemed to be consistent with the stated objectives for the following reasons:

- The proposal will maintain two x low-density detached dwelling houses, only one of which is viewable from the streetscape which will be consistent with the bulk and scale for similar sized allotments of land;
- The proposal will maintain flexible housing for the residents/family;
- The proposal will maintain the availability of residential accommodation and housing choice/type on residentially zoned land;
- The finished design provides for a renovated building that will not be visually intrusive or bulky when viewed from the surrounding public domain and is not incompatible within the adjoining/ surrounding locational built form or context; and
- There will be no unreasonable amenity impacts to neighbours or environmental impacts upon the public domain.

As for the wider considerations available under Section 4.15(e) of the Act, [pertaining to the public interest], the proposal will have no detrimental effects upon the public interest and does not undermine the integrity of Council's controls, especially cl.4.4A of the Randwick LEP 2012, whilst providing an acceptable environmental planning outcome on the site consistent with the existing surrounding dwelling houses and semi-detached residences. The proposal also offers an appropriately scaled development that is sympathetic to the streetscape and public domain, whilst meeting the housing needs of the broader community and will make a positive contribution to the built and landscape character of the locality.

GPL Planning**Objectives of the 'floor space ratio' development standard**

The objectives of Clause 4.4 of the Randwick LEP 2012 states the following:

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

The objectives of the floor space ratio development standard (in conjunction with the other development controls under the LEP), is to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity of the neighbouring residents or surrounding area. Also, the maximum finished built form that a site can be achieved is determined by its environmental constraints, including overshadowing, privacy, streetscape, parking, landscaping, visual impact and views and the capacity of the community infrastructure.

In terms of these performance criteria, the current proposal clearly enables an appropriate planning outcome as it has been designed to minimise impacts (including those relative to a FSR compliant proposal) and has had particular regard to site users and its neighbours in terms of visual appearance, overshadowing, aural and visual privacy, natural daylight and ventilation, views, vistas and outlook, traffic generation, parking and streetscape.

Impact of departure

The departure occupies only a very small portion of the total site area (9.3%), and is considered to be a prescriptive 'minor' variation for the simple fact that were the proposal to be considered as a dwelling house on its own (and not an existing dual occupancy development), then the allowable FSR under cl.4.4A would be 0.6:1, which the current proposal would be entirely consistent with for dwelling houses in the R2 and R3 zones. In addition, notwithstanding that there are two dwellings on the subject site, the presentation of the finished built form of the front building (unit 1) will appear

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smaller than surrounding residences that currently enjoy a higher allowable FSR as one single dwelling.

Notwithstanding the above, the development proposal itself is deemed to be consistent with the relevant principles of the LEP because it does not materially alter the existing correlation between the site and the finished form of development and despite the variation, the current proposal does not alter the buildings' compatibility with the bulk, scale, streetscape or desired future character of the locality. That compatibility is appropriate given the increased FSR of surrounding properties and the overall lack of adverse impacts to neighbouring properties and upon the public domain.

The nature of such an urban environment is that all future development will seek to maximise levels of residential amenity and density through its appropriate design. In this regard, the proposal represents an appropriate planning outcome without any adverse environmental impacts.

The expression of the finished built form suitably responds to:

- The site's locational context;
- The site and locality's topographical characteristics;
- The design and built form of the adjoining and surrounding developments;
- The site's orientation and solar access; and
- The resultant internal and external amenity for the occupants and the amenity of the neighbours.

Regarding the above, there will be no unreasonable amenity impacts upon neighbouring and nearby properties or the surrounding public domain because of the minor exceedance in the overall height of the proposal.

Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))

In *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

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" 42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

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

However, in *Four2Five v Ashfield Council* [2015] NSWLEC 90, the Land and Environment Court said that whether something was 'unreasonable or unnecessary' is now addressed specifically in clause 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary. Additionally, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308, the Court of Appeal said that a requirement may be unreasonable when *'the severity of the burden placed on the applicant is disproportionate to the consequences attributable to the proposed development'* (para. 15).

Consequently, while the objectives of the standard are achieved despite its non-compliance, this request goes further, it seeks to demonstrate that requiring strict adherence to the standard would be 'unreasonable or unnecessary' for reasons that are additional to merely demonstrating consistency with the development standard.

The judgement in *Wehbe* then expresses the view that there are 5 different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy, as follows:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard*

Despite the proposed development's non-compliance with the applicable FSR development standard, the proposal achieves the desired low-density character

GPL Planning

of the area and provides a bulk and scale that is generally consistent with that envisaged by Council's controls [esp. those under cl.4.4A] and results in an overall improvement in terms of the development outcomes for the site despite the proposed breach. The reasons why the proposed development will achieve the objectives of the FSR standard have been explained previously.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

GPL Planning does not believe that the underlying objective or purpose is not relevant to the development and therefore we do not rely on this reason.

3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Compliance with the stated objectives of the FSR standard would be thwarted if strict compliance was required in the circumstances of this case as the quality and internal/external amenity of the residential outcome would be compromised for no sound planning reason. This alone would be inconsistent with the objects of the Act.

The resulting height, bulk and scale of the dwelling will be consistent with its neighbouring dwellings where an acceptable density is provided that is consistent with the surrounding established built form.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Following a review of Council's published Variations Registers (2008 until May 2022), the non-discretionary development standards cannot be said to be abandoned. Notwithstanding the non-abandonment of the standard, the published variations register clearly demonstrates that Council has granted development consent to DA's on R2 zoned land that departed from the "floor space ratio" development standard in the past.

5.1.1. FSR

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The site is zoned R2 Low Density Residential, which is deemed to be reasonable and appropriate. The predominant or most characteristic built form of the immediate locality is free standing dwelling houses with varying architectural forms and which predominantly have an allowable FSR greater than that which can be achieved on the subject site [as previously explained].

Having regard to all the above, it is considered that compliance with the maximum "floor space ratio" development standard is unreasonable or unnecessary in the circumstances of this case for the reasons set out above and below:

- Strict compliance with FSR control artificially restricts a reasonable form of development that otherwise improves the amenity of the residents within the existing dwelling, and which will have no noticeable adverse impacts upon neighbouring properties or upon the public domain; and
- The proposal will remain consistent with the current LEP objectives and all other applicable prescriptive controls and objectives of the LEP.

Sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and as provided previously in this statement, it is considered that there is an absence of any significant impacts, adverse or otherwise, that the proposed non-compliance will have upon the amenity currently enjoyed within neighbouring properties, or upon the character of the area and existing streetscape. On "planning grounds", and to satisfy that the proposal meets objective 1(b) of clause 4.6, in that allowing flexibility in the circumstances of this development will achieve "a better outcome for and from development" [as previously discussed]:

- the development allows for the continued use of the site for purposes of a dwelling-house (despite it being one of a "detached dual occupancy development") as envisaged under the *R2 Low Density Residential* zone;

GPL Planning

- the siting and location of the non-compliant FSR will not impact adversely upon the existing streetscape which is filled with dwelling-houses that enjoy a higher permissible FSR;
- the proposal improves the amenity for residents of the site and will not cause any adverse amenity impacts upon the adjoining and surrounding properties;
- the extent of the FSR area breach is not associated with an increased or excessive finished built form; and
- flexibility in this instance will allow for the site to be developed with no discernible impacts beyond a fully compliant scheme.]

It is our opinion that compliance with the floor space ratio development standard as stipulated under cl.4.4 of the Randwick LEP is unreasonable and unnecessary in the circumstances of this case on the basis that the extent of non-compliance will not in any way increase the perceivable bulk or the finished built form from that which could be constructed on the same site but without the existing [detached] dual occupancy development. The proposal will also more than suitably fulfil the objectives of the development standard and the zone objectives and insistence upon strict compliance with the "floor space ratio" development standard would be unreasonable in this case and therefore satisfies the requirements of clause 4.6(3).

Consent authority must keep a record of its assessment (clause 4.6(4))

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

On 1 November 2023, Clause 4.6(4) was subject to a significant amendment. The 'public interest' test that was previously confined to the requirements as set out in the decision of *Initial Action* was removed because it duplicated existing considerations when determining a development application or considering a variation request.

Notwithstanding the above, as per *Initial Action* and as demonstrated in this statement, the proposal is in the public interest given the satisfaction of the proposal with the *R2 Low Density Residential* zone objectives and wider considerations available under Section 4.15(1)(e) of the Act.

GPL Planning**Whether strict compliance will hinder the attainment of the objects specified in s.1.3 of the Act**

The relevant objects of the Act as specified in Section 1.3, are in our opinion, achieved by the amended proposal in that it:

- promotes the social and economic welfare of the community (object (a));
- facilitates ecologically sustainable development (object (b));
- promotes the orderly and economic use and development of land (object (c));
- promotes the maintenance of affordable housing (object (d));
- promotes the sustainable management of built and cultural heritage (object (f));
- promotes good design and amenity of the built environment (object (g)); and
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants (object (h)).

A strictly complying development would result in an almost identical urban design outcome within the subject site and would hinder the attainment of the objects of section 1.3 of the Act.

The proposal holistically has 'planning' merit and any subsequent departure from the FSR standard will not preclude or isolate any adjacent property from being suitably redeveloped. It will also be consistent with the provisions of and orderly and economic development which will not hinder the objects of the Act as stated in Section 1.3.

4. CONCLUSION

The proposed variation to the “floor space ratio” development standard under cl.4.4 of the Randwick LEP 2012, is based on the reasons contained within this written request for an exception to the standard. We submit, that a development strictly complying with the numerical site area standard would not significantly improve the amenity of the surrounding properties because:

- it satisfies and achieves the objectives of the R2 Low Density Residential zone;
- it satisfies and achieves the objectives of the development standard;
- compliance is unwarranted given the extent of the overall FSR variation which would be otherwise consistent with Council’s FSR controls under cl.4.4A for residential development;
- removing the non-compliance would not alter the environmental impacts of the built form, which will remain contextually consistent with neighbouring properties envisaged by the current planning controls; and
- the finished residence will result in a high level of internal amenity for the occupants and the preservation of environmental amenity for the neighbours and the public domain.

It is concluded that this written request is well founded and has demonstrated consistency with the standard’s objectives and consistency with the objectives of the R2 Low Density Residential zone. Consequently, compliance with the standard is both ‘unnecessary’ and ‘unreasonable’ and there are sufficient environmental planning grounds in which to support the proposal.

Considering the above, the consent authority should be satisfied that the applicant of the DA has demonstrated that the matters set out in Clause 4.6 of the Randwick LEP 2012 have been appropriately addressed to warrant a variation to the development standard and the granting of development consent.

Appendix 3: DCP Compliance Table**Part C1: Low Density Residential (2023)**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 609.38m ²	
2.4	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	41.7% (255m ²) (based on a site area of 609.38m ² , the maximum allowable site coverage for the entire site is 274.2m ²). The proposed additional floorspace is within the existing footprint and will not alter the site coverage.	Yes
2.5	Deep soil permeable surfaces		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached dwellings: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	55% (195m ²) The extent of deep soil permeable surface will not change. The existing plantings and tree canopies will be retained.	Yes
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	The proposal does not alter the extent of the existing site coverage. Therefore, this clause does not apply. Notwithstanding, the existing trees and dense foliage within the site will be retained and contribute to suitable canopy coverage within the site.	Yes
	Dual occupancies and semi-detached dwellings		
	Calculated on the overall site area and must be evenly distributed between the pair of dwellings.	As above	Yes
	The front setback must contain at least one (1) tree per dwelling.		
2.7	Private open space (POS)		
	Dual Occupancies POS		

DCP Clause	Controls	Proposal	Compliance																								
	451 to 600 sqm = 5m x 5m 601 or above sqm = 6m x 6m	The proposal does not alter or reduce the extent of existing private open space which remain accessible from the living area at ground level.	Yes																								
3	Building envelope																										
3.1	Floor space ratio LEP 2012 = 0.5:1	0.59:1	No																								
3.2	Building height																										
	Building height LEP 2012 = 9.5m	8.67m	Yes																								
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: <ul style="list-style-type: none"> - Topography - Site orientation - Lot configuration - Flooding - Lot dimensions - Impacts on visual amenity, solar access, privacy and views of adjoining properties. 	The proposed first floor addition maintains a two storey height at the street frontage.	Yes																								
3.3	Setbacks																										
3.3.1	Front setbacks <ul style="list-style-type: none"> i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites - Should align with setbacks of adjoining dwellings iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front. 	No change	Yes																								
3.3.2	Side setbacks <table border="1"> <thead> <tr> <th colspan="4">Minimum side setbacks</th></tr> <tr> <th>Existing primary frontage width</th><th>Building heights 0m to 4.5m</th><th>Building heights >4.5m to 7m</th><th>Building heights >7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height - 4.5m) / 4</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.5m + 2 \times \frac{\text{building height} - 4.5m}{4}$</td></tr> <tr> <td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.8m + 2 \times \frac{\text{building height} - 4.5m}{4}$</td></tr> </tbody> </table>	Minimum side setbacks				Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m	Less than 6m	Merit assessment			6m to less than 9m	0.9m	0.9m	0.9m + (building height - 4.5m) / 4	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times \frac{\text{building height} - 4.5m}{4}$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times \frac{\text{building height} - 4.5m}{4}$	1.545m (eastern side setback) Despite the minor non-compliance of 10mm, the proposal will continue to provide for adequate separation distances from and in between existing surrounding residences to minimise amenity impacts to an	No
Minimum side setbacks																											
Existing primary frontage width	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m																								
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DCP Clause	Controls	Proposal	Compliance
	In accordance with the formula for allotments of land >12m under Part 3.3.2, the eastern side setback is required to be 1.6m.	acceptable level.	
3.3.3	Rear setbacks <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p><i>*Definition: predominant rear setback is the average of adjacent dwellings on either side and is determined separately for each storey.</i></p> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings.</p>	No change	Yes
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	The proposed first floor addition is reasonably positioned entirely within the footprint of the existing building. Bedrooms will satisfy the minimum dimensions.	Yes
4.6	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. 	The proposed colour and finish of the addition matches existing development.	Yes

DCP Clause	Controls	Proposal	Compliance
	vi) Recycle and re-use sandstone		
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	There will be no change to the existing solar access to the ground floor living area.	Yes
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	The site enjoys a north-south orientation and additional overshadowing created by the proposed first floor addition will primarily fall on the roof of the adjoining properties and the adjacent street. The adjoining residential properties to the east and west will continue to receive minimum 3 hours direct solar access at the winter solstice to the north facing windows and private open space. The proposal is acceptable in terms of overshadowing.	Yes
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) Living rooms contain windows and doors opening to outdoor areas	The design incorporates adequate daylight and natural ventilation measures.	Yes

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DCP Clause	Controls	Proposal	Compliance
	<i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable		
5.3	Visual Privacy		
	Windows		
	i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	Refer to Section 9.1 of this report	Yes
5.4	Acoustic Privacy		
	i) Noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	The proposed design and layout is acceptable in terms of acoustic privacy for the adjacent dwellings.	Yes
5.5	Safety and Security		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	There will be no change to existing access from the street.	Yes
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.	The proposal will not result in any undue view impacts.	Yes
6	Car Parking and Access		
6.1	Location of Parking Facilities:		

DCP Clause	Controls	Proposal	Compliance
	All dwellings		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard. v) Tandem parking may be considered vi) Avoid long driveways (impermeable surfaces)	There will be no change to the existing parking arrangements on the site.	Yes

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Responsible officer: Thomas Mithen, Environmental Planner

File Reference: DA/78/2025

Development Consent Conditions



Folder /DA No:	DA/78/2025
Property:	1/184 Storey Street, MAROUBRA NSW 2035
Proposal:	Alterations and additions to an existing part one and two storey dwelling (Unit 1) including a new first floor addition.
Recommendation:	Approval

GENERAL CONDITIONS

Condition

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Site Plan A01	John Spiteri Design and Drafting	31 January 2025	5 February 2025
Ground Floor Plan A04	John Spiteri Design and Drafting	31 January 2025	5 February 2025
First Floor Plan A05	John Spiteri Design and Drafting	31 January 2025	5 February 2025
Southern, Eastern and Northern Elevation A08	John Spiteri Design and Drafting	31 January 2025	5 February 2025
Western Elevation & Section A-A A09	John Spiteri Design and Drafting	31 January 2025	5 February 2025
Streetscape Elevation A10	John Spiteri Design and Drafting	31 January 2025	5 February 2025

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
A1779583	10 January 2025	5 February 2025

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

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

2. **Amendment of Plans & Documentation**
The approved plans and documents must be amended in accordance with the following requirements:
 - a. An external privacy screen having a height of 1.6mm (measured above FFL)

Condition
shall be provided to Window 11 along the eastern elevation at the first floor.
Privacy screen/s must be constructed with either: <ul style="list-style-type: none"> • Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable); • Fixed lattice/slats with individual openings not more than 30mm wide; • Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition
<p>3. Consent Requirements The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
<p>4. External Colours, Materials & Finishes The colours, materials and finishes of the external surfaces are to be compatible with the existing building and adjacent development to maintain the integrity and amenity of the building and the streetscape.</p> <p>a) External materials, finishes and colours of the building are required to match, as closely as possible, the existing building and any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare.</p> <p>b)</p> <p>c) Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by the Certifier prior to issuing a construction certificate for the development.</p> <p>d)</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
<p>5. Section 7.12 Development Contributions In accordance with Council's Randwick City Development Contributions Plan 2024, effective from 31 July 2024, based on the development cost of \$845,706.00 the following applicable monetary levy must be paid to Council: \$8,457.05.</p> <p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p>

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Condition	
	<p>IDC = ODC x CP2/CP1</p> <p>Where:</p> <p>IDC = the indexed development cost</p> <p>ODC = the original development cost determined by the Council</p> <p>CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment</p> <p>CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p>
6.	<p>Long Service Levy Payments</p> <p>Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction Industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with Section 6.8 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p><i>At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p>
7.	<p>Security Deposits</p> <p>The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none"> • \$1,500.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
8.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the</p>

	Condition
	<p>requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
9.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
10.	<p>Structural Adequacy</p> <p>Certificate of Adequacy supplied by a professional engineer shall be submitted to the Certifier (and the Council, if the Council is not the Certifier), certifying the structural adequacy of the existing structure to support the upper floor addition.</p> <p>Condition Reason: To ensure the structural integrity of the building is maintained.</p>
11.	<p>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 75 of the <i>Environmental Planning and Assessment Regulation 2021</i>, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and</p>

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Condition	
	any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.
	Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.
12.	<p>Stormwater Drainage</p> <p>A surface water/stormwater drainage system must be provided in accordance with the following requirements, to the satisfaction of the Certifier and details are to be included in the construction certificate:-</p> <ul style="list-style-type: none"> a) Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2); and b) The surface water/stormwater must be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit. <p>Condition Reason: To control and manage stormwater run-off.</p>

BEFORE BUILDING WORK COMMENCES

Condition	
13.	<p>Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <ul style="list-style-type: none"> e) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ul style="list-style-type: none"> f) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and g) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and h) 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 i) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works. <p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>

Condition	
14.	<p>Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p>
15.	<p>Dilapidation Reports</p> <p>A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified person to the satisfaction of the appointed Registered Certifier for the development, in the following cases:</p> <ul style="list-style-type: none"> • excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the zone of influence of the footings of any dwelling, associated garage or other structure located upon an adjoining premises; • demolition or construction of new dwellings; additions to dwellings or outbuildings, which are sited up to or less than 900 mm from a site boundary (e.g. a semi-detached dwelling, terraced dwelling or other building sited less than 900mm from the site boundary); • excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises; and • as may be required by the Principal Certifier for the development. <p>The dilapidation report shall include details of the current condition and status of any dwelling, or other structures located upon the adjoining premises and shall include relevant photographs of the structures.</p> <p>The dilapidation report must be submitted to the Principal Certifier, the Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).</p> <p>Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>
16.	<p>Construction Site Management Plan</p> <p>A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none"> • location and construction of protective site fencing and hoardings • location of site storage areas, sheds, plant & equipment • location of building materials and stock-piles • tree protective measures • dust control measures • details of sediment and erosion control measures

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Condition	
	<ul style="list-style-type: none"> • site access location and construction • methods of disposal of demolition materials • location and size of waste containers/bulk bins • provisions for temporary stormwater drainage • construction noise and vibration management • construction traffic management details • provisions for temporary sanitary facilities • measures to be implemented to ensure public health and safety.
	<p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
17.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
18.	<p>Public Utilities</p> <p>A <i>Public Utility Impact Assessment</i> must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>
19.	<p>Public Utilities</p> <p>The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>
20.	<p>Street Tree Management</p> <p>Prior to the commencement of any demolition/building works any Council Street Tree located in front of the subject site is to be suitable protected for the duration of the works. As a minimum the owner/applicant is to provide star-pickets with parra-web type fencing around the tree with a 1.00m offset (approx).</p>

Condition
Condition Reason: To ensure residential amenity and permit appropriate landscaping to be provided.

DURING BUILDING WORK

Condition

21. **Site Signage**
It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:
- showing the name, address and telephone number of the principal certifier for the work, and
 - showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and
 - stating that unauthorised entry to the work site is prohibited.
- The sign must be—
- maintained while the building work is being carried out, and
 - removed when the work has been completed.
- This section does not apply in relation to—
- building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or
 - Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.
- Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm (maximum) Saturday - No work permitted Sunday & public holidays - No work permitted

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.

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Condition

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

23.

Public Safety & Site Management

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

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

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

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

- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.
- j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual

Condition	
"Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.	
k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public 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 6000 for further details.	
Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.	
24.	Building Encroachments There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place. Condition Reason: To ensure no encroachment onto public land and to protect Council land.
25.	Road / Asset Opening Permit A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with. The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development. For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542. Condition Reason: To ensure protection and/or repair of Council's Road & footpath assets and ensure public safety.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
26.	Occupation Certificate Requirements An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> . Condition reason: Statutory requirement. To ensure the site is authorised for occupation.
27.	BASIX Requirements In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> , a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled. Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.

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Condition	
	Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.
28.	<p>Council's Infrastructure, Vehicular Crossings and Street Verge</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:</p> <ul style="list-style-type: none"> (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. <p>Condition Reason: To ensure works are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p>

OCCUPATION AND ONGOING USE

Condition	
29.	<p>External Lighting</p> <p>External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>
30.	<p>Plant & Equipment</p> <p>Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

Condition	
31.	<p>Demolition Work Plan</p> <p>A demolition work plan must be developed and be implemented for any demolition works in accordance with AS2601 (2001)- Demolition of Structures.</p>

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

DURING DEMOLITION WORK

Condition
<p>32. Demolition Work</p> <p>Any demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard - AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a demolition work plan, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations • A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress", • Council is to be given at least two days written notice of demolition works involving materials containing asbestos, • Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request, • A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works. <p>Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.</p> <p>Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

Development Application Report No. D21/25

Subject: 24 Amour Avenue, Maroubra (DA/185/2025)


Executive Summary

Proposal:	Installation of passenger lift to rear of dwelling
Ward:	Central Ward
Applicant:	Mr S Ruben
Owner:	Mr S Ruben
Cost of works:	\$99 000
Reason for referral:	The proposal exceeds the Floor Space Ratio development standard by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the applicants written requests to vary the development standard relating to floor space ratio in Clause 4.4 of Randwick Local Environmental Plan 2012 have demonstrated that;
- i. Compliance with the relevant development standard is unnecessary and unreasonable in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development standards.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 185/2025 for the installation of a passenger lift at 24 Amour Avenue Maroubra subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/185/2025 - 24 Amour Avenue, MAROUBRA NSW 2035 - DEV - Randwick City Council

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1. Executive summary

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

- The development contravenes the development standard for floor space ratio by more than 10%

The proposal seeks development consent for the installation of a passenger lift at the rear of the dwelling.

The key issues associated with the proposal relate to the variation to the FSR development standard. The FSR variation arises because the FSR of the existing building already exceeds the current standard and these works further increase that.

The FSR variation and additional bulk to the building do not result in any adverse impacts to the amenity of the adjoining properties.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is legally described as Lot 87 in DP 246179. The site is 548.8m², is a trapezoid in shape and has a frontage of 23.7m to Amour Avenue. The site contains at present an existing two and three storey dwelling.



Photo 1. Dwelling as viewed from the street.

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Photo 2. Rear of dwelling and location of lift outline in red.

The locality is residential in nature in the R2 zone and contains predominantly free standing substantial two and three storey dwellings.

3. Relevant history

There are no other relevant matters relating to this property.

4. Proposal

The proposal seeks development consent for the construction of a passenger lift to the rear of the dwelling to serve the three levels of the dwelling. Minor internal alterations to the dwelling will be carried out to accommodate the new lift and access to and from the lift and also an external door and new windows installed within the garage basement level in the southern elevation of the dwelling. See extract of plans below.

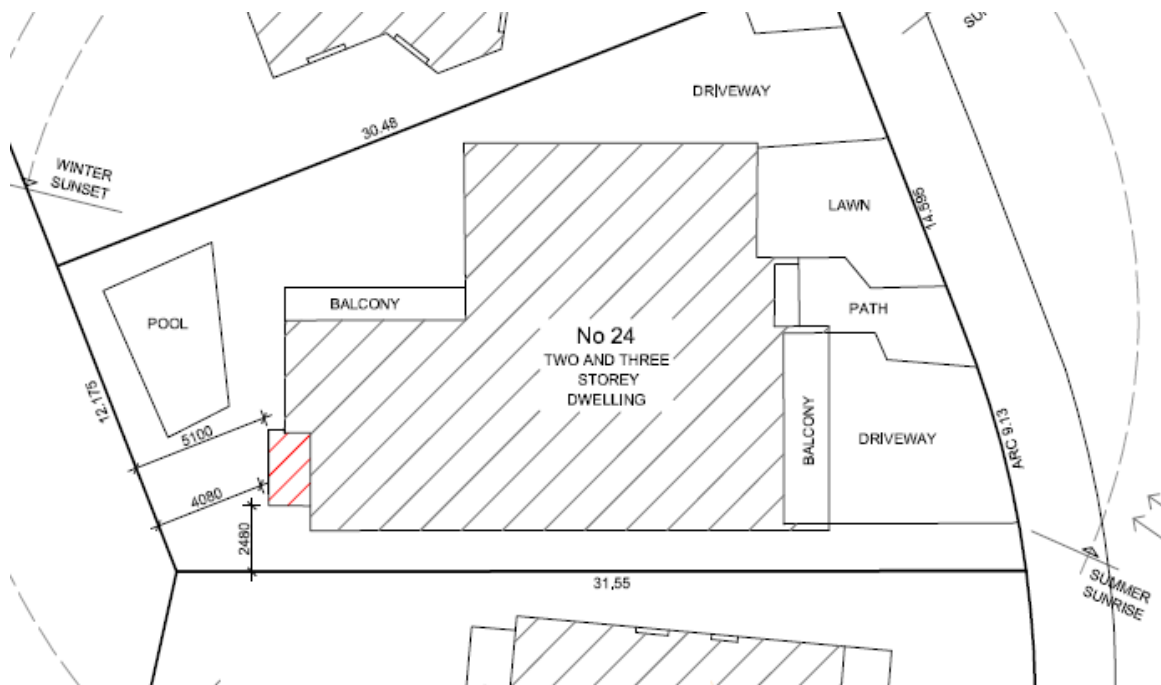


Figure 1. Location of passenger lift.

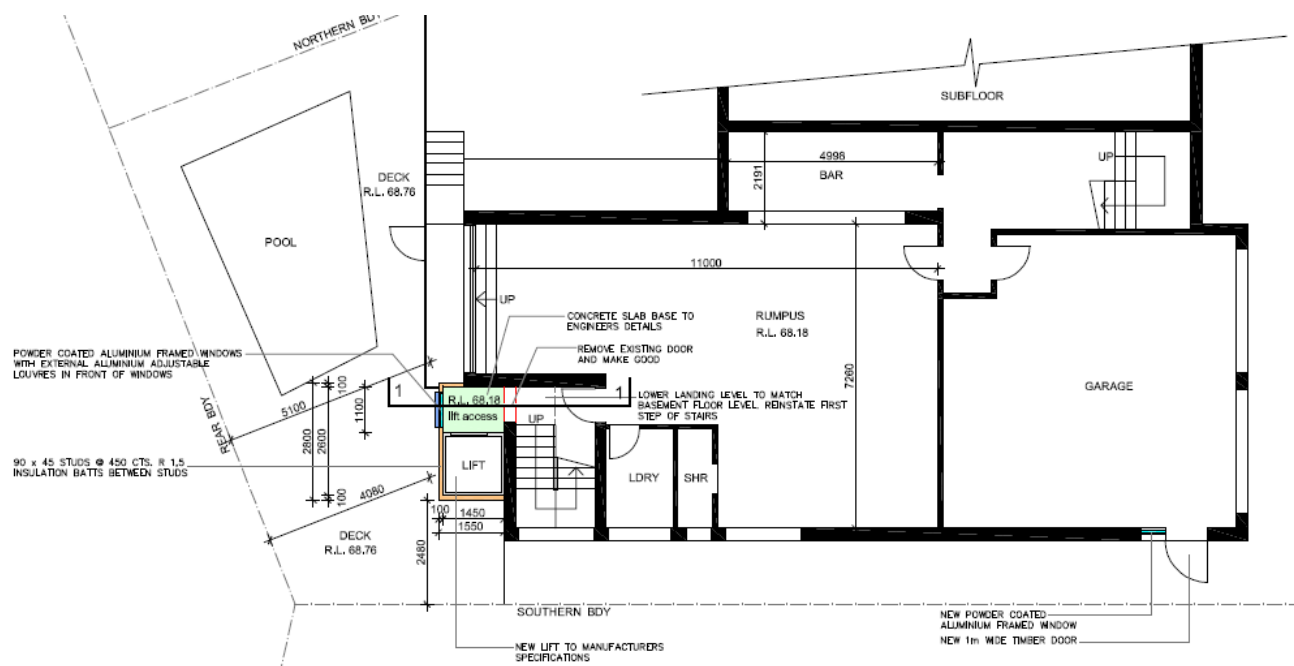


Figure 2. Altered basement level and lift installation.

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NORTHERN B'DY

DINING

KITCHEN

BED

STAIRS

FORMAL DINING

FORMAL LOUNGE

BED

BED

BATH

BATH

BATH

BATH

LIFT

REMOVE EXISTING AND MAKE GOOD

WINDOW

1

UP

DN

R.L., 70,82

R.L., 70,82

Lift access

INFLY TIMBER FRAMED FLOOR TO ENG DETAILS

POWDER COATED ALUMINIUM FRAMED WINDOW—FIXED OPAQUE GLASS TO 1.6m HIGH WITH CLEAR GLASS LOUVRES ABOVE EXTERNAL ALUMINIUM ADJUSTABLE LOUVRES IN FRONT OF WINDOWS.

90 x 45 STUDS @ 450 CTS. R 1.5 INSULATION BATTS BETWEEN STUDS

READY TO GO

5100

2800

2800

100

1100

100

4080

100

1450

1550

2450

6450

7250

13900

1100

9500

SOUTHERN B'DY

NEW LIFT TO MANUFACTURERS SPECIFICATIONS

Architectural floor plan of a residential building showing a proposed lift installation. The plan includes rooms such as BED, KITCHEN, FAMILY, BATH, ENS, LDY, and a central staircase. A new lift shaft is proposed, with dimensions and structural details provided. Annotations include 'POWDER COATED ALUMINIUM FRAMED WINDOW', 'INFILL TIMBER FRAMED FLOOR TO ENG DETAILS', and 'NEW LIFT TO MANUFACTURERS SPECIFICATIONS'. Dimensions are given in millimeters and meters.

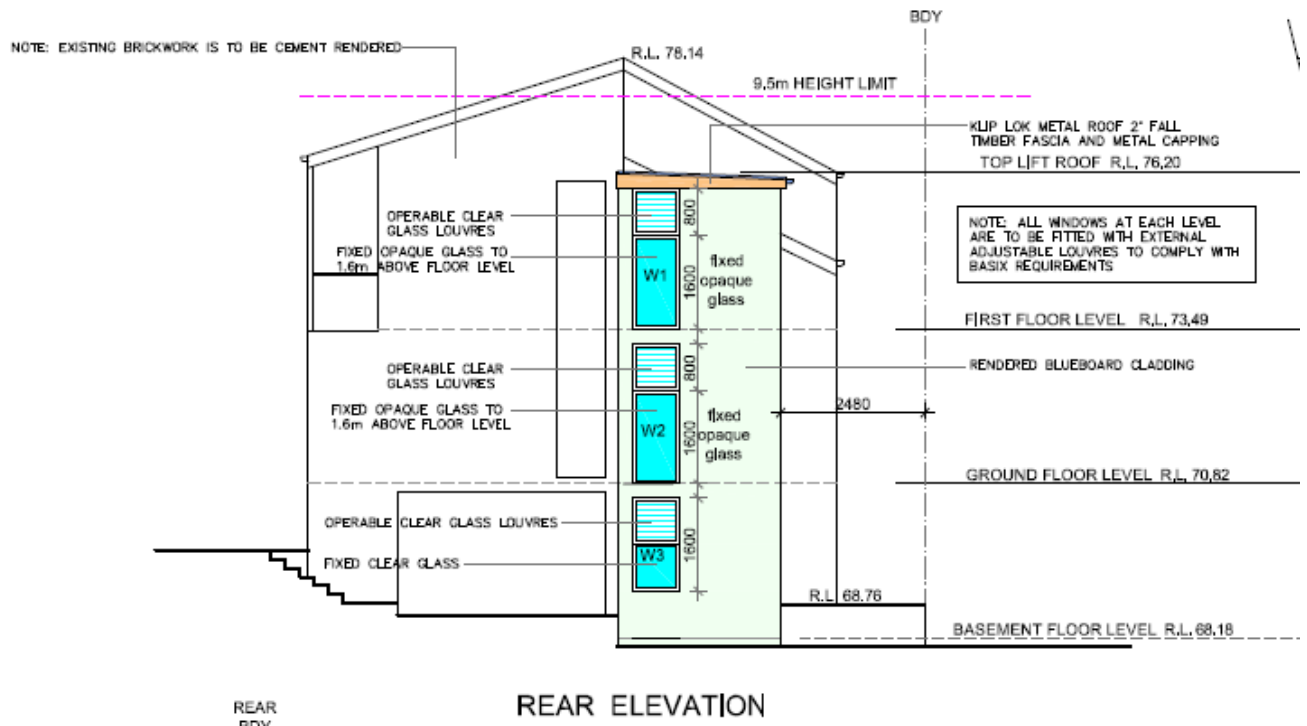


Figure 5. Rear elevation of dwelling.

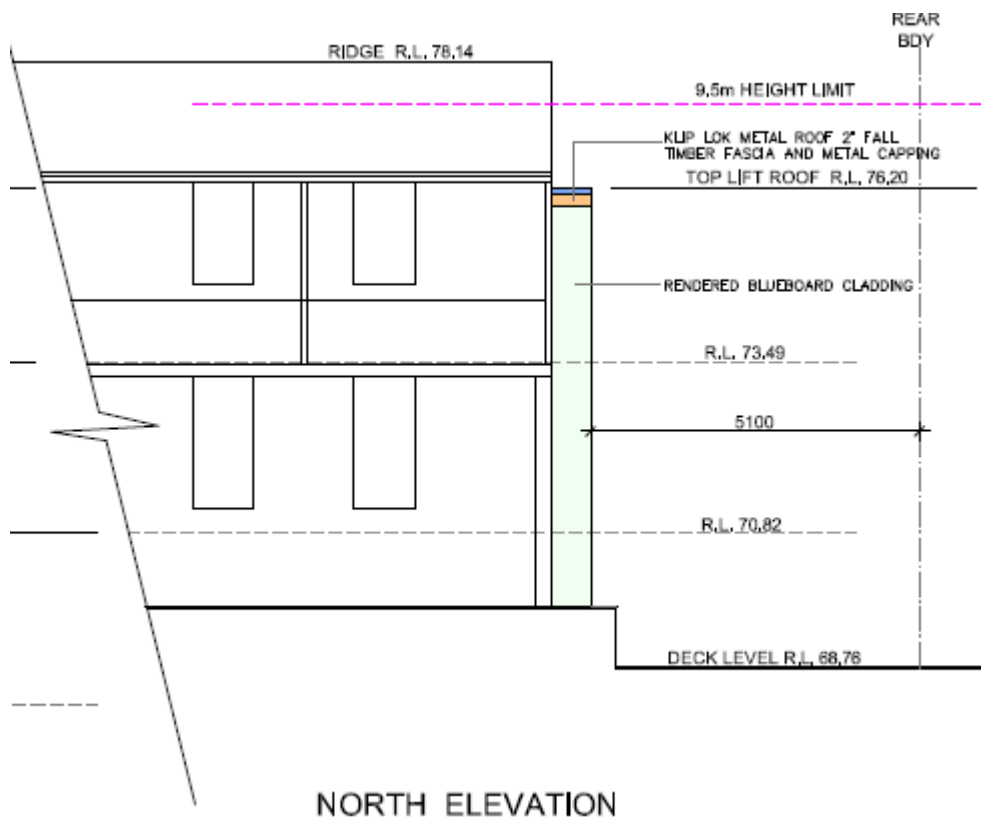


Figure 6. North elevation.

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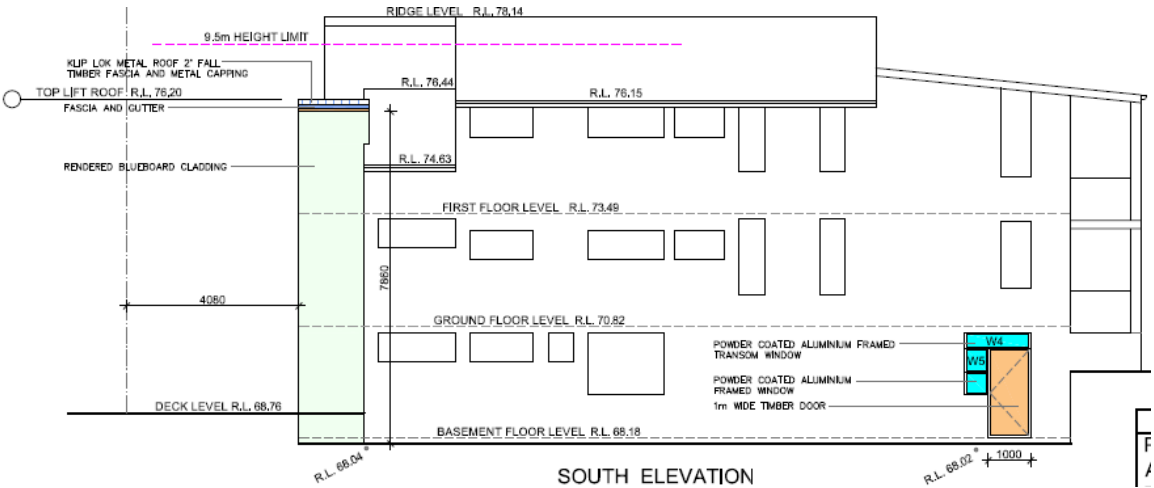


Figure 7. Southern elevation.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No submissions were received as a result of the notification process.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

A BASIX Certificate, No. A1785751, has been issued for the proposed development.

6.2. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned R2 under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will continue to provide for the housing needs to the community within the R2 zone and protect the amenity of the residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.65:1	0.83:1 Existing FSR = 0.81:1	No

6.2.1. Clause 4.6 - Exceptions to development standards

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.65:1	0.83:1	81m ²	28.6%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The applicant’s written justification for the departure from the FSR development standard is contained in Appendix 1.

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

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

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

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

The applicant’s written justification demonstrates that this objective is satisfied by noting that the proposed lift is to provide mobility access and future proof the dwelling and ensure the day to day needs of the residents are met. The lift has also been designed to consider the amenity of the adjoining neighbouring properties.

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

The applicant’s written justification demonstrates that this objective is satisfied by noting that the proposed lift does not increase the overall size and scale of the dwellings as it is to the rear of the dwelling, the footprint is modest and will not result in any negative building.

In addition to the passenger lift has been designed to mitigate visual privacy and amenity impacts on adjoining neighbouring properties.

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the siting of the lift at the rear of the dwelling does not impact views or outlook from the adjoining dwellings. There are no privacy impacts as the external windows in the lift are fixed and obscured to 1600mm above floor level, and in relation to overshadowing there are minimal impacts to the adjoining properties with the solar access controls of the DCP readily complying.

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

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 summarized below. Also see Appendix 1.

- a) The proposed development seeks to retain the existing dwelling with only a minor increase in the FSR for the passenger lift,
- b) The additional FSR is within the passenger lift and transitional space in the dwelling only,
- c) It is noted that disability standards require Council to demonstrate some flexibility to futureproof and retrofit existing dwellings to be compatible for disability access,
- d) The resultant FSR, and that of the existing dwelling, is compatible with the established character of the surrounding area which includes similar substantial dwellings which all exceed the FSR development standard,
- e) The FSR exceedance does not contradict the objectives of this development standard, and the R2 zone, as there are no adverse amenity impacts to either the adjoining dwellings or the overall character of the area,

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

7.2 Rear setback

Part C2, Section 3.4 of RDCP 2023 details the objectives and controls in relation to setbacks. The relevant objectives seek to ensure.

- a) *Adequate separation between buildings for visual and acoustic privacy, solar access, air circulation and views,*
- b) *Reserve contiguous areas for creation of open space, landscaping and deep soil planting.*

The controls, in this case for attached dwellings, is that a rear setback of 8m or 25% of the depth of the lot, whichever is the lesser, applies.

In this case, the minimum rear setback is 8m. Noting that the proposed rear setback is up to 4.08m, a merit assessment of the proposal is warranted to determine if the development is overall reasonable in the context of the immediate locality.

See extract of plan with rear setback noted.

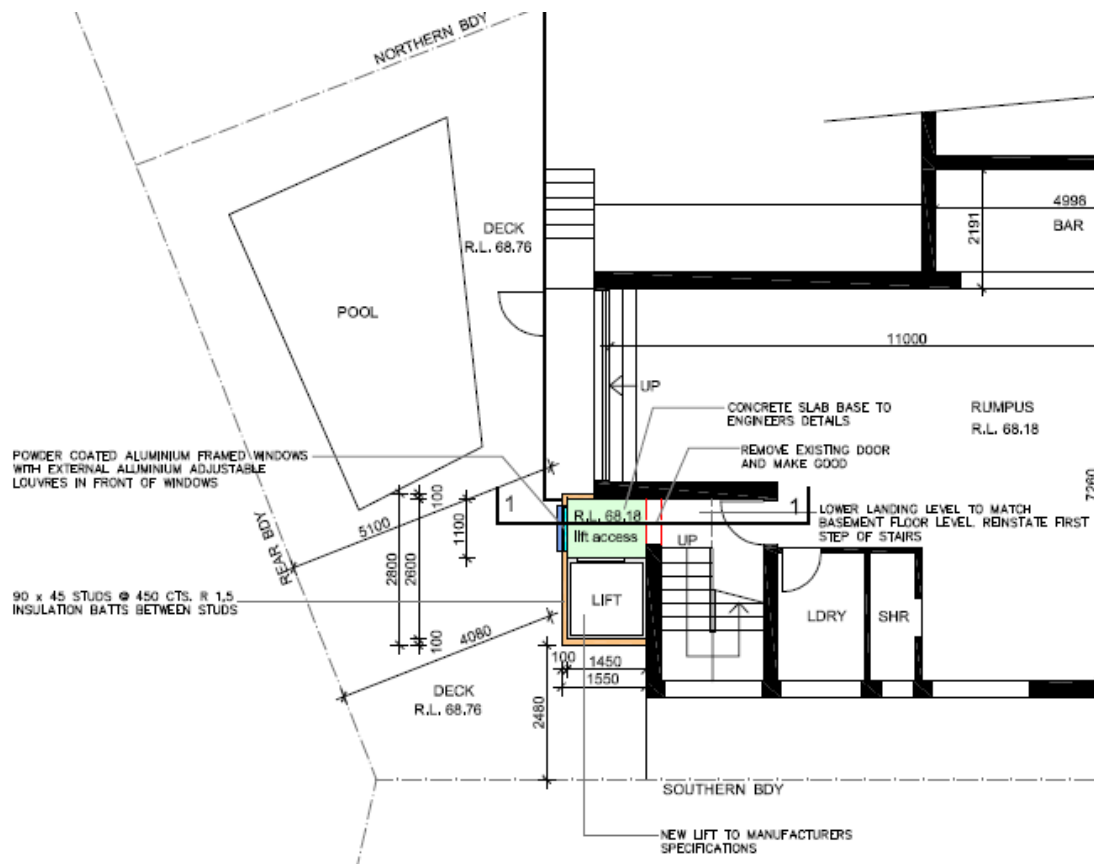


Figure 8. Rear setbacks shown.

An assessment against the objectives is as follows.

- a) Adequate separation between buildings for visual and acoustic privacy, solar access, air circulation and views,

Comment: The proposal as noted details the installation of a passenger lift to the rear of the dwelling. The existing dwelling encroaches upon the DCP control, being at 5.1m, see above. The further encroachment is to the rear southeast corner of the dwelling where the passenger lift is to be constructed. The width of the additional building at that point is 2.8m, with a depth of 1.55m.

Having regard to the objectives of the rear setback control, the proposal does not result in any privacy impacts. As noted in the DCP assessment table, the windows to the lift shaft area obscured to 1600mm above floor level, and in any event the lift is an ancillary building element to provide access within the building, it is not a high privacy impact area such as a living room or outdoor terrace.

Similarly the proposal complies with the solar access controls as noted in Section 5.1 of the DCP.

There are no views in question that will be impacted by the rear setback.

- b) Reserve contiguous areas for creation of open space, landscaping and deep soil planting.

Comment: The proposal complies with both the landscaping and private open space controls in the DCP.

The refusal of an application rests in this case against an assessment of the proposal in relation to the objectives of the DCP, and to sustain a refusal it would need to be demonstrated that the new lift would not satisfy the objectives.

As noted above, the proposal does meet the objectives of this Section of the DCP and therefore, regardless of the numeric non-compliance, the application can be supported.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

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)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(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 environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant character in the locality. The proposal will not result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions have been lodged in response to the notification period.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

The fundamental issue is the assessment and consideration of the applicants Clause 4.6 Objection to the FSR development standard which is necessary as the proposal will result in a further exceedance of the 0.65:1 maximum FSR.

As noted, the applicant's Clause 4.6 Objection to the development standard adequately address the underlying objectives of Clause 4.4 of the RLEP in relation to maximum floor space ratio.

10. Conclusion

That the application for the construction of a passenger lift to the dwelling to be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2023
- The proposal is consistent with the specific objectives of the R2 zone in that the proposal will provide for the continued use of the site as a residential development and continues to reflect the desired future character of the area and not result in any unreasonable amenity impacts to the adjoining and surrounding properties.

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

Clause 4.6 Variation Request (FSR)
24 Amour Avenue Maroubra



1 Introduction

This submission seeks a variation to development standard for the maximum floor space ratio under clause 4.4 of Randwick Local Environmental Plan 2012. This Clause 4.6 variation request has been prepared in support of a development application (DA) in respect to proposed alterations and additions to a dwelling at 24 Amour Avenue Maroubra.

2 What Is The Name Of The Environmental Planning Instrument That Applies To The Land?

The environmental planning instrument (EPI) that applies to the site is Randwick Local Environmental Plan (LEP) 2012.

3 What Is The Zoning Of The Land And What Are The Objectives Of The Zone?

The site is in Zone R2 Low Density Residential and is surrounded by adjoining residential land.



Figure 1: Zoning map of the subject site.

The objectives of the R2 zone are:

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



4 What Is The Development Standard To Which This Clause 4.6 Variation Applies And What Are The Objectives Of The Development Standard?

The development standard to which this variation relates to is clause 4.4 (Floor Space Ratio), which reads as follows:

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

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

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

(2A), (2B) (Repealed)

It is noted that a subsequent clause (Clause 4.4A) provides an exception to the FSR development standard which permits the following:

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

Land Use	Zone	Lot size	Maximum floor space ratio
Dwelling houses, semi-detached dwellings	Zone R2	>300m ² and ≤450m ²	0.75:1
		>450m ² and ≤800m ²	0.65:1
		>800m ²	0.6:1

It is therefore noted that the FSR for the proposed development is 0.65:1.

5 What Is The Extent Of The Variation?

Under Clause 4.4 of the RLEP 2012, the maximum floor space ratio permitted on the site 0.5:1, however it is noted that clause 4.4A provides an exception to the FSR of 0.65:1 for lots created prior to the commencement of the current RLEP2012. The site has an existing FSR of 0.816:1 (448sqm) which is noted to be an existing non compliance with the development standard. The development proposes an FSR of 0.836:1 (GFA of 459.25sqm) which is noted as an increase of 2.4% of the existing FSR (11.25sqm). The overall extent of the variation to the development standard is 28.6%.

Clause 4.6 Variation Request (FSR)
24 Amour Avenue Maroubra

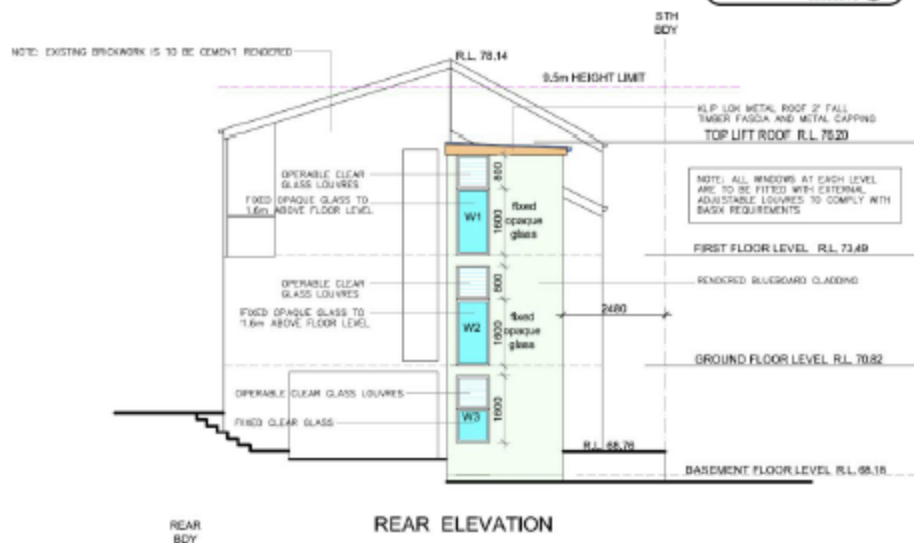


Figure 2: Extract of proposed lift elevation plan as viewed at the rear.

6 Clause 4.6 Exceptions To Development Standards

Development standards are a means to achieving an environmental planning objective and can be numerical or performance based. Some developments may achieve planning objectives despite not meeting the required development standards. The planning system provides flexibility to allow these objectives to still be met by varying development standards in exceptional cases.

As detailed in this request, the proposed development is considered to meet the requirements prescribed under Clause 4.6 of the Randwick LEP 2012, as the development standard is considered unreasonable, the development displays sufficient environmental planning grounds to warrant contravention of the development standard, and the development will be in the public interest because it is consistent with the objectives of the standard and the subject zone.

Clause 4.6 states the following:

"4.6 Exceptions to development standards

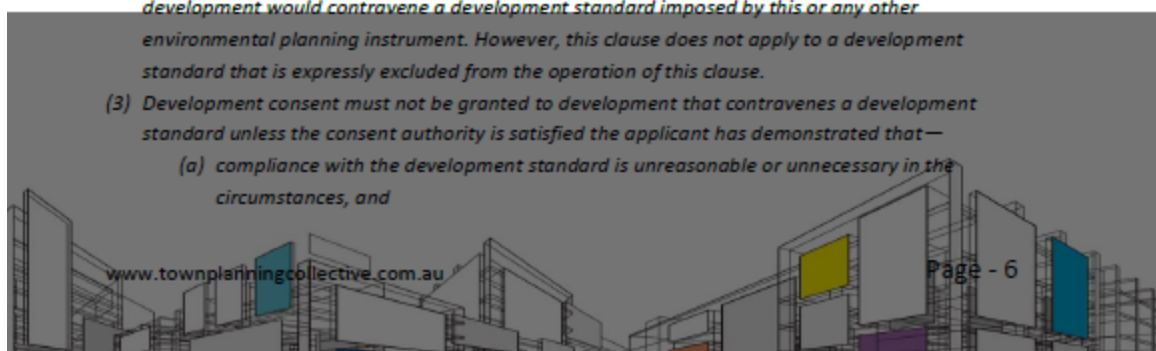
(1) The objectives of this clause are as follows—

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

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

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

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



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

Note—

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

- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- (5) *(Repealed)*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *(Repealed)*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4,*
- (caa) *clause 5.5,*
- (ca) *clause 6.16(3)(b).*

7 Justification For Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument and LEP should be assessed contained in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 11 & *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states:

Clause 4.6 of (the LEP) imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters



required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl4.6(4)(a)(i))." [paragraph 27] [emphasis added by author]

This written request satisfies the four preconditions in the following way:

- **Precondition 1: Consistency with zone objectives:** As described in Section 7.1.
- **Precondition 2: Consistency with the objectives of the standard:** As described in Section 7.2. Consistency with the objectives of the standard is demonstrated when establishing that compliance is unreasonable or unnecessary (specifically the first invocation of the "5 Part Test").
- **Precondition 3: Compliance with the development standard is unreasonable or unnecessary:** As described in Section 7.3 utilising the accepted "5 Part Test".
- **Precondition 4: Sufficient environmental planning grounds:** As described in Section 7.4.

As demonstrated throughout this report, the use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority should be satisfied that all requirements of the clause have been suitably addressed via the content in this formal request.

7.1 Is The Proposal Consistent With The Zone Objectives?

The objectives of the R2 zone are:

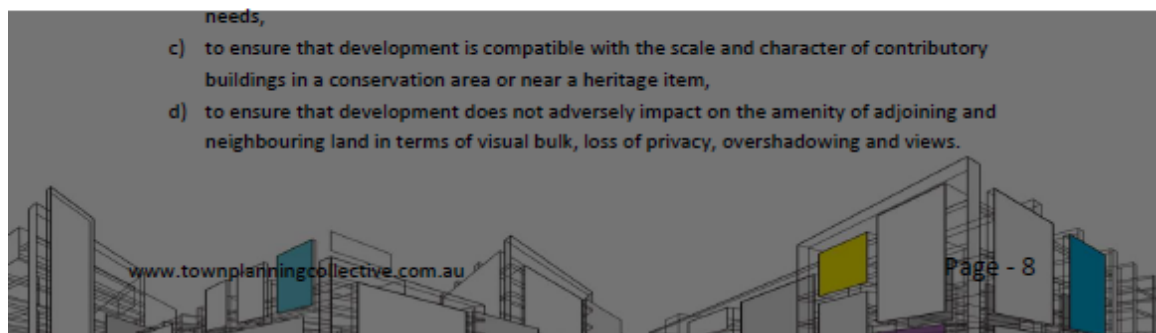
- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To recognise the desirable elements of the existing streetscape and built form or, in precincts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

Comment: The proposed development is for alterations and additions to the existing dwelling for a residential passenger lift on the exterior of the existing dwelling to provide mobility access to the three floors of the dwelling. The proposed lift is intended to futureproof the dwelling and assist with access to provide facilities to service the day to day needs of the occupants. The proposed lift is a non-habitable space within the dwelling and has been designed to consider amenity of adjoining neighbouring properties. It is considered that the proposed lift to the existing dwelling achieves compliance with the objectives of the zoning.

7.2 Is The Proposal Consistent With The Objectives Of The Standard?

Clause 4.4 provides the following objectives:

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



Comment: The proposed development does not seek approval to increase the overall size and scale of the dwelling as it is obscured from view from the streetscape at the rear of the dwelling. The height of the passenger lift is noted to be less than the overall height of the existing dwelling and the footprint of the passenger lift is modest and will not result in any negative building bulk. The passenger lift has been designed to mitigate visual privacy and amenity impacts on adjoining neighbouring properties. It is noted that the passenger lift will provide opaque windows within the lift entry space to retain existing access to light and the use of operable windows, above the sight lines, will allow for cross ventilation within the dwelling.

7.3 Is Compliance With The Standard Unreasonable Or Unnecessary?

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court (LEC) in *Wehbe v Pittwater Council* (2007) NSWLEC 827.

In the decision of *Wehbe v Pittwater Council* (2007) NSWLEC 827, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

- 1 *The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development provides an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.*
- 2 *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
- 3 *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
- 4 *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- 5 *"The zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

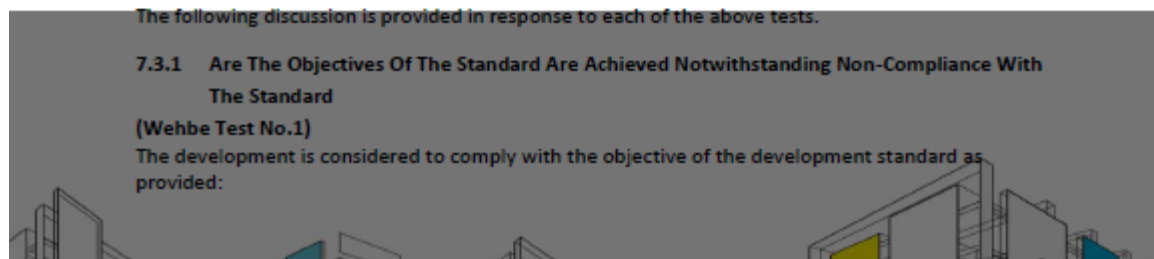
Satisfactorily demonstrating that compliance with a development standard is unreasonable or unnecessary in any one of these ways is sufficient for meeting the requirement in Clause 4.6(3)(a) of LEP 2012.

The following discussion is provided in response to each of the above tests.

7.3.1 Are The Objectives Of The Standard Are Achieved Notwithstanding Non-Compliance With The Standard

(Wehbe Test No.1)

The development is considered to comply with the objective of the development standard as provided:



As noted above, the development achieves the outcomes and objectives of the development standard and does not result in any increase in bulk and scale or any negative impacts on neighbouring properties.

7.3.2 The Underlying Objective Or The Purpose Of The Standard Is Not Relevant To The Development

(Wehbe Test No.2)

The underlying objective of the development standard is to limit large dwellings that encompass the whole of the site which result in negative impacts on the amenity adjoining dwellings and impact the character of the area. The proposed development seeks to retain the existing dwelling with a minor increase in the FSR for the passenger lift and lift access area. The new FSR is noted to be a transitional space and not considered habitable floor area of the dwelling. The development standard provides no flexibility to minor development on development that already exceed the FSR requirements for the site. It is considered that the underlying purpose of the standard is not relevant in regard to this development as the proposed works is to provide mobility access for the occupants of the dwelling and does not seek any changes to habitable areas within the development. The disability access standards require Council to show a level of flexibility to futureproof and retrofit existing dwellings to be compatible for disability access.

7.3.3 The Underlying Object Or Purpose Would Be Defeated Or Thwarted

(Wehbe Test No.3)

As mentioned above, the underlying objective of the zone would be thwarted if strict compliance with the development standard was enforced due to the development not resulting in any additional bulk and scale and not resulting in any impacts in regard to the amenity of neighbouring properties.

7.3.4 The Development Standard Has Been Virtually Abandoned Or Destroyed

(Wehbe Test No.4)

The development standard, based on the variation register is often varied with many examples of development applications within the area where a clause 4.6 report has been submitted in regard to clause 4.4, particularly in regard to existing non compliant FSRs. It is noted that the area within Maroubra is known for dwellings that are well beyond the prescribed FSR requirements and it is considered that the FSR mapped for the area is not relevant for the area, considering the non compliances.

7.3.5 The Zoning Of The Land Is Unreasonable Or Inappropriate

(Wehbe Test No.5)

The zoning of the land in relation to the development is considered to be appropriate for the area. As mentioned above, the FSR mapping for the area is not considered appropriate considering the substantial existing non compliant gross floor areas for the surrounding area.

7.4 Are There Sufficient Environmental Planning Grounds?

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning

grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2013] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2013] NSWLEC 90 at [31].

Further, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what a Clause 4.6 variation request does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development. I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

The assessment in the preceding sections and as shown throughout the supporting documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory, subsequently providing the justification for contravening the development standard. The proposal is consistent with the relevant objectives of the zone and the development standard, and it has been established that compliance with the standard is unreasonable or unnecessary.

There are sufficient environmental and planning grounds to justify contravening the development standard and are summarised from the preceding sections as follows:

- The proposed development meets the zone objectives (Section 7.1) and the development objectives (Section 7.2).
- The proposed development is compatible with existing and future built form within the surrounding locality.

The proposal will not result in any unreasonable amenity or environmental impacts as detailed in the supporting documentation and this request. Notwithstanding the variation, the proposed development will not result in any negative impacts on the land or the character of the area.

As outlined above, it is considered that the proposal will provide for a better planning outcome than a strictly compliant development. In this case, we submit that there are sufficient environmental planning grounds to justify contravening the development standard.

8 Other Matters That Must Be Satisfied

8.1 Is The Variation In The Public Interest?

As detailed above, Clause 4.6 (4)(a)(ii) of the LEP requires demonstration that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard (described and addressed above) and the objectives for the zone in which the development is proposed to be carried out. The demonstration of compliance with both the objectives of the standard and the land zone in turn confirm that the proposal is in the public interest.

It is noted that the development is to provide mobility access to future proof the existing dwelling to allow sufficient access for the occupants. The existing dwelling is a three-storey dwelling and the proposed passenger lift will ensure the occupants can easily access all levels in accordance with National disability access provisions. The retrofitting of the passenger lift is considered to be within the public interest as it will allow the occupants of the dwelling to retain their family home rather than being forced to move to a single level home. The approval of the development will continue with the positive precedent for Council's approving disability access to existing homes, despite minor non-compliances with development standards and development controls.

8.2 Whether Contravention Of The Development Standard Raises Any Matter Of Significance For State Or Regional Environmental Planning

The variation sought does not raise any matter of significance for State or regional environmental planning.

8.3 Public Benefit Of Maintaining The Standard?

It is considered that there is no benefit to the public or the community in maintaining the development standard. As established, there are no unreasonable or adverse impacts resulting from the development. As such, there would be no public benefit in maintaining strict numerical compliance the standard.

9 Conclusion

As provided above, the development complies with the outcomes of the development standard and is considered to be in the public interest. Strict compliance with this control is deemed unnecessary and restricts the use of the site for people with a disability or mobility issues. It is considered that the development results in a good planning outcome for the property and the community.

Strict compliance with the development standard is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality and as there are no changes to the building design, it is considered to be compatible with the existing character of the area. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

Appendix 2.: DCP Compliance Table**2.1 Part C1: Low Density Residential (dated 27 June 2023)**

DCP Clause	Controls	Proposal	Compliance																							
	Classification	Zoning = R2																								
2	Site planning	Site = 548.8sqm																								
2.4	Site coverage																									
	451 to 600 sqm = 50% *Site area is measured on the overall site area (not proposed allotment areas)	Proposed = 39.5%	Yes																							
2.5	Deep soil permeable surfaces																									
	451 to 600 sqm = 40% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached dwellings: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	Proposed = Not applicable as site coverage increase is less than 10%.	N/A.																							
2.7	Private open space (POS)																									
	Dwelling & Semi-Detached POS																									
	451 to 600 sqm = 7m x 7m	Proposed = No change from existing.	N/A																							
3	Building envelope																									
3.1	Floor space ratio LEP 2012 = 0.65:1	Proposed = 0.83:1	No, see Clause 4.6 Objection.																							
3.2	Building height																									
	Building height LEP 2012 = 8.16m	Proposed = 8.16m, as existing.	Yes.																							
3.3	Setbacks																									
3.3.2	Side setbacks																									
	<table border="1"> <thead> <tr> <th rowspan="2">Existing primary frontage width</th><th colspan="3">Minimum side setbacks</th></tr> <tr> <th>Building heights 0m to 4.5m</th><th>Building heights >4.5m to 7m</th><th>Building heights >7m</th></tr> </thead> <tbody> <tr> <td>Less than 6m</td><td colspan="3">Merit assessment</td></tr> <tr> <td>6m to less than 9m</td><td>0.9m</td><td>0.9m</td><td>0.9m + (building height - 7m)</td></tr> <tr> <td>9m to less than 12m</td><td>0.9m</td><td>$0.9m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.5m + 2 \times (\text{building height} - 7m)$</td></tr> <tr> <td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{\text{building height} - 4.5m}{4}$</td><td>$1.8m + 2 \times (\text{building height} - 7m)$</td></tr> </tbody> </table>	Existing primary frontage width	Minimum side setbacks			Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m	Less than 6m	Merit assessment			6m to less than 9m	0.9m	0.9m	0.9m + (building height - 7m)	9m to less than 12m	0.9m	$0.9m + \frac{\text{building height} - 4.5m}{4}$	$1.5m + 2 \times (\text{building height} - 7m)$	12m and above	1.2m	$1.2m + \frac{\text{building height} - 4.5m}{4}$	$1.8m + 2 \times (\text{building height} - 7m)$	Proposed = 2480mm to lift.	Yes.
Existing primary frontage width	Minimum side setbacks																									
	Building heights 0m to 4.5m	Building heights >4.5m to 7m	Building heights >7m																							
Less than 6m	Merit assessment																									
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3.3.3	Rear setbacks																									
	i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.	Minimum = 8m Proposed = up to 4.08m	See Key Issue above. Yes, on merit.																							

DCP Clause	Controls	Proposal	Compliance
	iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p><i>*Definition: predominant rear setback is the average of adjacent dwellings on either side and is determined separately for each storey.</i></p> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings.</p>		
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	The building generally complies with the building design controls of the DCP.	Yes.
4.6	Colours, Materials and Finishes		
	i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone	The colours and materials will match the existing building.	Yes.
4.7	Earthworks		
	i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vii) cut and fill for POS is terraced <i>where site has significant slope:</i> viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas.	Minimal earthworks which do not exceed the DCP controls.	Yes.

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DCP Clause	Controls	Proposal	Compliance
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	Solar access is maintained to the dwelling.	Yes.
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.	Solar access to the adjoining properties are maintained in accordance with the DCP controls.	Yes.
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) Living rooms contain windows and doors opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	A BASIX Certificate has been provided with this application.	Yes.
5.3	Visual Privacy		
	Windows		
	i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm windowsills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard 	There are no privacy impacts from the windows within the lift shaft as they are of obscured glass up to 1600mm above floor level.	Yes.

DCP Clause	Controls	Proposal	Compliance
	(minimum 3m x 2m). ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)		

Responsible officer: Perry Head, Environmental Planning Officer

File Reference: DA/185/2025

D21/25

D21/25

Development Consent Conditions

Folder /DA No:	DA/185/2025
Property:	24 Amour Avenue, MAROUBRA
Proposal:	Alterations and additions to existing dwelling house including rear extension to facilitate new lift and lift structure.
Recommendation:	Approval

GENERAL CONDITIONS**Condition**

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

Plan	Drawn by	Dated	Received by Council
Sheet 1 Drawing 09/25	Lawrence Design and Drafting	20/2/2025	4/4/2025
Sheet 2 Drawing 09/25	Lawrence Design and Drafting	20/2/2025	4/4/2025
Sheet 3 Drawing 09/25	Lawrence Design and Drafting	20/2/2025	4/4/2025
Sheet 4 Drawing 09/25	Lawrence Design and Drafting	20/2/2025	4/4/2025
Sheet 5 Drawing 09/25	Lawrence Design and Drafting	20/2/2025	4/4/2025
Sheet 6 Drawing 09/25	Lawrence Design and Drafting	20/2/2025	4/4/2025

BASIX Certificate No.	Dated	Received by Council
A1785751	3/3/2025	6/3/2025

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

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

**BUILDING WORK
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**
Condition

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

Condition	
	<p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
3.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none">• Building plan approvals• Connection and disconnection approvals• Diagrams• Trade waste approvals• Pressure information• Water meter installations• Pressure boosting and pump approvals• Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
4.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
5.	<p>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent</p>

Condition
and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.
Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.

BEFORE BUILDING WORK COMMENCES

Condition
<p>6. 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:</p> <ul style="list-style-type: none"> a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment. b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works. <p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
<p>7. Home Building Act 1989 In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p>
<p>8. Construction Site Management Plan</p>

Condition
<p>A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none"> • location and construction of protective site fencing and hoardings • location of site storage areas, sheds, plant & equipment • location of building materials and stock-piles • tree protective measures • dust control measures • details of sediment and erosion control measures • site access location and construction • methods of disposal of demolition materials • location and size of waste containers/bulk bins • provisions for temporary stormwater drainage • construction noise and vibration management • construction traffic management details • provisions for temporary sanitary facilities • measures to be implemented to ensure public health and safety. <p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
<p>9. Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.</p> <p>A <i>Construction Noise & Vibration Management Plan</i> must be developed and implemented throughout demolition and construction work.</p> <ol style="list-style-type: none"> The <i>Construction Noise & Vibration Management Plan</i> must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority <i>Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline</i> (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier. 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. Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the <i>Construction Noise & Vibration Management Plan</i> and which demonstrates compliance with relevant criteria. Any recommendations and requirements contained in the <i>Construction Noise & Vibration Management Plan</i> and associated reports are to be implemented accordingly and should noise and vibration emissions not

Condition	
	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.	

DURING BUILDING WORK

Condition							
10.	<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> <ol style="list-style-type: none"> showing the name, address and telephone number of the principal certifier for the work, and showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ol style="list-style-type: none"> maintained while the building work is being carried out, and removed when the work has been completed. <p>This section does not apply in relation to—</p> <ol style="list-style-type: none"> building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or Crown building work certified to comply with the Building Code of Australia under the Act, Part 6. <p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>						
11.	<p>Restriction on Working Hours</p> <p>Building, demolition and associated site works must be carried out in accordance with the following requirements:</p> <table border="1"> <thead> <tr> <th>Activity</th><th>Permitted working hours</th></tr> </thead> <tbody> <tr> <td>All building, demolition and site work, including site deliveries (except as detailed below)</td><td> <ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted </td></tr> <tr> <td>Excavations in rock, sawing of rock, use of jack-hammers, driven-type</td><td> <ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm </td></tr> </tbody> </table>	Activity	Permitted working hours	All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted 	Excavations in rock, sawing of rock, use of jack-hammers, driven-type	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm
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	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm 						

Condition	
piling/shoring or the like	<ul style="list-style-type: none"> (maximum) Saturday - No work permitted Sunday & public holidays - No work permitted

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

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

12. **Noise & Vibration**

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with a *Construction Noise & Vibration Management Plan*, prepared in accordance with the Environment Protection Authority guidelines for Construction Noise and Assessing Vibration.

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

13. **Construction Site Management**

Temporary site safety fencing must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works.

Temporary site fences must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.

Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.

All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

Notes:

- Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.*
- A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.*

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

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
14.	Occupation Certificate Requirements

D21/25

	Condition
	<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>
15.	<p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>