

Randwick Local Planning Panel (Electronic) Meeting

Thursday 10 July 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 Thursday, 10 July 2025

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D32/25

Subject: 319 Clovelly Road, Clovelly (DA/336/2025)


Executive Summary

Proposal:	Use of the ground level tenancy as an indoor recreation facility (gym) with associated internal fit out works and signage.
Ward:	North Ward
Applicant:	Mr T Newman
Owner:	Mrs S Gomez & Mr A Gomez
Cost of works:	\$11,000.00
Reason for referral:	The development involves demolition works to a heritage item

Recommendation

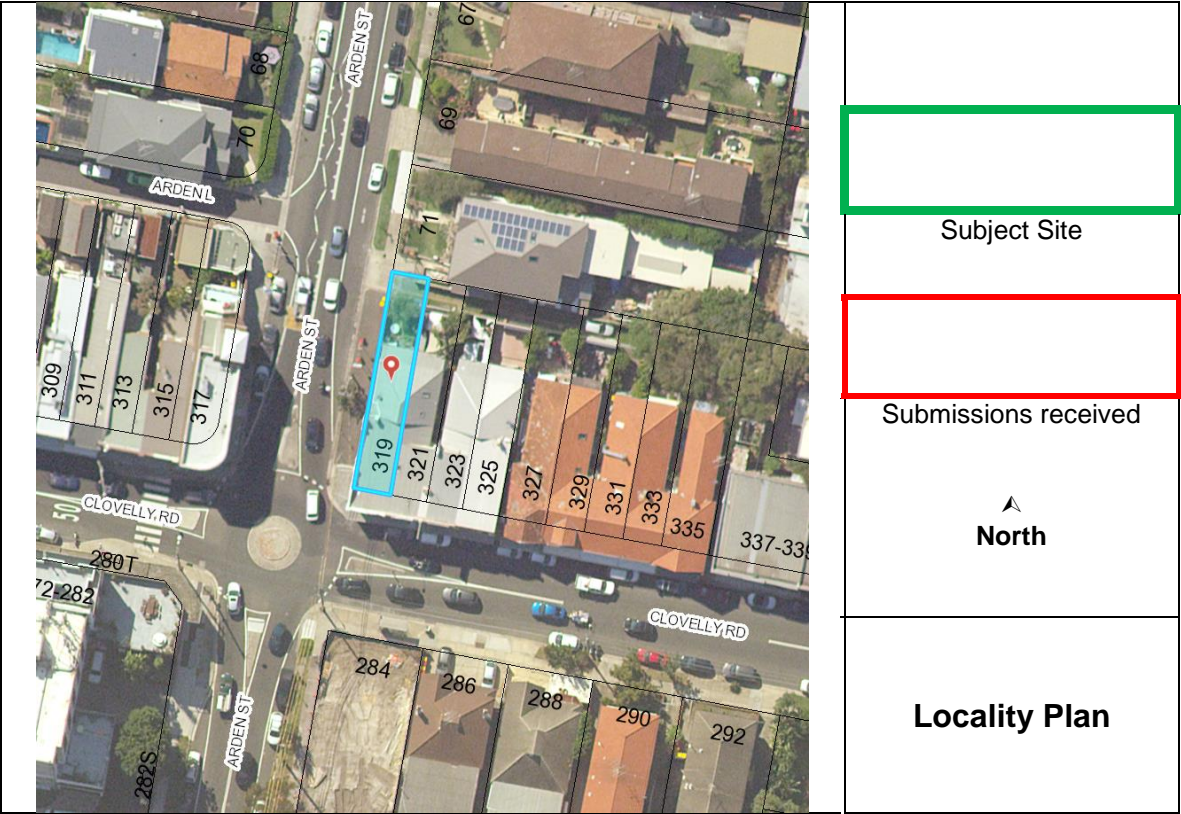
That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/336/2025 for Use of the ground level tenancy as an indoor recreation facility (gym) with associated internal fit out works and signage, at No. 319 Clovelly Road, Clovelly, subject to the development consent conditions attached to the assessment report.

Attachment/s:

-  RLPP Dev Consent Conditions (med density res) - DA/336/2025 - 319 Clovelly Road, CLOVELLY 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 involves demolition works to a heritage item.

The application seeks approval for a change of use of a ground-level tenancy to an indoor recreation facility (gym), including demolition, internal fit-out works and signage. The facility is proposed to operate daily from 5am to 8pm, with fitness classes commencing at 6am.

The site is part of heritage item I16 “Walders Corner” under the Randwick LEP 2012. The group of terraces represents early 20th-century commercial/residential development in Clovelly and contributes to the historic streetscape character of the area.

Key issues include:

- Heritage sensitivity, especially regarding signage; and
- Noise impacts, particularly from early morning classes (proposed start at 5am).

An updated acoustic report recommends several mitigation measures, but the Operational Plan of Management does not reflect these, and class size limits remain unclear.

Council’s Environmental Health Officer does not support operation before 7:00am (Monday to Saturday) and 8:00am (Sundays and public holidays). However, a trial period and strict conditions have been recommended to manage potential impacts for these additional hours.

The proposal is recommended for approval subject to non-standard conditions, including:

- Signage reduction to protect heritage values;
- A trial period to monitor early morning operations; and
- Noise controls and updated plan of management.

2. Site Description and Locality

The subject site is known as 319 Clovelly Road, Clovelly and is legally described as Lot 1 in DP 703219. The subject site is a 159.3m² rectangular lot with a 5.16m frontage to Clovelly Road, located at the corner of Clovelly Road and Arden Street. It contains a two-storey shop top terrace and forms part of a row of terraces (Nos. 319–325 Clovelly Road).

The site features a right of way that is 2.59 metres wide at the rear of the property.

The subject site forms part of heritage item number 'I16' known as commercial/residential group "Walders Corner" which is listed as a heritage item in the Randwick LEP 2012 (Amendment No.9).

The site is located within the commercial centre of Clovelly which comprises of a mixture of commercial, retail and residential development of building heights typically of two and three storeys.

The site adjoins No. 321 Clovelly Road to the east and forms a row of terraces along No. 319-325 Clovelly Road.



Figure 1: Subject building along Clovelly Road. Subject tenancy hashed in red.



Figure 2: Subject building along Arden Street. Subject tenancy hashed in red.

3. Relevant history

Council Environmental Health officer required the submission of an updated Acoustic Report to assess the existing and potential noise sources and emissions associated with the proposed development and to evaluate their potential impact on the amenity of the surrounding locality.

An amended Acoustic Report addressing these requirements was received by Council on 30 May 2025.

4. Proposal

The development application seeks consent for a change of use and associated internal works at the ground level of the existing two-storey shop top terrace at 319 Clovelly Road, Clovelly. The proposal involves converting the current commercial tenancy into an indoor recreation facility (gym), along with minor internal and external modifications. The scope of works includes:

- Change of Use:

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- Conversion of the ground floor tenancy to an indoor recreation facility (gym), operating from 5:00am to 8:00pm, Monday to Sunday.
- The facility will accommodate a maximum of 10-12 clients at any one time, with 3-4 staff members.
- Internal Works:
 - Demolition of selected internal walls, a bulkhead, and an existing vanity to create an open-plan layout suitable for gym equipment.
 - Internal fit-out to accommodate gym equipment and functional zones.
 - Alterations to the existing WC to meet operational and compliance requirements.
 - Replacement of the existing ceiling with a new fire-rated ceiling to meet building code standards.
- Mechanical Services:
 - Retention of the existing air conditioning unit, with no external changes proposed.
- Signage and External Works:
 - Installation of a new light box for business identification.
 - New fascia signage and window decals applied to the shopfront.

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:

- Resident living above this group of shops (Unknown resident)

Issue	Comment
<p>Noise Impacts and Amenity</p> <p>Concerns have been raised regarding potential noise impacts associated with the proposed gym use, particularly during early morning hours (5:00am-9:00am), and the cumulative effect of multiple fitness studios operating in the vicinity of Clovelly Road between Arden and Beach Streets.</p> <p>In addition to the above, potential noise concerns from instructor voice projection during classes, amplified music used during workouts, client activity including arrival/departure and congregation on footpath, mechanical plant noise, particularly from the existing split system air conditioning unit.</p>	<p>The application has been reviewed by Council’s Environmental Health Officer, who has advised that the proposed early morning operating hours (from 5:00am) are not supported due to the potential for noise impacts on nearby residential properties. However, a trial period for early morning operations, subject to strict acoustic and operational conditions, has been recommended to allow monitoring and assessment of potential impacts.</p> <p>While it is acknowledged that there are other fitness-related businesses in the area, this proposal is for a small-scale facility with a maximum of 10-12 clients at any one time, which is significantly lower than a high-capacity gym. Subject to conditions, the scale and intensity of use are considered appropriate for the site’s commercial zoning and heritage context.</p>

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development does not involve the removal of any vegetation (including any trees).

6.2. SEPP (Industry and Employment) 2021 – Chapter 3

The aims of Chapter 3 are as follows:

- (a) To ensure that signage (including advertising):*
 - (i) Is compatible with the desired amenity and visual character of an area, and*
 - (ii) Provides effective communication in suitable locations, and*
 - (iii) Is of high-quality design and finish, and*
- (b) To regulate signage (but not content) under Part 4 of the Act, and*
- (c) To provide time-limited consents for the display of certain advertisement, and*
- (d) To regulate the display of advertisement in transport corridors, and*
- (e) To ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

Pursuant to section 3.6, a consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) That the signage is consistent with the objectives of this Policy as set out in clause 3.1 (1)(a), and*
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.*

The proposal seeks approval for the provision of new business identification signage for the proposed change of use to a recreation facility (gym).

- The following signage is proposed:
 - Installation of new light box sign for business identification
 - New fascia signage; and
 - Window decals signage applied to the shopfront

SEPP (Industry and Employment) 2021

Chapter 3 – Advertising and Signage

Chapter 3 of the Industry and Employment SEPP seeks to ensure that signage, including advertising, is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations, and is of high quality design and finish.

The signage falls within the definition of ‘advertisement’, which is defined by the SEPP as follows:

Advertisement means signage to which Section 3.3 applies and includes any advertising structure for the advertisement.

Advertising structure means a structure or vessel that is principally designed for, or that is used for, the display of an advertisement.

Pursuant to section 3.11, the consent authority must not grant consent to an application to display an advertisement unless the advertisement is consistent with the objectives of Chapter 3 and has been assessed as acceptable in relation to the assessment criteria in Schedule 5.

An assessment against the relevant objects and criteria is provided in the tables below.

Industry & Employment SEPP – Chapter 3	Compliance
<p>(a) to ensure that signage (including advertising) -</p> <p>(i) is compatible with the desired amenity and visual character of an area, and</p> <p>(ii) provides effective communication in suitable locations, and</p> <p>(iii) is of high-quality design and finish, and</p> <p>(b) to regulate signage (but not content) under Part 4 of the Act, and</p> <p>(c) to provide time-limited consents for the display of certain advertisements, and</p> <p>(d) to regulate the display of advertisements in transport corridors, and</p> <p>(e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.</p>	<p>Subject to conditions, the proposed signage is considered to be sympathetic to the heritage character of the building and the surrounding streetscape. Refer to discussions below under Character of the area.</p> <p>The signage is compatible with the locality and is not expected to significantly impact the amenity or visual character of the area, particularly in relation to the adjoining residential development.</p> <p>Subject to a condition requiring the signage design to be of high quality and to reflect the architectural details, materials, and finishes of the existing building and surrounding block, the proposal is considered appropriate.</p> <p>The placement and scale of the signage, subject to condition will respect the building façade and the broader streetscape context, ensuring visual cohesion and minimal impact on the heritage character of the area.</p> <p>The proposed signage effectively communicates the presence, name, and activities of the associated business, contributing positively to the commercial identity of the area.</p> <p>The signage is consistent with the objectives of the applicable State Environmental Planning Policy (SEPP).</p> <p>Suitable conditions are included to ensure the signage structure maintains reasonable levels of safety for both pedestrians and vehicular traffic. Additionally, conditions will ensure that any illumination complies with relevant Australian Standards, minimising potential impacts on residential amenity and ensuring visual comfort and safety.</p>

Industry & Employment SEPP – Schedule 5	Comment
Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Subject to a condition limiting the number of signs to a maximum of two on the building, the proposed signage is considered acceptable in the context of the heritage character of the site and the surrounding streetscape.

Industry & Employment SEPP – Schedule 5	Comment
	<p>Council's Heritage Planner has recommended that either the proposed awning signage or window signage be removed to reduce visual clutter and preserve the integrity of the heritage façade. It is recommended by the Heritage Planner that a revised signage plan be prepared, clearly identifying the final signage to be retained or proposed and submitted to Council for review and approval prior to the installation of any new signage.</p> <p>This approach ensures that the signage remains sympathetic to the architectural significance of the building while allowing for appropriate business identification.</p> <p>Subject to the above heritage recommendations, the proposed signage is considered to maintain the character of the E1 Local Centre Zone and surrounding zoned land. It is consistent with the existing and desired future character of the area and does not detract from the architectural style or features of the heritage building.</p> <p>The information displayed on the signage relates directly to the identified business name and services, assisting users in identifying the retail use. As such, the proposal is considered to comply with relevant planning controls and heritage considerations.</p>
<p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p>	<p>While the locality does exhibit a particular theme for outdoor advertising, subject to conditions, the proposed signage is not considered to be in contrast with the immediate context. A condition will require that the signage be consistent with the character and façade detailing of the building by utilising a complementary design and materials palette.</p> <p>This ensures that the signage integrates harmoniously with the architectural style of the building and the established visual character of the streetscape, maintaining the overall amenity and cohesion of the area.</p>
Special areas	
<p>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	<p>The subject site is identified as a heritage item. Subject to conditions, the proposed signage is not considered to detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes, or residential areas.</p>

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Industry & Employment SEPP – Schedule 5	Comment
	The signage has been designed and conditioned to ensure compatibility with the heritage significance of the site and the surrounding locality, maintaining the visual integrity and amenity of the broader area.
Views and vistas	
Does the proposal obscure or compromise important views?	The proposed signage will not obscure or compromise important views.
Does the proposal dominate the skyline and reduce the quality of vistas?	The nature of the proposed signage will not dominate the skyline or reduce the visual qualities of vistas, as they're appropriately sized, consistent with existing signage and subject to conditions will complement the character of the existing heritage building.
Does the proposal respect the viewing rights of other advertisers?	The proposed signage is of appropriate size and scale for the building and does not affect the viewing rights of other advertisers.
Streetscape, setting or landscape	
Are the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The signage is compatible with the scale and proportions of the surrounding streetscape, setting, and landscape.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Subject to conditions, the proposal does not have an adverse impact on the visual interest of the streetscape.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal does not create any undue clutter and is limited to a sole signage emplacement.
Does the proposal screen unsightliness?	The proposal does not create any undue unsightliness.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposal does not protrude above buildings.
Does the proposal require ongoing vegetation management?	The proposal does not require ongoing vegetation management.
Site and building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	<p>The proposed signage is suitably scaled for its given purpose and compatible with the existing characteristics on the site and building.</p> <p>Subject to condition, the signage does not have any adverse impacts on the site or the building.</p>
Does the proposal respect important features of the site or building, or both?	Subject to condition, the proposed signage complements the features and visual character of the building.

Industry & Employment SEPP – Schedule 5	Comment
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	A condition is included which requires a signage plan to be submitted to ensure that the form, colours and finishes of the signage directly relate to the attended existing and future use and streetscape setting with regards to the heritage item.
Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The signage is well integrated with the built form structures.
Illumination	
Would illumination result in unacceptable glare?	Complies, subject to conditions.
Would illumination affect safety for pedestrians, vehicles or aircraft?	Complies, subject to conditions.
Would illumination detract from the amenity of any residence or other form of accommodation?	Complies, subject to conditions.
Can the intensity of the illumination be adjusted, if necessary?	Complies, subject to conditions.
Is the illumination subject to a curfew?	Complies, subject to conditions.
Safety	
Would the proposal reduce the safety for any public road?	The proposal will not affect the safety of any public road, subject to conditions.
Would the proposal reduce the safety for pedestrians or bicyclists?	The proposal will not affect the safety of pedestrians or cyclists, subject to conditions.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal does not obscure sightlines from public areas.

6.3. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Zone E1: Local Centre under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone, as outlined in the Randwick Local Environmental Plan (RLEP) 2012. The proposed change of use to an indoor recreation facility (gym) and associated internal works will:

- Serve the needs of the local community by providing a health and wellness service that supports active lifestyles.
- Generate local employment opportunities, contributing to economic growth and supporting the vitality of the Clovelly commercial centre.
- Activate the street frontage through the introduction of a new commercial use at ground level, enhancing passive surveillance and contributing to a vibrant public domain.

The proposed use aligns with the intent of the zone to encourage a mix of compatible uses that support the local economy and community wellbeing.

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) Site area = 159.3m ²	1:1	The proposed use will not be altering the FSR on the site. The commercial tenancy has an area of 68m ² .	Not applicable.
CI 4.3: Building height (max)	9.5m	The proposed development will not be altering the height of the building.	Not applicable.

6.3.1. Clause 5.10 - Heritage conservation

The subject site is identified as a heritage item under the Randwick Local Environmental Plan, Schedule 5 Environmental heritage, Part 1 Heritage items. The site forms part of a heritage item known as Commercial/residential group, "Walders Corner" (116) at 319-325 Clovelly Road on Lots 1-4 in DP 70321. The site is not within a heritage conservation area.

The subject site is also in close proximity to a heritage listed item under Schedule 5 Environmental Heritage, RLEP 2012. The item is listed below:

Item / HCA Name	Item Number	Address	Significance
"Pohills Corner"	115	317 Clovelly Road	Local

Table 1: Nearby Heritage Items - Applicable heritage listings and statutory requirements

The application was referred to Council's Heritage planner for comments and the proposed change of use and internal alterations are generally supported from a heritage perspective, subject to the following amendments:

- The signage proposal must comply with the two-signage limit. Either the under-awning signage or the window signage must be removed.
- A detailed signage plan must be prepared and submitted to Council for review to ensure all signage is sympathetic to the heritage character of the building.

The original external form, detailing, materials, and finishes of the heritage item are entirely maintained.

Given that the scope of works involves a change of use and minor internal fit-out, the proposed works are considered to be reversible, non-intrusive, and respectful of the heritage significance of the building and its contribution to the "Walders Corner" heritage item.

Council's Heritage Planner has reviewed the submitted plans and documentation and is satisfied that the proposal complies with Clause 5.10 of the Randwick Local Environmental Plan (RLEP) 2012, subject to the recommended conditions. Refer to referral comments from Council's Heritage Planner in Appendix 1: Referrals section of this report.

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

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2023

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

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and Discussion of key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submission have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of key issues

Amenity: Acoustic and Visual Privacy

The proposal involves a change of use of the ground floor commercial tenancy to an indoor recreation facility (gym). The site forms part of a row of commercial shops with residential development located directly above.

The proposed hours of operation are 5:00am to 8:00pm, seven days a week, with fitness classes commencing from 6:00am daily.

The key issue associated with the proposal is noise impact, particularly during early morning hours when residential sensitivity is highest.

Under Council's Comprehensive Development Control Plan (DCP), there are no specific operating hours prescribed for businesses within residential zones. However, the DCP states:

"Operating hours must be submitted with the DA should the development require deliveries and/or operation of machinery outside of standard hours (7.30am to 5pm, Monday to Friday), an acoustic report must be prepared by a suitably qualified acoustic consultant".

As the proposed use extends beyond standard operating hours of 7.30am to 5pm, Council's Environmental Health Officer requested an amended acoustic report, as the original submission did not adequately address the following:

- Lack of reference to the Industrial Noise Policy and Environmental Noise Control Manual in relation to sleep disturbance;
- Background noise levels were measured on 26 August 2024 between 2:30pm and 2:45pm, which does not represent the proposed early morning operating hours;
- The requested hours of operation (5:00am–8:00pm, 7 days) were not fully assessed; and
- The night-time period was incorrectly referred to as the morning shoulder.

To address these concerns, an updated acoustic report was submitted by Ocave Acoustic, dated 29 May 2025. The report recommends a range of construction and operational measures to mitigate noise impacts, including:

- No music before 7:00am (Mon–Sat) and 8:00am (Sun/public holidays),
- Avoidance of high-impact activities (e.g., medicine ball slams),
- Controlled handling of weights,
- Acoustic treatments to floors and ceilings,
- Use of low-noise air conditioning,
- Doors to remain closed during operation.

However, the Operational Plan of Management (dated 6 March 2025) has not been updated to incorporate the recommendations outlined in the updated acoustic report. While the Statement of Environmental Effects (SEE) notes a maximum of 10 to 12 clients per class, this detail is not clearly stated or confirmed in the Plan of Management. The absence of this information, along with the lack of alignment with the acoustic recommendations, limits Council's ability to fully assess the potential for adverse amenity impacts on nearby residential properties.

In addition to the above, given the conflict between early class times and noise restrictions outlined in the updated acoustic report, Council's Environmental Health Officer does not support operation before 7:00am (Monday to Saturday) and 8:00am (Sundays and public holidays).

Notwithstanding the above, to address these concerns and ensure the protection of residential amenity, the following conditions of consent are recommended:

- A 12-month trial period for early morning operations,
- Strict conditions of consent to ensure compliance with acoustic recommendations,

- An updated Operational Plan of Management reflecting the latest acoustic recommendations; and
- Ongoing monitoring and review of noise impacts.

These conditions aim to ensure that the use and operation of the premises do not cause a nuisance to nearby and adjoining residential development and remain compliant with relevant acoustic criteria.

Notwithstanding the above, Council is still required to consider the impact of the proposal and whether it complies with the objectives of the Comprehensive DCP. The relevant objective to acoustic noise impacts is as follows:

- To ensure high levels of acoustic privacy within and between developments

Subject to the above recommendations, the proposed use of the commercial tenancy as a gym will maintain acoustic privacy to the neighbouring residential premises. Within the immediate locality there are a row of ground floor commercial tenancies, which are occupied by retail, office and commercial uses. The proposed hours of operation are generally similar to that of the proposed development with the exception of the early trade at 5am.

Subject to the recommended conditions, the proposed use is considered capable of maintaining acoustic privacy for neighbouring residential premises. The site is located within a mixed-use commercial strip along Clovelly Road, where other ground floor tenancies are occupied by retail, office, and commercial uses. The proposed hours of operation are generally consistent with surrounding businesses, except for the proposed early 5:00am start.

To address concerns regarding early morning noise impacts, Council's Environmental Health Officer recommends that the business commence operations no earlier than 7:00am (Monday to Saturday) and 8:00am (Sundays and public holidays). Notwithstanding the above, if the applicant wishes to commence before these times, a trial period of one (1) year will be reviewed by Council no later than 30 days prior to the end of the trial period, to allow assessment of any potential impacts on residential amenity. Refer to detailed Environmental Health comments in Appendix 1: Referrals section below.

A condition of consent has also been included to ensure that the use and operation of the premises, including all plant and equipment, must not give rise to "offensive noise" as defined under the Protection of the Environment Operations Act 1997 and associated Regulations.

Subject to these recommendations, the proposal is considered to comply with the objectives for acoustic privacy and will maintain residential amenity while supporting small-scale commercial activity within an existing commercial building.

Part F2 Outdoor Advertising and Signage

2 General Design and Siting

Control requirement 2 (vii) requires:

(vii) Signage erected or displayed on identified heritage buildings or within heritage conservation areas must not detract from the architectural character and heritage significance of such buildings or areas.

The application was reviewed by Council's Heritage Planner due to the site's inclusion in heritage item I16 "Walders Corner". The proposed signage is considered generally acceptable, provided it is limited to a maximum of two signs to avoid visual clutter and maintain the heritage character of the building.

It is recommended that either the awning or window signage be removed, and a revised signage plan be submitted for Council approval. The signage design should also reflect the architectural detailing and materials of the existing building. These recommendations have been incorporated

into the conditions of consent to ensure the development remains sympathetic to the heritage significance of the site and its context.

9. Conclusion

That the application for the change of use of the ground floor commercial tenancy to an indoor recreation facility (gym), including internal fit-out works and signage, be approved (subject to conditions) for the following reasons:

- The proposal is consistent with 1.3 Objects of Act under the Environmental Planning and Assessment Act 1979, as it will promote the orderly and economic use and development of land.
- The proposal is consistent with the relevant objectives and provisions of the Randwick Local Environmental Plan 2023 and the Randwick Development Control Plan 2023.
- The proposal aligns with the objectives of the E1 Local Centre zone under the Randwick LEP 2023, as it provides a retail and recreational use that serves the needs of people who live in, work in, or visit the area.
- The proposed use is compatible with the desired future character of the local centre, contributing a small-scale, community-oriented facility that supports the daily needs of local residents.
- The development will make a positive contribution to the local centre by maintaining an active street frontage and enhancing the vibrancy of the commercial strip at footpath level.

Non-Standard Conditions of Consent:

Amendment of Plans & Documentation

2. a) A maximum of two (2) signs shall be installed on the site. One of the following signs must be deleted to comply with this requirement:
 - Under awning signage; or
 - Window signage.
- b) A revised signage plan must be submitted to Council Heritage officer for approval prior to the installation of any signage. The revised plan shall demonstrate that the proposed signage:
 - Reflects the architectural detailing and materials of the existing building;
 - Is sympathetic to the heritage significance of the site; and
 - Is compatible with the broader historical and visual context of the surrounding area.

The signage must be designed to ensure minimal visual impact and to preserve the integrity and character of the heritage item and its setting.

Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development and to ensure the development remains sympathetic to the heritage value of the building, the site, and its surrounding context.

Operating Hours

3. The hours of operation of the business must be restricted to between:
 - Monday to Saturday: 7:00am to 8:00pm
 - Sunday and Public Holidays: 8:00am to 8:00pm

Notwithstanding with the above, the use may operate between 5:00am to 8:00pm for a trial period of one (1) year from the date of issue of the Occupation Certificate. Council's Health,

Building and Regulatory Services is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to Council@randwick.nsw.gov.au.

Should the operator seek to continue the extended operating hours outlined in above, an application must be lodged with Council not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions and any substantiated complaints received.

Condition Reason: To ensure acoustic amenity is maintained for neighbouring residential dwellings.

Plan of Management

4. An amended plan of management shall be submitted to and approved by Council prior to occupation or use of the development, which details the measures to be implemented to:

- Ensure compliance with the relevant conditions of development consent and relevant approved acoustic reports/s,
- Ensure compliance with relevant noise criteria and minimise noise emissions and associated nuisances,
- Minimise the potential environmental and amenity impacts upon nearby residents,
- Effectively minimise and manage anti-social behaviour,
- Effectively manage and respond to resident complaints,
- Ensure responsible service of alcohol and harm minimisation,
- Provision of adequate security and surveillance,
- Ensure that the maximum number of patrons does not exceed the authorised capacity, in accordance with Council's consent.

Condition Reason: To ensure acoustic amenity is maintained for neighbouring residential properties.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The application was referred to Council's Heritage Planner for specialist advice. The following comments were provided:

The proposed change of use and internal alterations are generally supported from a heritage perspective, subject to the following amendments:

1. No more than 2 signage is acceptable for this site. Window signage is considered as a new signage. Please request deletion of under awning signage or window signage
2. A signage plan should be prepared for any proposed new signage and submitted to council for review.

The following must be carefully considered:

- a. Signage is to be compatible with the architecture, materials, finishes and colours of the building and the streetscape.
- b. Signage that must not detract from the amenity or visual quality of heritage items.
- c. The height to the underside of an under-awning sign is to be consistent with the approved height of projecting wall signs and under awning signs on adjoining properties. The minimum height to the underside of an under-awning sign is 2.6m above ground level (existing) of the footway below. An under-awning sign is not to hang more than 1m below the underside of an awning and should not be more than 400mm high.
- d. Any illuminated signage is to be designed to ensure that the illuminance and luminance from the sign or advertisement is, in the opinion of the consent authority, consistent with the existing light level of the streetscape or environment within which it is located and does not cause glare.
- e. Signage is only permitted to be illuminated while a premises is open and trading where the sign is on, or within 25m of and visible from, land zoned R1 General Residential or R2 Low Density Residential
- f. Signs with flashing, chasing, pulsating or flickering lights are not permitted.

1.2. Environmental Health

The application was referred to Council's Environmental Health officer for specialist advice. The following comments were provided:

Proposed Development:

Change of use for ground level tenancy to indoor recreation facility (gym) and associated internal fit out works and signage.

Hours of operation 5 am - 8 pm Monday to Sunday (7 days) with classes starting at 6 am.

Comments:

An updated acoustic report prepared by Ocave Acoustic dated 29 May 2025 has been prepared.

The acoustic report provides many recommendations regarding construction and operation within its report, such as:

- At night (prior to 7 am Monday to Saturday and prior to 8 am on Sunday and public holidays) music is to be switched off.
- Background music is limited to L10 67 dB(a) during the daytime.
- It is recommended that high impact activities such as medicine ball slams are not conducted in the gym.

- Gym management should instruct patrons to set weights down in a controlled manner rather than dropping weights.
- It is recommended that the air conditioner is operated in a low-noise mode or switched off prior to 7am.
- Doors to be closed while the gym is in operation.
- Ceiling construction requirements
- Rubber gym floor system to be installed throughout the gym.
- Weight machines to incorporate damped isolation springs.

It is noted that the Operational Plan of Management dated the 6 March 2025 does not reflect the updated recommendation of the acoustic report.

It is unclear what is the maximum people allowed in each class. Due to that no music is allowed to be played before 7 am on Monday to Saturday and 8 am on Sunday and public holidays but have classes from 6 am it is hard for the Environmental Health Section to support such activities as it may cause sleep disturbance to neighbouring residents.

Recommendation:

The Environmental Health Section does not support that the gym to operate before 7 am on Monday to Saturday and 8 am on Sunday and public holidays.

However, should the application be approved with operating hours starting at 5am Environmental Health will recommend a trial period of 12 months to be conducted. The condition would read:

1. The hours of operation for the premises are regulated by a reviewable condition as follows:
The hours of operation must be restricted to between 7am to 8pm on Monday to Saturday and 8am to 8pm on Sunday and public holidays.

Notwithstanding with the above, the use may operate between 5am to 8pm for a trial period of 1 year from the date of issue of the Occupation Certificate. Council's Health, Building and Regulatory Services is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to Council@randwick.nsw.gov.au.

Should the operator seek to continue the extended operating hours outlined in above, an application must be lodged with Council not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions and any substantiated complaints received.

Appendix 2: DCP Compliance Table

3.1 Part D6 Neighbourhood Centres – General Controls

DCP Clause	Controls	Proposal	Compliance
3.1	Facades		
	<p>v) Design shopfronts, including entries and windows, to reinforce any prevalent character in the centre.</p> <p>vi) All street frontage windows at ground level are to have clear glazing. Large glazed shopfronts should be avoided, with window configurations broken into discrete sections to ensure visual interest.</p> <p>vii) All facade elements must be contained within the site boundaries.</p>	<p>The proposed shopfront will be replaced with a new aluminum framed glazed shopfront with an automatic sliding door.</p>	Yes
3.6	Signage		
	<p>i) The location, size and design of signage must integrate with the architectural detail of the building and act as a unifying element to the neighbourhood centre.</p> <p>ii) Signage must not:</p> <ul style="list-style-type: none"> • obscure important architectural features; • dominate the architecture of buildings; • protrude from, or stand proud of, the awnings; • project above any part of the building to which it is attached; • cover a large portion of the building façade. <p>iii) Avoid fin signs, signage on canvas blinds, signage on roller shutters and projecting wall signs and large elevated solid panel business and building name signs including those fixed on parapets or roofs.</p> <p>iv) Ensure that signs provide clear identification of premises for residents, visitors and customers.</p> <p>v) All premises must display a street number. The height of these numbers should be legible but not a dominating feature, and no less than 300mm presented in a clear readable font.</p> <p>vi) Signage must relate to the business being carried out on the</p>	<p>Subject to condition, the proposed signage is suitably integrated and consistent with the commercial character of the local centre.</p> <p>All proposed signage is related to the business premises.</p> <p>No architectural elements will be obscured by the proposed signage.</p>	Yes

DCP Clause	Controls	Proposal	Compliance
	<p>property.</p> <p>vii) Early building names (on parapets, pediments, etc) should be preserved wherever possible.</p> <p>viii) Any signage structure or sign must have regard to the impact on residential occupants in terms of illumination and visual impact.</p>		
5.2	Acoustic and Visual privacy		
	<p>iv) Operating hours must be submitted with the DA. Should the development require deliveries and/or operation of machinery outside of standard hours (7.30am to 5pm, Monday to Friday), an acoustic report must accompany the DA. The acoustic report must be prepared by a suitably qualified acoustic consultant.</p>	<p>The proposed hours of operation are 5:00am to 8:00pm, seven days a week, with fitness classes commencing from 6:00am daily.</p> <p>The key issue associated with the proposal is noise impact, particularly during early morning hours when residential sensitivity is highest.</p>	Refer to Discussion of key issues above.

Part F2: Outdoor Advertising and Signage

DCP	Control	Proposal	Compliance
2	General Design and Siting		
	(i) Signage should recognise the legitimate needs for directional advice, business identification and promotion.	The proposed signage is for the purpose of building identification signage and is required to identify the business.	Compliant
	(ii) Signage must complement and be compatible with the development on which it is situated and with adjoining development.	The proposed signage is compatible in scale, character and siting with the associated development.	Compliant
	(iii) Signage should not obscure architecturally decorative details or features of buildings or dominate building facades. It should be placed on the undecorated wall surfaces or designed sign panels provided.	The proposed signage is appropriate in size and scale for the site and does not conceal any important architectural features of the existing building.	Compliant
	(iv) Entire building facades and /or walls must not be painted or covered with cladding or other material to act as a large billboard type	Signage is suitably scaled for the site and is not considered to be a billboard.	Compliant

D32/25

DCP	Control	Proposal	Compliance
	(v) Where a building or site contains multiple tenancies or uses, a coordinated approach for all signs is required	The information displayed on the signs relate to the identified business and does not contain multiple tenancies.	Compliant
	(vi) Signage shall be displayed in English but may include a translation in another language.	The signage content is displayed in English.	Compliant
	(vii) Signage erected or displayed on identified heritage buildings or within heritage conservation areas must not detract from the architectural character and heritage significance of such buildings or areas.	<p>The signage is located on a heritage building.</p> <p>Heritage Planner has recommended that the signage is limited to a maximum of two signs to avoid visual clutter and preserve the architectural integrity of the heritage building and its broader context.</p> <p>Subject to condition will comply.</p>	Refer to Discussion of key issues above.
	(viii) Outdoor advertising attached to vehicles or trailers which are parked for advertising purposes will not be permitted.	Advertising not proposed.	Compliant
	(ix) Signage must not be flashing or animated.	The signage content will not involve features that result in flashing or animation.	Conditioned to comply.

Section D6 Neighbourhood Centres – General Controls

DCP Clause	Controls	Proposal	Compliance
3.1	Facades		
	<p>viii) Design shopfronts, including entries and windows, to reinforce any prevalent character in the centre.</p> <p>ix) All street frontage windows at ground level are to have clear glazing. Large glazed shopfronts should be avoided, with window configurations broken into discrete sections to ensure visual interest.</p> <p>x) vii) All facade elements must be contained within the site boundaries.</p>	<p>A condition is included in the consent which requires a revised signage plan to be submitted to Council for approval. This will ensure that the signage reflects the architectural detailing and materials of the existing building, ensuring it remains sympathetic to the heritage significance of the site and maintain compatibility with the broader historical and visual context of the surrounding area.</p>	Conditioned to comply.

DCP Clause	Controls	Proposal	Compliance
3.6	Signage		
	<p>i) The location, size and design of signage must integrate with the architectural detail of the building and act as a unifying element to the neighbourhood centre.</p> <p>ii) Signage must not:</p> <ul style="list-style-type: none"> • Obscure important architectural features; • Dominate the architecture of buildings; • Protrude from, or stand proud of, the awnings; • Project above any part of the building to which it is attached; • Cover a large portion of the building façade. <p>iii) Avoid fin signs, signage on canvas blinds, signage on roller shutters and projecting wall signs and large elevated solid panel business and building name signs including those fixed on parapets or roofs.</p> <p>iv) Ensure that signs provide clear identification of premises for residents, visitors and customers.</p> <p>v) All premises must display a street number. The height of these numbers should be legible but not a dominating feature, and no less than 300mm presented in a clear readable font.</p> <p>vi) Signage must relate to the business being carried out on the property.</p> <p>vii) Early building names (on parapets, pediments, etc) should be preserved wherever possible.</p> <p>viii) Any signage structure or sign must have regard to the impact on residential occupants in terms of illumination and visual impact.</p>	<p>Subject to conditions, the proposed signage is suitably integrated and consistent with the commercial character of the local centre.</p> <p>All proposed signage is related to the business premises.</p> <p>No architectural elements will be obscured by the proposed signage.</p>	<p>Conditioned to comply.</p>
5.2	Acoustic and Visual privacy		

D32/25

D32/25

DCP Clause	Controls	Proposal	Compliance
	v) Operating hours must be submitted with the DA. Should the development require deliveries and/or operation of machinery outside of standard hours (7.30am to 5pm, Monday to Friday), an acoustic report must accompany the DA. The acoustic report must be prepared by a suitably qualified acoustic consultant.	The proposed hours of operation are Monday to Sunday, from 5:00am to 8:00pm. Subject to compliance with relevant acoustic requirements and 1 year trial period for the early trading hours (between 5am-7am).	Refer to Discussion of key issues above.

F2 Outdoor Advertising and Signage

DCP Clause	Controls	Proposal	Compliance
2	General Design and Siting		
	<p>i) Signage should recognise the legitimate needs for directional advice, business identification and promotion.</p> <p>ii) Signage must complement and be compatible with the development on which it is situated and with adjoining development.</p> <p>iii) Signage should not obscure architecturally decorative details or features of buildings or dominate building facades. It should be placed on the undecorated wall surfaces or designed sign panels provided.</p> <p>iv) Entire building facades and /or walls must not be painted or covered with cladding or other material to act as a large billboard type.</p> <p>v) Where a building or site contains multiple tenancies or uses, a coordinated approach for all signs is required.</p> <p>vi) Signage shall be displayed in English but may include a translation in another language.</p> <p>vii) Signage erected or displayed on identified heritage buildings or within heritage conservation areas must not detract from the architectural character and heritage significance of such buildings or areas.</p>	<p>The proposed signage will assist in business identification.</p> <p>The signage is generally consistent with other signage in the area and does not obscure any significant architectural or features of the building.</p> <p>The proposed signage is consistent with the use of the business and does not occupy an unnecessary area of the building façade.</p> <p>The signage will be in English.</p> <p>No flashing or animated signage is proposed.</p>	Yes

DCP Clause	Controls	Proposal	Compliance
	<p>viii) Outdoor advertising attached to vehicles or trailers which are parked for advertising purposes will not be permitted.</p> <p>ix) Signage must not be flashing or animated. Note: Flashing or animated signs include mechanical moving signs, moving LED signs, video/television screens, projected laser advertising and other flashing, intermittently illuminated or sequenced lighting signs.</p>		
3.2	Business Zones		
	<p>i) The size and shape of any signage must relate to the size of the building or space to which it is to be attached to or placed on. Larger building facades are capable of accommodating larger signs without detracting from the appearance of the building.</p> <p>ii) Signage must not dominate or obscure a building or its architectural features. Advertising should highlight and reinforce architectural details.</p> <p>iii) Roof signs and advertising structures must not project above the parapet of the building or that part of the building to which they are attached (including signs and bunting mounted on plant rooms or other roof structures).</p> <p>iv) Avoid fin signs, projecting wall signs and above awning signs (sitting on the awning).</p> <p>v) The visual amenity and value of streetscapes should be protected through careful consideration of proposals for flush wall signage.</p> <p>vi) On any building listed as a Heritage Item or situated in a Heritage Conservation Area outdoor advertising (projecting and flush) must not be located</p>	<p>The proposed signage relates directly to the business.</p> <p>The application was referred to Council's Heritage Planner for specialist advice. The following comments were provided:</p> <ul style="list-style-type: none"> The subject site is a listed heritage item and forms part of a streetscape with established heritage significance. The proposed signage, subject to conditions, is generally acceptable and does not detract from the heritage significance of the building or the surrounding area. It is recommended that the total number of signs be limited to a maximum of two to avoid visual clutter and maintain the integrity of the heritage façade. Either the proposed awning signage or window signage should be removed to ensure the signage remains sympathetic to the architectural character of the building. A revised signage plan should be submitted to Council for review and approval, clearly identifying the final signage to be retained or proposed. The signage design should reflect the architectural detailing, materials, and finishes of the existing building 	<p>Subject to condition is considered to be acceptable.</p>

D32/25

D32/25

DCP Clause	Controls	Proposal	Compliance
	<p>above awning level.</p> <p>vii) Upper level signs are best located at major focal points of a building only, to advertise arcades, plazas, etc...and to provide as corporate identity for developments which contain a range of businesses.</p> <p>viii) Outdoor advertising on or attached to buildings must align and relate to the architectural design lines on a building façade or, in the absence of architectural detail or decoration, relate to the design lines of adjacent buildings.</p> <p>ix) Limit under awning to one per shop or for larger premises one per 6 metres of shop frontage.</p> <p>x) Under awning signs must be at least 2.6 metres above footpath level.</p> <p>xi) Pole or pylon signs must not exceed the height of adjoining or adjacent buildings, or 6 metres, whichever is the lower.</p>	<p>to ensure consistency with the heritage character.</p> <p>These recommendations have been incorporated into the conditions of consent to ensure the proposal remains compatible with the heritage values of the site and its context.</p>	

Responsible officer: Chahrazad Rahe, Senior Assessment Planner

File Reference: DA/336/2025

Draft Development Consent Conditions (Medium Density Residential)



Folder /DA No:	DA/336/2025
Property:	319 Clovelly Road, CLOVELLY NSW 2031
Proposal:	Use of the ground level tenancy as an indoor recreation facility (gym) with associated internal fit out works and signage
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>
A060	Interlock	20/03/2025	10 April 2025
A100	Interlock	20/03/2025	10 April 2025
A101	Interlock	20/03/2025	10 April 2025
A120	Interlock	20/03/2025	10 April 2025
A200	Interlock	20/03/2025	10 April 2025
A202	Interlock	20/03/2025	10 April 2025
A300	Interlock	20/03/2025	10 April 2025
A301	Interlock	20/03/2025	10 April 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 maximum of two (2) signs shall be installed on the site. One of the following signs must be deleted to comply with this requirement:
 - Under awning signage; or
 - Window signage.
- b) A revised signage plan must be submitted to Council's Heritage officer for approval prior to the installation of any signage. The revised plan shall demonstrate that the proposed signage:
 - Reflects the architectural detailing and materials of the existing building;
 - Is sympathetic to the heritage significance of the site; and
 - Is compatible with the broader historical and visual context of the surrounding area.

	Condition
	<p>The signage must be designed to ensure minimal visual impact and to preserve the integrity and character of the heritage item and its setting.</p> <p>Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development and to ensure the development remains sympathetic to the heritage value of the building, the site, and its surrounding context.</p>
3.	<p>Operating Hours</p> <p>The hours of operation of the business must be restricted to between:</p> <ul style="list-style-type: none"> Monday to Saturday: 7:00am to 8:00pm Sunday and Public Holidays: 8:00am to 8:00pm <p>Notwithstanding with the above, the use may operate between 5:00am to 8:00pm for a trial period of one (1) year from the date of issue of the Occupation Certificate.</p> <p>Council's Health, Building and Regulatory Services is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to Council@randwick.nsw.gov.au.</p> <p>Should the operator seek to continue the extended operating hours outlined in above, an application must be lodged with Council not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions and any substantiated complaints received.</p> <p>Condition Reason: To ensure acoustic amenity is maintained for neighbouring residential dwellings.</p>
4.	<p>Plan of Management</p> <p>An amended plan of management shall be submitted to and approved by Council prior to occupation or use of the development, which details the measures to be implemented to:</p> <ul style="list-style-type: none"> Ensure compliance with the relevant conditions of development consent and relevant approved acoustic reports/s, Ensure compliance with relevant noise criteria and minimise noise emissions and associated nuisances, Minimise the potential environmental and amenity impacts upon nearby residents, Effectively minimise and manage anti-social behaviour, Effectively manage and respond to resident complaints, Ensure responsible service of alcohol and harm minimisation, Provision of adequate security and surveillance, Ensure that the maximum number of patrons does not exceed the authorised capacity, in accordance with Council's consent. <p>Condition Reason: To address potential concerns related to amenity, safety, and operational impacts, and to demonstrate how the site will be managed in accordance with Council's expectations and relevant planning controls.</p>
5.	<p>Signage</p> <p>The signs (including their structure and advertising material) must be maintained in good condition at all times.</p> <p>Condition Reason: To ensure signage is maintained in good condition.</p>
6.	<p>Under-Awning Signage Requirements</p>

Condition
<p>The height to the underside of any under-awning sign must be consistent with the approved height of projecting wall signs and under-awning signs on adjoining properties. The minimum clearance from the ground level (existing footway) to the underside of the sign must be no less than 2.6 metres. Additionally:</p> <ul style="list-style-type: none"> The sign must not hang more than 1 metre below the underside of the awning. The maximum height of the sign itself must not exceed 400 millimetres. <p>Condition Reason: To ensure consistency with the established streetscape character, maintain pedestrian safety, and provide adequate clearance above the public footway in accordance with Council's signage guidelines and relevant planning controls.</p>

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition
<p>7. 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>
<p>8. Security Deposits</p> <p>The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none"> \$5000.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the 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>
<p>9. 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</p>

	Condition
	<p>wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
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> <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>Noise & Vibration</p> <p>Noise and vibration from the development must comply with the following requirements and a report prepared by a qualified Acoustic Consultant must be submitted to and approved by Council's Director City Planning, prior to the issue of a Construction Certificate:</p> <ol style="list-style-type: none"> Noise and vibration from the development shall be assessed in accordance with the NSW Environment Protection Authority (EPA) Noise Policy for Industry 2017, the DECC (EPA) Assessing Vibration – A Technical Guideline and relevant Australian Standards and conditions of this development consent. Noise from the development must not exceed the project amenity/intrusiveness noise level or the maximum noise level as detailed in the NSW Environment Protection Authority (EPA) Noise Policy for Industry 2017. Noise from any entertainment and patrons, when assessed as an LA₁₀ enters any residential use through and internal to internal transmission path is not to exceed the existing internal LA₉₀, 15 min level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) when assessed in a habitable room at any affected residential use within the mixed-use development between the hours of 7am and 12 midnight and is to be inaudible between 12 midnight and

Condition	
7am.	
d)	Noise and vibration from gymnasiums and other exercise facilities must satisfy the following additional requirements:
i)	Noise and vibration from the development shall be assessed in accordance with and satisfy the criteria contained in the Association of Australasian Acoustical Consultants Guideline for Acoustic Assessment of Gymnasiums and Exercise facilities.
ii)	Structure borne noise emanating from the use of the premises is not to exceed the following criterion (when doors and windows are closed): <ul style="list-style-type: none"> Commercial premises - LA1, Slow 15 minute \leq LA90, 15 minute +3 dB(A) Residential dwellings/premises - LA1, Slow 15 minute \leq LA90, 15 minute dB(A).
iii)	Between the hours of 10pm and 7am the following day, noise from the use of the premises must be inaudible and must not cause vibration in any residence (assessed when doors and windows are closed).
iv)	The $L_{A10(15min)}$ noise contribution from music, patrons and staff emitted from the gymnasium or exercise facility shall not exceed the background noise level in any octave band frequency (31.5 Hz to 8 kHz inclusive) by more than 5 dB at the boundary, or within at any affected residence between 7am* and 10pm (*8am on Sundays and public holidays).
v)	The $L_{A10(15min)}$ noise contribution from music, patrons and staff emitted from the gymnasium or exercise facility shall not exceed the background noise in any octave band centre frequency (31.5 Hz to 8 kHz inclusive) at the boundary, or within any affected residence between 10pm and 7am* (*8am on Sundays and public holidays).
vi)	Notwithstanding compliance of the above, noise from music, patrons and staff at the gymnasium or exercise facility shall not be audible in any habitable room in any residential premises between the hours of 10pm and 7am* (*8am on Sundays and public holidays)."
vii)	Where the $L_{A10(15min)}$ noise level is below the threshold of hearing, Tf at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226:2003 "Acoustics – Normal equal-loudness-level contours" then the value of Tf corresponding to that Octave Band Centre Frequency shall be used instead.
viii)	The following criteria applies to impulsive noise from weight-drops or other similar sources. Overall contributed L_{AFmax} within octave bands of interest (octave bands containing the impulse energy, generally 31.5 Hz to 250 Hz, as determined by the acoustic consultant) should not exceed the following levels: <ul style="list-style-type: none"> $L_{AFmax}(\Sigma Oct, 31.5-2500Hz) \leq 35$ dB for daytime1 $L_{AFmax}(\Sigma Oct, 31.5-250Hz) \leq 30$ dB for evening2 $L_{AFmax}(\Sigma Oct, 31.5-250Hz) \leq 25$ dB for night-time3
Notes:	
<ol style="list-style-type: none"> Daytime is 7am to 6pm Evening is 6pm to 10pm Night-time is 10pm to 7am* (*8am on Sundays and public holidays) Justification would be required of the acoustician to vary any of the above 	

Condition	
	Condition Reason: To ensure amenity is maintained for surrounding residential areas.
12.	<p>Noise Emissions</p> <p>Noise from the development must not cause an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997</i> and must satisfy the project amenity/intrusiveness noise level or the maximum noise level as detailed in the NSW EPA Noise Policy for Industry 2017 (NPfI) and conditions of this development consent.</p> <p>A report prepared by a qualified Acoustic Consultant, which provides details of compliance with the abovementioned criteria, must be provided to the Council and the Certifier for the development and any recommendations and requirements are to be included in the Construction Certificate accordingly.</p> <p>Condition Reason: To ensure amenity is maintained for surrounding residential areas.</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"> 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>
14.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.</p>

Condition

A *Construction Noise & Vibration Management Plan* must be developed and implemented throughout demolition and construction work.

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

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

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

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

15. **Construction Site Management Plan**

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

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

Condition	
	<ul style="list-style-type: none"> 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>
16.	<p>Public Liability</p> <p>The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p>
17.	<p>Hazardous Materials/Asbestos</p> <p>Hazardous materials arising from the demolition, excavation and remediation process being removed and disposed of in accordance with the requirements of SafeWork NSW and the Environment Protection Authority, and with the provisions of:</p> <ul style="list-style-type: none"> <i>Work Health and Safety Act 2011;</i> <i>Work Health and Safety Regulation 2017;</i> <i>Protection of the Environment Operations Act 1997;</i> <i>Protection of the Environment Operations (Waste) Regulation 2014;</i> <i>NSW EPA Waste Classification Guidelines (2014);</i> SafeWork NSW Code of Practice for the Safe Removal of Asbestos; Australian Standard 2601 (2001) – Demolition of Structures; Randwick City Council's Asbestos Policy. <p>Details of Compliance must be provided to the Principal Certifier for the development and Council, prior to commencement of site works.</p> <p>Condition Reason: To ensure that the handling and removal of hazardous material/asbestos from the site is appropriately managed.</p>

DURING BUILDING WORK

Condition	
18.	<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.

Condition

This section does not apply in relation to -

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

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

19. **Restriction on Working Hours**

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

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

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

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

20. **Noise & Vibration**

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the *Construction Noise & Vibration Management Plan*, prepared for the development and as specified in the conditions of consent.

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

21. **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

	Condition
	<p>control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.</p> <p>Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.</p> <p>All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.</p> <p><i>Notes:</i></p> <ul style="list-style-type: none"> • <i>Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.</i> • <i>A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.</i> <p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p>
22.	<p>Public Safety & Site Management</p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ol style="list-style-type: none"> a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. 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. <p>Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.</p> <p><i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local</i></p>

Condition
<i>Approval application must be submitted to and approved by Council beforehand.</i>
<p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>j) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.</p>

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

23. **Dust Control**

Dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.

Dust control measures and practices may include:

- *Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).*
- *Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.*
- *Installation of water sprinkling system or provision hoses or the like.*
- *Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.*
- *Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.*
- *Landscaping and revegetation of disturbed areas.*

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

24. **Site Accessway**

A temporary timber, concrete crossing or other approved stabilised access is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council throughout the works, unless access is via an existing suitable concrete crossover.

Any damage caused to the road, footpath, vehicular crossing or nature strip during construction work must be repaired or stabilised immediately to Council's satisfaction.

Condition reason: To minimise and prevent damage to public infrastructure.

25. **Complaints Register**

A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.

Details of the complaints management process including contact personnel details

Condition	
	shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigated, actioned and responded to and documented in a Complaints Register accordingly.
	Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.
	Condition reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.
26.	Building Encroachments There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place. Condition Reason: To ensure no encroachment onto public land and to protect Council land.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
27.	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.
28.	Fire Safety Certificate A single and complete <i>Fire Safety Certificate</i> , certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> . A copy of the <i>Fire Safety Certificate</i> must be displayed in the building entrance/foyer at all times and a copy of the <i>Fire Safety Certificate</i> and <i>Fire Safety Schedule</i> must also be forwarded to Fire and Rescue NSW. Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> , and that adequate provision is made for fire safety in the premises for building occupant safety.
29.	Structural Certification A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal Certifier</i> . A copy of which is to be provided to Council. Condition Reason: To ensure the structural adequacy of the building and works.
30.	Sydney Water Certification A <i>section 73 Compliance Certificate</i> , under the <i>Sydney Water Act 1994</i> must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site www.sydneywater.com.au >

Condition	
	<p><i>Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.</i></p> <p>Please make early contact with the Water Servicing Coordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.</p> <p>The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
31.	<p>Noise Control Requirements & Certification</p> <p>The operation of plant and equipment shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>.</p> <p>A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from any plant and equipment (e.g. mechanical ventilation systems and air-conditioners) satisfies the relevant provisions of the <i>Protection of the Environment Operations Act 1997</i>, NSW Environment Protection Authority (EPA) Noise Policy for Industry and Council's development consent.</p> <p>A copy of the report must be provided to the <i>Principal Certifier</i> and Council prior to an occupation certificate being issued.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>

OCCUPATION AND ONGOING USE

Condition	
32.	<p>Fire Safety Statement</p> <p>A single and complete <i>Fire Safety Statement</i> (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> at least on an annual basis each year following the issue of the <i>Fire Safety Certificate</i>, and in accordance with the <i>Fire Safety Schedule</i> for the building.</p> <p>The <i>Fire Safety Statement</i> is required to confirm that all the fire safety measures have been assessed by a registered fire safety practitioner and are operating in accordance with the standards of performance specified in the <i>Fire Safety Schedule</i>.</p> <p>A copy of the <i>Fire Safety Statement</i> must be displayed within the building entrance or foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, and that adequate provision is made for fire safety in the premises for building occupant safety.</p>
33.	<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>

Condition	
34.	<p>Maximum Client number A maximum of 12 clients is permitted on the premises at any one time during scheduled fitness classes.</p> <p>Condition Reason: To ensure the scale of the use remains appropriate to the site and to minimise potential acoustic and amenity impacts on neighbouring residential properties</p>
35.	<p>Acoustic report An acoustic report, prepared by a suitably qualified and experienced consultant in acoustics, must be provided to the Council within 1 month of the issuing of an occupation certificate, which demonstrates and confirms that the relevant provisions of the <i>Protection of the Environment Operations Act 1997</i> and the noise criteria and requirements contained in this consent has been satisfied (including any relevant adopted acoustic report and recommendations). The assessment and report must include all relevant fixed and operational noise sources.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
36.	<p>Complaints Register for Operation of Business The operator of the business must establish and maintain a formal and documented system for the recording and resolution of complaints made to the premises by residents.</p> <p>All complaints are to be attended to in a courteous and efficient manner and referred promptly to the manager (or other nominated position). The appropriate remedial action, where possible, is to be implemented immediately and the Manager (or nominated position) shall contact the complainant within 48 hours to confirm details of action taken. The Complaints register shall be made available to Council officers and Police upon request.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
37.	<p>Air-conditioning Plant & Equipment The air conditioning plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or as otherwise specified in relevant Noise Control Regulations:</p> <ul style="list-style-type: none"> • before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or • before 7.00am or after 10.00pm on any other day. <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
38.	<p>Signage The level of illumination shall be limited in accordance with AS/NZS 4282:2023 - control of Obtrusive Effects of Outdoor Lighting.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
39.	<p>Signage No flashing lights shall be used in and around the advertising signage.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents</p>
40.	<p>Signage The illuminated signage shall be internally illuminated only and must not have any flashing function.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents</p>

Condition	
41.	<p>Signage The signage shall convey messages relating to the place of business and/or merchandise or services associated with the premises.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents</p>
42.	<p>Signage The intensity of the light in the illuminated signs shall be designed so as not to cause a nuisance to nearby residents or motorists and to ensure that light overspill does not affect the amenity of the area.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents</p>
43.	<p>Signage Signage is only permitted to be illuminated while a premises is open and trading where the sign is on, or within 25m of and visible from, land zoned R1 General Residential or R2 Low Density Residential.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents</p>

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
44.	<p>Demolition Work A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <ol style="list-style-type: none"> a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy. b) The Demolition Work Plan must include the following details (as applicable): <ul style="list-style-type: none"> • The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor • Details of hazardous materials in the building (including materials containing asbestos) • Method/s of demolition (including removal of any hazardous materials including materials containing asbestos) • Measures and processes to be implemented to ensure the health & safety of workers and community • Measures to be implemented to minimise any airborne dust and asbestos • Methods and location of disposal of any hazardous materials (including asbestos) • Other measures to be implemented to ensure public health and safety • Date the demolition works will commence/finish. <p>The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.</p> <p>If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.</p> <p><i>Notes: it is the responsibility of the persons undertaking demolition work to</i></p>

Condition

obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.

A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.

Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.

DURING DEMOLITION WORK

Condition

45. **Demolition Work and Removal of Asbestos Materials**

Demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a *demolition work plan*, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.

Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:

- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro),
- Asbestos waste must be disposed of in accordance with the *Protection of the Environment Operations Act 1997* and relevant Regulations
- A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",
- Council is to be given at least two days written notice of demolition works involving materials containing asbestos,
- Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,
- A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works,
- Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.

A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.

Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.

Development Application Report No. D33/25

Subject: 238-246 Arden Street, Coogee (DA/356/2025)

Executive Summary

Proposal:	Installation of five (5) business identification signs and five (5) wayfinding signs to the existing building
Ward:	East Ward
Applicant:	Salter Brothers (Coogee Beach) Hotel Pty Ltd
Owner:	MAP Capital Pty Ltd
Cost of works:	\$123,475.00
Reason for referral:	The development contravenes the development standard for building height by more than 10%

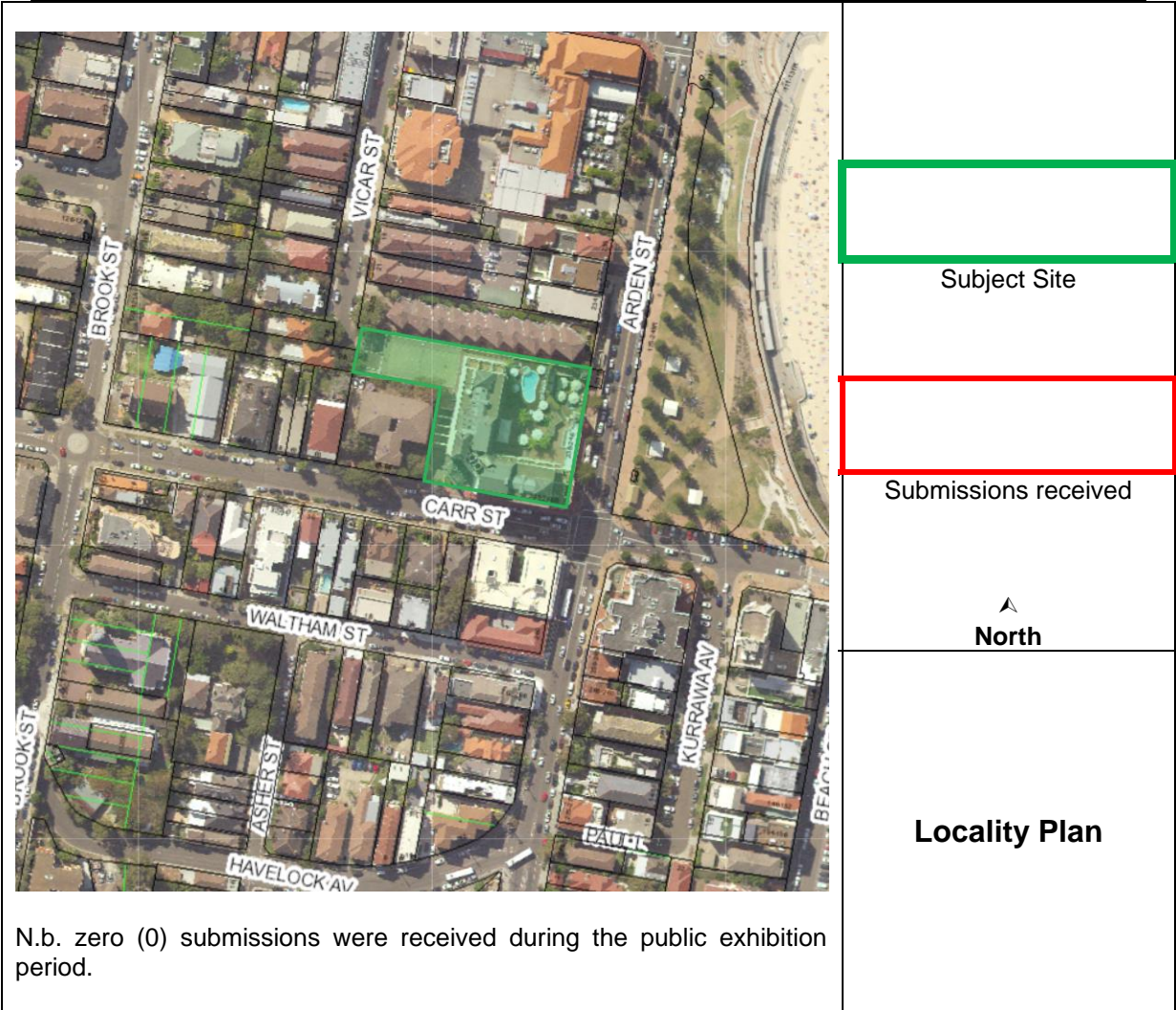
Recommendation

- A. That the RLPP is satisfied that the applicant's written requests to vary the development standard relating to building height in Clause 4.3 of Randwick Local Environmental Plan 2012 have demonstrated that;
- i. Compliance with the relevant development standard is unnecessary and unreasonable in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development standards.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/356/2025 for installation of five (5) business identification signs and five (5) wayfinding signs to the existing building, at No. 238-246 Arden Street, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  Draft Conditions of Consent

D33/25



1. **Executive summary**

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

The proposal seeks development consent for installation of five (5) business identification signs and five (5) wayfinding signs to the existing building. The proposal also involves the removal of existing signage.

The key issues associated with the proposal relate to non-compliance with the development standard for building height pursuant to Clause 4.3 of Randwick Local Environmental Plan (RLEP) 2012.

The proposed variations are supported as the proposal is consistent with the objectives of the height of buildings development standard, and the E1 zone. The applicant’s written requests have adequately addressed the matters for consideration pursuant to clause 4.6 of RLEP 2012.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is located at 238-246 Arden Street Coogee and is legally described as Lot 1 DP 772123. The site has an approximate area of 4,478.68m² and is irregular in shape. The site is located on the northeastern side of Carr Street and southwestern side of Arden Street, with a street frontage of 60.35m to Arden Street and a second street frontage of 62.485m to Carr Street.

The site is currently occupied by a nine (9) storey hotel Crowne Plaza, Coogee Beach, offering a mix of Hotel, Restaurant and Bar services, with 11 separate meeting and function rooms with a maximum capacity of up to 400 people. The ground floor facing Coogee Beach fronting Arden Street provides opportunities for indoor and alfresco dining within various existing eateries.

Vehicular access to the basement and pedestrian entry are both provided at the western end of Carr Street. The site experiences a gradual fall of approximately 3 metres from west to east. A row of mature pine trees is located along the Arden Street frontage.

Surrounding development comprises a mix of commercial, retail and residential buildings. Adjoining development includes residential flat buildings at 236 Arden Street and 65-69 Carr Street. Coogee Beach is located to the east of the subject site.

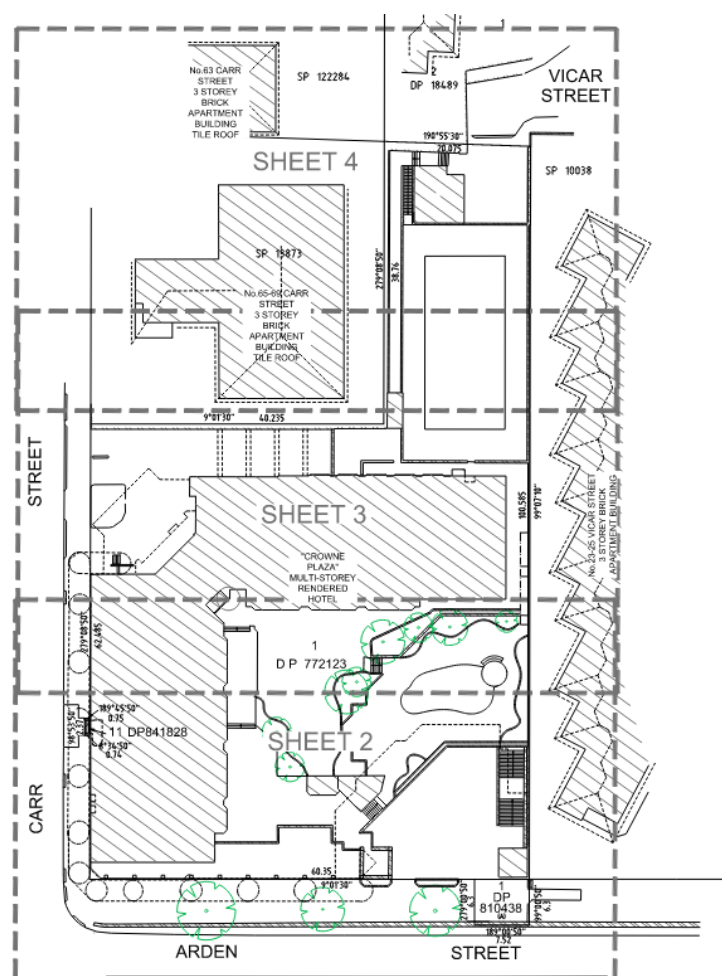


Figure 1. Site Survey Plan (Source: LTS Lockley)

D33/25



Figure 2. Existing Crowne Plaza Hotel building viewed from Carr Street (Source: Corlette)



Figure 3. Existing Crowne Plaza Hotel Sign on north elevation viewed from Coogee Beach (Source: Council Officer)



Figure 4. Existing wayfinding sign to the basement (Source: Council Officer)



Figure 5. Existing wayfinding sign at the eastern end of Carr Street (Source: Council Officer)

3. Relevant History

Previous Consent

DA/963/2018 was approved on 13 June 2019 for the refurbishment of internal and external areas at the lower ground, ground and first floor levels of the Crowne Plaza Hotel Coogee. The DA also approved three (3) signage zones with two zones located at the Porte-cochere and one zone located on the corner of Arden and Carr Street.

DA/47/2021 was approved on 12 October 2021 for 8 x external signs for the Crowne Plaza Coogee. The location of the signage aligned with the signage zones approved in DA/963/2018.

Subject Development Application


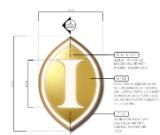

On 23 April 2025, the application was lodged with Council seeking consent for the installation of five (5) business identification signs and four (4) wayfinding signs associated with the rebranding of the existing Crowne Plaza to the Intercontinental, involving a variation to the building height standard.

On 29 May 2025, Council issued a request for information letter, noting inconsistencies between the architectural drawings, which depicted ten (10) signs, and the application documents which referenced nine (9) signs. The submitted Clause 4.6 variation request also contained an error in the extent of the variation sought.

On 10 June 2025, the applicant submitted a revised Clause 4.6 variation request, an updated Statement of Environmental Effects (SEE), and a new set of plans. The revised documentation rectified the numerical error in the Clause 4.6 variation and clarified that the proposal comprises five (5) business identification signs and five (5) wayfinding signs. The discrepancy arose from Sign 2.2(1), a lower-level wayfinding sign on the west elevation, which had not been previously accounted for in the SEE or the west elevation drawing, although it was shown on the signage location plan. This sign has now been correctly included in the revised west elevation and SEE. As the amendments were minor in nature and did not alter the overall scope of the proposal, re-notification of the application was not required.

4. Proposal

The proposal seeks consent for removal of the existing signage and installation of five (5) business identification signs and five (5) wayfinding signs in relation to the existing Crowne Plaza to the Intercontinental. These signs are identified within the table below:

Sign Type	Location	Plan Ref	Dimensions	Illumination & Materials	Design
Business Identification - Primary Identification	Sky Sign – North Elevation	1.1(1)	1.735m H x 11.225m W	Internally illuminated & Halo illumination Aluminium	
Business Identification - Primary Identification	Sky Sign – West Elevation	1.1(2)	2.055m H x 1.39m W	Internally illuminated & Halo illumination Aluminium	
Business Identification - Secondary Identification	Façade Sign – South Elevation	1.2	0.35m H x 0.8m W	Spot Lit Aluminium Panel	

Business Identification – Beach Side Entrance	Fascia / Porte Cochere Sign – South Elevation	1.3	0.95m H x 6.29m W	Internally illuminated & Halo illumination Brushed Brass	
Business Identification - Entrance	North Elevation	1.4	0.35m H x 0.8m W and 0.13m H x 0.8m W	Ambient Aluminium Panel	
Wayfinding - Vehicular Directional	Freestanding sign facing South to Carr Street	2.1	1.25m H x 0.415m W	Spot Lit (from landscaping) Aluminium Cladding	
Wayfinding - Pedestrian Directional	Wall Sign – West & South Elevations	2.2 (1 & 2)	0.5m H x 0.25m W	Spot Lit Aluminium Panel	
Wayfinding - Carpark entry / exit identification	Carpark	8.1	0.55m H x 6.17m W	Internally Illuminated Aluminium Cladding	
Wayfinding - Carpark height limit identification	Carpark	8.2	0.2m H x 4.065m W	Ambient Aluminium Bar	

D33/25

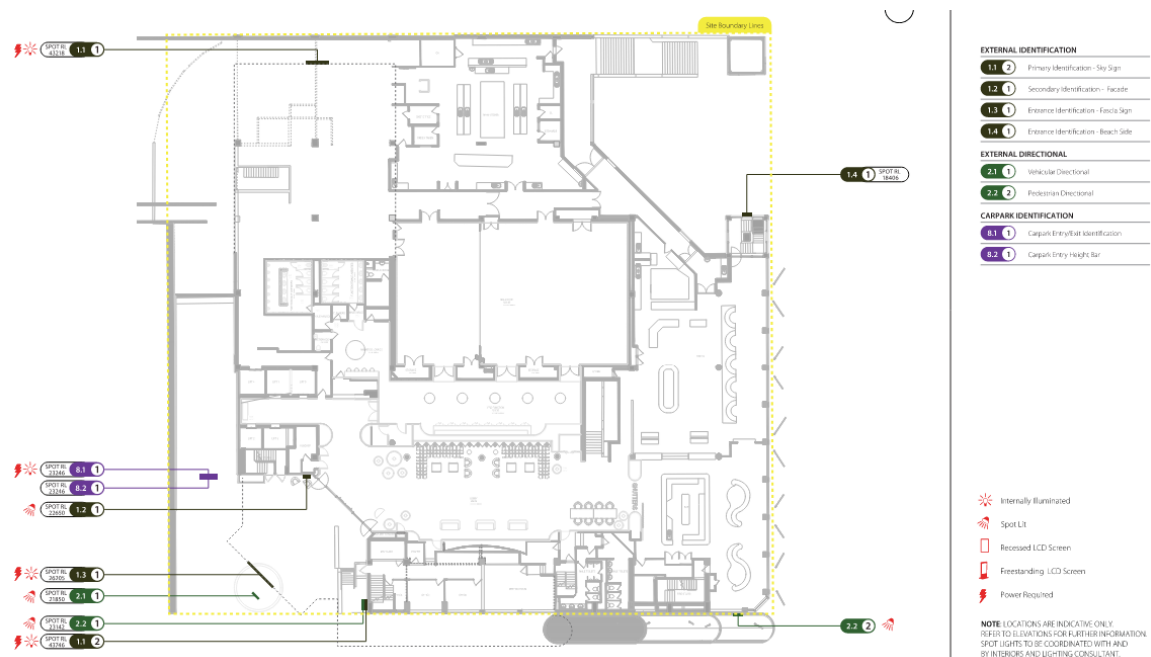


Figure 6. Proposed Signage Location Plan (Source: Corlette)

D33/25

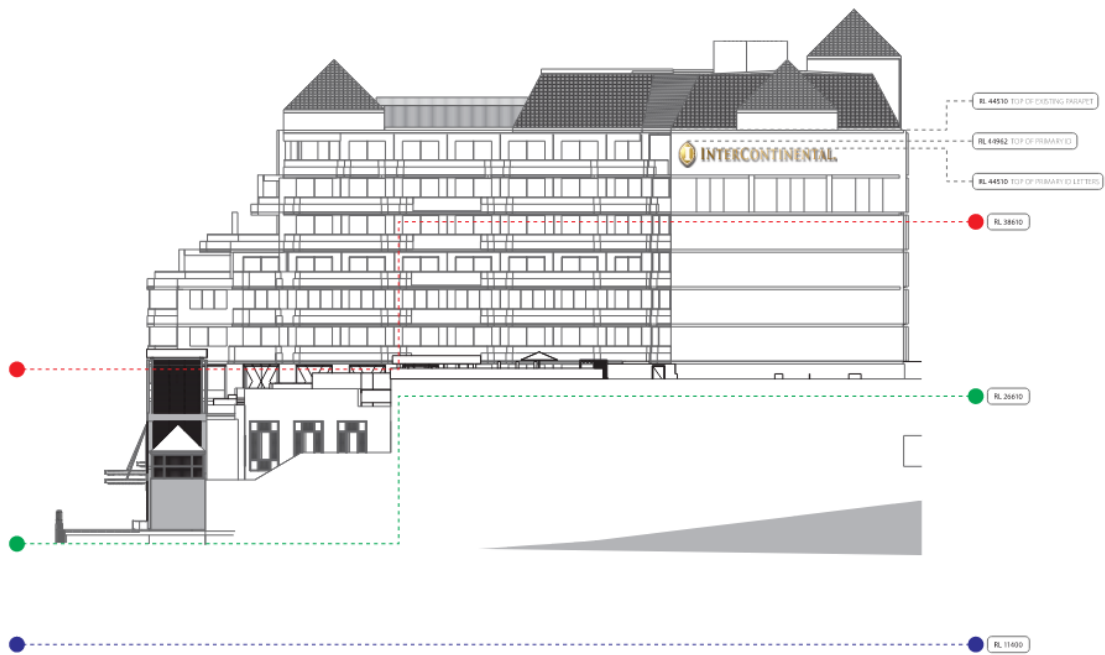


Figure 7. Proposed North Elevation (Source: Corlette)
The red dashed line indicates the maximum 12m height limit.



Figure 8. Proposed West Elevation (Source: Corlette)
The orange dashed line indicates the maximum 12m height limit.



Figure 9. Proposed South Elevation (Source: Corlette)

D33/25

D33/25

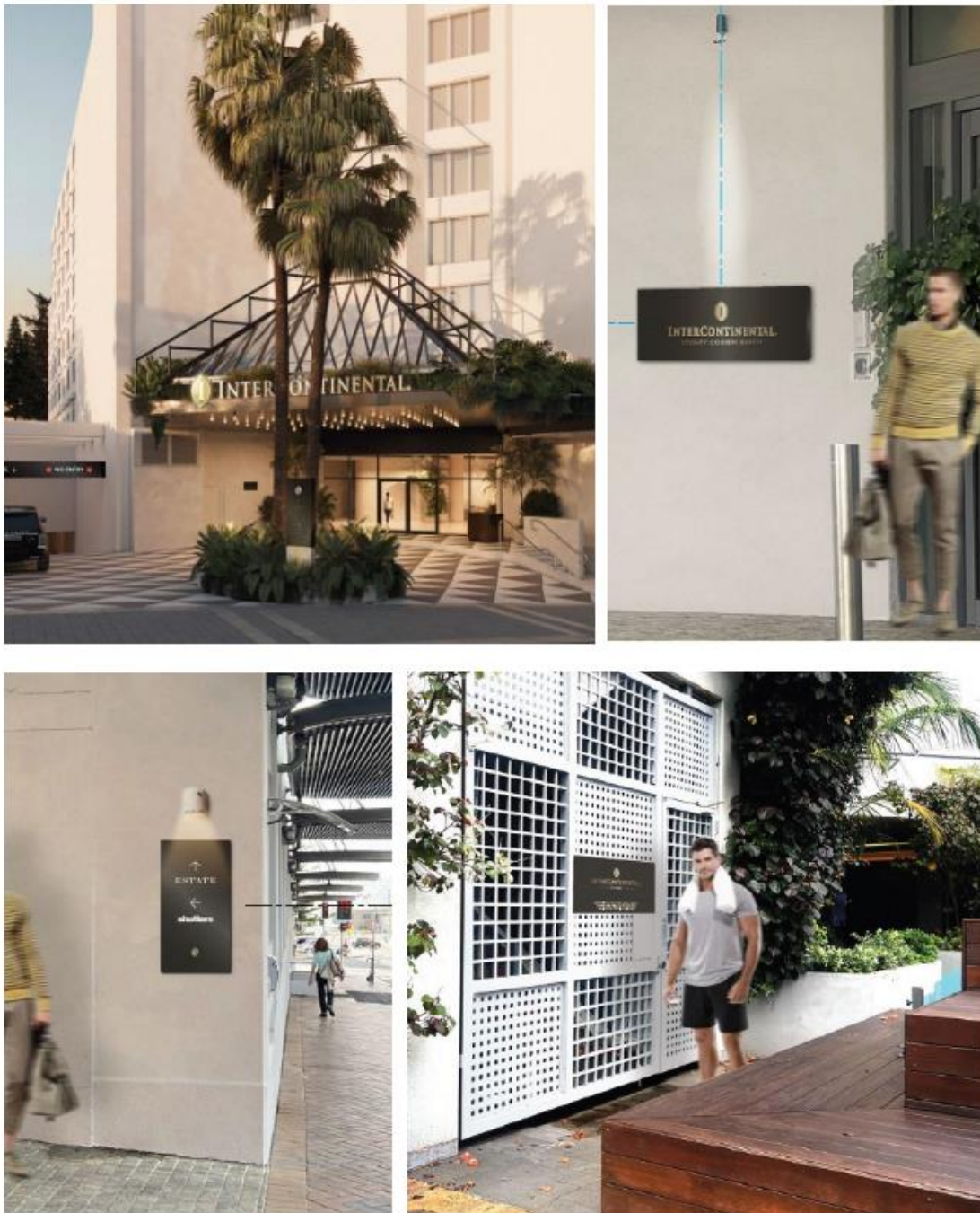


Figure 10. Proposed photomontages (Source: Corlette)

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

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

(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and

(b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

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

6.2. SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

The proposal relates to an existing hotel development and involves removal and installation of signage only. The proposal is unlikely to cause an adverse impact on access to and along the foreshore and is unlikely to result in an adverse impact to the visual amenity and scenic qualities of the coast.

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

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

Furthermore, pursuant to Clause 2.12, development consent must not be granted unless Council is satisfied that the proposed development is not likely to cause increased risk of coastal hazard on the subject site or other land. It is considered that the proposed development is not likely to cause increased risk of coastal hazards on the coastal land and therefore clause 2.12 is satisfied.

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 commercial purposes (i.e. hotel) and as such is unlikely to contain any contamination. The nature and location of the proposed development (involving removal and installation of signage only) are such that any applicable provisions and requirements of the SEPP have been satisfactorily addressed.

6.3. SEPP (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

Clause 2.119 of the Transport and Infrastructure SEPP states that the consent authority must not grant development consent on land that has a frontage to a classified road unless it is satisfied with the following matters:

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The subject site has a frontage to Arden Street, which is a classified road. The subject site is occupied by an existing hotel with vehicular access from Carr Street. The subject application relates to removal and installation of signage only and does not involve any other changes to the existing development or existing vehicular access arrangement. In this regard, Council is satisfied that the proposal achieves the relevant objectives and provisions under Chapter 2.

6.4. SEPP (Industry and Employment) 2021

Chapter 3 – Advertising and Signage

Chapter 3 of the Industry and Employment SEPP seeks to ensure that signage, including advertising, is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations, and is of high quality design and finish.

Pursuant to section 3.6, the consent authority must not grant consent to an application to display signage unless the signage is consistent with the objectives of Chapter 3 as set out in section 3.1(1)(a) and has been assessed as acceptable in relation to the assessment criteria in Schedule 5.

An assessment against the relevant objectives and criteria is provided in the tables below.

Industry & Employment SEPP – Chapter 3	Compliance
(a) to ensure that signage (including advertising)— (i) is compatible with the desired amenity and visual character of an area, and (ii) provides effective communication in suitable locations, and (iii) is of high-quality design and finish,	<p>The proposed signage relates to rebranding of the existing Crowne Plaza to the Intercontinental. The proposal is generally consistent with the previous signage approved under DA/47/2021.</p> <p>The proposal is compatible with the desired amenity and visual character of the locality.</p> <p>Suitable conditions are included to ensure that the structure will maintain reasonable levels of safety for pedestrians and traffic and to ensure the signage will comply with relevant Australian standards for illumination.</p>

Industry & Employment SEPP – Schedule 5	Comment
Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage relates to rebranding of the existing Crowne Plaza to the Intercontinental. The proposal is consistent with the hotel use of the subject site and would continue to provide clear business identification for a hotel use within the E1 Local Centre zoned land. The proposal is consistent with other signage associated with surrounding buildings and is compatible with the existing character of the area.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The locality does not have a particular theme for outdoor advertising; however, it is not considered the subject design

Industry & Employment SEPP – Schedule 5	Comment
	would be in contrast with the immediate locality.
Special areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The signage is generally consistent with the existing signage and therefore does not detract from the amenity or visual quality of the surrounding E1 Local Centre zoned land. The proposed design of the signage is simple, of high architectural quality and is compatible with the surrounding signage within the area, and in this regard, would not have any further adverse impacts on the nearby heritage items.
Views and vistas	
Does the proposal obscure or compromise important views?	All the proposed signage is either attached to the existing building façade or on the ground, which will not obscure or compromise important views.
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage does not dominate the skyline or reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	The proposal does not affect the viewing rights of other advertisers.
Streetscape, setting or landscape	
Are the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The signage is compatible with the scale and proportions of the signage within the area, and is considered appropriate for the surrounding streetscape, setting, and landscape.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage with aluminium and brass with refined detailing presents a contemporary design, which clearly identifies the hotel name and provides directional information for wayfinding purposes. The simple and high quality design of the proposed signage contributes to the visual interest of the streetscape and setting.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal does not create any undue clutter and is limited to a sole signage emplacement.
Does the proposal screen unsightliness?	The proposal does not create any undue unsightliness.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	All the proposed signage is either attached to the existing building façade or on the ground, which does not protrude above buildings.

Industry & Employment SEPP – Schedule 5		Comment
Does the proposal require ongoing vegetation management?		The proposal does not require ongoing vegetation management.
Site and building		
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?		The proposal is compatible with the scale, proportions and presentation of the existing hotel signage.
Does the proposal respect important features of the site or building, or both?		The content of the signage is consistent with the branding of the Intercontinental Hotel. The signage is integrated into the existing fabric of the building and is positioned in a similar location to the existing hotel signage, which respects the features of the site and its function being a hotel.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?		The proposal demonstrates innovation and imagination in its high-quality design of the hotel's branding and its integration with the existing building. The proposal contributes to the existing character of the area and is well integrated into the existing architectural features.
Associated devices and logos with advertisements and advertising structures		
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?		<p>The proposed signage incorporates illumination. The illumination will not adversely impact on the safety of pedestrians, vehicles or aircraft being of a low luminance level. The signage is proposed for business identification and wayfinding purposes.</p> <p>The proposed signage incorporates the brand and logo of The Intercontinental Hotel, directions to parking and pedestrian access.</p>
Illumination		
Would illumination result in unacceptable glare?		The proposed illumination will operate on a timed dimmer and operate in accordance with the relevant Australian Standards. The proposed signage is not expected to cause any glare that would be unacceptable in the context of the Coogee local centre. Conditions have been included to ensure that the illumination will comply with relevant Australian standards.
Would illumination affect safety for pedestrians, vehicles or aircraft?		The proposed signage that will be illuminated will not reduce pedestrian or cyclist safety and will not obscure sightlines from public areas, being fixed either to the façade of the building or on the ground.

Industry & Employment SEPP – Schedule 5		Comment
Would illumination detract from the amenity of any residence or other form of accommodation?		The proposed signage is appropriately located that is similar to the existing location and will not detract from the amenity of any sensitive receivers.
Can the intensity of the illumination be adjusted, if necessary?		The intensity of the illumination is adjustable when required.
Is the illumination subject to a curfew?		The illumination will operate on the basis of a timed dimmer, which will be illuminated between 5am and 12am daily.
Safety		
Would the proposal reduce the safety for any public road?		The proposal will not reduce safety for users of public roads given that the signage type and location are similar to that of the existing signage.
Would the proposal reduce the safety for pedestrians or bicyclists?		The proposal will not affect the safety of pedestrians or cyclists.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?		All the proposed signage is either attached to the existing building façade or on the ground, which will not obscure sightlines from public areas.

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned E1 Local Centre under Randwick Local Environmental Plan 2012. The proposal, being for the installation of five (5) business identification signs and five (5) wayfinding signs in relation to the existing Crowne Plaza to the Intercontinental, is permissible with Council's consent.

The proposal is consistent with the specific objectives of the zone in that the proposed signage supports the existing hotel use that generates employment opportunities and economic growth 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	Standard	Proposed	Compliance (Yes/No/NA)
Cl. 4.3 Height of Building (Maximum)	12m	33.56m (northern sign) 23.33m (western sign)	No

6.5.1. Clause 4.6 - Exceptions to development standards

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

6.5.2. Clause 5.10 - Heritage conservation

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

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

The site is not listed under Schedule 5 of RLEP 2012 as being a heritage item or being located within a heritage conservation area. However, the site is within close proximity to a few heritage items.

Council's Heritage Planner is satisfied that the proposed works comply with clause 5.10 of RLEP 2012. Refer to comments from Council's Heritage Planner at Referrals section of this report in Appendix 1.

6.5.3. *Clause 6.7 Foreshore scenic protection area*

The subject site is located in the Foreshore Scenic Protection Area. Clause 6.7 of RLEP 2012 requires Council to be satisfied that the development has minimal visual impact on the coastline and contributes to the scenic quality of the foreshore.

The proposed development relates to signage attached to the existing building façade only and does not exceed the existing building height. In this regard, the proposal will not compromise the scenic qualities of the foreshore location and has been designed to protect existing views from neighbouring properties. On this basis, the development is satisfactory with regard to clause 6.7 of RLEP 2012.

6.5.4. *Clause 6.22 Development in Local Centres*

Pursuant to clause 6.22 of RLEP 2012, consent must not be granted to development on land zoned E1 Local Centre unless the consent authority has considered:

- (a) *the impact of the development on—*
 - (i) *the amenity of surrounding residential areas, and*
 - (ii) *the desired future character of the local centre, and*
- (b) *whether the development is consistent with the hierarchy of centres.*

The proposed development will not detrimentally impact on the amenity of surrounding residential areas as the proposal relates to signage attached to the existing hotel building wall. The proposed signage will not exacerbate impacts relating to view loss, overshadowing, or visual privacy. The proposed illumination will operate on a timed dimmer and operate in accordance with the relevant Australian Standards, which is not expected to cause any glare that would be unacceptable in the surrounding residential areas.

The proposed development will not detrimentally impact on the desired future character of the local centre as the overall height, bulk and scale, and character of the proposed signage are compatible with existing signage on the site and within the surrounding development context.

Council is satisfied that the proposed development is consistent with the established hierarchy of centres as it supports the role and function of the Coogee Local Centre by contributing to its economic vitality and providing appropriately scaled signage that reinforces the Centre's identity.

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 (%)
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CI 4.3: Building height (max)	12m	33.56m (northern sign) 23.33m (western sign)	21.56m & 11.33m	180% & 94.4%
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It is noted that the variation to the building height standard relates solely to the two (2) proposed sky signs located on the northern and western elevations. All other proposed signage complies with the applicable building height limit.

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 (Cl 4.3)

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

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

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

The objectives of the Height of Buildings standard are set out in clause 4.3 of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

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

- The perceived size and scale of the building is unchanged relative to the surrounding public domain and surrounding commercial and residential development;
- The proposed signage does not exceed the height of the existing hotel building, which exceeds the maximum building height development standard;
- The proposed northern sky sign is a replacement of the existing signage on the building with similar size and scale;

- The proposed signage is considered to be consistent with the size and scale of the existing building and is not expected to result in any visual dominance. As such, it would not be incompatible 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,

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

- It is acknowledged that there are heritage items located close to the subject site including 212 Arden Street, Coogee Bay Hotel (local significance), 125 Brook Street, St Nicolas Anglican Church (local significance), 123-123A Brook Street St Nicolas Rectory (local significance) and 113 Brook Street, Federation house (local significance). However, none of them locate immediately adjoins the subject site and the site is not within a heritage conservation area.
- The west elevation of the site is marginally visible from both St. Nicolas Anglican Church and the St. Nicolas Rectory with vegetation, street trees and existing buildings obscure views of the subject hotel building. The proposed signage consists of a single 'I' representing the Intercontinental hotel will not detract from the local heritage values as the proposed design and dimensions are in keeping with the existing building on the site and development in the surrounding area.
- The proposed sky sign on the north elevation is visible from the upper levels of the Coogee Bay Hotel. However, the impact is negligible as it is replacing an existing sign with similar size and scale.
- The proposal is not visible from No.113 Brook Street.
- The proposed signage is consistent with the character of the existing signage on the hotel building and other signage within the local area.

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

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

- The proposed signage is on the existing hotel building and replaces the existing business identification signage of Crowne Plaza with Intercontinental.
- The visual bulk of the proposed signage is comparable to the existing signage on the site. The northern elevation sign replaces an existing sign and therefore will not have any additional visual bulk impacts. The addition of the sign on the western elevation will have minimal impacts as it is in keeping with the proposed signage on the site and is of a small scale in comparison to the size of the western elevation wall. The western elevation wall is largely blank and therefore the sign will add visual interest.
- There are no additional privacy or overshadowing impacts that will result from the proposed signage.
- The proposed signage is either attached to the existing building or on the ground, which does not exceed the existing building height and will not have any view impacts.

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

The proposed variation is resultant of the height of the existing hotel building, which does not comply with the 12m height limit (Refer to Figures 7 & 8). A strict compliance with the height limit is unreasonable as it would prevent the installation of any signage above 12 metres on the building façade, resulting in visually blank upper walls that detract from the vibrancy and commercial character of the Coogee Local Centre.

The proposed signage is compatible with the existing signage on the site and responds appropriately to the context of the site. The proposal is compatible with the character of the locality, which comprises signage of various style and scale for the existing commercial

properties. The proposal does not adversely impact on the amenity of adjoining properties in terms of visual bulk, loss of privacy, overshadowing and loss of views.

Additionally, the proposal does not have any adverse impact on nearby heritage items as discussed in this report.

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

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

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

- *Enables key public benefit*
- *Variation relates to an existing building that exceeds the mapped height limit*
- *Does not result in any additional adverse environmental impacts to what already exists on the site*
- *No benefit in requiring strict compliance*
- *Consistency with objects of the EP&A Act*

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

The proposal provides clear, legible, and high-quality business identification and wayfinding signage that supports the function of the existing hotel building within Coogee Local Centre. It clearly identifies the hotel use of the existing building and effectively provides guidance to the public and the hotel guests.

The non-compliance with the building height standard relates to the proposed signage on the existing hotel structure, which already exceeds the maximum height limit. The proposed signage is attached to the existing building wall and does not exceed the existing building height. In this regard, the proposal will not exacerbate impacts relating to view loss, overshadowing, or visual privacy.

The overall height, bulk and scale, and character of the proposed signage are compatible with the existing signage on the hotel building and other signage within Coogee Local Centre. The proposal is consistent with the desired character of Coogee Local Centre.

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received during the course of the assessment.
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

Visual Impact

Most of the proposed signs are located on the existing building façade where Crowne Plaza signage currently exists, ensuring minimal visual impact through seamless integration with the built form.

The ground-level signs will replace the existing Crowne Plaza identifiers, reflecting the rebranding to the Intercontinental.

One (1) new sky sign with a simple letter “I” is proposed on the West Elevation, representing the hotel branding the Intercontinental. One (1) new Fascia / Porte Cochere sign “Intercontinental” is proposed on the South Elevation, identifying the entrance of the hotel to Carr Street. Both new signs are appropriately scaled in accordance with the existing building and is consistent with the scale, form and proportion of the existing signage within Coogee Local Centre. In this regard, the proposed new signs add visual interest to the building and area.

The ground-level signage is clear, legible, and strategically positioned to support wayfinding throughout the site, allowing the public and hotel guests to easily identify the hotel and navigate the associated retail areas. The design avoids visual clutter and presents a cohesive appearance that is compatible with existing signage within the Coogee Local Centre. As such, the overall visual impact is negligible and will not result in any adverse impacts on the surrounding residences and locality.

Illumination

The proposed signage is not expected to result in any significant adverse amenity impacts associated with illumination. As noted above, the majority of the signs will replace existing illuminated signage and are located in positions where signage currently exists. As such, the proposal does not introduce new lighting elements in sensitive locations or intensify existing impacts.

The proposed sky sign “I” on the West Elevation is positioned at a height that exceeds the elevation of nearby residential properties to the west. This vertical separation ensures that light spill towards residential areas is negligible.

The proposed fascia / porte cochere sign “Intercontinental” is oriented towards Carr Street, where it will be visible to residential properties along Carr Street located opposite the site. However, the proposed lighting temperature of 3500K (neutral white) offers a soft and balanced illumination that avoids harsh glare. Additionally, the signs are fitted with a timed dimmer system and will only be illuminated between 5:00am and 12:00am, further minimising potential impacts during more sensitive nighttime hours. The proposal also confirms compliance with relevant Australian Standards relating to outdoor lighting.

In this regard, the proposed illumination is considered to have a minimal adverse impact on the surrounding street and residential amenity.

Notwithstanding, suitable conditions are included to minimise light nuisance impacts to nearby residential properties, as outlined below:

- The signage must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.
- The signage must not result in unacceptable glare or adversely impact the safety of pedestrians, residents or vehicular traffic.
- The signage must comply with the relevant provisions of *AS 4282 – 1997 Australian Standard – Control of the obtrusive effects of outdoor lighting*.
- The signage will be illuminated only between the hours of 5:00am and 12:00am.

10. Conclusion

That the application to installation of five (5) business identification signs and five (5) wayfinding signs in relation to the existing Crowne Plaza to the Intercontinental (Variation to Building Height) be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.

- The proposal is consistent with the specific objectives of the E1 Local Centre zone in that the proposed signage supports the existing hotel use that generates employment opportunities and economic growth 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 development enhances the visual quality of the public domain/streetscape.
- The proposed development will make a positive contribution to the commercial centre.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

The site:

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

- ‘Sandstone wall’ at 111–131R Beach Street, Coogee (Item no. 57)
- ‘Coogee Bay Hotel’ at 212 Arden Street, Coogee (Item no. 48)
- ‘James Robertson Fountain’ at 201M Arden Street (Item no. 47)
- ‘Ross Jones Memorial Pool’ at 133R Beach Street, Coogee (Item no. 58)
- ‘Grand Pacific Hotel’ at 64 Carr Street, Coogee (Item no. 76)
- ‘St Nicolas Anglican Church’ at 125 Brook Street, Coogee (Item no. 69)
- ‘St Nicolas Rectory’ at 123–123A Brook Street, Coogee (Item no. 68)

Proposal:

The proposal involves the installation of new signage to replace existing signage and branding on the building.

Internal heritage comments:

- Signs 8.1, 8.2, 1.2, 2.1, 2.2 (1 and 2) and will replace existing Crown Plaza signage in similar size and in the same location as the existing signs. Signs 1.2, 2.1, and 2.2 (1 and 2) will have a spotlight. The impact on these signs on the surrounding heritage items will be negligible.
- Sign 1.3 is a new fascia sign proposed above the entrance to the building fronting Carr Street, incorporating a simple logo and word ‘Intercontinental’ in aluminium letters. The fascia sign will be internally illuminated. The location of this sign will not result in an adverse impact on the surrounding heritage items.
- Sign 1.1 (1) is a new sky sign proposed to the north elevation, incorporating a logo and the word ‘Intercontinental’ in aluminium letters. The signage will be illuminated and dimmable. The sign will be readily visible from the north, in particular from the following streets/ locations:
 - along Arden Street between the intersection of Arden Street and Coogee Bay Road and the intersection of Alison Road and Arden Street;
 - from Bream, Brook and Hill streets; and
 - Coogee Beach.

The new sky sign will have a minor impact on the heritage items in the vicinity – Item nos. 48, 67, 85, 478 and 479. The illuminated signage is supported as the building is not a heritage item.

There are many heritage items located to the north that may have partial views of Sign 1.1 (1) from the streets/ locations listed above. These include:

- ‘Federation house’ at 113 Brook Street (Item no. 67)
- “‘Brook Court’, inter-war residential flat building’ at 122 Brook Street (Item no. 478)
- “‘Edwardton Flats’, inter-war residential flat building’ at 124 Brook Street (Item no. 479)
- ‘Art Deco residential flat buildings’ at 201–203 Coogee Bay Road (Item no. 85)
- “‘Douglass Buildings’, Federation free style shops’ at 218–222 Coogee Bay Road (Item no. 481)
- ‘Inter-war residential flat building’ at 230 Coogee Bay Road (Item no. 482)

- 'Federation arts and crafts shops' at 250–252 Coogee Bay Road (Item no. 483)
- 'Residential flat building' at 101 Brook Street (Item no. 64)
- "'Smithfield Grange', Victorian mansion' at 88 Brook Street (Item no. 62)
- "'Catley's Wall", sandstone retaining wall' at 108 Brook Street (Item no. 65)
- '2 storey semi-detached group' at 90–100 Brook Street (Item no. 63)
- 'Inter-war residential flat building' at 108 Brook Street (Item no. 66)
- "'Beach Court", Neo-classical residential flat building' at 184 Arden Street (Item no. 46)
- "'Juvina", Art Deco residential flat building' at 182 Arden Street (Item no. 45)
- 'Coogee Palace, replica of original building' at 169–181 Dolphin Street (Item no. 87)
- 'Arden Street sandstone retaining walls' at 158–176LH and 149–165LH Arden Street (Item no. L44)

Overall, the sky sign will have a minor impact on the heritage items to the north. Sign 1.1 (1) is located a considerable distance away from the heritage items listed above, which will reduce impacts to the items and their setting. This is an acceptable impact.

- Sign 1.1 (2) is a new sky sign proposed to south elevation facing west along Carr Street. The sign incorporates a simple logo and will be illuminated. The size and location of the signage is unlikely to impact the significance of the heritage items located to the west – Item nos. 69 and 68.
- Sign 1.4 is proposed to the north elevation along Arden Street. It will be a small entrance sign and not illuminated. This sign will not impact the surrounding heritage items.

Recommendations to be included in consent, if required:

The proposed signage will not have an adverse impact on the heritage items in the vicinity. The proposed signage scheme is acceptable from a heritage perspective.

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

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Clause 4.6 Variation Request

Signage DA

242 Arden Street, Coogee

Submitted to Randwick City Council
on behalf of Salter Brothers

D333/25



Prepared by Ethos Urban, a Colliers Company.
30 May 2025 | 2240286

**'Gura Bulga'**

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

**'Dagura Buumarri'**

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.

**'Gadalung Djarri'**

Liz Belanjee Cameron

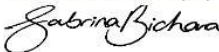



'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

In March 2025, Ethos Urban took a major step toward future growth by partnering with leading professional services firm, Colliers. While our name evolves, our commitment to delivering high-quality solutions remains unchanged—now strengthened by broader access to property and advisory services and expertise.

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1.0 Introduction

1.1 Overview

This Clause 4.6 Variation Request has been prepared by Ethos Urban on behalf of Salter Brothers. It is submitted to Randwick City Council (the Council) in support of a development application (DA) for signage at the existing Crowne Plaza Hotel at 242 Arden Street, Coogee. The proposed signage seeks to rebrand the hotel from Crowne Plaza to Intercontinental.

This Clause 4.6 Variation Request has been prepared on the basis that the legally correct height calculation is measured in accordance with the decision in NSW Land and Environment Court (LEC) for *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. The *Merman* method adopted an approach that determines the existing ground level should include any existing excavated basement levels. In this case, the bottom of the existing basement car park at the site. In accordance with the *Merman* method, the existing building on the site and proposed signage do not comply with the maximum building height development standard, and therefore a Clause 4.6 Variation Request is required.

Clause 4.6 of the *Randwick Local Environmental Plan 2012* (RLEP) enables Council to grant consent for development even though the development contravenes the development standard. This Clause 4.6 Variation Request relates to the development standard for the 12 metre Height of Buildings under Clause 4.3 of the RLEP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This Clause 4.6 Variation Request demonstrates that an exception to the height of buildings development standard is warranted, with sufficient environmental planning grounds to justify the contravention. Accordingly, the consent authority can be satisfied that there are adequate grounds to support the proposed variation in accordance with the flexibility permitted under Clause 4.6 of the RLEP.

1.2 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at Paragraph 89 in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 Variation Request:

- Identifies the site and proposed development (**Section 2.0**);
- Identifies the development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**).

2.0 Site and Proposed Development

2.1 Site Description

The site is an irregular shape and has an approximate area of 4,478.68 m². It currently comprises the Crowne Plaza, Coogee and is owned by Salter Brothers. The site is legally described as Lot 1 in Deposited Plan 772123. Vehicular access to the site's basement is provided at the western end of Carr Street, whilst pedestrian access is granted from the eastern frontage to Arden Street overlooking the beach, and the southern frontage to Carr Street. An aerial photo of the site is shown below.



Figure 1 Site Aerial

Source: Google Maps, Ethos Urban

3.0 Development Standard to be Varied

3.1 Clause 4.3 Height of Buildings

This Clause 4.6 seeks to support the signage DA submitted to Randwick City Council. The DA seeks to support the rebranding of the existing Crowne Plaza Hotel to the Intercontinental Hotel. The signage DA does not seek consent for any new building structures that would increase the building height further. It only relates to new hotel signage that will replace the existing hotel signage on the building. Architectural drawings prepared by Corlette detailing the extent of the proposed exterior signage are included at **Appendix A**.

The existing building on the site exceeds the mapped building height of 12 metres. The proposed new signage includes signs that are above the mapped building height limit of 12 metres. As such, two of the proposed sky signs technically exceed the building height control, given their location above the 12m maximum height. This non-compliance is purely technical, as there is no change to the actual height of any buildings on the site. Therefore, a Clause 4.6 Variation Request is required to seek consent for the proposed signage above the mapped building height.

In consideration that the proposed variation relates to the replacement of hotel signage on an existing approved building, the impacts are considered minimal.

A summary of the environmental planning instrument (EPI), development standard and proposed variation is summarised in **Table 1** below.

Table 1 Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument	Randwick Local Environmental Plan 2012 (2013 EPI 36)
Development standard sought to be varied	<p>Clause 4.3 – Height of Buildings</p> <p>(1) The objectives of this clause are as follows—</p> <p>(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,</p> <p>(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</p> <p>(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</p> <p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the <u>Height of Buildings Map</u>.</p> <p>(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</p> <p>This Clause 4.6 variation request seeks to justify contravention of the development standard set out in Clause 4.3 of the Randwick LEP. Clause 4.3 provides that the maximum height shown on the Randwick LEP Map (sheet 007) for the Site is 12 metres. Refer to Figure 2.</p>
Definition of building height	<p>Building height (or height of building) means—</p> <p>(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</p> <p>(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.</p>
Type of development standard	Numerical development standard
Numeric value of the development standard in the EPI	12 metres (refer to the extract provided in Figure 2).

Matter	Comment
Extent of variation to development standard	<p>Northern elevation sky sign:</p> <ul style="list-style-type: none">• 18.35 metres (53% variation) under Bettar interpretation (measured from the existing ground level at the base of northern elevation external wall RL26.61).• 33.56 metres (180% variation) under Merman interpretation (measured from the existing basement level RL11.40). <p>Western elevation sky sign:</p> <ul style="list-style-type: none">• 23.33 metres (94.4 % variation) (measured from the existing ground level RL22.00, noting there is no basement directly beneath this sign).
Visual representation of the proposed variation	Refer to Figure 3 and Figure 4 below.



Figure 2 **Randwick LEP Height of Buildings Map**
Source: Randwick LEP

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EXTERNAL IDENTIFICATION

1.1 2 Primary Identification - Sky Sign

LEGEND

- 12m height line from Existing Ground level below the new proposed sign
- Existing Ground level RL (per AHD) below new proposed sign
- Basement RL (per AHD)



Figure 3 Northern Elevation

Source: Corlette

EXTERNAL IDENTIFICATION

1.1 2 Primary Identification - Sky Sign

1.3 1 Entrance Identification - Porte Cochere

LEGEND

- Nature ground line
- 12m height line from ground line

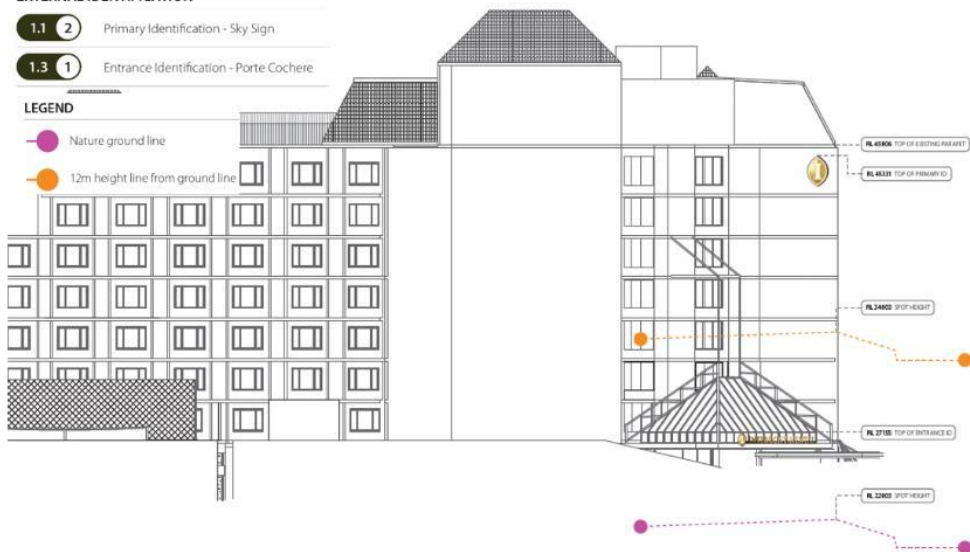


Figure 4 Western Elevation

Source: Corlette

4.0 Extent of the Variation Interpretation

This Clause 4.6 Variation Request has been prepared to consider both interpretations of ground level (existing) as taken from *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (*Merman*), and *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (*Bettar*). This applies to the sky sign at the northern elevation given the basement level directly below. There is no basement level underneath the sky sign at the western elevation.

The long-held approach to measuring building height under *Bettar* is to measure from the existing ground level and the natural fall of the site, as inferred from coordinates on the edge of the footprint of existing building(s) on the site. This has been demonstrated by RL26.61 at the base of the northern elevation wall as shown by the dashed green in **Figure 2**. When measured from this point, the proposed height is 18.35 metres, which represents a variation of 6.35 metres or 53%.

The *Merman* case establishes an alternative interpretation where the existing ground level is taken from the bottom of the existing basement. *Merman* is now the established methodology used by the Land and Environment Court to determine building height when there is an existing basement on the site.

At its lowest point, the basement sits at RL11.40 as shown dashed purple in **Figure 2**. When applied to the site, the *Merman* approach reflects a height plane that is significantly lower than the existing building on the site. As measured from the basement, the proposed height of the northern elevation sign is 33.56 metres (RL44.962). This equates to a variation of 21.56m or 180%.

In light of the above, the interpretation of ground level (existing) as taken from the *Merman* and *Bettar* methods results in a significant variation between the two measurements by 15.21 metres. For the avoidance of any possible doubt and to ensure all possible interpretations are considered in the assessment, this Clause 4.6 Variation Request acknowledges both interpretations of the building height control under both the *Bettar* and *Merman* decisions (which depending on the interpretation used would result in a different level of variation to the building height control).

However, the justification provided in **Sections 5.0** and **6.0** below applies irrespective of whether the *Bettar* or *Merman* interpretation is used. In either scenario, it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances, and there are sufficient environmental planning grounds to justify the contravention of the development standard.

5.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Randwick LEP provides that:

4.6 Exceptions to development standards

- (3) Development consent must not be granted for 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.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*);
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*);
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*)

The relevant matters contained in Clause 4.6 of the Randwick LEP, with respect to the height of buildings development standard, are each addressed below, including with regard to these decisions.

5.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were exhaustive.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under Clause 4.6 where subclause 4.6(3)(a) uses similar language to Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Randwick LEP is essentially the same as the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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 (**Fourth Method**).
- 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings development standard pursuant to the **First Method**.

5.2 Objectives of Clause 4.3 Height of Buildings

The proposal is assessed against the objectives of the Height of Buildings development standards in this section. The objectives of the development standard contained in Clause 4.3 of the Randwick LEP are:

- (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.

As discussed in the sections below, the proposed development will achieve these objectives of the development standard, notwithstanding the proposed numerical variation to the height of buildings development standard.

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

The proposed signage does not exceed the height of the existing building on the site, which surpasses the mapped building height limit for the site. On this basis, the proposed signage wouldn't be inconsistent with the size and scale of the existing building and therefore wouldn't be incompatible with desired future character of the locality. The height contravention is a technicality, and it is noted that northern sky sign is replacing existing signage on the building.

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

The site is located in close proximity to the following heritage items:

- 212 Arden Street, Coogee Bay Hotel (local significance)
- 125 Brook Street, St Nicolas Anglican Church (local significance)
- 123-123A Brook Street St Nicolas Rectory (local significance)
- 113 Brook Street, Federation house (local significance)

The proposed signage aligns with the character of the existing signage found in the local area and on the existing building. It is designed to ensure it does not detract from the heritage items in the vicinity.

The west elevation of the site is marginally visible from both St. Nicolas Anglican Church and the St. Nicolas Rectory. The proposed identification signage consists of a single 'I' representing the Intercontinental hotel. Its design and dimensions are in keeping with the existing building on the site and development in the surrounding area and will not detract from the local heritage values of the church. Vegetation and street trees obscure views of the existing building. As a result, the proposed business identification sign will not be easily visible. Consequently, its impact is negligible and unlikely to be discerned from the heritage item.

The proposed signage on the northern elevation for business identification is visible from the upper levels of the Coogee Bay Hotel. The impact of the signage is negligible as it is replacing an existing sign.

Additionally, the site is not visible from Item No. 113 Brook Street, which is a Federation-style house of local significance.

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

The proposed signage is for the purposes of rebranding the existing hotel. Given that the building is long-standing and already includes business identification signage, the proposed signage will not negatively impact the amenity of adjoining or neighbouring properties.

- **Visual bulk:** The visual bulk of the proposed signage is comparable to the existing signage on the site. The western elevation sign replaces an existing sign and therefore, it will not have any additional visual bulk impacts. The addition of the sign on the northern elevation will have minimal impacts as it is in keeping with the proposed signage on the site and is of a small scale in comparison to the size of the northern elevation wall. The northern elevation wall is largely blank and therefore the sign will add visual interest.
- **Loss of privacy:** This Clause 4.6 Variation Request relates to signage. Therefore, there are no additional privacy impacts that will result from the proposal.
- **Overshadowing:** There are no additional overshadowing impacts as a result of the proposed signage.

- **Views:** There are no views impacted as a result of the proposed signage.

5.2.1 Conclusion on Clause 4.6(3)(a)

- The proposed signage does not exceed the height of the existing hotel building on the site, which surpasses the mapped building height limit for the site.
- The proposed signage will have negligible impacts to the nearby heritage items.
- The proposed signage will not have any significant amenity impact the surrounding development.

It has been demonstrated above that compliance with the development standard is unreasonable or unnecessary in the circumstances with regard to the *First Method* provided for in *Wehbe*.

5.3 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Randwick LEP requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 Variation Request must be particular to the circumstances of the proposed development on that site at [60]. In this instance the relevant aspect of the development are the proposed signs that result in the exceedance of the development standard.

There are sufficient environmental planning grounds to justify contravention of the building height development standard in this specific instance, as described below.

5.4 Ground 1: Enables key public benefit

The purpose of this variation is to facilitate a key public benefit, namely, providing clear, high-quality business identification signage. Located at a prominent corner within the Coogee Town Centre, the site should effectively guide both the public and hotel guests to their intended destination.

The proposed signage is part of the rebranding of the hotel from the Crowne Plaza to the Intercontinental which is crucial for clearly communicating the new identity of the business.

The proposed signage does not result in any additional environmental impact; the non-compliance is purely technical, arising from the existing building's height exceeding the mapped limit.

5.5 Ground 2: Variation relates to an existing building that exceeds the mapped height limit

This Clause 4.6 has been prepared to address the technical non-compliance with the mapped 12 metre building height limit on the site. Strict compliance to the building height standard would be unreasonable as it would prevent any signage being installed above 12 meters on the building. Consequently, a fully compliant development would hinder any future signage changes or rebranding of the hotel. Therefore, the proposed technical exceedance is necessary to accommodate the installation of the proposed signage.

5.6 Ground 3: Does not result in any additional adverse environmental impacts to what already exists on the site

The two proposed signs that are above the 12 metre mapped height on the site do not result in any adverse environmental impacts beyond that associated with the existing site signage. The signs are in keeping with the existing architectural features of the building will not adversely impact any development in the surrounding area.

5.7 Ground 4: No benefit in requiring strict compliance

If the proposed signage were to comply with the mapped building height, it would be limited to a maximum height of 12 meters. This would result in an undesirable outcome for the site, as signage could not be installed above 12 meters on the existing building.

The absence of signage above 12 meters would create blank, unappealing walls, which is especially problematic given the site's prominent corner location within the Coogee Town Centre. Adequate signage is essential to reflect the building's use and align with its existing height. Large areas where signage currently exists would be blank, leading to unsightly aesthetic consequences and a lack of business identification signage.

Therefore, strict compliance with the development standard would result in an inflexible application of the control that would not deliver meaningful benefits to the occupants of the development, the general public or the properties surrounding the site. Avoiding a suboptimal planning outcome and achieving the proposed outcome constitutes sufficient environmental planning grounds to warrant the proposed variation to the current height control.

5.8 Ground 5: Consistency with Objects of the EP&A Act

In *Initial Action*, the Court stated that the phrase "environmental planning grounds" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 2** we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the height development standard.

Table 2 Assessment of consistency of the proposed development with the Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposed height variation will promote the social and economic welfare of the community by enabling the installation of business identification signage to the existing building where it exceeds the mapped height limit of 12 metres. This will enable customers and the general public to identify the building and its use.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The building height variation will have no negative impact on the environmental and social considerations and will support the economic health of the Coogee locality through the delivery of high-quality business identification signage.
(c) to promote the orderly and economic use and development of land	The proposal will promote the orderly and economic use of the land by allowing the installation of signage to reflect the height of the existing building on the site while remaining consistent with the desired character of Coogee.
(d) to promote the delivery and maintenance of affordable housing	Not applicable.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	Not relevant to the proposed height variation.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The site is located in close proximity to the following heritage items: <ul style="list-style-type: none"> • 212 Arden Street, Coogee Bay Hotel (local significance) • 125 Brook Street St Nicolas Anglican Church (local significance) • 123-123A Brook Street St Nicolas Rectory (local significance) • 113 Brook Street, Federation house (local significance)

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Object	Comment
	The proposed signage will not detract from the heritage items in proximity to the site as discussed in Section 5.2.
(g) to promote good design and amenity of the built environment	The proposed variation allows the existing building to be adequately signed. The proposed signage will generally replace existing signage on the building with the addition of a sign on the western elevation. Given that the building is long-standing and already includes business identification signage, the rebranding to the hotel will promote good design and amenity through facilitating business identification signage that is reflective of the existing building height and is reflective of the proposed use of the business occupying the site.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	Not applicable.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	Not applicable.
(j) to provide increased opportunity for community participation in environmental planning and assessment	Not applicable.

6.0 Conclusion

The assessment above demonstrates that compliance with the height development standard contained in Clause 4.3 of the Randwick LEP is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allowing for a better outcome in planning terms.

This Clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height development standard, the proposed development:

- Compliance with the development standard would be unreasonable and unnecessary, because:
 - The proposed signage does not exceed the height of the existing building on the site.
 - The proposed signage is for the purposes of rebranding the existing hotel. Given that the building is long-standing and already includes business identification signage, the proposed signage will not negatively impact the amenity of adjoining or neighbouring properties.
 - The proposed signage will have negligible impacts to the nearby heritage items.
 - The proposed signage will not have any significant amenity impact the surrounding development.
- There are sufficient environmental planning grounds to justify the contravention, including:
 - The purpose of this variation is to facilitate a key public benefit, namely, providing clear, high-quality business identification signage
 - A technically compliant development would hinder the successful rebranding of the hotel.
 - The signs are in keeping with the existing architectural features of the building will not adversely impact any development in the surrounding area
 - The absence of signage above 12 meters would create blank, unappealing walls, which is especially problematic given the site's prominent corner location within the Coogee Town Centre.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in Clause 4.6(3) of the Randwick LEP and may grant development consent notwithstanding the contravention of the height development standard.

Appendix 3: DCP Compliance Table**3.1 Section F2: Outdoor Advertising and Signage**

DCP Clause	Controls	Proposal	Compliance
2	General Design and Siting		
	<ul style="list-style-type: none"> i) Signage should recognise the legitimate needs for directional advice, business identification and promotion. ii) Signage must complement and be compatible with the development on which it is situated and with adjoining development. iii) Signage should not obscure architecturally decorative details or features of buildings or dominate building facades. It should be placed on the undecorated wall surfaces or designed sign panels provided. iv) Entire building facades and /or walls must not be painted or covered with cladding or other material to act as a large billboard type. v) Where a building or site contains multiple tenancies or uses, a coordinated approach for all signs is required. vi) Signage shall be displayed in English but may include a translation in another language vii) Signage erected or displayed on identified heritage buildings or within heritage conservation areas must not detract from the architectural character and heritage significance of such buildings or areas. viii) Outdoor advertising attached to vehicles or trailers which are parked for advertising purposes will not be permitted. ix) Signage must not be flashing or animated. Note: Flashing or animated signs include mechanical moving signs, moving LED signs, video/television screens, projected laser advertising and other flashing, intermittently illuminated or sequenced lighting signs 	<p>The proposed signage provides clear business identification without overwhelming the building façade or detracting from its architectural features.</p> <p>The simple but high-quality design of the proposed signage positively contributes to the visual interest and character of the Coogee Local Centre.</p> <p>The signage is appropriately scaled, non-animated, and positioned on existing hotel building facade, ensuring compatibility with the existing building and surrounding development. The signage does not dominate the building or the immediate locality.</p>	Yes
3	Signage based on land use zones		
3.2	Business zones		
	<ul style="list-style-type: none"> i) The size and shape of any signage must relate to the size of the building or space to which it is to be attached to or placed on. Larger building facades are capable of accommodating larger 	The size and placement of the signs are proportionate to the building façade, ensuring they do not dominate or obscure key architectural	Yes

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	<p>signs without detracting from the appearance of the building.</p> <p>ii) Signage must not dominate or obscure a building or its architectural features. Advertising should highlight and reinforce architectural details.</p> <p>iii) Roof signs and advertising structures must not project above the parapet of the building or that part of the building to which they are attached (including signs and bunting mounted on plant rooms or other roof structures).</p> <p>iv) Avoid fin signs, projecting wall signs and above awning signs (sitting on the awning).</p> <p>v) The visual amenity and value of streetscapes should be protected through careful consideration of proposals for flush wall signage.</p> <p>vi) On any building listed as a Heritage Item or situated in a Heritage Conservation Area outdoor advertising (projecting and flush) must not be located above awning level.</p> <p>vii) Upper level signs are best located at major focal points of a building only, to advertise arcades, plazas, etc...and to provide as corporate identity for developments which contain a range of businesses.</p> <p>viii) Outdoor advertising on or attached to buildings must align and relate to the architectural design lines on a building façade or, in the absence of architectural detail or decoration, relate to the design lines of adjacent buildings.</p> <p>ix) Limit under awning to one per shop or for larger premises one per 6 metres of shop frontage.</p> <p>x) Under awning signs must be at least 2.6 metres above footpath level.</p> <p>xi) Pole or pylon signs must not exceed the height of adjoining or adjacent buildings, or 6 metres, whichever is the lower.</p>	<p>features. The signage enhances the building's visual presentation by aligning with existing design elements and avoiding roof-mounted, projecting, or above-awning signs. The proposal also avoids visual clutter and respects the surrounding commercial and residential buildings. In conclusion, the signage represents a balanced and context-sensitive outcome that achieves high visual quality and effective business identification.</p>	
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D33/25

Responsible officer: Ivy Zhang, Senior Environmental Planning Officer

File Reference: DA/356/2025

D33/25

Draft Development Consent Conditions

Folder /DA No:	DA/356/2025
Property:	238-246 Arden Street, COOGEE NSW 2034
Proposal:	Installation of five (5) business identification signs and five (5) wayfinding signs to an existing building
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:

Plan	Drawn by	Dated	Received by Council
Location Plan ICCG_01, Rev B	Corlette	10 June 2025	11 June 2025
North Elevation ICCG_02, Rev B	Corlette	10 June 2025	11 June 2025
West Elevation ICCG_03, Rev B	Corlette	10 June 2025	11 June 2025
South Elevation ICCG_04, Rev B	Corlette	10 June 2025	11 June 2025
Material Schedule ICCG_09, Rev B	Corlette	10 June 2025	11 June 2025
Material Schedule ICCG_10, Rev B	Corlette	10 June 2025	11 June 2025
Material Schedule ICCG_11, Rev B	Corlette	10 June 2025	11 June 2025
Material Schedule ICCG_12, Rev B	Corlette	10 June 2025	11 June 2025
1.1 Primary Identification (Sky Sign) – North Elevation ICCG_T1.1_1, Rev B	Corlette	10 June 2025	11 June 2025
1.1 Primary Identification (Sky Sign) – North Elevation ICCG_T1.1_2, Rev B	Corlette	10 June 2025	11 June 2025
1.1 Primary Identification (Sky Sign) – West Elevation ICCG_T1.1_3, Rev B	Corlette	10 June 2025	11 June 2025
1.2 Secondary Identification (Façade) ICCG_T1.2, Rev B	Corlette	10 June 2025	11 June 2025

Condition				
1.3 Entrance Identification – Fascia Sign ICCG_T1.3_1, Rev B	Corlette	10 June 2025	11 June 2025	
1.3 Entrance Identification – Fascia Sign ICCG_T1.3_2, Rev B	Corlette	10 June 2025	11 June 2025	
1.3 Entrance Identification – Fascia Sign ICCG_T1.3_3, Rev B	Corlette	10 June 2025	11 June 2025	
1.4 Entrance Identification – Beach Side ICCG_T1.4, Rev B	Corlette	10 June 2025	11 June 2025	
2.1 Vehicular Directional ICCG_T2.1_1, Rev B	Corlette	10 June 2025	11 June 2025	
2.1 Vehicular Directional ICCG_T2.1_2, Rev B	Corlette	10 June 2025	11 June 2025	
2.2 Pedestrian Directional ICCG_T2.2, Rev B	Corlette	10 June 2025	11 June 2025	
8.1 Carpark Entry/Exit Identification ICCG_T8.1, Rev B	Corlette	10 June 2025	11 June 2025	
8.2 Carpark Entry Height Bar ICCG_T8.2, Rev B	Corlette	10 June 2025	11 June 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.

External Lighting

- a) The proposed luminance levels shall be in accordance with the Transport Corridor Outdoor Advertising and Signage Guidelines 2017 and relevant Australian Standards, including AS/NZS 4282:2023 - control of Obtrusive Effects of Outdoor Lighting.
- b) 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.
- c) The signage must not result in unacceptable glare or adversely impact the safety of pedestrians, residents or vehicular traffic.
- d) No animation or flashing lights shall be used in and around the signage.

Condition reason: To ensure luminance levels are within relevant guidelines and Australian Standards and protect the amenity of the surrounding area and residents.

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
3.	Consent Requirements

	Condition
	<p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
4.	<p>External Colours, Materials & Finishes</p> <p>The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
5.	<p>Section 7.12 Development Contributions</p> <p>In accordance with the applicable Randwick City Council S7.12 Development Contributions Plan, based on the development cost of \$123,475.00 the following applicable monetary levy must be paid to Council: \$617.35.</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>
6.	<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"> \$1000.00 - 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</p>

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

BEFORE BUILDING WORK COMMENCES

Condition	
8.	<p>Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):</p> <ol style="list-style-type: none"> a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ol style="list-style-type: none"> a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and 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 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 at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.

Condition	
	<p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
9.	<p>Construction Site Management Plan</p> <p>A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none"> • location and construction of protective site fencing and hoardings • location of site storage areas, sheds, plant & equipment • location of building materials and stock-piles • tree protective measures • dust control measures • details of sediment and erosion control measures • site access location and construction • methods of disposal of demolition materials • location and size of waste containers/bulk bins • provisions for temporary stormwater drainage • construction noise and vibration management • construction traffic management details • provisions for temporary sanitary facilities • measures to be implemented to ensure public health and safety. <p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
10.	<p>Construction Site Management Plan</p> <p>A <i>Sediment and Erosion Control Plan</i> must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.</p>
11.	<p>Public Liability</p> <p>The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p>

DURING BUILDING WORK

Condition	
12.	Site Signage

Condition

<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>
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- | |
|---|
| <ul style="list-style-type: none"> a) showing the name, address and telephone number of the principal certifier for the work, and b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and c) stating that unauthorised entry to the work site is prohibited. |
|---|

The sign must be—

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

This section does not apply in relation to—

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

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

13.

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.

14.

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

	Condition
	Environment Protection Authority guidelines for Construction Noise and Assessing Vibration.
	Condition Reason: To protect the amenity of the neighbourhood during construction.
15.	<p>Construction Site Management</p> <p>Temporary site safety fencing must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works.</p> <p>Temporary site fences must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.</p> <p>Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.</p> <p>All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.</p> <p><i>Notes:</i></p> <ul style="list-style-type: none"> • <i>Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.</i> • <i>A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.</i> <p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p>
16.	<p>Overhead Hoardings</p> <p>An overhead ('B' class) type hoarding is required is be provided to protect the public (unless otherwise approved by Council) if:</p> <ul style="list-style-type: none"> • goods or materials are to be hoisted (i.e. via a crane or hoist) over a pedestrian footway • building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment • it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or adjoining land • as may otherwise be required by SafeWork NSW, Council or the Principal Certifier. <p>Condition Reason: To ensure proper management of public land and ensure public safety during site works and construction.</p>
17.	<p>Public Safety & Site Management</p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <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.

	Condition
	<ul style="list-style-type: none"> 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.
	Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

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

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

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
19.	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

Condition	
	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.

OCCUPATION AND ONGOING USE

Condition	
20.	<p>Hours of Illumination</p> <p>The hours of illumination for the approved signs are restricted to 5.00am to 12.00am on Monday to Sunday (inclusive).</p> <p>Condition Reason: To ensure that the approved signage is illuminated within the approved hours of illumination, to protect the amenity of surrounding areas and residents.</p>

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
21.	<p>Demolition Work</p> <p>A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <ol style="list-style-type: none"> 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. The Demolition Work Plan must include the following details (as applicable): <ul style="list-style-type: none"> The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor Details of hazardous materials in the building (including materials containing asbestos) Method/s of demolition (including removal of any hazardous materials including materials containing asbestos) Measures and processes to be implemented to ensure the health & safety of workers and community Measures to be implemented to minimise any airborne dust and asbestos Methods and location of disposal of any hazardous materials (including asbestos) Other measures to be implemented to ensure public health and safety Date the demolition works will commence/finish. <p>The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.</p> <p>If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.</p>

Condition
<p><i>Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.</i></p> <p><i>A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.</p>

DURING DEMOLITION WORK

Condition
<p>22. 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. D34/25

Subject: 69A St Pauls Street, Randwick (DA/131/2025)

Executive Summary

Proposal:	Alterations and additions to an existing dwelling house including rear ground floor addition, construction of a detached single storey secondary dwelling and associated site and landscaping works (Variation to Minimum Lot Size for Secondary Dwellings).
Ward:	East Ward
Applicant:	Mr D Vasales
Owner:	Mr D Vasales
Cost of works:	\$190,000.00
Reason for referral:	Site area is less than the 450m ² Minimum Site Area for detached Secondary Dwelling as per Clause 53(2)(a) of the Housing SEPP 2021.

Recommendation

- A. That the RLPP is satisfied that the applicant's written requests to vary the non-discretionary development standard relating to minimum site area for a detached secondary dwelling in Clause 53(2)(a) of in Clause 4.3 of the State Environmental Planning Policy (Housing) 2021 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 non-discretionary development standard.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/665/2022/REV for alterations and additions to the existing dwelling house including rear ground floor addition and construction of a detached single storey secondary dwelling at the rear of the site with associated site and landscape works at No. 69A St Pauls Street, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.   RLPP Dev Consent Conditions - DA/131/2025 - 69A St Pauls Street, Randwick

D34/25



1. Executive Summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development for a secondary dwelling is on site with an area of 395.8m2 contravening by more than 10% (12%) the 450m2 minimum site area non-discretionary development standard applicable under clause 53(2)(a) of the Housing SEPP.

The key issues associated with the proposal relate to whether the applicant has provided a well-founded argument to satisfy the clause 4.6 matters required to be satisfied, and other relevant matters for consideration in the assessment of the application in relation to impact on neighbour’s amenity with regards to view loss, privacy impact and structural adequacy.

The applicant has submitted a clause 4.6 written request seeking a variation to the development standard. The main reasons provided by the applicant are:

- To maintain proportional site density, the proposed secondary dwelling has been reduced to 52.3sqm (a 12.8% reduction from the 60sqm GFA limit), aligning with the site shortfall.
- Although the site is zoned R3 Medium Density Residential, where secondary dwellings are only allowed via the Housing SEPP, under the LEP more intensive developments like residential flat buildings (RFBs) face no minimum site area.
- The proposal supports a more diverse housing typology and meets the intended planning objectives of the Housing SEPP.
- The proposed secondary dwelling is consistent with the Part C1 Low Density Residential of the Randwick Comprehensive DCP objectives for outbuildings noting that this was a matter required to be addressed in the RLPP refusal of a previous application for a secondary dwelling on the site (DA/665/2022).

The applicant's written request is considered to have provided well founded arguments for supporting the variation to the minimum site area non-discretionary development standard. An assessment against the relevant matters for consideration also shows that the proposed secondary dwelling is generally consistent with the outbuilding provisions under the DCP, namely it has a height that is below the maximum 3.6m height for outbuildings (noting it has a 10 degree roof pitch which is shallower than previously proposed), mostly compliant with the maximum 2.4m wall height (except for a part of the outbuilding located over the localised lower southern end which has a 2.46m wall height). The proposed development also complies with the site coverage, deep soil, privacy, excavation, and private open space controls.

As a result of the public exhibition of the development application for a period of 14 days to the surrounding area in accordance with Council's Community Engagement Strategy, a total of five (5) unique submissions were received. The matters raised in submissions relate to outdated nature of the Geotech report (dated 2023), excessive excavation compromising structural adequacy of adjoining land including buildings and established landscaping, view loss, visual bulk, adverse noise and visual privacy impacts, use of the secondary dwelling for short term rentals, and increased parking demand. Each of these matters are identified in the submissions section of this report and commented on in relevant sections of the report including discussion of key issues section. In brief, it is considered that the proposed development will not result in any adverse impacts on the amenity of neighbouring properties with regard to excavation, privacy, noise or views.

The proposal is recommended for approval subject to conditions that require specific attention to ensuring structural support of adjoining land, and dilapidation reporting prior to and post works.

2. Site Description and Locality

The subject property is legally described as Lot A within DP 337572 and is located on the northern side of St Pauls Street, and opposite the intersection with Lee Street which runs perpendicular to the south.

The site itself is near rectangular in shape with a south to north orientation, having a frontage width to St Pauls Street of 9.18m, an eastern (side) boundary length of 42.730m, a western (side) boundary length of 43.67m and northern (rear) boundary width of 9.165m, resulting in a total site area of 395.8m².

The site topography is sloped with a level difference of approximately 7.76m from the rear of the property to the street level.

The site is presently occupied by a three-storey brick dwelling with tiled roof plus basement garage level (Figure 1). Vehicle access is provided via a driveway of St Pauls Street leading to the existing single basement garage. Pedestrian access to the site is via a stair within the site frontage and front setback leading to the front terrace and main dwelling entry. The remainder of the property to the rear contains vegetation.

The subject site is not identified as a Heritage Item, nor within the vicinity of a Heritage item however is directly opposite Heritage Conservation Area known as "The Spot" on the south side of St Pauls Street.

The following figures show the subject site and relevant surrounding area which is zoned R3 medium density residential permitting a 12m maximum height (that is part-3 part-4 storey built form) and a 0.9:1 maximum density.



Figure 1: Subject site viewed from the intersection of St Pauls and Lee Streets, April 2023
(Source: Google Maps)



Figure 2: Subject site rear yard, July 2023

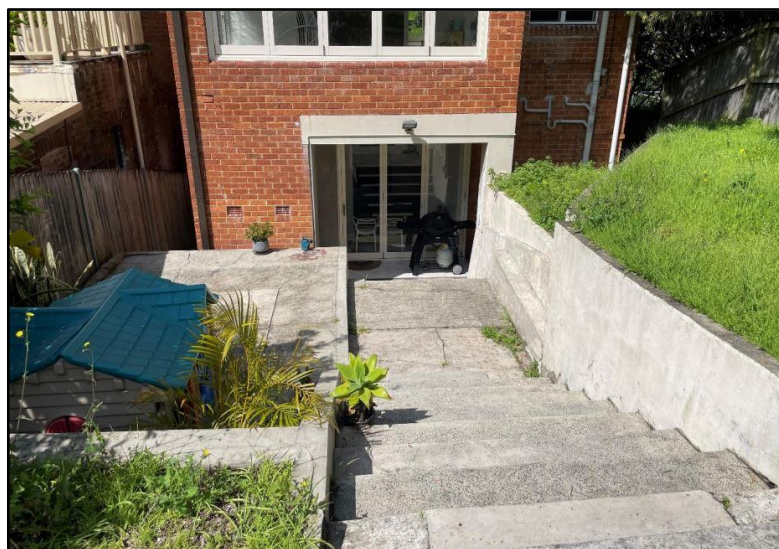


Figure 3: Existing rear of the dwelling (Source: Planning Ingenuity)



Figure 4: Existing rear of the site looking towards the rear fence and RFB at 11 Daintrey Crescent beyond
(Source: *Planning Ingenuity*)



Figure 5: View west toward rear of RFB at 67-69 St Pauls Street, seen from the rear of the subject site.



Figure 6: Subject site and the middle level unit 16/67-69 St Pauls Street. (Source: Google Earth)

3. Relevant history

DA/665/2022

Development Application No. DA/665/2022 was refused by the Randwick Local Planning Panel for alterations and additions to the existing dwelling house including rear ground floor addition and construction of a detached single storey secondary dwelling at the rear of the site with associated site and landscape works on 11/04/2024.

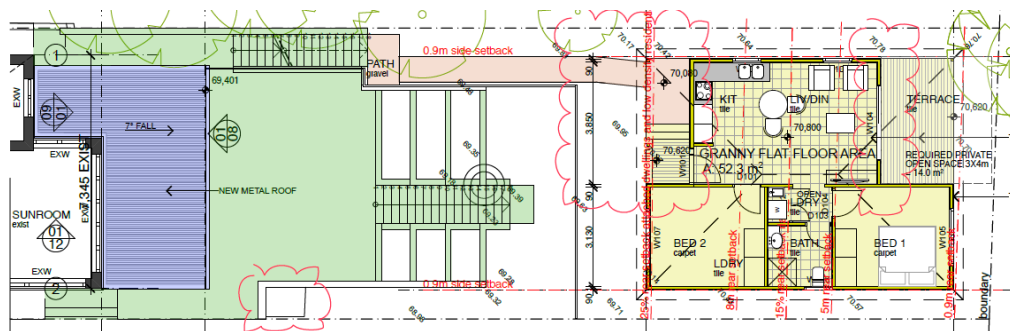


Figure 7: Refused secondary dwelling ground floor plan under DA/665/2022 (Source: Fortly & Grant Architecture Pty Ltd)

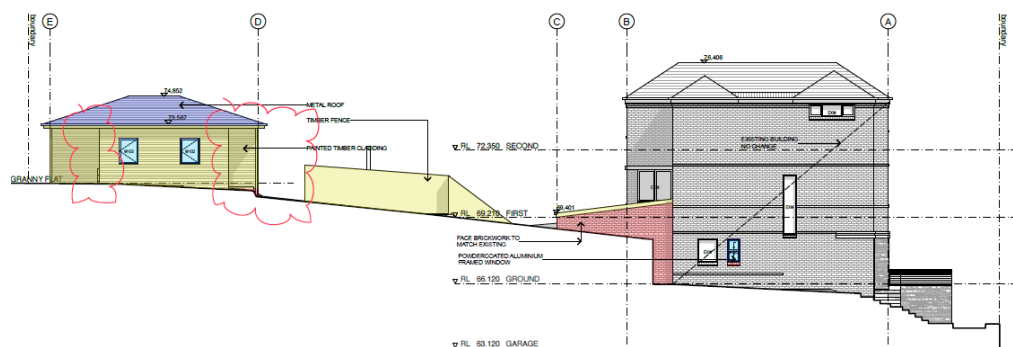


Figure 8: Refused western elevation under DA/665/2022 (Source: Fortly & Grant Architecture Pty Ltd)

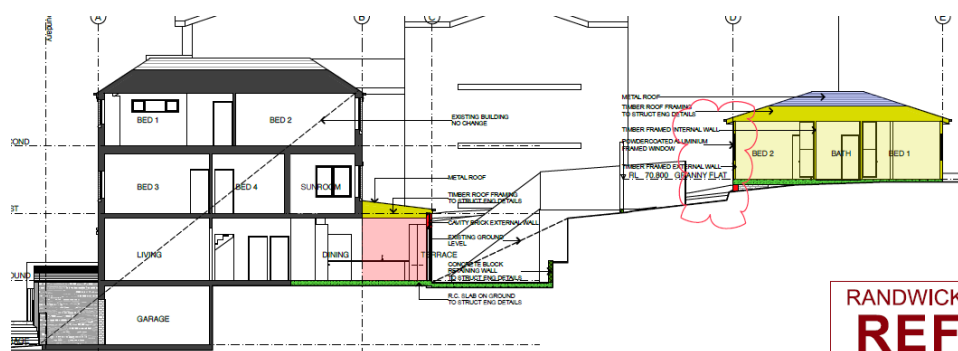


Figure 9: Refused long section under DA/665/2022 (Source: Fortly & Grant Architecture Pty Ltd)

The comprehensive set of reasons for refusal are contained in Document number D05283101 or on the subject Notice of Determination for the application: <https://edrmsview.randwick.nsw.gov.au/edrmsview/default.aspx?s=PlanningAdvertising&container=DA%2f665%2f2022&ga=download&gdu=6619666>.

In general, the reasons for refusal are summarized as follows:

- The submitted Clause 4.6 is unsatisfactory as it does not demonstrate that compliance with the non-discretionary development standard under clause 53(2)(a) of the Housing SEPP 2021 in relation to the minimum site area is unreasonable or unnecessary in the circumstances, there are insufficient environmental planting ground to justify a convention and it is not in the public interest.
- The proposal does not satisfy the aims and objectives of the RLEP.
- The proposal does not satisfy the objectives of the R3 Medium Density Residential Zone.
- The proposal does not satisfy the following sections of Part C1 of the RDCP:
 - Earthworks.
 - Visual and acoustic privacy.
 - Outbuildings.

Panel Advice and recommendation:

In its determination, the RLPP advised that a new development application should be submitted with the following key changes:

- The secondary dwelling should be set back 3m from the rear boundary.
- The fencing between the primary and secondary dwellings should be removed.
- Side-facing windows on the secondary dwelling should be removed.
- The Clause 4.6 written request should be updated to directly address the objectives for outbuildings under the RDCP.

Assessment comments:

The current DA, which is the subject of this assessment, largely complies with the RLPP's reasoning for DA/665/2022 except that it does not provide for a 3m rear setback. This is further addressed below with regard to the S8.2 application which was the subject of preliminary assessment.

DA/665/2022/REV

Division 8.2 Review of a Determination No. DA/665/2022/REV was lodged with Randwick City Council as a review of the determination for DA/665/2022. The determination of the review extended beyond six months from the original determination. As such, the review could not be completed and has lapsed. 665

- Preliminary assessment observations:

During preliminary assessment of the review application, it was noted that the increased rear setback sought by the Panel may not result in a desirable planning outcome for the subject site. Specifically:

- The setback would be inconsistent with the established pattern of outbuildings and secondary dwellings in the locality.
- The increased setback was likely to exacerbate view loss impacts to adjoining properties, particularly Unit 16/67–69 St Pauls Street.
- Privacy and amenity impacts could be appropriately mitigated by:
 - Reducing the roof pitch to a shallower angle (e.g. approximately 10 degrees), and
 - Installing a privacy screen to the western side of the secondary dwelling's entry landing.

As such, Council is of the opinion that the requirement to setback the building 3m from the rear boundary is not required in this instance.

4. Proposal

The proposal seeks development consent for alterations and additions to an existing dwelling house including rear ground floor addition, construction of a detached single storey secondary dwelling and associated site and landscaping works (Variation to Minimum Lot Size for Secondary Dwellings).

Specifically, the proposal includes:

Demolition

- Demolition of some internal and external walls of the dwelling house at the ground floor level.
- Demolition of existing landscaped and hard surface areas to the north of the existing dwelling.

Garage Floor

- New paved area for bin storage; and
- New stair along the eastern boundary.

Ground Floor

- Demolition of the existing kitchen, WC and laundry and internal and external walls as shown;
- Construction of a northern rear addition to provide an open plan kitchen and dining area with new laundry and WC;
- New roof to the proposed additions;
- Demolition of the existing stair and alfresco and provision of new paved outdoor space with tiered planters;
- New path along the eastern side boundary from the garage stairs;
- Extended path and stair along the western side boundary leading to the secondary dwelling.

Secondary Dwelling

- A new secondary dwelling proposed to the rear of the site. Including the following:
 - Main pedestrian entry;
 - Open plan kitchen, living and dining area;
 - Northern terrace;
 - Bedroom 1 and 2 with built in robe;
 - Bathroom; and
 - Laundry.

Landscaping

- Additional landscaping to the rear yard around the periphery of the site to provide a landscaped buffer and to ensure the long term retention of the species. Specifically, the

proposed development will provide for 2x Coastal Banksia and 1x Cheese tree in the rear yard which grow to a height of 9m or more and will be supplemented by a number of hedge or smaller species to enhance the landscaped character.

N.b. no works are proposed to the first and second floors of the primary dwelling.

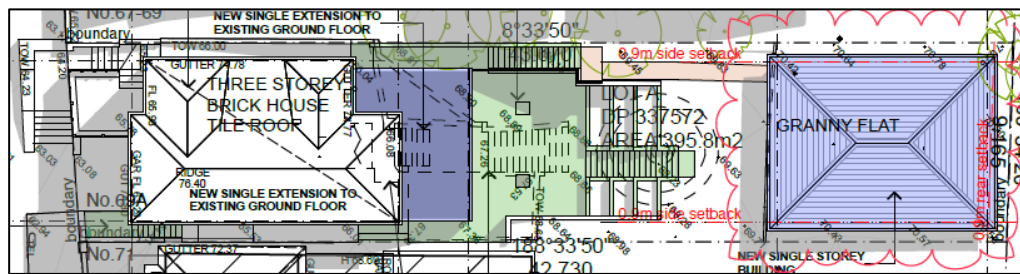


Figure 10: Proposed site plan (Source: Fortly & Grant Architecture Pty Ltd)

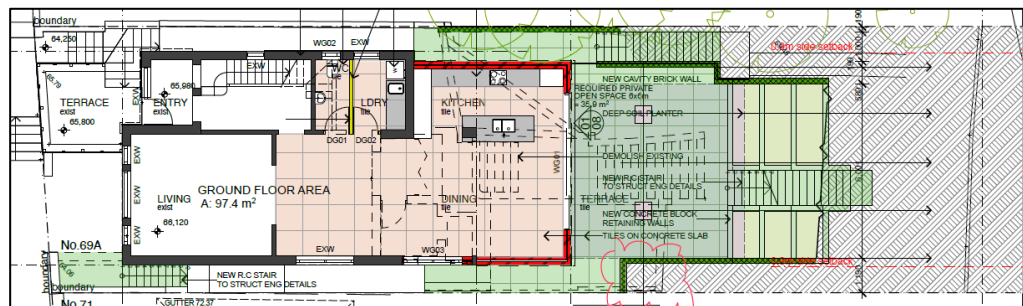


Figure 11: Proposed primary dwelling ground floor plan (Source: Fortly & Grant Architecture Pty Ltd)

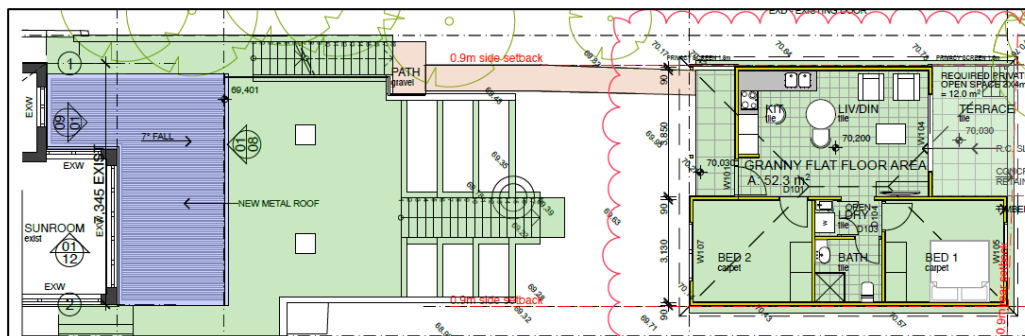


Figure 12: Proposed secondary dwelling ground floor plan (Source: Fortly & Grant Architecture Pty Ltd)

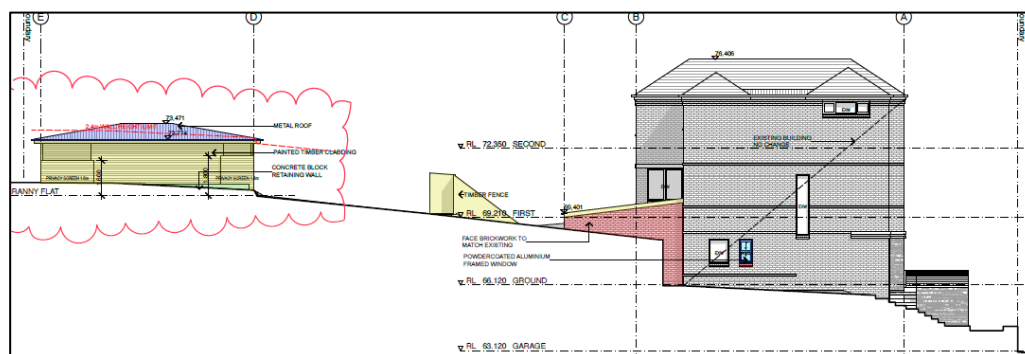


Figure 13: Proposed western elevation (Source: Fortly & Grant Architecture Pty Ltd)

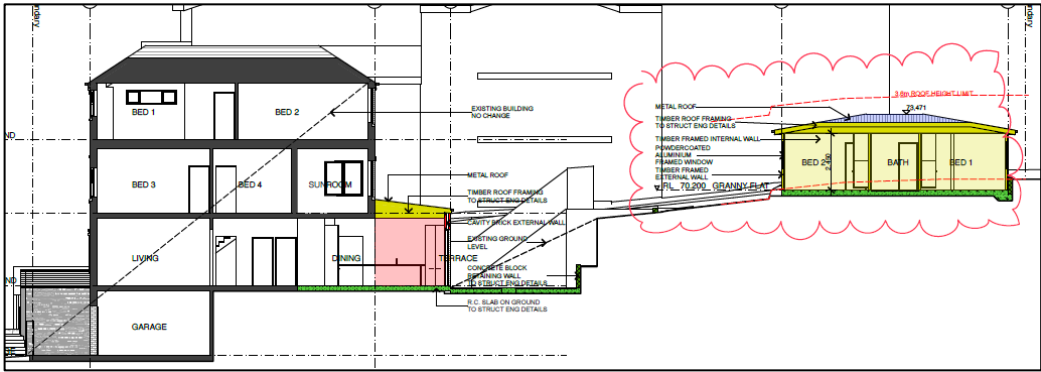


Figure 14: Proposed long section (Source: Fortly & Grant Architecture Pty Ltd)

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:

- 15/67-69 St Pauls Street
- 16/67-69 St Pauls Street
- 28/67-69 St Pauls Street
- 28/67-69 St Pauls Street (also Secretary of Owners Committee)
- Strata Manager of owners corporation of 67-69 St Pauls Street

Each individual submission has been addressed, as below:



- Unit 15, 67-69 St Pauls St, Randwick (repeat of original submission)

Issue	Comment
Doesn't address previously raised concerns pertaining to DA/665/2022 and DA/665/2022/REV therefore we object to proposal as previously advised for same reasons restating our concerns.	The concerns raised in previous objections have been considered as indicated in rows below and in the assessment of the current application.
Visual privacy Proximity of the secondary dwelling and privacy concerns.	The outbuildings' location meets the relevant controls in the DCP. It is also noted that the current DA no longer has any side facing windows that were sought in the previously refused DA.
Fencing Proposed development has been indicated as requiring removal of existing fencing	The proposed development has been identified as necessitating the removal of existing fencing. Due to the depth and proximity of the required excavation works, it may be necessary to remove and subsequently replace sections of fencing. Accordingly, a condition shall be imposed requiring that any fencing removed be temporarily replaced with a suitable barrier to maintain site security and safety. This temporary barrier must remain in place until a permanent replacement fence is installed. The condition shall further stipulate that the property owner is responsible for the full cost of both the temporary and permanent fencing.

Issue	Comment
<p>Excavation</p> <p>Concerns that extent of excavation could impact the structural adequacy of No. 67-69 St Paul's Street. The inconclusive Geotech report, no new expert evidence provided, out of date Geotech report and scope of the DA changed multiple times.</p>	<p>Noted.</p> <p>Refer to Clause 6.2 – Earthworks and Earthworks concerns discussed under section '8.1- Discussion of Key Issues' below.</p> <p>The applicant submitted an addendum to the Geotech report received by Council on 18 June 2025, outlining a recent site visit and further comments and recommendations specific to the current site conditions.</p>
<p>Parking</p> <p>The single garage is not used to house any parking and there is no evidence of a disabled member of family living in the house.</p> <p>Adding a granny flat will add to the limited street parking</p>	<p>The application does not propose any changes to existing on-site or on-street parking arrangements. Under the provisions of the Housing SEPP, there is no requirement to provide additional parking for a secondary dwelling, as imposing such a requirement is considered a deterrent to the delivery of diverse and affordable housing options.</p> <p>The SEPP specifically mandates that parking for the principal dwelling must not be reduced, which this proposal complies with. While concerns about increased demand for on-street parking are acknowledged, the planning framework does not require secondary dwellings to include dedicated parking, regardless of current use of existing garage facilities or household composition.</p>
<p>Outlook</p> <p>Concerns have been raised regarding the potential impact of the proposed outbuilding on the outlook from the neighbouring rear balcony.</p> 	<p>The proposal complies with the side setback, external wall height and overall height controls <u>as viewed from this rear balcony</u>. The proposal is not considered to result in an unacceptable impact on outlook. While the outbuilding will be visible from the balcony, the wall height will sit relatively close to the level of the balcony floor, and the structure features a hipped roof that recedes away from the neighbouring property. This design minimises bulk and visual intrusion, helping to preserve a reasonable level of outlook from the adjacent dwelling.</p>

- Unit 16, 67-69 St Pauls St, Randwick (made by Town Planner BBC consulting planners on behalf of new unit owner) – level 2 unit in middle of floor plate with east side facing living room balcony and bedroom window.

Issue	Comment
<p>Merit assessment.</p> <p>A request was made that the application be assessed on its overall planning merits, rather</p>	<p>It is agreed that the application has been assessed holistically and, on its merits, in accordance with the relevant provisions of</p>

Issue	Comment
than with a narrow focus on the submitted design amendments from the previously refused DA or withdrawn review application.	Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
<p>Loss of views</p> <p>Noting section 5.6 of Councils DCP with concerns that the ridge height would impinge on the view corridor. The DA does not explain how these existing view corridors will be maintained.</p>  	See view loss assessment in Key issues section of this report.
<p>Overdevelopment</p> <p>– substandard lot size</p> <p>Concern has been raised that the proposed development constitutes overdevelopment, as the site area is less than the minimum 450m² required under Clause 53(a) of the Housing SEPP for a complying secondary dwelling.</p>	Refer to the Clause 4.6 variation request and associated assessment in the relevant section of this report.
Secondary dwellings are prohibited in the R3 zone.	<p>It is acknowledged that secondary dwellings are prohibited under the Randwick Local Environmental Plan (LEP) 2012 within the R3 Medium Density Residential zone.</p> <p>However, Under Clause 5.5(1) of the Housing SEPP 2021, secondary dwellings are permitted with consent in the R3 zone, overriding the LEP by virtue of the higher order State Environmental Planning Policy (SEPP).</p>
<p>Bulk and scale</p> <p>The proposals non-compliant wall height at the southern end, results in impact on view corridors</p>	See key issues section of this report in relation to assessment of non-compliance with the wall height, and views associated with this aspect of non-compliance.

Issue	Comment
and does not result in reasonable levels of visual amenity and neighbouring privacy.	
Visual privacy Cross viewing into balcony.	The proposal includes a blade wall along the western side of the entry landing. In any event, cross viewing is not out of the ordinary for residential development noting that the objector's own side facing balcony faces the rear yard of the subject site.
Acoustic privacy The proposal is close to our habitable living areas resulting in disruption and noise impacts.	The level of noise associated with residential dwellings is generally not anticipated as being a significant source of noise disturbance.
Use Renting the property independently will lead to intensification of the site and limit the control of tenant behaviour by primary occupants of the main dwelling. It is unclear if the secondary dwelling would be used for short term rental accommodation request that a condition be imposed as follows: The secondary dwelling should not to be holiday let or used as tourist and visitor accommodation.	It is not expected that the primary dwelling occupants will need to exercise direct control over tenants. In the event of any anti-social behaviour, standard avenues for resolution—such as contacting neighbours, the police, or Council rangers—would remain available. Provisions within the SEPP Codes permit short-term rental accommodation under specific conditions. An additional condition will clarify that the premises is not approved for short-term rental accommodation beyond what is permitted under those Codes.
Earthworks The Geotech report is out of date The Report is not accompanied by a cut and fill plan. Lacks detail as to the exact amount of earthworks near the boundary, and potential impacts.	The applicant submitted an addendum to the Geotech report received by Council on 18 June 2025, outlining a recent site visit and further comments and recommendations specific to the current site conditions. Council is satisfied that the works will not adversely impact adjoining neighbours, subject to conditions.

- Unit 28, 67-69 St Pauls St, Randwick (within the adjoining RFB)

Issue	Comment
Geotechnical report General concerns about proposed excessive excavation works and inadequate Geo-Technical information. The Applicant's consulting planner does to not appear to endorse the geotechnical report prepared by Geofirst Pty Ltd. The Geotech report is out of date	The applicant submitted an addendum to the Geotech report received by Council on 18 June 2025, outlining a recent site visit and further comments and recommendations specific to the current site conditions. In addition, to ensure appropriate site management and structural integrity, suitable conditions have been included requiring that all excavation and associated support works be supervised by a suitably qualified and experienced structural engineer. While the applicant's consulting planner does not explicitly endorse the geotechnical report, the planning assessment relies on technical input from the report itself, supported by recommended conditions to mitigate identified risks.

D34/25

Issue	Comment
	<p>In accordance with Clause 6.2 of the Randwick LEP – Earthworks, the depth of excavation is acknowledged, particularly along the western boundary. However, the proposed extent of excavation is not inconsistent with development patterns in the locality, particularly given the precedent of excavation at the adjoining development at No. 67–69 St Pauls Street.</p> <p>The proposal includes reconfiguration of the rear yard to provide a more functional and usable open space for recreational purposes. While the excavation will extend below the level of existing elevated planters on the neighbouring site, this is considered reasonable and manageable through the following conditions of consent:</p> <ul style="list-style-type: none"> • Implementation of structural retention measures to protect adjoining properties. • Submission of pre- and post-construction dilapidation reports to monitor impacts on neighbouring structures. • Adherence to best-practice engineering and construction standards throughout the excavation process. <p>These measures are considered appropriate to address potential impacts and provide a reasonable level of assurance for surrounding property owners.</p>
Applicant SEE fails to address Clause 6.2 Earthworks and insufficient justification provided.	Refer to Clause 6.2 – Earthworks and Earthworks concerns discussed under section '8.1- Discussion of Key Issues' below.

- 28/67-69 St Pauls Street (also Secretary of Owners Committee)
- Strata Manager of owners corporation of 67-69 St Pauls Street

Issue	Comment
Reasons for objection remain the same as previously advised.	Noted
<p>Earthworks</p> <p>Concerns regarding the extent of excavation along the shared boundaries, particularly to the west and, to a lesser extent, the east. Objector is concerned that the depth and proximity of excavation may compromise the structural integrity of adjacent land, services, structures, and vegetation. A request has been made for</p>	<p>Refer to the "Key Issues" section of this report and the detailed comments from Council's Landscape Officer included in the Appendix.</p> <p>Pursuant to Clause 6.2 of the Randwick LEP – Earthworks, it is acknowledged that the depth of excavation is notable in some areas,</p>

Issue	Comment
<p>the applicant to provide adequate retention measures or for such measures to be imposed through consent conditions.</p> <p>The Geotech report indicates that further geotechnical input is required. The trees and vegetation are essential for privacy and quite enjoyment.</p>	<p>especially adjacent to the western boundary. However, the works are not considered out of character for the locality, particularly when compared with the level of excavation previously undertaken at the adjoining development at No. 67–69 St Pauls Street.</p> <p>The proposal seeks to enhance the rear yard by providing an expanded, functional open space for recreational purposes. While the depth of excavation will extend below the existing elevated planters on the adjoining site, it is considered acceptable subject to the imposition of appropriate consent conditions.</p> <p>The applicant submitted an addendum to the Geotech report received by Council on 18 June 2025, outlining a recent site visit and further comments and recommendations specific to the current site conditions.</p> <p>Conditions will be recommended to require:</p> <ul style="list-style-type: none"> • Provision of structural support and retention measures to protect adjoining land, • Submission of pre- and post-construction dilapidation reports to document the condition of adjacent properties, • Compliance with relevant engineering and construction standards to mitigate risk during excavation. <p>These measures are considered sufficient to address potential impacts and provide reasonable assurance to neighbouring owners.</p>

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

BASIX certificates have 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 (Housing) 2021

Chapter 3 – Diverse Housing – Secondary Dwellings

Chapter 3, Part 1 of the Housing SEPP applies to development for the purposes of a secondary dwelling on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument.

The subject site is located in the R3 Medium density residential zone and the development of a dwelling house is permissible, as are multiple dwellings in the form of detached dual occupancies, residential flat buildings and multi dwelling housing permissible in this zone pursuant to RLEP 2012 (i.e. another environmental planning instrument). On this basis, and noting that the proposal seeks consent for the construction of a secondary dwelling, an assessment of the relevant provisions of the Housing SEPP is provided below:

No subdivision (section 51)

No consent is sought for the subdivision of the site.

Development may be carried out with consent (section 52)

Pursuant to section 52, the development of a secondary dwelling may be carried out with consent at the subject site, subject to the following criteria:

(a) no dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land

Comment: The proposal includes one (1) principal dwelling and one (1) secondary dwelling on the site.

(b) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and

Comment: The total floor area of the proposed principal dwelling and proposed secondary dwelling is 984.9m², which equates to a floor space ratio (FSR) of 0.72:1. The total FSR complies with the maximum 0.75:1 FSR control applying to the site under Clause 4.4A(2) for R3 zoned site that has an area > 300m² and < or equal to 450m² in the RLEP 2012.

(c) the total floor area of the secondary dwelling is—

(i) no more than 60m², or

(ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.

Comment: The floor area of the proposed secondary dwelling is 52.3m², which complies with the maximum 60m² requirement.

Non-discretionary development standards (section 53)

Pursuant to section 53, the following non-discretionary development standards are applicable:

(a) for a detached secondary dwelling—a minimum site area of 450m²

Comment: The site has an area of 398.5m² and does not comply. The proposal does not comply with this standard and contravenes this standard by 12.04%. The applicant includes a Clause 4.6 submission/written request seeking a variation to this development standard assessed in the following **Section 6.2.1**.

(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.

Comment: Consistent with the existing situation, the proposal provides for a total of one existing car parking space.

6.2.1.Clause 4.6 Exception to a Development Standard (Section 53 of SEPP Housing)

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) (contained in Appendix 2 and assessed accordingly).

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) a) and b) establish 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. The grounds for the applicant to satisfy the preconditions a) and b) are identified as follows:

- a) *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.

- b) *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 the contravention of the minimum lot size 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.

6.2.1.1. Exception to the 450m² Minimum lot size development standard for a detached secondary dwelling under clause 53 of SEPP Housing 2021.

The subject site sought to contain the detached secondary dwelling has an area of 395.8m², which represents 12% or 54.2m² non-compliance to the non-discretionary development standard for a detached secondary dwelling to be contained on site with a 450m² minimum site area (clause 53 of Housing SEPP).

The applicant's written justification for the departure from the Minimum Lot Size 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 argues that strict compliance with the Minimum Lot Size standard is unreasonable, as the proposal still meets the aims of the Housing SEPP and the objectives for outbuildings in low-density zones. They note that, since the SEPP lacks specific objectives for minimum lot size, its overall aims can be treated as the relevant objectives, referencing *Wehbe v Pittwater Council* (2007) NSW LEC 827 for support.

Housing SEPP aims:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,
- (c) ensuring new housing development provides residents with a reasonable level of amenity,
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,
- (e) minimising adverse climate and environmental impacts of new housing development,
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,
- (h) mitigating the loss of existing affordable rental housing.

Objectives for outbuildings

The applicant's submission responds to the outbuilding objectives in Section 7 of Part C1 of the DCP, which were central to the RLPP's earlier refusal. Although these objectives are not

binding, the applicant argues they may be considered under clause 4.6 and relevant case law, as they remain pertinent to the current proposal.

Objectives for ancillary structures such as outbuildings (bold emphasis added identifying relevant objectives for outbuildings):

- The alignment, configuration, rhythm of bays, height, materials, colours and texture of new fences complement the building on the site and the streetscape.
- Fences are designed to achieve a balance between privacy, safety and security for the building occupants and visual interaction with the public domain, without adversely affecting the amenity of the pedestrian environment.
- Fences are designed to minimise opportunities for graffiti and malicious damage.
- **To provide for ancillary development that enhances the liveability of dwellings and maintains reasonable levels of visual amenity, solar access and privacy for the neighbouring dwellings.**
- **To ensure ancillary development do not present as prominent features and detract from the streetscape character.**

In the first instance, the applicant has addressed each of the objectives (aims of the Housing SEPP) as follows:

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

Applicant: The size of the secondary dwelling has been reduced proportionate to the shortfall in site area from the standard which is around 12% for each.

Whilst the proposed secondary dwelling is not contemplated by the LEP, it is noted that a more intensive form of development for the purposes of medium density development is permitted under the LEP and SEPP Housing and a secondary dwelling is identified as a diverse form of housing contemplated by the SEPP Housing.

Assessment officers' comment: Agreed, the LEP and Housing SEPP enable larger scale developments particularly with the latter enabling purpose-built rental housing (build-to-rent) and affordable in fill housing incentives.

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

Applicant: The provision of a secondary dwelling will "encourage" housing for more vulnerable members of the community. The secondary dwelling may be used for different generations of the one family or rented to members of the public who may, or may not, be on low to moderate incomes.

Assessment officers' comment: While the Housing SEPP contains specific provisions for the development of housing targeted toward vulnerable groups such as seniors, people with disabilities, and very low to moderate income households, it is acknowledged that secondary dwellings can indirectly support this objective by enabling more diverse and flexible living arrangements.

In this case, the proposed secondary dwelling offers potential for multigenerational living or rental accommodation in a well-located area, which may be suitable for moderate-income households or older family members seeking independent yet proximate living. Although the dwelling is not purpose-built for seniors or people with a disability, its single-storey form, separate access, and proximity to services improve its suitability for a broader demographic aligning with the objectives of the Housing SEPP and the RDCP's aims to encourage adaptable housing typologies within established neighbourhood's.

Overall, while the development is not specifically targeted toward vulnerable community members, its scale, form, and flexibility contributes to the supply of diverse housing in a manner that may be accessible to a more diverse demographic.

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

Applicant: The proposed secondary dwelling will deliver a detached two-bedroom dwelling that will provide a high level of amenity for the occupants. In this regard, the proposed development will have a north facing living area and separate private open space area in the form of a terrace facing north. The secondary dwelling will have a high level of internal amenity with access to sunlight and cross ventilation and will not impose on the private open space or landscaped character of the primary dwelling. The proposed secondary dwelling will also have separate access which will allow for multi-generational or separate living arrangements in an accessible location. The proposal satisfies this assumed objective.

Assessment officers' comment: The applicant's written justification demonstrates that this objective is satisfied. The proposed secondary dwelling although on a reduced land size does provide a reduced floor plate commensurate with the site area that will continue to provide a suitable sized functional dwelling with suitably sized bedrooms, living areas and outdoor spaces that achieve reasonable levels of solar access and ventilation. Certain amendments made since the original DA such as privacy screening of the entry landing maintain reasonable privacy for both occupants and neighbours, and shallower roof angle ensure visual amenity and view loss is minimised for neighbours.

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

Applicant: The proposed secondary dwelling is located within the R3 – Medium Density Residential zone with excellent access to public transport, shops and services. The site is less than 200m walking distance to The Spot and Randwick Ritz with a number of other shops and services located within close proximity. The proposal will make use of all existing connections to infrastructure and will have no greater impact than the surrounding RFB's which are of a significantly greater density than the proposal. The proposal satisfies this assumed objective.

Assessment officer comment: Agreed noting that transport-oriented development is a SEPP goal.

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

Applicant: The proposed secondary dwelling has been designed to result in minimal environmental impacts to neighbouring properties and provides a positive impact to the subject site. There are no views which would be adversely affected by the proposal, particularly given works proposed are typically at ground level and relate to a single storey secondary dwelling.

The proposed secondary dwelling has been positioned at the rear of the site with a rear setback of 3m that is compatible with surrounding development including No. 67-69 St Pauls Street to the west and No. 73 St Pauls Street to the east which also has a secondary dwelling in the rear yard but is only setback approximately 1m from the rear boundary. The proposal is also sited at, or close to, ground level which ensures that any impact in relation to privacy and overshadowing is minimal.

The amended proposal reduces the overall height of the secondary dwelling to no greater than 3.6m and will ensure the western elevation wall facing No. 67 St Pauls Street is compliant with the 2.4m wall height requirement. The reduced height of the amended proposal will further reduce any potential overshadowing opportunities and "minimise" the impact by ensuring compliance is maintained with Council's solar access controls and that a reasonable amount of sunlight is maintained to the private open space and living room windows of both the subject site and neighbouring properties in accordance with the RDCP. Furthermore, the proposal will delete the eastern and western elevation windows to enhance the privacy relationship with surrounding properties.

The proposed secondary dwelling will not have any adverse impacts on the climate of the locality and does not significantly alter the topography and is "reversible". That is, the demolition or

demolition of the structure would simply return the area to a rear yard for the primary dwelling without any additional adverse impacts.

The compliant landscaping to the site and greater setbacks ensures the secondary dwelling will sit within a landscaped setting, will be visually integrated with the primary dwelling and will be compatible with the built form and character of the locality. The proposal satisfies this assumed objective.

Assessment officers' comment: The applicant has demonstrated that the proposed secondary dwelling is unlikely to result in significant adverse climate or environmental impacts. The single-storey scale, generous rear setback from the primary dwelling, and retention of deep soil zones and landscaping assist in mitigating privacy and overshadowing impacts within the site and on neighbouring properties.

Upgraded landscaping and tree planting throughout the site contribute to reducing the heat island effect and enhancing stormwater management. While the proposal does not incorporate specific environmentally sustainable design (ESD) features, its orientation, solar access, and passive ventilation potential are positive attributes.

A BASIX certificate is provided with the application demonstrating minimum standards for water and energy efficiency, and thermal performance can be achieved.

On balance, the development is considered to satisfy this objective through its low-impact single-storey built form, site-responsive layout, and landscape integration.

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

Applicant: Even with a compliant site area of 450m², the proposed impact of the secondary dwelling will be no different to the site area being 395.8m². This is evident when comparing the site to No. 73 St Pauls Street which also contains a secondary dwelling on a site of 463sqm. Whilst compliant with the site area, the secondary dwelling is located in a constrained part of the site which tapers between 7-9m, is setback approximately 1m from the rear boundary and is setback approximately 8m from the primary dwelling. The proposed secondary dwelling, despite the variation to the minimum allotment size, is on part of the site with an approximate 9.2m consistent width, is setback 3m from the rear boundary and approximately 12m from the primary dwelling. That is, despite the variation to the minimum site area, the location of the secondary dwelling is superior to the approved secondary dwelling at No. 73 St Pauls Street with a compliant site area of 463sqm.

The current site area still results in a density and scale that is compatible with the surrounding development, is appropriate for the site and does not result in any significant adverse impacts to the residential amenity of the neighbouring properties. Applying strict compliance with the minimum site area for secondary dwellings is not considered necessary when the development complies with all the objectives and/or controls of the SEPP Housing, RLEP and RDCP.

Assessment officers' comment: The applicant's written justification demonstrates that this objective is satisfied. The proposed secondary dwelling on a site short of the minimum is not inconsistent with the housing in the area noting the presence of another outbuilding at the rear of a property at No. 73 St Pauls Street. There are also numerous examples of buildings on properties in the area that cover substantial parts of their respective site areas. Further afield, the locality contains numerous examples of outbuildings similar in form, and architectural character located at the rear particularly for those properties containing low density residential development.

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Figure 15: Aerial view showing the presence of an outbuilding also used as a secondary dwelling at No. 73 Alison Road and the considerable depth of buildings in each of the properties relative to their rear boundaries.

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

Applicant: The proposal is for a secondary dwelling and will not support short-term rental accommodation. This assumed objective is not relevant.

Assessment officer comment: The applicant's written justification demonstrates that this objective is not applicable. However, it is noted that there are exempt provisions for hosted and non-hosted STRA under the Housing SEPP including obligations for registration through the planning portal, fire safety requirements, limit of 180 days in a calendar year and adherence to a code of conduct requiring contactable hosts (representatives). A condition has included limiting the ability of the premises is not approved for short-term rental accommodation beyond what is permitted under the SEPP Codes 2008 (SEPP Exempt and Complying Development Codes 2008).

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

Applicant: The proposal involves the construction of a new secondary dwelling and will not result in the loss of any existing affordable rental housing. The proposal satisfies this assumed objective.

Assessment officer comment: Noted. The proposal is not for a boarding house, no subdivision is sought, and the development does not displace lower-cost housing indirectly.

Objectives in Section 7 Ancillary Part C1 – Low density residential development:

Applicant: The applicant identifies the relevant objectives for outbuildings (bold emphasis added below) under the low-density residential (part C1) of the DCP:

- *The alignment, configuration, rhythm of bays, height, materials, colours and texture of new fences complement the building on the site and the streetscape.*

- *Fences are designed to achieve a balance between privacy, safety and security for the building occupants and visual interaction with the public domain, without adversely affecting the amenity of the pedestrian environment.*
- *Fences are designed to minimise opportunities for graffiti and malicious damage.*
- **To provide for ancillary development that enhances the liveability of dwellings and maintains reasonable levels of visual amenity, solar access and privacy for the neighbouring dwellings.**
- **To ensure ancillary development do not present as prominent features and detract from the streetscape character.**

The applicant addresses and assesses the above objectives as follows:

Objectives:

- *The alignment, configuration, rhythm of bays, height, materials, colours and texture of new fences complement the building on the site and the streetscape.*
- *Fences are designed to achieve a balance between privacy, safety and security for the building occupants and visual interaction with the public domain, without adversely affecting the amenity of the pedestrian environment.*
- *Fences are designed to minimise opportunities for graffiti and malicious damage.*

Applicant: Not relevant

Assessment officer comment: Noted

Relevant objectives:

- **To provide for ancillary development that enhances the liveability of dwellings and maintains reasonable levels of visual amenity, solar access and privacy for the neighbouring dwellings.**

Applicant:

The provision of a secondary dwelling in the rear yard will enhance the amenity of the occupants on the site by providing opportunities for inter-generational living or alternative and diverse housing in an appropriate location.

The objective only requires “reasonable levels” of amenity to be maintained for neighbouring properties. Despite this, the amended proposal will improve the amenity for neighbouring properties when compared to the refused scheme and is a “reasonable” outcome as discussed in the assumed objectives above. In this regard, the proposal will not have any adverse impacts on the amenity of adjoining properties because:

- *The proposed secondary dwelling is a single storey detached structure located close to ground level with a maximum height of 3.6m which will not have any adverse impacts on views or overshadowing;*
- *The proposed secondary dwelling contains privacy screening to the rear terrace and does not provide for any windows on the eastern and western elevations facing adjoining properties which will provide “reasonable” levels of privacy;*
- *The compliant landscaping to the site and greater setbacks ensures the secondary dwelling will sit within a landscaped setting, will be visually integrated with the primary dwelling and will be compatible with the built form and character of the locality; and*
- *The secondary dwelling adopts a pitch roof and materials that are compatible with the primary dwelling and other development in the locality and will not detract from the streetscape, if visible at all.*

The proposal satisfies this objective.

Assessment officers' comment: The applicant's written justification demonstrates that this objective is satisfied noting that it supports the intent of the RDCP and the planning grounds under clause

4.6(3)(b). It is agreed the outbuilding provides for additional living quarters on site consistent with the outcomes encouraged under the Housing SEPP and is not inconsistent with the requirements under the DCP for outbuildings. It is also arguable that the proposal will maintain reasonable levels of visual amenity, solar access and privacy of neighbouring dwelling noting that this application includes a privacy screen along the entry landing for the dwelling something missing in the previous DA which was refused by the panel and provides an amended roof design with shallower angles enable a reduction in the overall height.

- **To ensure ancillary development do not present as prominent features and detract from the streetscape character.**

Applicant: The site is located within the R3 Medium Density Residential zone and surrounding development is characterised by a mixture of residential accommodation including dwelling houses, attached dwellings, semi-detached dwellings, residential flat buildings and Seniors Developments. On the southern side of St Pauls Street, lots are zoned R2 Low Density Residential which provides a different character to the buildings on the northern side.

To the west, the site adjoins No. 67-69 St Pauls Street which contains a five-storey rendered residential flat building. Pedestrian access is via a high gate at the front boundary, while vehicular access is via a roller door directly adjacent the front boundary leading to basement parking. Adjoining the site to the east is No. 71 St Pauls Street which contains a one to two storey brick dwelling with tile roof. This dwelling has a detached single garage with limited front setback addressing St Pauls Street. To the north (rear) of the site is No. 11 Daintrey Crescent which contains a three to four storey residential flat building.

The proposed secondary dwelling is single storey and is of a modest scale that is compliant with the built form controls including FSR, height, setbacks and landscaped area of the RLEP and RDCP. Given the varying scales and housing types of the surrounding development, a one storey secondary dwelling is compatible with the context and character of the locality. In addition, the secondary dwelling cannot be visually seen from the public domain as it is located to the rear of the site with no rear lane and the adjoining buildings are larger in built form and scale.

The secondary dwelling is of high-quality contemporary design utilising a variety of materials and colours such as Dulux Lexicon timber cladding and Colorbond Windspray roof sheeting. The external materials, colours and finishes and architectural design results in an appearance that is compatible with the surrounding built and natural environment. The site also incorporates large amount of landscaping and deep soil to integrate the built form with the site and streetscape.

Given the above, the proposed scale and built form is compatible with the character and appearance of the locality and will have no adverse visual amenity impact to the public domain and therefore, this objective' is satisfied.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in Section 6 below.

Assessment officers' comment: The applicant's written justification demonstrates that this objective is satisfied. The proposed outbuilding visual prominence is acceptable in that it's limited to single storey scale at the rear of the site and does not present as a prominent feature other than the somewhat limited visual impact when viewed from the unit block to the west.

In conclusion, the applicant has adequately addressed the objectives of Section 7 of Part C1 of the Randwick Development Control Plan and demonstrated that the proposed secondary dwelling will not detract from the amenity or character of the locality. The assessment comments in response to each of the objectives provide sufficient planning grounds to justify the contravention of the minimum lot size development standard under Clause 4.6. As such, the variation is supported and satisfies the relevant tests under Clause 4.6(3) and (4) of the Randwick Local Environmental Plan 2012.

- 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 minimum lot size development standard as follows:

Applicant comments summarised:

In this instance, there are sufficient environmental planning and design grounds to justify the proposed contravention of the minimum site area for secondary dwelling standard in the Housing SEPP as follows:

1. *The variation to the minimum site area control will increase the density of the site without having any impacts greater than that of a compliant site area for secondary dwellings. This is evident when comparing the site to No. 73 St Pauls Street which also contains a secondary dwelling on a site of 463sqm. Whilst compliant with the site area, the secondary dwelling is located in a constrained part of the site which tapers between 7-9m, is setback approximately 1m from the rear boundary and is setback approximately 8m from the primary dwelling. The proposed secondary dwelling, despite the variation to the minimum allotment size, is on part of the site with an approximate 9.2m consistent width, is setback 3m from the rear boundary and approximately 12m from the primary dwelling. That is, despite the variation to the minimum site area, the location of the secondary dwelling is superior to the approved secondary dwelling at No. 73 St Pauls Street with a compliant site area of 463sqm.*
2. *The subject site has an area of 395.8sqm which is 54.2sqm or 12.04% less than the minimum allotment size required under the Housing SEPP. Given the site does not achieve the minimum site area the proposal reduces the size of the secondary dwelling by a proportionate amount to ensure the density of the site remains relative to the site area. In this regard, the proposed secondary dwelling has a maximum GFA of 52.3sqm which represents a 12.8% reduction on the maximum GFA for a secondary dwelling (60sqm). That is, the size of the secondary dwelling (52.3sqm) continues to be proportionate to the difference between the site area (395.8sqm) and the 450sqm minimum site area requirement under the Housing SEPP. This ensure that an appropriate density will be maintained on the subject site.*
3. *The proposed development achieves a high level of compliance with the applicable planning controls which reinforces the appropriateness of the secondary dwelling, despite the variation to the minimum site area requirement for secondary dwellings. In this regard, the proposal:*
 - a. *Complies with the Floor Space Ratio (FSR) with the principal and secondary dwelling combined is 0.72:1 (required 0.75:1).*
 - b. *Complies with the site coverage requirements by providing a site coverage of 44.8% which is well below the maximum site coverage requirement of 55% for a site area between 301m² and 450m² under the RDCP.*
 - c. *Complies with the landscape area requirement with at least 99m² of the landscape deep soil area which is greater than the requirement (98.9sqm)*
 - d. *Complies with the private open space area that is at least 7 x 7 metres with adequate solar access. It is also noted that a private terrace is provided to the secondary dwelling*
 - e. *Complies with the maximum overall height for ancillary structures of 3.6m and provide a compliant wall height of 2.4m on the western elevation.*

The proposed secondary dwelling demonstrates a high level of compliance with the applicable planning controls despite the variation to the minimum site area for secondary dwelling which demonstrates that the site is large enough to accommodate the proposed density. Furthermore, the development sits within a landscaped setting and is visually integrated within the primary dwelling and scale of neighbouring properties.

4. *Contextually the site is surrounded by apartment buildings and dwellings that are of two to five storey scale, including No. 73 St Paul Street which has a secondary dwelling in the rear yard and therefore the proposal is not introducing a new element or scale not already in existence. The surrounding buildings are built with minimal setbacks and directly adjoin the proposed secondary dwelling. Therefore, in comparison, the single storey secondary dwelling to the rear would be of a lesser and more modest scale that is appropriate for the site and surrounding development. In addition, the secondary dwelling cannot be visually seen from the public domain and is surrounded by larger buildings. The proposal scale and built form is compatible with the site and surrounding development and will have no adverse visual amenity impact to the public domain.*
5. *It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties and on the character of the locality. Specifically:*
 - a. *The extent of the variation creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope on a compliant (450sqm) site. When considering the overshadowing against the backdrop of the applicable planning controls and existing development, the additional overshadowing impacts caused by the non-compliant element would be insignificant.*
 - b. *The extent of the variation creates no adverse additional privacy impacts when compared to a compliant building envelope on a compliant (450sqm) site. The proposed addition provides setbacks which are consistent with the RDCP 2013 setbacks and when considering the visual and acoustic privacy impacts against the backdrop of the applicable planning controls, the additional privacy impacts caused by the non-compliant element would be insignificant or nil; and*
 - c. *The extent of the variation will not result in any significant view loss. The proposed development does not increase the visual bulk of the development over that anticipated by the building envelope controls and therefore any view loss impacts caused by the non-compliant element would be insignificant or nil.*
6. *The proposed secondary dwelling allows the owners to increase the density of the site so that it is more reflective of the R3 Medium Density Residential objectives. As a result, the existing dwelling can be retained and a secondary dwelling can be provided which contributes to additional housing types in the area and by nature contributes to affordable housing particularly for young couples, families and students. The retention of the dwelling also ensures that there is no significant demolition impact which would contribute negatively to the carbon footprint and amenity of the neighbouring properties. Therefore, the proposal is compatible with the R3 Medium Density Zone objectives.*
7. *The proposal is compliant with all the SEPP Housing requirement for secondary dwellings (excluding site area) and satisfies the relevant principles of the Housing SEPP as discussed in Part 5 above.*
8. *The proposed development achieves the Objects in Section 1.3 of the EP&A Act. Specifically:*
 - a. *that the proposed development promotes the orderly and economic use and development of land (1.3(c));*
 - b. *that the proposed development promotes the delivery and maintenance of affordable housing (1.3(d)); and*
 - c. *that the proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).*
9. *The proposed development is consistent with the aims of RLEP listed in Clause 1.2. Specifically:*

- a. *the proposal is compatible with aim (f) to facilitate sustainable population and housing growth.*
- b. *the proposal is compatible with aim (g) to encourage the provision of housing mix and tenure choice, including affordable and adaptable housing, that meets the needs of people of different ages and abilities in Randwick.*

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

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. 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.

87. The second matter was in cl 4.6(3)(b). 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.

Regardless, as outlined above, it is considered that the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

Assessing officer's comment: The applicant's written request seeks to justify the contravention of the minimum lot size development standard under the Housing SEPP, on the basis of sufficient environmental planning grounds. After review, it is considered that the request satisfactorily addresses the requirements of Clause 4.6(3)(b) and is well founded for the following reasons:

- The subject site falls short of the minimum lot size requirement by approximately 12%. This shortfall is adequately offset by a proportional design response reducing the gross floor area of the secondary dwelling, thereby maintaining a consistent and appropriate overall density. The secondary dwelling is designed and sited to respond to the site's dimensions and constraints, ensuring the development is contextually appropriate and sustainable within its physical and planning setting.
- The proposal complies with all other relevant key development standards in the LEP and controls in Part C1 of the DCP for low density residential, including floor space ratio (FSR), site coverage, landscaped area, setbacks, overall height, and privacy provisions. This high level of compliance indicates that the minor variation in lot size will not result in adverse environmental impacts commonly associated with increased density, such as excessive overshadowing, bulk, or privacy loss.
- The proposed variation does not generate significant additional impacts on solar access, privacy, or visual amenity to adjoining properties. The single-storey secondary

dwelling is modest in scale and given the surrounding context of larger multi-storey residential developments to the west and north, the proposal maintains reasonable amenity outcomes consistent with the objectives of the R3 Medium Density Residential zone.

- The development supports the strategic aims of the Randwick LEP and the Housing SEPP, including the promotion of housing diversity, affordability, and the efficient use of land. The retention of the primary dwelling reduces demolition-related environmental impacts, thereby contributing positively to sustainability principles.
- The applicant's submission appropriately references the decision of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, which clarifies that Clause 4.6 does not require the non-compliant development to provide a better planning outcome than a compliant development. Rather, the test is whether there are sufficient environmental planning grounds to justify the variation. This interpretation strengthens the validity of the applicant's justification.

The applicant's Clause 4.6 written request demonstrates that there are sufficient environmental planning grounds to justify the contravention of the minimum lot size development standard. The proposal provides an appropriate and small-scale form of development that maintains acceptable levels of amenity, complies with the majority of other relevant planning controls in the DCP, and aligns with the strategic planning objectives for the site.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have been satisfied and that development consent may be granted for development that contravenes the minimum lot size development standard for detached secondary dwellings under Clause 53 of the Housing SEPP.

6.3. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development involves the removal of vegetation. Council's Landscape Development Officer reviewed the proposal and confirmed support for the proposed removal and landscaping treatments, subject to the imposition of conditions (refer to Referrals section below).

As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

6.4. 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 excavation for the secondary dwelling) are such that any applicable provisions and requirements of the SEPP have been satisfactorily addressed.

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned R3 Medium Density Residential under Randwick Local Environmental Plan 2012 and the proposal is prohibited however it is permissible with consent pursuant to Clause 50 under the Housing SEPP 2021 as the site is located in a prescribed zone.

An assessment against the objectives is carried out further below the applicable development standards.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.75:1	0.72:1	Yes
Cl 4.3: Building height (max)	12m	Rear addition of dwelling: 3.28m	Yes
		Secondary dwelling: 3.42m (RL74.002 – RL70.60).	Yes

6.5.1. *Clause 5.10 - Heritage conservation*

The site is located opposite The Spot Heritage Conservation Area identified as Zone C16 under Schedule 5 Part 2 Heritage Conservation Areas in the LEP.

See heritage referral comments in **Appendix 1**.

6.5.2. *Clause 6.7 Foreshore scenic protection area*

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

Clause 6.2(3) of the RLEP (2012) further states:

Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) *the effect of the development on the likely future use or redevelopment of the land,*
- (c) *the quality of the fill or the soil to be excavated, or both,*
- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing relics,*
- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Assessing officer's comments: Refer Section 8.1 – Discussion of Key Issues related to Earthworks. The proposed earthworks are excessive and fail to achieve the provisions and objective under Clause 6.2.

6.5.3. R3 Zone Objectives

The following objectives are applicable to the zone:

Objectives of zone:

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

The above objectives are addressed by the applicant in their SEE and Clause 4.6 submission and summarised below and following, an assessment is carried out.

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

Applicant:

The proposed development will provide for the housing needs of the community. The variation to the minimum site area for secondary dwellings will provide for an additional dwelling on the site in a highly accessible location in a superior location and configuration to the approved secondary dwelling on No. 73 St Pauls Street with a compliant site area of 463sqm. The proposed variation will assist in providing the housing needs to the community within the medium density zone where higher densities are both anticipated and present in surrounding development. The proposal satisfies this objective.

Assessment officers' comment: The proposal is for a diverse housing type that is generally consistent with the permitted multi dwelling uses permitted in the zone and accommodated appropriate within the dimensions and areas of the subject site.

- To provide a variety of housing types within a medium density residential environment.

Applicant:

The proposed development will provide for a secondary dwelling under the Housing SEPP which is not permitted in the R3 Medium Density Residential zone under RLEP 2012. Therefore, the proposal will provide a wider variety of housing types that are not completed and cater for a wider cross section of the community. The proposal satisfies this objective.

Assessment officers' comment: The proposal provides for an additional variety of housing type ie secondary dwelling identified as a diverse type of housing under the Housing SEPP and permitted in a prescribed medium density zone.

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

Applicant: This objective is not relevant to the proposal.

Assessment officers' comment: Agreed.

- 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.

Applicant: The locality is undergoing a transition to medium density residential flat buildings with scattered dwellings throughout the locality, such as the subject site. The proposed secondary dwelling complies with the relevant envelope controls relating to height, FSR, site coverage and landscaped area which demonstrates that the scale is compatible with development anticipated by the planning controls. The proposal will provide a detached, single storey secondary dwelling that contains two bedrooms, a rear private terrace, materiality and pitched roof that is compatible with the desirable elements in the streetscape. The proposed secondary dwelling will contribute and not be antipathetic to the desired future character of the locality. The proposal satisfies this objective.

Assessment officers' comment: The proposed secondary dwelling is located at the rear of the site and not immediately viewable from the streetscape. The proposed single storey structure located within the rear of the site is generally consistent with the future character of the area particularly for low density residential development in the R3 zone which is able to sustain a multiple dwellings.

- To protect the amenity of residents.

Applicant: The proposed secondary dwelling has a maximum height of 3.6m, is located at, or close to, ground level and will not have any adverse impacts on views or overshadowing. Furthermore, the proposal does not contain any windows on the eastern and western elevations facing other properties and will contain privacy screening on the rear terrace. As such, the proposal will provide for visual and acoustic privacy of adjoining properties. Therefore, despite the variation, the amenity of adjoining residents will be protected.

The amenity of the occupants will be high with north facing living areas and private terrace coupled with appropriate levels of cross ventilation for a small secondary dwelling. The proposal satisfies this objective.

Assessment officers' comment: The proposal predominately protects the amenity of residents in the surrounding area limiting the scale to a single storey form mostly in compliance with the wall height except for a localised section in the south eastern corner of the site and in full compliance with the overall building height. The proposal does not result in any overshadowing beyond that anticipated by a single storey structure, it is not anticipated as resulting in unreasonable loss of visual or acoustic privacy, it does not result in any unreasonable loss of high-quality views.

- To encourage housing affordability.

Applicant: The proposal will provide additional accommodation for multi-generational living, ageing in place or alternative rental accommodation in a highly accessible location. The provision of a 52.3sqm two-bedroom secondary dwelling will provide a more affordable choice than a number of other two-bedroom offerings in the locality if the owners choose to rent the secondary dwelling separately. The proposal satisfies this objective.

Assessment officers' comment: The secondary dwelling by nature of being encouraged by the housing SEPP is a form of diverse affordable housing.

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

Applicant: This objective is not relevant to the proposal.

Assessment officers' comment: Agreed.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant

successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

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

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

8. Environmental Assessment

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

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

8.1. Discussion of Key Issues

Clause 4.6 - Exception to a Development Standard – minimum lot size for secondary dwellings in R3 zone under Section 53 of SEPP Housing

A written request under Clause 4.6 of the Randwick LEP 2012 has been submitted, seeking a variation to the non-discretionary site area standard. The applicant argues the variation is reasonable as:

- The proposal achieves the underlying aims of the Housing SEPP, promoting diverse and affordable housing.
- The reduced GFA of the secondary dwelling (52.3m²) is proportionate to the site area shortfall.
- The development achieves full compliance with all other applicable LEP and DCP controls (FSR, setbacks, height, site coverage, and landscaping).
- The single-storey form, setbacks and privacy treatments mitigate amenity impacts.
- The planning grounds are specific to the site's context and do not result in adverse environmental outcomes.

The Clause 4.6 variation request is considered well-founded. It demonstrates that compliance with the minimum lot size standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation. The development is compatible with surrounding residential character, poses no significant adverse impact on amenity, and aligns with the strategic intent of the Housing SEPP and RLEP.

The variation satisfies the requirements of Clause 4.6(3) and (4) and is supported.

Earthworks

Section 4.6 of the DCP sets out the objectives and controls in relation to Earthworks to guide the assessment of earthworks, as follows:

Objectives:

- *To maintain or minimise change to the natural ground levels.*
- *To ensure excavation and backfilling of a site do not result in unreasonable structural, visual, overshadowing and privacy impacts on the adjoining dwellings.*
- *To enable the provision of usable private open space for dwellings with adequate gradient.*
- *To ensure earthworks do not result in adverse stormwater impacts on the adjoining properties.*

Assessing officer's comments: The necessity to assess the proposal against the objectives is required because the development exceeds the 1m maximum depth of earthworks control and within 900mm of the side boundaries to carry out the additions to the primary dwelling and to provide for an area of POS directly connected to their living room. Works are also proposed to provide a transition to the proposed secondary dwelling which is also sought to be excavated however substantially less than that proposed for the primary dwelling.

The nature of earthworks is shown in the figures immediately below showing between 1.6m excavation at the eastern boundary adjoining a dwelling at No. 71 St Pauls Street and around 3.16m at the western boundary adjoining planter boxes for the medium density RFB at No. 67-69 St Pauls Street. The depth of earthworks has generated concerns from neighbouring residents regarding potential structural impacts.

D34/25

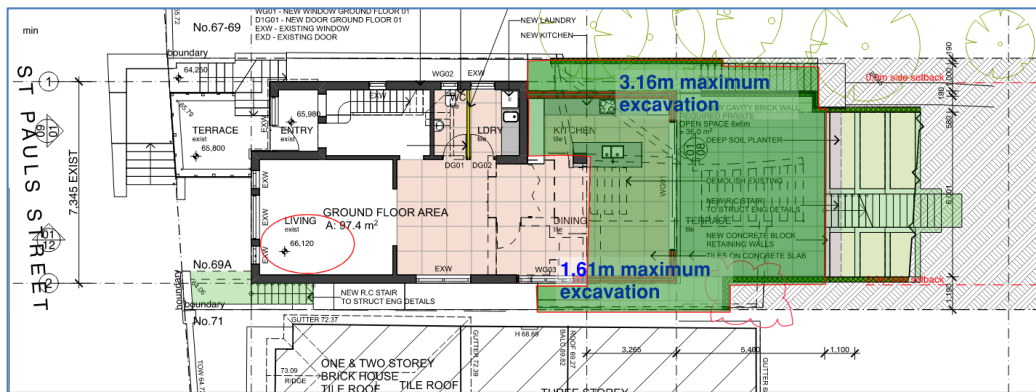


Figure 16: Excavation within the site identifying maximum at the western side is 3.16m and at the eastern side it is 1.61m.

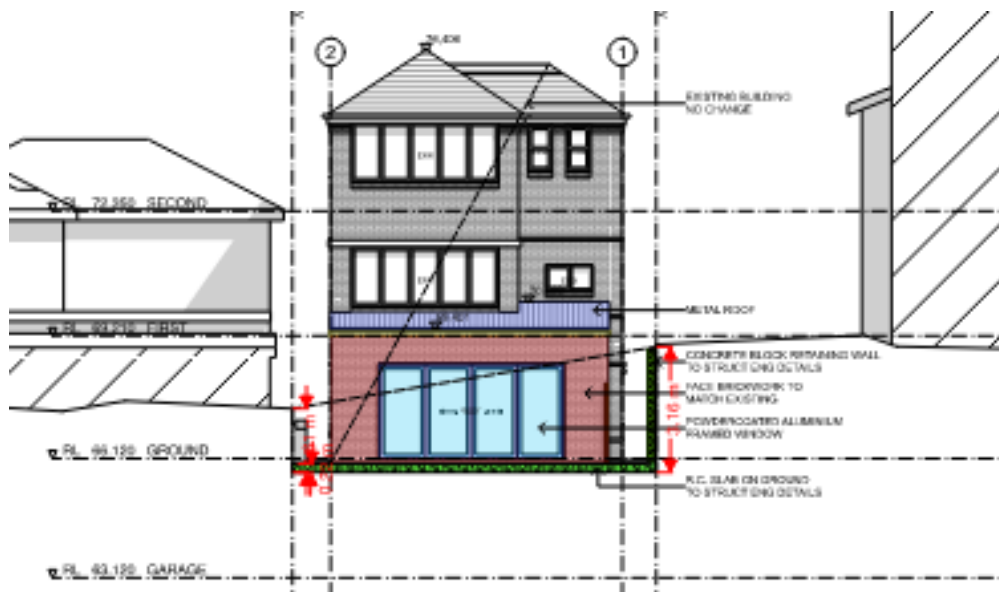


Figure 17 Maximum excavation depth of 1.61m at eastern boundary (left of image) and 3.16m at western boundary (right of image).

The objectors' concerns relate to various issues such as extensive amount of excavation, unclear documentation reducing the ability to discern with any detail there'd be appropriate measures are to be implemented to avoid, minimise or mitigate the impacts of the excavation or for Council to be satisfied that the proposed excavation will not have a detrimental impact on the site and amenity of adjoining properties.

It should be noted that adjoining properties have in some form, or another also undertaken not dissimilar excavation to accommodate their own developments such as the neighbouring building to the east at No. 71 St Pauls Street which contains the rear of its dwelling and to the west at No. 67-69 St Pauls Street it contains planter boxes elevated above ground level used for access and parking.

In response to the objectors concerns and the objectives of the DCP with regard to earthworks, it is acknowledged that the proposed development includes significant excavation and that this level of excavation exceeds what is typically anticipated under the DCP (1m limit and 900mm setback) and concerns from neighbouring residents regarding potential structural impacts require particular attention.

In this respect, the submitted application includes a geotechnical report identifying variable subsurface conditions—loose sandy soils in the upper layers and denser material below. The originally submitted Geotech report dated December 2023, was requested to be updated or an addendum provided reflecting the current site conditions. An addendum letter to the Geotech report by the structural engineer, dated 18 June 2025, indicates a recent site visit and provides further comments and recommendations notably Geotechnical supervision before/during secondary

dwelling construction. A recommendation is made for conditions of consent requiring ongoing professional oversight and certification during excavation works.

On balance, the extent of excavation whilst significant is considered to satisfy the earthwork's objectives in Section 4.6 of the DCP and Clause 6.2 of the LEP, given the context of the site and adjoining land and subject to appropriate conditions of consent (9, 10, 11 and 18) which aim to appropriately manage structural adequacy of the site and adjoining land and structures.

View Sharing

A submission has been received from No. 16/67-69 St Pauls Street raising concerns that the proposed secondary dwelling results in partial views being lost of the ocean and Dunningham reserve – see figures below showing:

- Directions views across the subject site (Figures 18 and 19)
- The location of affected unit including direction of view as showing in photo further below, (Figure 20) and
- Photo of the view with the ocean element highlighted (Figure 21).

Following is an assessment against the Tenacity planning principle provided by the Land and Environment Court.

Images of directional views:

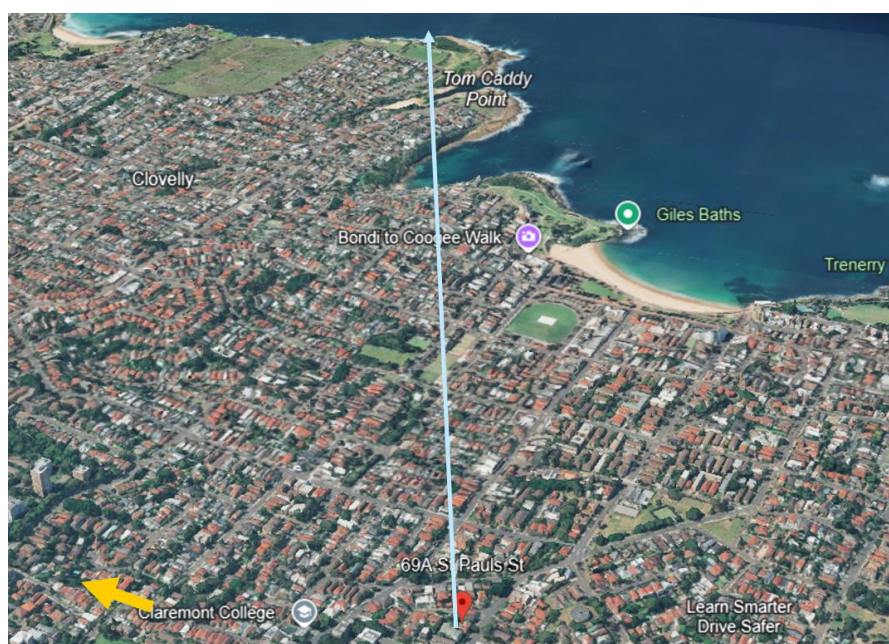


Figure 18: Wide directional view towards the east from the affected unit.

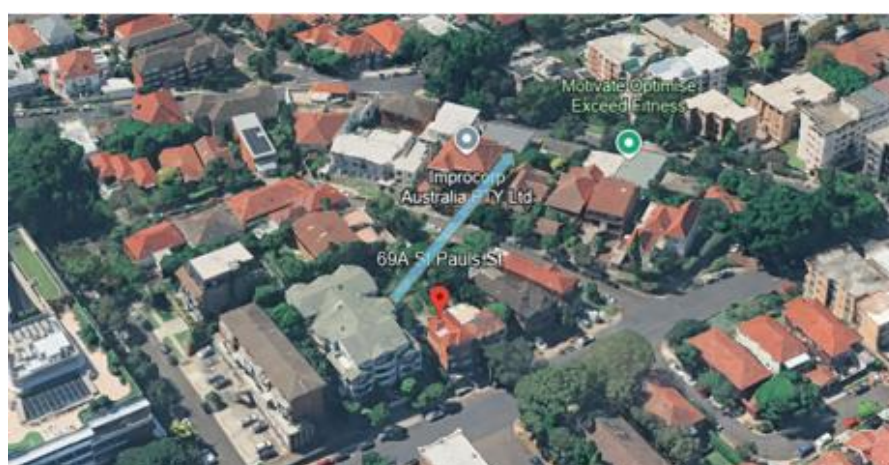


Figure 19: Closer directional view towards the east from the affected unit which is along the southern side of No. 18 Daintrey Crescent.



Figure 20: Close directional view from the affected unit towards the east.



Figure 21: Current view of ocean is over the northern side of No. 20 Daintrey Crescent (a single storey dwelling) and southern side of No. 18 Daintrey Crescent.



Figure 22: Image of building at No. 73 St Pauls Street showing top of roof at RL73.405.

View sharing assessment

The owners of Unit 16 have made a submission providing photo (Figure 21 above) of a standing view from a balcony (attached to a living room) located at mid-level and in the middle of the RFB's floor plate. The points made in their submission are:

- The overall height (RL73.471) would extend over 1.12m above the levels of their internal living room and balcony (RL72.350)
- The existing material doesn't explain how their view corridor will be retained.
- The development should be designed with a flat roof with a height of 73.00.

In relation to the above points, an analysis of the proposed hipped roof within the view corridor has heights between RL72.78 and RL73.10. This demonstrates a lesser visual impact compared to a flat roof design at RL73.00, as suggested by the objector. In this context, the proposed roof design is considered acceptable noting also that it complies with the maximum height controls in the DCP.

The fundamental question is whether a complying building in terms of building wall height, which is non-compliant at the lower south eastern corner should be insisted upon given the context of the view and considering: overall size and scale of the development or whether a more skillful design and or location could retain the view whilst also achieving similar amenity for the occupants of the secondary dwelling. All of these are considered in the assessment of this application subject of the tests under the planning principle for view sharing.

The planning principle sets out the following tests for view sharing:

1. Value and quality of the view,
2. Reasonable expectation of view retention,
3. Impact on views and
4. Reasonableness of the proposal.

Step 1 - Value and quality of the view,

The view from a living room balcony of Unit 16/67-69 St Pauls Street is a low value view as a result of the following conditions:

- The view is a distant view around 1.7km to the east.
- The view is of a narrow corridor.
- The view is interrupted by existing vegetation and buildings in the line of sight of the view.
- The view is not a sitting view.

Step 2 - Reasonable expectation of view retention

In assessing views, one must also have regard from where the view is obtained. The view is obtained from a high use living room balcony which increases expectation of view retention; however, the expectation is somewhat lessened as this view is across the side boundary of the objector's site and across the rear of the site where the objectors own flat building also sits.

Step 3 - Impact on view

Whilst the above image of the view doesn't show the impact of the view, the critical reference point is the roof of the outbuilding at the rear of No. 73 St Pauls Street which is around 6.6cm (RL73.405) lower than the proposed maximum ridge (RL73.471) falling to up to 62.5cm lower at the top of eaves at the south eastern corner.

This means that the view will largely be retained as is with only a very minor impact on views at the left of the view.

Step 4 - Reasonableness of the proposed development

The Court poses two main questions in *Tenacity Consulting v Warringah* (2004) NSWLEC 140 (paragraphs 23-33).

1. The first question relates to whether a non-compliance with one or more planning controls results in view loss.

2. The second question posed by the Court relates to whether a more skillful design could provide the same development potential whilst reducing the impact on views.

Compliance

In relation to the first question, the proposed doesn't have a compliant wall height at the southern end of the site and whilst the roof above is compliant it seems that if it were lowered then it would not result in less view loss noting that at this point the building is lower than the outbuilding at No. 73 St Pauls Street.

Skillful design

In relation to the second question, the development has been amended substantially when compared with that originally proposed in earlier DA that was refused including:

- Reduced the roof pitch to around 10 degrees reducing the overall height and wall height of the secondary dwelling;
- Lowered the external wall height of the secondary dwelling to mostly full compliance; and
- Removing walls in open space between the primary dwelling and the secondary dwelling.

These amendments are considered to represent skillful designs which seek to provide suitable amenity for the occupants and at the same time limiting the impact on views lost from the neighbouring property - Unit 16/67-69 St Pauls Street.

Overall, the proposal has been assessed against the view sharing principles contained in Tenacity Consulting v Warringah Council [2004] NSWLEC 140. The proposal, as conditioned, is considered to represent a skillful design, which upholds Council's view sharing principles and objectives.

Landscaping

The development application includes a landscape plan and planting schedule which contains tree species such as Callistemon Citrinus 'Crimson Bottlebrush', Banksia Integrifolia, Glochidion Ferdinandi, and Waterhousea Floribunda 'Weeping Lilly Pilly'. The selection of these species will likely impact upon the view corridors across the site from 67-69 St Pauls Street.

As such, a condition of consent has been included that all trees proposed within the elevated rear yard between the primary and secondary dwellings (i.e. within finished land levels between RL69.21 and RL70.20) are to be revised. The species must be native species that will not exceed a mature height above RL73.58 or must be capable of being maintained (pruned) to a maximum height of RL73.58. Suitable examples include, but are not limited to:

- Grevillea 'Robyn Gordon' or 'Mini Marvel' – 1.5 to 2.5 m
- Leptospermum 'Pink Cascade' or 'Fore Shore' – approx. 2 m
- Syzygium australe 'Tiny Trev' – 2 to 3 m
- Kunzea ambigua 'Tick Bush' – 2.5 to 4 m

Subject to this condition, the planting species is acceptable and will not adversely impact existing view corridors.

No. 15/67-69 St Pauls Street

View loss assessment of views to east from the rear balcony of Unit 15/67-69 St Pauls Street was not required as it was a view across a side boundary and the trees within No. 71 St Pauls Street already obscure this view as shown below.

9. Conclusion

That the development application for alterations and additions to the existing dwelling house, including a rear ground floor addition and the construction of a detached single-storey secondary dwelling at the rear of the site with associated site and landscape works at 69A St Pauls Street, Randwick NSW 2031, be approved (subject to conditions), for the following reasons:

- The proposal is consistent with the objectives of the Randwick Local Environmental Plan 2012 (RLEP 2012) and satisfies the relevant provisions of the Randwick Development Control Plan 2013 (RDCP 2013).
- The variation to the minimum lot size development standard under the Housing SEPP has been appropriately justified in the applicant's Clause 4.6 written request. The variation is considered well founded, having demonstrated sufficient environmental planning grounds to warrant the departure from the standard and meeting the intent of both the Housing SEPP and the R3 Medium Density Residential zone.
- The proposed earthworks, although involving excavation beyond 1 metre in parts of the rear yard, are acceptable subject to recommended conditions. The submitted geotechnical report confirms the site's capacity to accommodate the proposed works, and suitable measures can be implemented to mitigate potential structural, or amenity impacts to adjoining properties.
- The application has been assessed against the view sharing principles established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, and the potential view loss identified has been deemed reasonable. The views in question are distant, filtered, and obtained across multiple lots from the side aspect of a rear facing balcony. The development maintains a compliant building height and demonstrates a balanced and skillful design response.
- The overall scale and built form of the proposal is appropriate to the site context and is consistent with the existing and desired future character of the locality. The detached secondary dwelling maintains a modest single-storey form and integrates well with the established pattern of outbuildings in the area, and the wider LGA.
- The development will not detract from the visual quality or character of the public domain or streetscape, as the secondary dwelling is located at the rear of the site and is not visible from the street.
- The development contributes to housing diversity and affordability in line with the objectives of the Housing SEPP and the Zone R3 Medium Density Residential, while maintaining acceptable levels of residential amenity for both future occupants and neighbouring properties.

Appendix 1: Referrals

1. Internal Referral Comments:

1.1. Heritage Planner

The Site

Subject site is not a heritage item nor located within a HCA.

The site is facing the Spot HCA.

Proposal

Alterations and additions to the existing building/site

Controls

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

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

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

Comments

There development does not propose any changes to the front of the building. The proposal does not have any adverse visual or material impact on the HCA.

Recommendation

The proposed development is supported from a heritage perspective, no further condition is required.

1.2. Development Engineer and Landscape Officer

An application has been received for alterations and additions at the above site including a 2 bedroom granny flat in the rear yard.

This report is based on the following plans and documentation:

- *Amended, Architectural Plans by Fortey & Grant Architecture Pty Ltd, Job No 2207, REV D, dated 13/02/2025;*
- *Amended Statement of Environmental Effects by Planning Ingenuity dated 17/2/2025;*
- *Amended Landscape Plan by Be Landscape Architects, REV D, Date 21/1/2025;*
- *Detail & Level Survey by Benchmark Surveys NSW Pty Ltd Ref; 220306, Date 25/11/2022;*

Drainage Comments

Stormwater runoff from the (redeveloped portion) site shall be discharged to the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system);

Undergrounding of power lines to site

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

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

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

If additions are at rear consider following wording

It is noted that the proposed works are located towards the rear and there are no alterations or additions proposed at the front of the dwelling where the existing electricity supply connects. It is therefore considered a nexus cannot be established between the council resolution and the proposed works and subsequently the condition has not been recommended in this instance.

Landscape Comments

Site inspection was undertaken on Wednesday 3 May 2023 with vegetation submitted on D04931998.

Within the frontage of this site, the only vegetation found, were two street trees, they are plotted centrally adjacent the neighbouring properties, on St Pauls Street council verge, these trees will not be in conflict with works, are measured well clear from any physical or mechanical damage, tree protection will not be applied.

With most of the works carried out to the rear of the of the property, the only movement at the frontage will be deliveries of materials, possible lifting and manoeuvring of mechanical machinery.

Moving within the northern frontage, towards wooden gate, above small concrete stair, that leads to a narrow laneway, adjacent No.67-69 boundary, this narrow lane leads to the rear of existing building, where you meet a 90-degree angled retaining wall, this retaining wall will be demolished then excavated 5.5 metres north, within this excavation works, this will leave neighbouring upper level LillyPilly trees in direct conflict with works.

Investigation report was sought from owner detailing a root mapping trench, this trench was undertaken by hand, 2 metres long, measuring 0.2 metres from common boundary, minor root activity was identified, pictures and measurement can be found on D05059970 & D05064309 within existing DA/665/2022 dated 2/8/2023

Whilst root mapping was applied near 20 months prior, Council Officer agrees, that works can still proceed to the architects' measurements and specifications, council still requires the owner to comply with below guidelines before excavations proceeds.

*Given the relatively small size of the neighbouring trees, we're not anticipating any major issues, roots with a diameter of **less than 50mm** to be found which are in direct conflict with the approved works, Council grants permission for their pruning, they will be cut cleanly using hand-held tools only, not machinery, with the affected area then be backfilled with clean site soil as soon as practically possible.*

Moving to north setback, screening bamboo species listed in the DCP of undesirable species, were located on the boundary fence to the west, in direct conflict with works, to be removed for proposed works and landscaping.

Moving to the north, wholly in the adjoining property, two Archontopheonix cunninghamiana (Bangalow palms) 9 meters high, good vigor, slight overhang over site, not in direct conflict with works, boundary fence will be sufficed for protection, a dedicated deep soil area must be provided, within the site boundary and proposed building to consider root protection, this condition is stated further in this report.

Further southeast of above vegetation, Jasmine species, growing wholly within the neighbouring property, this climbing plant envelopes the entire boundary fence within the works site, conditions will be applied specifying that pruning will be undertaken, due to been in direct conflict with proposed new landscaping, shown in, Landscape Plan, (Dwg No, L01 REV D dated 21/1/2025).

Site inspection saw varied small insignificant vegetation throughout the site back within first site visit 9/5/2023, which with being 23 months prior would not see any major significant changes, all would be still in direct conflict with works, all to be removed.

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

D34/25

Clause 4.6 Variation Statement – (Clause 53(2)(a) Housing SEPP)

1. INTRODUCTION

This 4.6 written request for exception to development standard has been prepared on behalf of the applicant for the proposed development at No. 89A St Paul Street Randwick (the site).

The Court has established principles that are to be addressed in relation to whether a variation to a development standard should be approved by a consent authority. The relevant tests to be considered are set out in the judgement of Justice Lloyd in *Winton Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79. The relevant tests were revisited by Chief Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*). Although the *Winton Property Group* and *Wehbe* judgment refer to variations to development standards submitted under State Environmental Planning Policy 1 – Development Standards (SEPP 1) the principles and tests contained therein remain applicable to a variation request under Clause 4.6 in the NSW Standard Instrument as confirmed by the Court in the following judgments:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*);
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245;
- *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61;
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191;
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112;
- *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115.

It is important to note at the outset that clause 4.6 of the LEP "is as much a part of [the LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome." (*SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [73]).

In our opinion, the variation achieves the objectives of the zone and the development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

2. CLAUSE 53(2)(A) OF THE HOUSING SEPP

Clause 53 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) provides non-discretionary development standards, which if complied with, prevent the consent authority from requiring a more onerous standard. This Clause 4.6 Variation Request has been prepared in relation to Clause 53(2)(a) of the Housing SEPP relating to minimum site area of secondary dwellings which states:

(a) for a detached secondary dwelling—a minimum site area of 450m²

The subject development includes a detached secondary dwelling therefore, the site area is to be 450m².

3. THE VARIATION

The proposed site area does not meet the above non-discretionary development standard for a detached secondary dwelling. The site area is 395.8m² and is therefore, deficient by approximately 54.2sqm or 12.04%.

4. CLAUSE 4.6 OF RLEP 2012

Clause 4.6(2) of the *Randwick Local Environmental Plan 2012* (RLEP) states that this clause is applicable to a development standard "imposed by this or any other environmental planning instrument". The Housing SEPP is an

environmental planning instrument and therefore Clause 53(2)(a) of the Housing SEPP is a development standard which can be varied pursuant to Clause 4.6 of the RLEP.

Clause 4.6 of the RLEP allows for flexibility in the application of development standards in certain circumstances. The objectives and provisions of Clause 4.6 are reproduced below.

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*
- (4) *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.*

Note—

When this Plan was made, it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

- (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).

In accordance with Clause 4.6(2), the minimum site area standard for secondary dwellings in Clause 53(2)(a) of the Housing SEPP can be varied under Clause 4.6 of the RLEP. Clause 53(2)(a) is not expressly excluded from the operation of clause 4.6.

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

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

However, it is still useful to provide a preliminary assessment against the objectives of the Clause.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclause 4.6(3) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(8).

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

5. COMPLIANCE IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (Sub-Clause 4.6(3)(a))

Of relevance to Clause 4.6(3)(a) is Preston CJ's judgment in *Wehbe v Pittwater Council* (2007) NSW LEC 827 which sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

"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 judgment goes on to state that:

"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)."

Preston CJ then expressed 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 (with emphasis placed on number 1 for the purposes of this Clause 4.6 written request [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore 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 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.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

It is noted that there are no specific objectives for Clause 53(2)(a) of the Housing SEPP. However, the Principles of the SEPP (Housing) 2021 are as follows:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,
- (c) ensuring new housing development provides residents with a reasonable level of amenity,
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,
- (e) minimising adverse climate and environmental impacts of new housing development,
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,
- (h) mitigating the loss of existing affordable rental housing.

In the absence of any specific objectives for minimum site area for secondary dwellings in the Housing SEPP, the above principles of the Housing SEPP can be considered 'assumed objectives' for Clause 53(2)(A) of the Housing SEPP. Whilst the above assumed objectives are considered to provide the most appropriate considerations for the minimum site area, it is noted that the Reasons for the RLPP stated as follows:

Should the application be amended as outlined above a new Clause 4.6 Statement should also be provided which addresses the specific objectives for outbuildings contained in Part C1 of the DCP and which explicitly addresses how the proposal achieves those objectives.

With regard to the consideration of the objectives of a DCP in light of the controls for the RLEP, CJ Preston found in *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115* as follows:

46. First, the Commissioner was not legally obliged to construe the term "desired future character" in WLEP by reference to the desired future character provisions of WDCP. As SJD submitted, the provisions of a development control plan cannot be used to interpret the provisions of a local environmental plan, unless the provisions of the local environmental plan expressly refer to the provisions of the development control plan for that purpose. WLEP does not refer to WDCP as explicating the meaning of the term "desired future character" used in provisions of WLEP.

47. The fact that the principal purpose of a development control plan is to provide guidance on certain matters referred to in s 3.42(1) of the EPA Act does not make it permissible to construe the provisions of a local environmental plan by reference to a development control plan.

48. Of course, the maker of a development control plan will need to construe the provisions of a local environmental plan in order to provide guidance on the matters referred to in s 3.42(1)(a), (b) and (c). These matters include the aims of the local environmental plan and the objectives of land zones under the local environmental plan. As in WLEP, these aims and objectives may use terms, such as "desired future character", that are not defined in the local environmental plan. In order to provide guidance in the provisions of the development control plan so as to give effect to these aims or to achieve these objectives that use such undefined terms, the maker of the development control plan will need to construe the meaning of the various terms and apply that construction in the drafting of the provisions of the development control plan. But this process of providing guidance in this way does not define the meaning of the undefined terms in the local environmental plan; it merely implements an interpretation of the meaning of the terms in the local environmental plan.

49. So understood, the Commissioner did not err on a question of law by not construing the "desired future character" in the objectives of the height and development standards in cl 4.3 and cl 4.4 and the objective of the B2 zone of WLEP by reference to the desired future character provisions of WDCP.

50. This is not to say that it was not permissible for the Commissioner to have had regard to the desired future character provisions in WDCP, only that he was not bound to do so. There can only be an error on a question of law by failing to address a matter that the Commissioner was bound to address. Failure to address a matter that was permissible to consider, but not mandatory to consider, is not an error in deciding a question of law: *Minister for Aboriginal Affairs v Peko Wallsend Ltd* at 39-40; *Randall v Willoughby City Council* (2005) 144 LGERA 119; [2015] NSWCA 205 at [15].

Whilst the facts and degree vary from this case, it is clear that the consent authority is not bound to have regard to the provisions of RDCP, the objectives of Part 7 of Chapter C1 may be taken into account. As such, the objectives of Part 7 of Chapter C1 (Fences and Outbuildings) of RDCP 2013 will also be considered which state as follows:

- The alignment, configuration, rhythm of bays, height, materials, colours and texture of new fences complement the building on the site and the streetscape.
- Fences are designed to achieve a balance between privacy, safety and security for the building occupants and visual interaction with the public domain, without adversely affecting the amenity of the pedestrian environment.
- Fences are designed to minimise opportunities for graffiti and malicious damage.
- To provide for ancillary development that enhances the liveability of dwellings and maintains reasonable levels of visual amenity, solar access and privacy for the neighbouring dwellings.
- To ensure ancillary development do not present as prominent features and detract from the streetscape character.

Therefore, an assessment of the assumed objectives and objectives of Part 7 of Chapter C1 of RDCP 2013 is provided in turn below.

The Principles of the Housing SEPP (Assumed objectives) are discussed below:

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

The subject site has an area of 395.8sqm which is 54.2sqm or 12.04% less than the minimum allotment size required under the Housing SEPP for secondary dwellings. Given the site does not achieve the minimum site area it is reasonable to require the size of the secondary dwelling to be reduced by a proportionate amount to ensure the density of the site remains relative to the site area. In this regard, the proposed secondary dwelling has a maximum area of 52.3sqm which represents a 12.8% reduction on the maximum GFA for a secondary dwelling (60sqm). That is, the size of the secondary dwelling (52.3sqm) continues to be proportionate to the difference between the site area (395.8sqm) and the 450sqm minimum site area requirement under the Housing SEPP.

The subject site is zoned R3 Medium Density Residential where secondary dwellings are only permitted via the provisions of the Housing SEPP. The irony is a more intensive form of development (RFB) is not constrained by a minimum site area which is applicable to secondary dwelling. That is, there is a minimum site area for a principal and a secondary dwelling (two dwellings) but not for three or more dwellings (RFB). Therefore, the provision of a secondary dwelling on the site will provide for a typology that is not contemplated by the RLEP 2012 but will permit a more diverse range of housing. The proposal satisfies this assumed objective.

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

The provision of a secondary dwelling will "encourage" housing for more vulnerable members of the community. The secondary dwelling may be used for different generations of the one family or rented to members of the public who may, or may not, be on low to moderate incomes. As discussed above, a more intensive form of development (RFB for 3 or more units) is not constrained by the minimum site area for secondary dwellings and the proposal will provide a wider diversity of housing. In this regard, whilst the proposal is non-compliant with the minimum site area requirement, it delivers a density which is reasonably anticipated on the subject site, consistent with the desired future character of the locality. The proposal satisfies this assumed objective.

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

The proposed secondary dwelling will deliver a detached two-bedroom dwelling that will provide a high level of amenity for the occupants. In this regard, the proposed development will have a north facing living area and separate private open space area in the form of a terrace facing north. The secondary dwelling will have a high level of internal amenity with access to sunlight and cross ventilation and will not impose on the private open space or landscaped character of the primary dwelling. The proposed secondary dwelling will also have separate access which will allow for multi-generational or separate living arrangements in an accessible location. The proposal satisfies this assumed objective.

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

The proposed secondary dwelling is located within the R3 – Medium Density Residential zone with excellent access to public transport, shops and services. The site is less than 200m walking distance to The Spot and Randwick Ritz with a number of other shops and services located within close proximity. The proposal will make use of all existing connections to infrastructure and will have no greater impact than the surrounding RFB's which are of a significantly greater density than the proposal. The proposal satisfies this assumed objective.

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

The proposed secondary dwelling has been designed to result in minimal environmental impacts to neighbouring properties and provides a positive impact to the subject site. There are no views which would be adversely affected by the proposal, particularly given works proposed are typically at ground level and relate to a single storey secondary dwelling.

The proposed secondary dwelling has been positioned at the rear of the site with a rear setback of 0.9m that is compatible with surrounding development including No. 67-69 St Pauls Street to the west and No. 73 St Pauls Street

to the east which also has a secondary dwelling in the rear yard that is setback approximately 1m from the rear boundary. The proposal is also sited at, or close to, ground level which ensures that any impact in relation to privacy and overshadowing is minimal.

The amended proposal reduces the overall height of the secondary dwelling to no greater than 3.6m and will ensure the western elevation wall facing No. 67 St Pauls Street is compliant with the 2.4m wall height requirement. The reduced height of the amended proposal will further reduce any potential overshadowing opportunities and "minimise" the impact by ensuring compliance is maintained with Council's solar access controls and that a reasonable amount of sunlight is maintained to the private open space and living room windows of both the subject site and neighbouring properties in accordance with the RDCP. Furthermore, the proposal will delete the eastern and western elevation windows to enhance the privacy relationship with surrounding properties.

The proposed secondary dwelling will not have any adverse impacts on the climate of the locality and does not significantly alter the topography and is "reversible". That is, the demolition or demolition of the structure would simply return the area to a rear yard for the primary dwelling without any additional adverse impacts.

The compliant landscaping to the site and greater setbacks ensures the secondary dwelling will sit within a landscaped setting, will be visually integrated with the primary dwelling and will be compatible with the built form and character of the locality. The proposal satisfies this assumed objective.

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

Even with a compliant site area of 450m², the proposed impact of the secondary dwelling will be no different to the site area being 395.8m². This is evident when comparing the site to No. 73 St Pauls Street which also contains a secondary dwelling on a site of 463sqm. Whilst compliant with the site area, the secondary dwelling is located in a constrained part of the site which tapers between 7-9m, is setback approximately 1m from the rear boundary and is setback approximately 8m from the primary dwelling. The proposed secondary dwelling, despite the variation to the minimum allotment size, is on part of the site with an approximate 9.2m consistent width, is setback 0.9m from the rear boundary and approximately 12m from the primary dwelling. That is, despite the variation to the minimum site area, the location of the secondary dwelling is superior to the approved secondary dwelling at No. 73 St Pauls Street with a compliant site area of 463sqm.

The current site area still results in a density and scale that is compatible with the surrounding development, is appropriate for the site and does not result in any significant adverse impacts to the residential amenity of the neighbouring properties. Applying strict compliance with the minimum site area for secondary dwellings is not considered necessary when the development complies with all the objectives and/or controls of the SEPP Housing, RLEP and RDCP.

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

The proposal is for a secondary dwelling and will not support short-term rental accommodation. This assumed objective is not relevant.

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

The proposal involves the construction of a new secondary dwelling and will not result in the loss of any existing affordable rental housing. The proposal satisfies this assumed objective.

The objectives of Part 7 of Chapter C1 of RDCP 2013 are discussed below:

- *The alignment, configuration, rhythm of bays, height, materials, colours and texture of new fences complement the building on the site and the streetscape.*
- *Fences are designed to achieve a balance between privacy, safety and security for the building occupants and visual interaction with the public domain, without adversely affecting the amenity of the pedestrian environment.*
- *Fences are designed to minimise opportunities for graffiti and malicious damage.*

The first three objectives relate to fences which will not be altered by the proposal and are not relevant to secondary dwellings.

- *To provide for ancillary development that enhances the liveability of dwellings and maintains reasonable levels of visual amenity, solar access and privacy for the neighbouring dwellings.*

The provision of a secondary dwelling in the rear yard will enhance the amenity of the occupants on the site by providing opportunities for inter-generational living or alternative and diverse housing in an appropriate location.

The objective only requires "reasonable levels" of amenity to be maintained for neighbouring properties. Despite this, the amended proposal will improve the amenity for neighbouring properties when compared to the refused scheme and is a "reasonable" outcome as discussed in the assumed objectives above. In this regard, the proposal will not have any adverse impacts on the amenity of adjoining properties because:

- The proposed secondary dwelling is a single storey detached structure located close to ground level with a maximum height below 3.6m which will not have any adverse impacts on views or overshadowing;
- The proposed secondary dwelling contains privacy screening to the rear terrace and does not provide for any windows on the eastern and western elevations facing adjoining properties which will provide "reasonable" levels of privacy;
- The compliant landscaping to the site and setbacks ensures the secondary dwelling will sit within a landscaped setting, will be visually integrated with the primary dwelling and will be compatible with the built form and character of the locality; and
- The secondary dwelling adopts a pitch roof and materials that are compatible with the primary dwelling and other development in the locality and will not detract from the streetscape, if visible at all.

The proposal satisfies this objective.

- *To ensure ancillary development do not present as prominent features and detract from the streetscape character.*

The site is located within the R3 Medium Density Residential zone and surrounding development is characterised by a mixture of residential accommodation including dwelling houses, attached dwellings, semi-detached dwellings, residential flat buildings and Seniors Developments. On the southern side of St Pauls Street, lots are zoned R2 Low Density Residential which provides a different character to the buildings on the northern side.

To the west, the site adjoins No. 67-69 St Pauls Street which contains a five storey rendered residential flat building. Pedestrian access is via a high gate at the front boundary, while vehicular access is via a roller door directly adjacent the front boundary leading to basement parking. Adjoining the site to the east is No. 71 St Pauls Street which contains a one to two storey brick dwelling with tile roof. This dwelling has a detached single garage with limited front setback addressing St Pauls Street. To the north (rear) of the site is No. 11 Daintrey Crescent which contains a three to four storey residential flat building.

The proposed secondary dwelling is single storey and is of a modest scale that is compliant with the built form controls including FSR, height, setbacks and landscaped area of the RLEP and RDCP. Given the varying scales and housing types of the surrounding development, a one storey secondary dwelling is compatible with the context and character of the locality. In addition, the secondary dwelling cannot be visually seen from the public domain as it is located to the rear of the site with no rear lane and the adjoining buildings are larger in built form and scale.

The secondary dwelling is of high quality contemporary design utilising a variety of materials and colours such as Dulux Lexicon timber cladding and Colorbond Windspray roof sheeting. The external materials, colours and finishes and architectural design results in an appearance that is compatible with the surrounding built and natural environment. The site also incorporates large amount of landscaping and deep soil to integrate the built form with the site and streetscape.

Given the above, the proposed scale and built form is compatible with the character and appearance of the locality and will have no adverse visual amenity impact to the public domain and therefore, this objective is satisfied.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in Section 6 below.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (Sub-Clause 4.6(3)(b))

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* [2015] 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* [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 whereby Justice Pain ratified the original decision of Commissioner Pearson.

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6. The case also demonstrates that the requirement in Clause 4.6(3)(b) of LEP 2012 to justify there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development and not simply grounds that apply to any similar development on the site or in the vicinity. In the *Four2Five* case, the Court found that the environmental planning grounds presented by the applicant in a Clause 4.6 written request must be specific to the circumstances of the proposed development on that site.

Furthermore, it is noted that whilst *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24] indicated that the focus of consideration of environmental planning grounds should be on the aspect or element of the development that contravenes the development standard and not on the development as a whole, in this case, it is the design of the building as a whole that results in the contravention of the development standard and not necessarily an identified aspect of the development. In this context the proposed development must be considered holistically.

In this instance, there are sufficient environmental planning and design grounds to justify the proposed contravention of the minimum site area for secondary dwelling standard in the Housing SEPP as follows:

1. The variation to the minimum site area control will increase the density of the site without having any impacts greater than that of a compliant site area for secondary dwellings. This is evident when comparing the site to No. 73 St Pauls Street which also contains a secondary dwelling on a site of 463sqm. Whilst compliant with the site area, the secondary dwelling is located in a constrained part of the site which tapers between 7-9m, is setback approximately 1m from the rear boundary and is setback approximately 8m from the primary dwelling. The proposed secondary dwelling, despite the variation to the minimum allotment size, is on part of the site with an approximate 9.2m consistent width, is setback 0.9m from the rear boundary and approximately 14m from the primary dwelling. That is, despite the variation to the minimum site area, the location of the

secondary dwelling is superior to the approved secondary dwelling at No. 73 St Pauls Street with a compliant site area of 463sqm.

2. The subject site has an area of 395.8sqm which is 54.2sqm or 12.04% less than the minimum allotment size required under the Housing SEPP. Given the site does not achieve the minimum site area the proposal reduces the size of the secondary dwelling by a proportionate amount to ensure the density of the site remains relative to the site area. In this regard, the proposed secondary dwelling has a maximum GFA of 52.3sqm which represents a 12.8% reduction on the maximum GFA for a secondary dwelling (60sqm). That is, the size of the secondary dwelling (52.3sqm) continues to be proportionate to the difference between the site area (395.8sqm) and the 450sqm minimum site area requirement under the Housing SEPP. This ensure that an appropriate density will be maintained on the subject site.
3. The proposed development achieves a high level of compliance with the applicable planning controls which reinforces the appropriateness of the secondary dwelling, despite the variation to the minimum site area requirement for secondary dwellings. In this regard, the proposal:
 - a. Complies with the Floor Space Ratio (FSR) with the principal and secondary dwelling combined is 0.72:1 (required 0.75:1).
 - b. Complies with the site coverage requirements by providing a site coverage of 44.8% which is well below the maximum site coverage requirement of 55% for a site area between 301m² and 450m² under the RDCP.
 - c. Complies with the landscape area requirement with at least 99m² of the landscape deep soil area which is greater than the requirement (98.9sqm)
 - d. Complies with the overall height and wall height requirements for "outbuildings"
 - e. Complies with the setback requirements for secondary dwellings
 - f. Complies with the private open space area that is at least 7 x 7 metres with adequate solar access. It is also noted that a private terrace is provided to the secondary dwelling

The proposed secondary dwelling demonstrates a high level of compliance with the applicable planning controls despite the variation to the minimum site area for secondary dwelling which demonstrates that the site is large enough to accommodate the proposed density. Furthermore, the development sits within a landscaped setting and is visually integrated within the primary dwelling and scale of neighbouring properties.

4. Contextually the site is surrounded by apartment buildings and dwellings that are of two to five storey scale, including No. 73 St Paul Street which has a secondary dwelling in the rear yard and therefore the proposal is not introducing a new element or scale not already in existence. The surrounding buildings are built with minimal setbacks and directly adjoin the proposed secondary dwelling. Therefore, in comparison, the single storey secondary dwelling to the rear would be of a lesser and more modest scale that is appropriate for the site and surrounding development. In addition, the secondary dwelling cannot be visually seen from the public domain and is surrounded by larger buildings. The proposal scale and built form is compatible with the site and surrounding development and will have no adverse visual amenity impact to the public domain.
5. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties and on the character of the locality. Specifically:
 - a. The extent of the variation creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope on a compliant (450sqm) site. When considering the overshadowing against the backdrop of the applicable planning controls and existing development, the additional overshadowing impacts caused by the non-compliant element would be insignificant;
 - b. The extent of the variation creates no adverse additional privacy impacts when compared to a compliant building envelope on a compliant (450sqm) site. The proposed addition provides setbacks



which are consistent with the RDCP 2013 setbacks and when considering the visual and acoustic privacy impacts against the backdrop of the applicable planning controls, the additional privacy impacts caused by the non-compliant element would be insignificant or nil; and

- c. The extent of the variation will not result in any significant view loss. The proposed development does not increase the visual bulk of the development over that anticipated by the building envelope controls and therefore any view loss impacts caused by the non-compliant element would be insignificant or nil.
6. The proposed secondary dwelling allows the owners to increase the density of the site so that it is more reflective of the R3 Medium Density Residential objectives. As a result, the existing dwelling can be retained and a secondary dwelling can be provided which contributes to additional housing types in the area and by nature contributes to affordable housing particularly for young couples, families and students. The retention of the dwelling also ensures that there is no significant demolition impact which would contribute negatively to the carbon footprint and amenity of the neighbouring properties. Therefore, the proposal is compatible with the R3 Medium Density Zone objectives.
 7. The proposal is compliant with all the SEPP Housing requirement for secondary dwellings (excluding site area) and satisfies the relevant principles of the Housing SEPP as discussed in Part 5 above.
 8. The proposed development achieves the Objects in Section 1.3 of the EP&A Act. Specifically:
 - a. that the proposed development promotes the orderly and economic use and development of land (1.3(c));
 - b. that the proposed development promotes the delivery and maintenance of affordable housing (1.3(d)); and
 - c. that the proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).
 9. The proposed development is consistent with the aims of RLEP listed in Clause 1.2. Specifically:
 - a. the proposal is compatible with aim (f) to facilitate sustainable population and housing growth;
 - b. the proposal is compatible with aim (g) to encourage the provision of housing mix and tenure choice, including affordable and adaptable housing, that meets the needs of people of different ages and abilities in Randwick.

It is noted that in *Initial Action Pty Ltd v Woolahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. 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.

87. The second matter was in cl 4.6(3)(b). 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.

Regardless, as outlined above, it is considered that the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

7. CONCLUSION

This Clause 4.6 written request to vary the minimum site area development standard in clause 53(2)(a) of the Housing SEPP has adequately addressed the matters required to be demonstrated under clause 4.6(3) in order for any consent authority to be satisfied that compliance with the Minimum Site Area for Secondary Dwelling provisions of the Housing SEPP is unreasonable or unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standard.

We are of the opinion that the consent authority should be satisfied that the proposed development achieves the assumed objectives of the standard and provides sufficient environmental planning grounds to support the variation. On that basis, the request to vary Clause 53(2)(a) of the Housing SEPP should be upheld.



Appendix 3: DCP Compliance Table

1.1 Part B2: Heritage

Council is satisfied that the proposed development meets the heritage requirements in accordance with Part B2 of RDCP 2013. Refer to detailed assessment by Council's Heritage Planner at Referrals section of this report.

1.2 Part B3: Ecologically Sustainable Development

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

1.3 Part B4: Landscaping and Biodiversity

Council is satisfied that the proposed development meets the landscape requirements in accordance with Part B4 of RDCP 2013. Refer to detailed assessment by Council's Landscape Officer at Referrals section of this report.

1.4 Part B5: Preservation of Trees and Vegetation

Council is satisfied that the proposed development meets the tree preservation requirements in accordance with Part B5 of RDCP 2013. Refer to detailed assessment by Council's Landscape Officer at Referrals section of this report.

1.5 Part B6: Recycling and Waste Management

Council is satisfied that the proposed development meets the waste requirements in accordance with Part B6 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer at Referrals section of this report.

1.6 Part B8: Water Management

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

1.7 Part C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	No pursuant to the SEPP Housing
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Proposed = 44.87% (177.59m ²)	Yes
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front. vii) Retain existing or replace mature native trees	Proposed= 34.1% (134.97m ²).	Yes

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	No pursuant to the SEPP Housing
	viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.		
2.5	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	Primary dwelling: A minimum 6m x 6m of contiguous POS is proposed to the rear of the dwelling and accessible from the rear living area. Secondary dwelling: A suitably dimensioned area of POS is provided for the Secondary dwelling within the rear yard of the site at a same level.	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.75:1	Existing FSR = 0.5:1 (GFA of 201.8m ²) Proposed FSR = 0.72:1 (GFA of 284.9m ²)	Yes
3.2	Building height		
	Maximum overall height LEP 2012 = 12m (R3) (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 <u>dwelling house</u> or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres	Primary dwelling works: 3.28m. Proposed secondary dwelling = 2.87m (73.471-70.6/70.67) Previous DA refused for Secondary Dwelling: = 4.422m (Measured between Ridge Level RL74.852 and adjacent ground RL70.43)	Yes Yes
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded See ancillary development section in relation to outbuildings.	Primary dwelling: 4m Rear extension max. wall height = between 3.19m and 3.99m. Minimum floor to ceiling = 2.87m.	Yes

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DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	No pursuant to the SEPP Housing
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	No change to existing	Yes
3.3.2	Side setbacks: Dwellings: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor up to 4.5m)	Frontage = 9.19m Works pertaining to the <i>primary dwelling</i> are limited to the rear ground floor extension resulting in the following side setbacks: West = 1170mm East = 960mm	Yes
3.3.3	Rear setbacks i) Minimum 25% of allotment depth (10.6825m) or 8m , whichever lesser. ii) Provide greater than aforementioned or demonstrate not required, having regard to: - 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. Refer to Section 7.4 of this table for outbuildings	Primary dwelling = 24.8m, Note Outbuildings may encroach on the rear setback subject to compliance with relevant provisions such as side setbacks, site coverage, deep soil, and maximum heights.	Yes Yes
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - • articulated to enhance streetscape. • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design	The development is in the sloping rear yard and generally considered to respond appropriately to the site conditions.	Yes
4.5	Colours, Materials and Finishes		

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	No pursuant to the SEPP Housing
	<ul style="list-style-type: none"> i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. 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 (See also section 8.3 foreshore area.) 	<p>Proposed materials and Finishes schedule is provided within DA drawing DA-13 (D)</p> <p>The nominated colours and materials are satisfactory.</p>	Yes
4.6	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) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. 	<p>Excavation >1m is proposed within the rear yard which extends to the side boundaries to create an open plan living space an outdoor terrace associated with the primary dwelling.</p> <p>Further to the rear the proposed excavation is to accommodate stepped planters/retaining walls that transition between the primary and secondary dwelling including stair access.</p> <p>Whilst the depth of excavation is significant it is considered the details at hand and imposition of suitable conditions can ensure the suitable management of excavation and support of adjoining land and structures located upon them.</p>	No, see key issues section of this report.
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 	The proposed secondary dwelling is single storey and does not trigger the requirements for shadow diagrams to be	Satisfactory

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DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	No pursuant to the SEPP Housing
	8am and 4pm on 21 June.	<p>submitted.</p> <p>North-facing living room windows are not impacted by the proposed development.</p> <p>As the works predominately impact on the subject site, the main concerns are whether the proposed secondary dwelling results in unreasonable shadowing of the primary dwellings open space. In the context of the site conditions, It is considered that the secondary dwelling is suitably designed in terms of bulk and scale and as far to the rear as practical and minimises overshadowing of the Primary dwellings area of POS.</p>	
	Solar access to neighbouring development:		
	<p>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.</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. 	<p>The proposed secondary dwelling is a single storey structure and does not trigger the requirements for shadow diagrams to be submitted. It is also noted that the predominately north south orientation means that shadows are not to the detriment of any single neighbour.</p>	Yes

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	No pursuant to the SEPP Housing
	<ul style="list-style-type: none"> Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 		
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	The layout and design will provide adequate internal amenity for the future occupants. A BASIX certificate has been submitted with the 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 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)	The proposed ground floor extension to the primary dwelling will not likely impact on visual privacy as the opening is orientated towards the rear yard and outlook towards the neighbouring properties would be suitably buffered by standard side fencing. It is noted that the proposal deletes the side facing windows seen as problematic in the previously refused DA.	Refer to Key Issues.
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows	The proposed additions to the primary dwelling	Refer to Key Issues.

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DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	No pursuant to the SEPP Housing
	<p><i>Attached dual occupancies.</i></p> <p>ii) Reduce noise transmission between dwellings by:</p> <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	<p>are orientated to its own rear yard.</p> <p>The secondary dwelling is located at the rear of the property and as conditioned it is generally considered to be suitably sited in relation to noise impacts and amenity of neighbouring properties.</p>	
5.6	View Sharing		
	<p>i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.</p> <p>ii) retaining existing views from the living areas are a priority over low use rooms</p> <p>iii) retaining views for the public domain takes priority over views for the private properties</p> <p>iv) fence design and plant selection must minimise obstruction of views</p> <p>v) Adopt a balanced approach to privacy protection and view sharing</p> <p>vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)</p>	<p>The proposed secondary dwelling complies with the overall building envelope controls. However, there are submissions raising concerns that the proposal results in a loss of views.</p>	Refer to Key Issues.
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	<p>i) Maximum 1 vehicular access</p> <p>ii) Locate off rear lanes, or secondary street frontages where available.</p> <p>iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i></p> <p>iv) Single width garage/carport if frontage <12m; Double width if:</p> <ul style="list-style-type: none"> - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. <p>v) Minimise excavation for basement garages</p> <p>vi) Avoid long driveways (impermeable surfaces)</p>	<p>There will be no change to the existing parking arrangement at the front of the primary dwelling.</p>	Yes
7	Fencing and Ancillary Development		
7.1	General - Fencing		

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning	Site = 395.8m ²	No pursuant to the SEPP Housing
	<ul style="list-style-type: none"> i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street. 	No changes are proposed to the existing boundary fencing.	Yes
7.4	Outbuildings		
	<ul style="list-style-type: none"> i) Locate behind the front building line. ii) Locate to optimise backyard space and not over required permeable areas. iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height) iv) Nil side and rear setbacks where: <ul style="list-style-type: none"> - finished external walls (not requiring maintenance. - no openings facing neighbours' lots and - maintain adequate solar access to the neighbours dwelling v) First floor addition to existing may be considered subject to: <ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades. - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. vi) Must not be used as a separate business premises. 	<p>The proposal is for a single storey within the rear yard.</p> <p>The overall height is to 2.871m (RL73.471-RL70.60) and a maximum wall height to 2.46m (RL72.6-RL70.14) localised at the lower south eastern corner of the site and that the wall height around the majority of the outbuilding is below 2.4m.</p> <p>Note: The originally refused secondary dwelling had an overall height of 4.422m and a wall height of 3.24m.</p>	<p>Yes – see also key issues section of this report.</p> <p>Rear setback: 900mm</p>

Responsible officer: Louis Coorey, Senior Environmental Planning Officer

File Reference: DA/131/2025

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Draft Development Consent Conditions (Alterations and additions and Secondary dwelling)



Folder /DA No:	DA/131/2025
Property:	69A St Pauls Street, RANDWICK NSW 2031
Proposal:	Alterations and additions to an existing dwelling house including rear ground floor addition, construction of a detached single storey secondary dwelling and associated site and landscaping works (Variation to Minimum Lot Size for Secondary Dwellings).
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
DA-01 Amendment D	Fortey and Grant Architecture Pty Ltd	13/2/2025	21 February 2025
DA-02 Amendment D			
DA-03 Amendment D			
DA-04 Amendment D			
DA-05 Amendment D			
DA-06 Amendment D			
DA-07 Amendment D			
DA-08 Amendment D			
DA-09 Amendment D			
DA-10 Amendment D			
DA-11 Amendment D			
DA-12 Amendment D			
DA-13 Amendment D			
L01 Revision D	B&E Landscape Architecture	21/01/2025	21 February 2025
L02 Revision B			

BASIX Certificate No.	Dated	Received by Council
A1783572	14 February 2025	21 February 2025
1783570S	14 February 2025	21 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.

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 Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.

3. External Colours, Materials & Finishes

The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

The roof of the secondary dwelling must be constructed using low-reflectivity Colorbond material in a finish that does not include highly reflective colours such as Surfist, Shale Grey, or similar. Roof finishes must be matte or low sheen to minimise glare and reflectivity impacts on neighbouring properties.

Details of the proposed colours, materials and textures including the specific roof material product and finish (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.

Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.

4. Section 7.12 Development Contributions

Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$190,000 the following applicable monetary levy must be paid to Council: \$950.00.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone **9093 6000** or **1300 722 542** for the indexed contribution amount prior to payment.

To calculate the indexed levy, the following formula must be used:

$$IDC = ODC \times CP2/CP1$$

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment

CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.

Condition Reason: To ensure relevant contributions are paid.

Condition	
5.	<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"> • \$1000.00 - 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>
6.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
7.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and</i></p>

- | | Condition |
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| | <p><i>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> |
| 8. | <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> |
| 9. | <p>Excavation, Earthworks and Support of Adjoining Land</p> <p>A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details the methods of support for any buildings located on the adjoining land, to the satisfaction of the Principal Certifier:</p> <ul style="list-style-type: none"> • when undertaking excavation or building work within the zone of influence of the footings of a dwelling or other building that is located on the adjoining land; • when undertaking demolition work to a wall of a dwelling or other substantial structure that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling); • when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land; and • as otherwise may be required by the Certifier for the development. <p>The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported</p> |
| 10. | <p>Geotechnical Suitability</p> <p>Documentary evidence prepared by a suitably qualified professional geotechnical engineer shall be submitted to the certifying authority prior to the issuing of a construction certificate, confirming the suitability and stability of the site for the proposed building and excavation works and certifying the suitability and adequacy of the proposed design and construction of the building for the site's current conditions.</p> <p>Note: The geotechnical report submitted with the Development Application (dated</p> |

	Condition
	<p>2022) is preliminary in nature and not adequate for the purposes of construction certification. The addendum dated 18 June 2025 shall be incorporated into the required Geotech report.</p> <p>Condition reason: To ensure that the development is appropriately designed and constructed in accordance with the site's geotechnical characteristics, and to protect the structural stability of the development and adjoining properties. This condition provides assurance that the proposed works will not pose a risk to neighbouring land due to unstable ground conditions.</p>
11.	<p>Excavation and Structural Impact Mitigation</p> <p>A report shall be prepared by a professional engineer and submitted to the certifying authority prior to the issuing of a construction certificate, detailing the proposed methods of excavation, shoring or pile construction, including details of potential vibration emissions. The report must demonstrate the suitability of the proposed methods of construction to overcome any potential damage to nearby land/premises.</p> <p>Driven type piles/shoring must not be provided unless a geotechnical engineer's report is submitted to the certifying authority, prior to the issuing of a construction certificate, which demonstrates that damage should not occur to any adjoining premises and public place as a result of the works.</p> <p>Any practices or recommendations specified in the engineer's report in relation to the avoidance or minimisation of structural damage to nearby premises or land must be fully complied with and incorporated into the documentation for the construction certificate.</p> <p>A copy of the engineer's report is to be submitted to the Council, if the Council is not the certifying authority.</p> <p>Condition reason: To minimise the risk of damage to adjoining properties, infrastructure, and the public domain during excavation and construction activities. This condition ensures that appropriate construction techniques and mitigation measures are adopted, particularly where there is potential for vibration, ground movement, or structural impact.</p>
12.	<p>Stormwater Drainage</p> <p>Surface water/stormwater (from the redeveloped portion of the site) must be drained and discharged to the street gutter in front of the site to the satisfaction of the Certifier and details of the proposed stormwater drainage system are to be included in the construction certificate details for the development.</p> <p>Details of any works proposed to be carried out in or on a public road/footway are to be submitted to and approved by Council prior to commencement of works.</p> <p>Condition Reason: To control and manage stormwater run-off.</p>
13.	<p>Landscape Plans</p> <p>a) Written certification from a qualified professional in the Landscape industry must state that the scheme submitted for the Construction Certificate is substantially consistent with the Amended Landscape Plans by Be Landscape Architects, REV D, Date 21/1/2025 with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.</p> <p>b) In addition, all trees proposed within the elevated rear yard between the primary and secondary dwellings (i.e. within finished land levels between RL69.21 and RL70.20) are to be revised. The species must be native species that will not exceed a mature height above RL73.58 or must be capable of being maintained (pruned) to a maximum height of RL73.58.</p>

Condition

Suitable examples include, but are not limited to:

- Grevillea 'Robyn Gordon' or 'Mini Marvel' – 1.5 to 2.5 m
- Leptospermum 'Pink Cascade' or 'Fore Shore' – approx. 2 m
- Syzygium australe 'Tiny Trev' – 2 to 3 m
- Kunzea ambigua 'Tick Bush' – 2.5 to 4 m

Condition Reason: To minimise the likelihood of trees having an impact on views from balcony at unit 16/67-69 St Pauls Street.

14. **Root Protection of Neighbouring Trees**

To ensure retention of five Lillypilly species, located beyond the western boundary/existing paling fence, wholly on the adjoining private property of No.67-69, the following measures are to be undertaken:

- a. Given the relatively small size of these trees, whilst not anticipating any major issues, roots with a diameter of less than 50mm that are found which are in direct conflict with the approved works, they are required to be cut cleanly using hand-held tools only, not machinery, with the affected area then be backfilled with clean site soil as soon as practically possible.

Condition Reason: To minimise damage to root system of existing trees on adjoining sites.

15. **Protection of Neighbouring Trees and Vegetation**

To ensure retention of all trees and vegetation, located beyond the western, northern and eastern common boundaries, along existing paling fences, wholly on adjoining private properties of No.67-69, No. 11 and No. 69 the following measures are to be undertaken:

- a) All documentation submitted for the Construction Certificate application must show retention of all vegetation and trees, with the position and diameter of their trunks and canopies to be clearly and accurately shown on all plans in relation to the site.
- b) All neighbouring trees/vegetation are to be physically protected within existing walls and fencing, **if any neighbouring common boundary walls and fences are removed or damaged**, then installation of 1.8 metre high steel mesh/chainwire fencing panels, will then be located where existing common fences/walls were removed or damaged then kept until the duration of works.
- c) This fencing shall be installed **if** common boundary fences are removed or damaged 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 or PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER"**.
- d) 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.
- e) To prevent soil/sediment being washed over root systems, erosion control measures must be provided at ground level around the perimeter of the TPZs.
- f) Where major roots with a diameter of 50mm or more are encountered and Council's officer determines they must be retained, a cantilevered, pier and beam style footing must be used for these areas.

Condition
<p>g) The Construction Certificate plans must acknowledge that the site inspection may result in the need to alter the design away from a traditional strip footing, with a suitably qualified engineer to have an alternative design approved by the Principal Certifier, prior to installing the footings.</p> <p>h) Where roots with a diameter of less than 50mm are found which are in direct conflict with the approved works, and permission is given for their pruning, they may be cut cleanly using hand-held tools only, with the affected area to then be backfilled with clean site soil as soon as practically possible.</p> <p>i) Ground levels within the TPZ's must not be altered by more than 200mm, with no other structures such as continuous strip footings, planter boxes or similar to be located in this area, which is to remain as undisturbed, deep soil.</p> <p>j) All Construction Certificate plans must show that existing soil within the proposed new granny flat and common boundaries must not be excavated further than 500mm towards each boundary fence, these remaining soils are to be retained as undisturbed, this will ensure additional protection to all neighbouring trees and vegetation from any mechanical or physical injury.</p> <p>k) Within above-mentioned undisturbed deep soil areas around western, northern and eastern aspects of granny flat, any excavations of footings/piers and such that protrudes further within the undisturbed soil areas, a shoring device, or a design from qualified engineer, must design a system which must retain soils from been disturbed, this will protect neighbouring trees and vegetation from injury and retain neighbouring soils from been disturbed.</p> <p>l) Demolition/removal of existing surfacing and structures, as well as all initial excavations for footings and similar within any TPZ's can only be performed by hand, not machinery, either by, or under the direct supervision of the Project Certifier.</p> <p>m) If roots above 50mm are encountered during installation of all footings, retaining walls or new fencings, then these footings must be re-positioned to allow preservation of these roots.</p> <p>n) Where there is a difference in level between this site and an adjoining properties, and the soil level where the trees are growing is higher than the subject site, if the soil profile is to be exposed for any period of time, temporary shoring must be provided along the common boundary so as to prevent failure of the soil and trees, with a suitable system to be approved by the PCA, prior to installation.</p> <p>Condition Reason: To maximise tree retention on adjoining sites and minimise damage to these trees.</p>

BEFORE BUILDING WORK COMMENCES

Condition
<p>16. 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> <p>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the construction certificate, the approved development consent</p>

- | | Condition |
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| | plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment. |
| | b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and |
| | c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i> , and the Principal Certifier and Council must be notified accordingly (in writing); and |
| | d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and |
| | e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works. |
| | Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation. |
| 17. | <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> |
| 18. | <p>Dilapidation Report (Pre works)</p> <p>A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a Professional Engineer, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site, and any other property or public land which may be affected by the works, to the satisfaction of the <i>Principal Certifier</i> for the development.</p> <p>The dilapidation report must be submitted to the Principal Certifier, Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).</p> <p>Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p> |
| 19. | <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> |

Condition
<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.

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.

20. **Construction Site Management Plan**

A *Sediment and Erosion Control Plan* must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.

Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

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

Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.

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.

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

22. **Public Utilities**

A Public Utility Impact Assessment must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.

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

23. **Public Utilities**

Condition

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.

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

DURING BUILDING WORK

Condition

24. **Site Signage**

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

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

The sign must be—

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

This section does not apply in relation to—

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

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

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

	Condition
	<p><i>reasons). Any applications are to be made on the standard application form and include payment of the relevant fees and supporting information. Applications must be made at least 10 days prior to the date of the proposed work and the prior written approval of Council must be obtained to vary the standard permitted working hours.</i></p> <p>Condition reason: To protect the amenity of the surrounding area.</p>
26.	<p>Construction Site Management</p> <p>Temporary site safety fencing must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works.</p> <p>Temporary site fences must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.</p> <p>Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.</p> <p>All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.</p> <p>Notes:</p> <ul style="list-style-type: none"> • <i>Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.</i> • <i>A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.</i> <p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p>
27.	<p>Public Safety & Site Management</p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ol style="list-style-type: none"> a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. 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

	Condition
	<p>strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines.</p> <p>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.</p> <p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>j) 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> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
28.	<p>Excavations and Support of Adjoining Land</p> <p>The adjoining land and buildings located upon the adjoining land must be adequately supported at all times and in accordance with section 74 of the Environmental Planning and Assessment Regulation 2021 and approved structural engineering details.</p> <p>Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.</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>

Condition	
	Condition Reason: To ensure compliance with approved plans.
31.	<p>Landscape Management</p> <p>Due to small size and insignificance, no objections are raised to removing all vegetation within this development site where needed to accommodate the approved works as shown, subject to full implementation of the approved Amended Landscape Plan Be Landscape Architects, REV D, dated 21/1/2025.</p> <p>Condition Reason: To balance the removal of existing vegetation (which is considered insignificant or of low ecological/amenity value) with the requirement to implement a high-quality replacement landscaping scheme (subject of conditioning).</p>
32.	<p>Pruning</p> <p>Permission is granted for the minimal pruning of:</p> <p>a) Jasmine climber plant, wholly in the neighbouring eastern property, which is enveloping the existing common boundary paling fence, pruning can only be where it overhangs into this development site to avoid conflict with the new landscaping, or to avoid damage to the shrub whilst works are near.</p> <p>Condition Reason: To apply specific pruning requirements of the Jasmine Climber plant.</p>
33.	<p>Rights of Entry</p> <p>This approval does not imply any right of entry onto a neighbouring property, nor does it allow pruning beyond a common boundary; however, where such measures are desirable in the best interests of correct pruning procedures, and ultimately, the ongoing health of this tree, the applicant must negotiate with the neighbour/tree owner for access to perform this work.</p> <p>Condition Reason: To identify rights of entry limitations and opportunities.</p>
34.	<p>Qualified Pruning</p> <p>All pruning must be undertaken by an Arborist who holds a minimum of AQF Level III in Arboriculture, and to the requirements of Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and NSW Work Cover Code of Practice for the Amenity Tree Industry (1998).</p> <p>Condition Reason: To ensure appropriately qualified arborists carry out pruning.</p>
35.	<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 protection and/or repair of Council's Road & footpath assets and ensure public safety.</p>
36.	<p>Fencing – Removal, Temporary Barrier, and Replacement</p> <p>Where existing fencing is required to be removed to facilitate excavation or construction works, the applicant must ensure that a suitable temporary barrier is</p>

Condition
erected and maintained in its place for the duration of works to ensure site security, public safety, and amenity.
The temporary barrier must be installed immediately upon removal of the fencing and must remain in place until a permanent replacement fence is installed to the satisfaction of the Principal Certifier.
All works associated with the removal, installation of the temporary barrier, and replacement of permanent fencing must be carried out at the full cost of the property owner/developer.
Condition Reason: To maintain site security, safety, and amenity during construction, and to ensure the reinstatement of fencing at no cost to adjoining property owners.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition
<p>37. Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
<p>38. 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>
<p>39. Council's Infrastructure, Vehicular Crossings and Street Verge</p> <p>The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.</p> <p>Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p>
<p>40. 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> <p>a) Details of the proposed civil works to be carried out on Council land must</p>

	Condition
	be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
b)	Works on Council land must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
c)	The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.
	Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
41.	<p>Landscape Certification</p> <p>Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Amended Landscape Plan by Be Landscape Architects, REV D, Date 21/1/2025 (as conditioned)</p> <p>Condition Reason: To ensure that independent verification is provided that the approved landscaping (as conditioned) is properly implemented prior to occupation.</p>
42.	<p>Long term health of landscaping</p> <p>Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.</p> <p>Condition Reason: To maximise strategies for long-term maintenance so that planting reaches maturity in a healthy and vigorous condition, consistent with the design intent and landscape outcomes approved by Council.</p>
	<p>Dilapidation Report (Post-works)</p> <p>Upon completion of all works and prior to the issue of any Occupation Certificate, a post-construction dilapidation report must be prepared and submitted to the Principal Certifier. This report must assess whether the condition of any adjoining properties has been impacted by the development, identifying any structural or aesthetic changes resulting from the works.</p>
43.	<p>The dilapidation report must be submitted to the satisfaction of the Principal Certifier, and copies must be provided to:</p> <ul style="list-style-type: none"> • Council, and • The owners of the adjoining/nearby properties covered by the report, <p>Reason: To document and monitor the structural condition of adjoining properties after works associated with the development, and to ensure any impacts are identified and communicated to affected parties and Council.</p>

OCCUPATION AND ONGOING USE

Condition	
44.	<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>
45.	<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>
46.	<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>
47.	<p>Use of Parking Spaces</p> <p>The car spaces within the development are for the exclusive use of the occupants of the primary/principle pre-existing dwelling. The car space must not be leased to any person/company that is not an occupant of the primary/principle pre-existing dwelling.</p> <p>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.</p>
48.	<p>Use of Premises</p> <p>The premises is not approved for short-term rental accommodation beyond what is permitted under the SEPP Codes 2008 (SEPP Exempt and Complying Development Codes 2008).</p> <p>Condition Reason: To ensure that the secondary dwelling is used in accordance with the relevant development consent and any relevant applicable SEPPs.</p>

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
49.	<p>Demolition Work</p> <p>A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <ol style="list-style-type: none"> a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy. b) The Demolition Work Plan must include the following details (as applicable): <ul style="list-style-type: none"> • The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor • Details of hazardous materials in the building (including materials

Condition	
	<p>containing asbestos)</p> <ul style="list-style-type: none"> • 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>

DURING DEMOLITION WORK

Condition	
50.	<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

Condition
<p>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> <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>

ON COMPLETION OF DEMOLITION WORK

Condition
<p>51. Site Clearance Following Demolition</p> <p>Following the completion of all demolition works, the subject site must be cleared of all demolition-related waste, building debris, and redundant materials. The site is to be left in a clean, level, and tidy condition, to the satisfaction of the Principal Certifier, and in a state suitable for the commencement of construction.</p> <p>Condition Reason: To ensure the site is safe, clean, and ready for the next stage of development, and to maintain public health and environmental standards.</p>
<p>52. Waste Disposal Verification</p> <p>All waste and materials resulting from the demolition works must be lawfully disposed of at a licensed waste disposal or recycling facility. Documentary evidence confirming disposal, such as receipts or weighbridge dockets, must be retained and made available to Council or the Principal Certifier upon request.</p> <p>Condition Reason: To ensure the proper disposal of demolition waste in accordance with environmental legislation and to prevent illegal dumping or inappropriate waste management.</p>
<p>53. Asbestos Clearance (If Applicable)</p> <p>If any asbestos-containing materials were identified and removed during demolition, a clearance certificate must be obtained from a licensed asbestos assessor. This certificate must confirm that the site has been inspected and found to be free of asbestos residues. The clearance certificate must be submitted to the Principal Certifier prior to the issue of a Construction Certificate, or the commencement of any construction works.</p> <p>Condition Reason: To ensure the site is free from asbestos contamination and safe for occupation and further construction, in accordance with Work Health and Safety legislation.</p>
<p>54. Dust, Erosion and Sediment Control</p> <p>Appropriate dust suppression and sediment and erosion control measures must be implemented immediately following demolition and maintained in good working order until commencement of construction. These measures must be in accordance with Council's requirements and current best practice environmental management guidelines.</p> <p>Condition Reason: To prevent air and water pollution, minimise environmental impacts, and protect adjoining properties and the public domain during the post-</p>

Condition
demolition phase.

D34/25

Development Application Report No. D35/25

Subject: 229 Anzac Parade, Kensington (DA/242/2025)

Executive Summary

Proposal:	Integrated development application for demolition of existing structures and the construction of a part seven (7) / part eight (8) storey mixed-use co-living development comprising of ground floor retail/commercial tenancy, and 70 self-contained accommodation rooms on upper levels, communal living areas and central courtyard, roof top communal space, and lower ground level containing plant and service areas, waste rooms, bicycle storage, motorbike parking and car parking spaces and substation, ancillary, landscaping and associated site works (Variations to Maximum Building Height, Minimum Lot Size and Minimum Room Size).
Ward:	West Ward
Applicant:	TAL GP PROJECTS NO 5 PTY LTD
Owner:	The Owners - Strata Plan No. 9637
Cost of works:	\$20,155,976.00
Reason for referral:	The development contravenes the development standard for building height (RLEP), lot size (Housing SEPP), room size (Housing SEPP), communal living area (Housing SEPP), and communal open space (Housing SEPP) by more than 10%.

Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/242/2025 for *Integrated development application for demolition of existing structures and the construction of a part seven (7) / part eight (8) storey mixed-use co-living development comprising of ground floor retail/commercial tenancy, and 70 self-contained accommodation rooms on upper levels, communal living areas and central courtyard, roof top communal space, and lower ground level containing plant and service areas, waste rooms, bicycle storage, motorbike parking and car parking spaces and substation, ancillary, landscaping and associated site works (Variations to Maximum Building Height, Minimum Lot Size and Minimum Room Size)* at No. 229 Anzac Parade, Kensington for the following reasons:

1. Pursuant to Section 4.47 of the *Environmental Planning and Assessment Act 1979*, concurrence and the general terms of any approval have not been provided by Water NSW in relation dewatering, pursuant to Section 90(2) of the *Water Management Act 2000*.
2. Pursuant to clause 2.3 of RLEP 2012, the proposal is inconsistent with the objectives of the E2 Commercial Centre Zone in that it does not complement the desired future built form outcomes of the locality, does not have a high amenity and protect the amenity of residents, is inconsistent with the Council's strategic planning for residential development in the area, and does not facilitate a high standard of urban design.
3. Pursuant to clause 4.3 of RLEP 2012, the proposed height of the building fronting Houston Lane is excessive and results in non-compliance with the height of buildings development standard.
4. Pursuant to clause 4.6 of RLEP 2012, the Applicant has failed to submit a written request to vary the communal living area, communal open space, and room size development standards in SEPP (Housing) 2021. The Applicant has failed demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and

has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.

5. Pursuant to clause 69(1)(a) of the SEPP (Housing) 2021, the proposed variation to the maximum room size is not supported as the room size is excessive and unnecessary.
6. Section 69(1)(b)(ii) of the SEPP (Housing) 2021, the suitability of the site for the proposed development as not been adequately demonstrated as the site does not comply with the relevant lot size development standard.
7. Pursuant to clause 69(1)(f) of the SEPP (Housing) 2021, the proposal does not provide adequate bathroom, laundry and kitchen facilities.
8. Pursuant to clause 69(1)(h) of the SEPP (Housing) 2021, the proposal does not include adequate bicycle and motorcycle parking spaces.
9. Pursuant to clause 69(2)(b) of the SEPP (Housing) 2021, the proposal does not comply with the minimum separation distances specified in the Apartment Design Guide.
10. Pursuant to clause 6.11 of RLEP 2012 and Part 4 of the K2K DCP, the proposed development does not exhibit design excellence.
11. Pursuant to clause 6.20 of RLEP 2012 and Part 19 of the K2K DCP, the proposal does not provide an active street frontage.
12. Pursuant to clause 2.119 of SEPP (Transport and Infrastructure) 2021, the proposal has not provided practicable and safe, vehicular access to the land from Houston Lane and has failed to provide a Construction Site Traffic Management Plan for the site.
13. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the following controls in the Part E6 of the K2K DCP:
 - a) Pursuant to Section 6, the proposal fails to comply with the maximum storey height, the setback controls and the frontage width, which results in an excessive built form and unacceptable built form due to the lot amalgamation pattern.
 - b) Pursuant to Section 12, the proposal fails to comply with the Floor to Ceiling Height controls.
 - c) Pursuant to Section 14, the proposal fails to comply with the acoustic privacy controls.
 - d) Pursuant to Sections 16 & 18, the building design fails to appropriately provide articulation or suitable awning structures.
 - e) Pursuant to Section 20, the proposal fails to comply with the Landscape Area controls.
 - f) Pursuant to Section 21 of the K2K DCP, the proposal fails to comply with the Transport, Traffic, Parking & Access controls.
 - g) Pursuant to Section 26 of the K2K DCP, the proposal fails to comply with the Student Accommodation controls.
14. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to waste management, sustainability, and water management.
15. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
16. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.

Attachment/s:

Nil

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	Subject Site
	Submissions received
	North
	Locality Plan

N.b. two (2) submissions were received, including one from 231-233 Anzac Parade, Kensington and one from Transport for NSW (separate to any concurrence requirements under the SEPP (Transport and Infrastructure) 2021).

1. Executive Summary

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

- The development contravenes the following development standards by more than 10%:
 - Height of Building (Cl. 6.17 of RLEP),
 - Communal Living Area (Cl. 68(2)(c) of SEPP (Housing) 2021).
 - Communal Open Space (Cl. 68(2)(d) of SEPP (Housing) 2021).
 - Private Room Floor Area (Cl. 69(1)(a) of SEPP (Housing) 2021).
 - Single Occupancy Room Floor Area (Cl. 69(1)(a)(i) of SEPP (Housing) 2021).
 - Lot Size (Cl. 69(1)(b) of SEPP (Housing) 2021).

The proposal seeks development consent for Integrated development application for demolition of existing structures and the construction of a part seven (7) / part eight (8) storey mixed-use co-living development comprising of ground floor retail/commercial tenancy, and 70 self-contained accommodation rooms on upper levels, communal living areas and central courtyard, roof top

communal space, and lower ground level containing plant and service areas, waste rooms, bicycle storage, motorbike parking and car parking spaces and substation, ancillary, landscaping and associated site works (Variations to Maximum Building Height, Minimum Lot Size and Minimum Room Size).

The key issues associated with the proposal relate to:

- The variation to the Lot Size development standard under the SEPP (Housing) 2021.
- The Variation to the Building Height development standard under the RLEP 2012.
- The non-complaint building separation under the ADG.
- The inappropriate width of the site for a co-living development, resulting in the following issues:
 - Deficient vehicle access
 - Inappropriate waste management
 - Poor amenity of the development
 - Streetscape and adjoining property environmental impacts.
- Inappropriate communal living areas and communal open space which have the incorrect calculation, resulting in variation to development standard and no clause 4.6 variation request.
- Incorrect measurements of room sizes, resulting in non-compliance with the minimum room sizes under the SEPP (Housing), no justification/ variation request provided.
- Inappropriate communal facilities, such as laundry, bicycle and motorcycle parking, resulting in non-compliance with the SEPP (Housing) 2021.
- The proposal does not exhibit design excellence, as per the design excellence advisory panel comments.
- Non-complaint with the built form sections of the K2K DCP relating to the number of stories, floor to ceiling height, blank walls to side elevations and setbacks.
- The proposal has not provided suitable landscaping.
- The proposal has not met the transport, traffic, parking and access requirements
- The proposal has not adequately addressed the acoustic privacy considerations and the student accommodation section of the K2K DCP.
- The proposal has not demonstrated suitable awning structures or articulation.

Based on the significant and numerous non-compliances with relevant planning controls, the development application is recommended for refusal, for the reasons outlined in the recommendation section of this report below.

Council notes that on 03 June 2025, the applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against Council's deemed refusal of the development application.

2. Site Description and Locality

The subject site is known as 229 Anzac Parade, Kensington NSW 2033 and is legally described as CP in SP 9637. The site has an area of 505.9m², is rectangular in shape and has a 10.06m frontage to Anzac Parade Street to the east, 50.29 side boundaries to the north and south and a 10.06m rear boundary to Houston Lane. The site currently contains a two-storey brick apartment building.

The site is well located, being 200m south of the UNSW light rail stop and 350m north of the Kingsford Light Rail Stop. The site is zoned E2 Commercial Centre.

The site slopes upwards approximately 0.1m across the frontage from RL 26.1 at the north to RL 26.2 at the south.

The site falls from the frontage on Anzac Parade towards the rear on Houston Lane. Along the northern side boundary, the site falls from RL 26.1 at the front to RL 23.93 at the rear (a drop of 2.17m). Along the southern boundary, the site drops from RL 26.2 to RL 23.7 (a drop of 2.5m).

Surrounding development includes:

- A shop-top housing development 231 – 233 Anzac Parade to the south.
- University of New South Wales Building (221 – 227 Anzac Parade) to the north

- Largely 2-4 storey residential properties to the west on Houston Lane. 16A Houston Lane is directly opposite, being a 2 storey dwelling house.

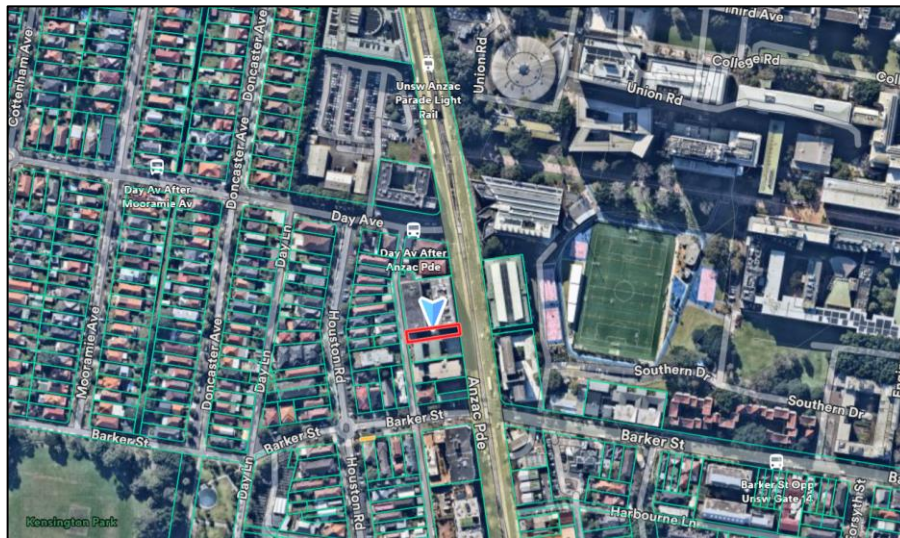


Figure 1: Aerial Imagery of development site in the wider context of Anzac Parade (Source: NearMap, 2025)



Figure 2: Aerial Imagery of 229 Anzac Parade and surrounding properties (Source: NearMap, 2025)

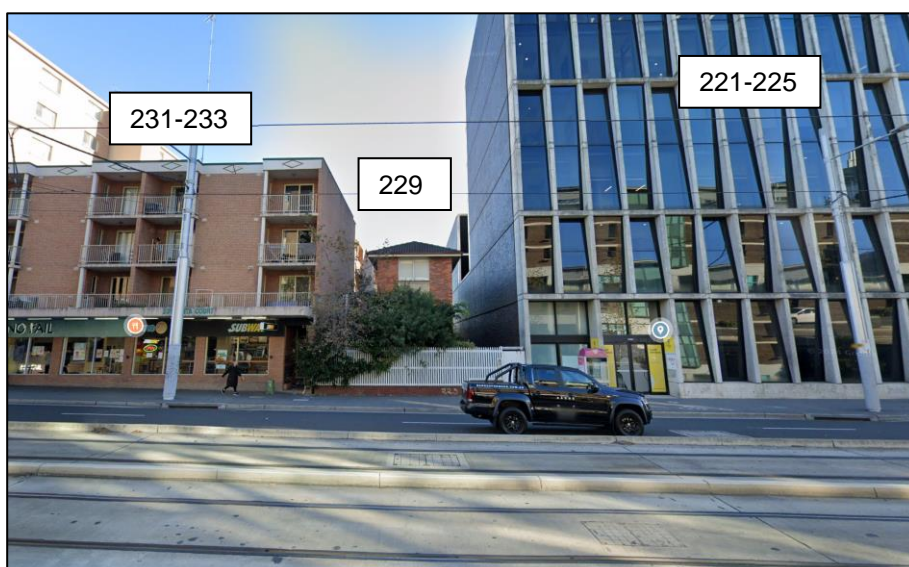


Figure 3: Site frontage of 229 Anzac Parade, Kensington (Source: Google Maps 2023)



Figure 4: Rear of site (taken from Houston Lane) of 229 Anzac Parade (Source: Google Maps)

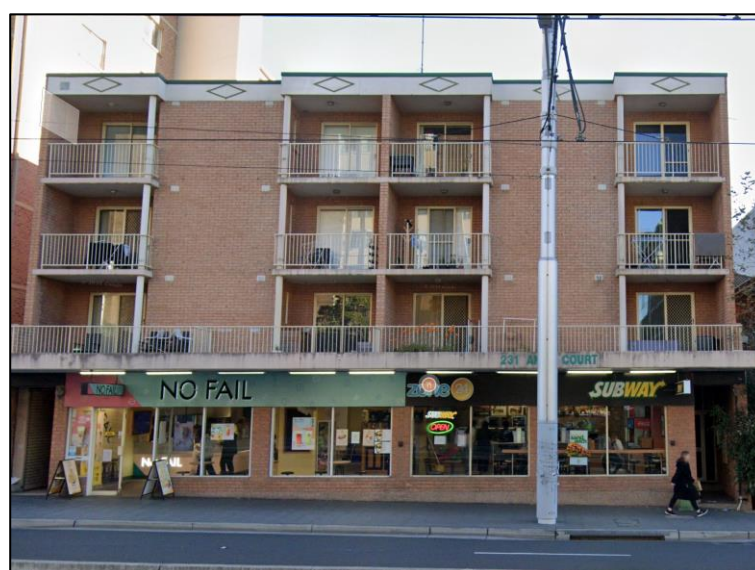


Figure 5: Adjoining development to the south 231- 233 Anzac Parade (Source: Google Maps)

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Figure 6: Adjoining development to the north 221 - 225 Anzac Parade (Source: Google Maps)



Figure 7: Development across Anzac Parade to the east (Source: Google Maps)



Figure 8: 16A Houston Lane to the west of the development site (Source: Google Maps)

3. Relevant history

DA/415/2022 - Integrated development application for demolition of existing structures and construction of a part nine (9) part (6) mixed use development comprising 1 retail premises, 20

residential apartments and 15 car parking spaces. The application was granted approval by the Land and Environment Court on the 11th of August 2023.

4. Proposal

The proposal seeks development consent for the demolition of the existing buildings and structures and construction of a part seven (7) / part eight (8) storey, mixed use, co-living development including seventy (70) student accommodation rooms, a commercial (retail) tenancy at ground floor level with a roof top communal living space and rooftop plant and lift overrun. The proposal comprises the following main components:

- Lower ground floor level with plant and service areas, waste rooms, bicycle parking, motorbike parking, parking space, substation and communal common areas;
- Ground floor commercial (retail) premise tenancy with frontage to Anzac Parade, Managers Office and Lobby;
- Co-Living student housing component comprising a total of seventy (70) self-contained single and twin rooms which include kitchen and bathroom facilities, varying in layout and type; and
- Roof top communal space, internal and external
- Communal living areas and a central communal courtyard.

The montages and floor plans/ elevations and sections of the development can be seen below:



Figure 9: Montage of the proposed site frontage (Source: Applicant)



Figure 10: Montage of the Houston Lane frontage (Source: Applicant)

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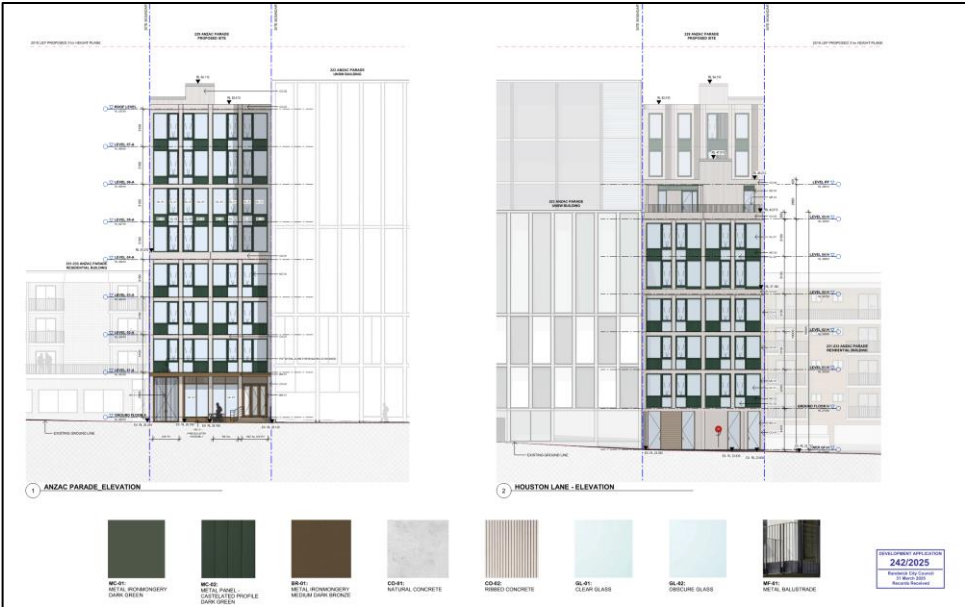


Figure 11: Anzac Parade (front) and Houston Lane (rear) Elevations (Source: Applicant)

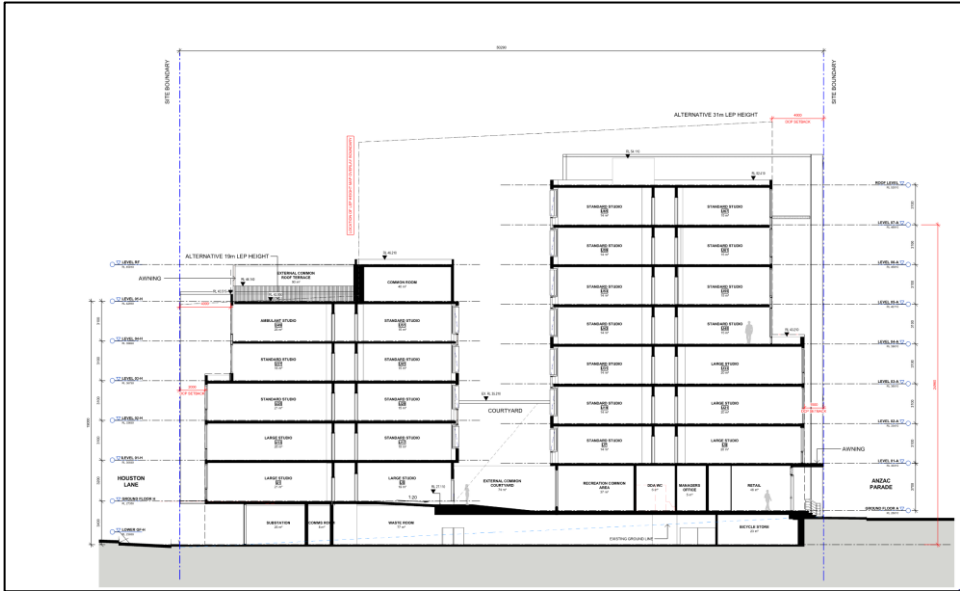


Figure 12: Section A-A of overall development (Source: Applicant)

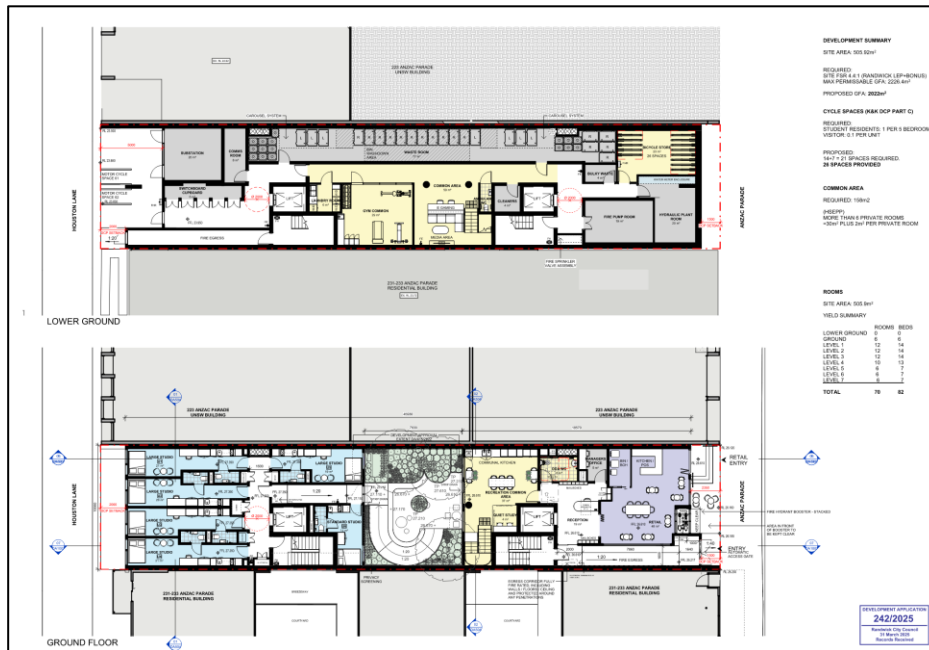


Figure 13: Lower ground floor and ground floor plans (Source: Applicant)



Figure 14: Floor Plans for level 1 and 2 (Source: Applicant)

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Figure 15: Floor Plans for levels 3 and 4 (Source: Applicant)



Figure 16: Floor Plans for levels 5 & 6 (Source: Applicant)

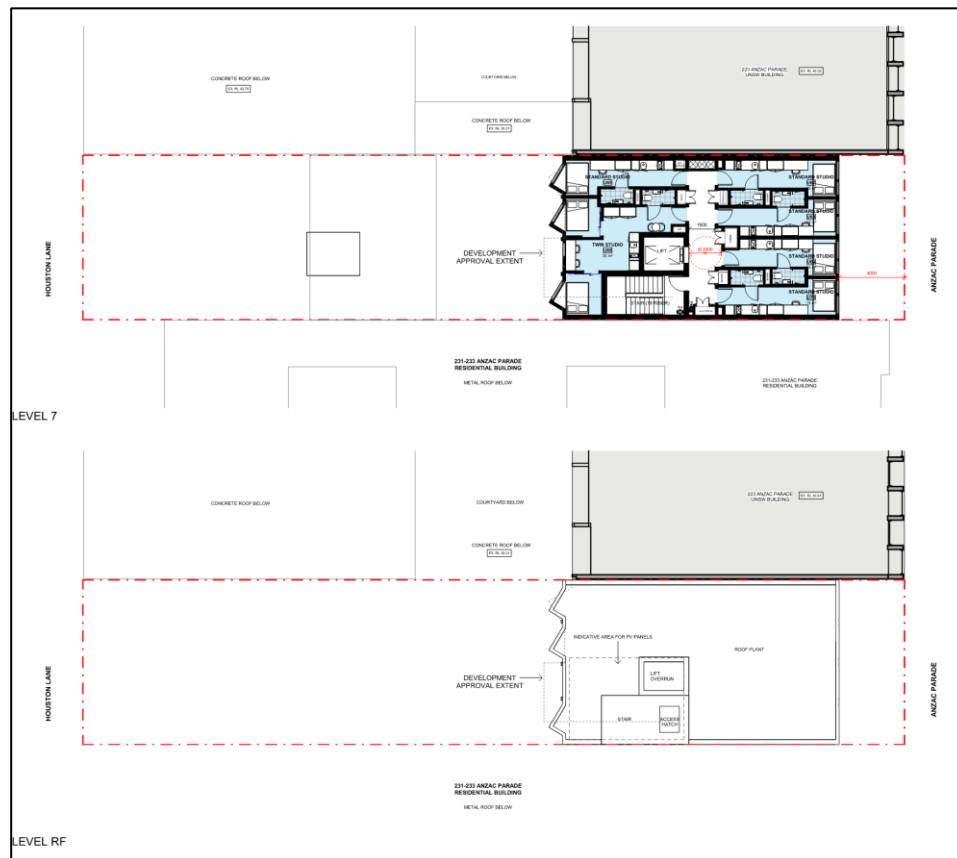


Figure 17: Floor Plans for levels 7 and 8 (Source: Applicant)

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:

- 231-233 Anzac Parade, Kensington

Issue	Comment
Overshadow the north-west side of 231 – 233 Anzac Parade, blocking the natural sunlight to common corridors and central courtyards, resulting in dark living conditions for the occupants.	Agreed. This has been raised in the key issues and must be addressed in any future application.
Construction activities – heavy machinery and pile driving generating vibrations which can negatively impact 231 – 233 Anzac Parade and potentially cause structural damage.	Agreed. This report is recommending refusal. Any future approval (of any kind) would have suitable conditions imposed.
Noise and dust during construction.	This report recommends refusal. Any future approval would have suitable conditions to manage these impacts.

- Transport for NSW

Issue	Comment
A Construction Pedestrian and Traffic Management Plan (CPTMP) must be created.	It is recommended that applicant obtain this submission and consider the content. Council agrees that a CPTMP is required.
Delivery and Servicing - no service vehicle parking, on-street waste collection from Houston Lane is proposed. A loading and servicing parking provision should be prioritized over general/private vehicle parking.	It is recommended that the applicant obtain this submission and consider the content. Council agrees that delivery and servicing needs are required to be further considered.

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development involves the removal of vegetation within the site. The proposed removal is permitted without development consent on the basis that the clearing is ancillary to the proposal and the affected vegetation does not trigger a separate permit and is not a heritage item nor within a heritage conservation area. As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.2. SEPP (Housing) 2021

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

The following table outlines the non-compliances of the development application with the relevant development standards in the SEPP (Housing) 2021:

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl. 68(2)(c) Communal living Area	158m ²	74.65m ² (Council's calculation)	No, see Clause 4.6 Assessment below.
Cl. 68(2)(d) Communal Open Spaces	101.18m ²	89.98m ² (Council's calculation). Area in courtyard has unacceptable amenity and does not satisfy the definition of COS. Area on rooftop doesn't comply with building height.	No, see Clause 4.6 Assessment below.
Cl. 69(1)(a) Private Room Floor Area	25m ² – Maximum 12m ² – Minimum (single)	Between 9.75m ² and 28m ² .	No, see Clause 4.6

	16m ² – Minimum (double)		Assessment below.
Cl. 69(1)(b) Lot Size	800m ²	505.9m ²	No, see Clause 4.6 Assessment below.

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 purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development (involving co-living development) are such that any applicable provisions and requirements of the SEPP have been satisfactorily addressed. In addition, it is noted that Council's Environmental Health Team has not raised contamination as an issue for the subject site.

6.4. SEPP (Transport and Infrastructure) 2021

Pursuant to Clause 2.119 'Development with frontage to classified road', Council is not satisfied that practicable and safe, vehicular access to the land has been provided from Houston Lane to the west of the site (in lieu of using Anzac Parade which is a classified road). In addition, the applicant has failed to provide a Construction Site Traffic Management Plan for the site which addresses the provisions of this clause. As such, the proposal is recommended for refusal.

Pursuant to Clause 2.98 'Development adjacent to rail corridors' and Clause 2.99 'Excavation in, above, below or adjacent to rail corridors', Council referred the application to Transport for NSW as the site is adjacent to the Light Rail. Transport for NSW granted concurrence, see Appendix 2 1 for their comments.

6.5. SEPP (Sustainable Buildings) 2022

The proposed development is not classified as a 'BASIX Building' in accordance with the standard definition and therefore the application is not required to demonstrate compliance with the requirements for sustainability as outlined in Chapter 2 of the SEPP.

"BASIX building means a building that contains at least 1 dwelling, but does not include the following—

- (a) hotel or motel accommodation,*
- (b) a boarding house, hostel or co-living housing that—*
 - (i) accommodates more than 12 residents, or*
 - (ii) has a gross floor area exceeding 300 square metres."*

6.6. 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 E2 (Commercial Centre) under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent (subject to permissibility granted under Part 3 'Co-Living Housing', Chapter 3 'Diverse Housing' of the SEPP (Housing) 2021).

The proposal is inconsistent with the specific objectives of the zone in that the proposed activity and built form will not sufficiently:

- complement the desired future built form outcomes of the locality,
- provide a high level of amenity,
- protect the amenity of residents,
- demonstrate consistency with the Council's strategic planning for residential development in the area,
- facilitate a high standard of urban design.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Clause 6.17: Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres	<u>Building Height:</u> 31m fronting Anzac Parade	28.77m.	Yes.
	19m fronting Houston Lane.	21.86m.	No, see Clause 4.6 Assessment below.
	<u>FSR:</u> Max = 4:1 (where community infrastructure provided).	4.1247:1 (2086.69m ² of GFA – includes additional 64.68m ² of GFA for non-basement waste room storage).	Yes.
	4.4:1 (including 10% bonus provided for co-living in SEPP (Housing) 2021).		
	N.b. no community infrastructure has been provided on site. Nor has a letter of offer or VPA been submitted with the application in relation to community infrastructure.		

6.6.1. Clause 4.6 - Exceptions to development standards

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

6.6.2. Clause 6.2 – Earthworks

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

Should the DA have been supported, the extent of earthworks would be supported, subject to conditions on a consent.

6.6.3. Clause 6.4 – Stormwater management

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

Should the DA have been supported, Council would have been satisfied that the proposed development will adequately address stormwater management, subject to conditions.

6.6.4. *Clause 6.8 – Airspace operations*

Council referred the development application to the Sydney Airport Corporation. Concurrence has been received from the Sydney Airport Corporation, who are supported of the development application. Refer to Appendix 2 for their comments.

6.6.5. *Clause 6.10 – Essential services*

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

Should the DA have been supported, Council would have been satisfied that the proposed development would be satisfied that essential services are available or that adequate arrangements have been made to make them available, subject to conditions.

6.6.6. *Clause 6.11 – Design excellence*

As the development application is over 15m in height, the development is to exhibit design excellence. The proposal is not considered to uphold the relevant provisions in relation to design excellence. Refer to Appendix 1 for comments provided by Council's Design Excellence Advisory Panel.

6.6.7. *Clause 6.17 – Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres*

The development application relies upon the building height and FSR bonuses awarded under this RLEP clause. However, the development does not include community infrastructure on the site. In addition, no letter of offer or draft Voluntary Planning Agreement been submitted with the application in relation to community infrastructure.

See assessment of FSR and Building Height in the compliance table above and in section 7 below.
Clause 6.20 – Active street frontages at Kensington and Kingsford town centres

The building frontage to Anzac Parade provides for a retail commercial premises. That being said, the configuration of the retail is unclear, there is a large bin room, no level access as well as a fire booster. It is unclear how the retail will function alongside the co-living development and provide for equal access under DDA requirements. See Appendix 4 for further active street frontage non-compliance.

6.6.8. *Clause 6.26 – Affordable housing contributions for Kensington and Kingsford town centres*

The development application is required to pay a 5% affordable housing contribution based on the residential total floor area of the proposed development. The applicant has failed to provide a TFA calculation plan to confirm what the applicable contribution required to be paid is. The total floor area of the development will need to be calculated. The monetary contribution per sqm is found on Councils website and is currently \$718.75 per sqm (June 2025).

7. **Clause 4.6 Exception to a Development Standard**

The proposal seeks to vary the following development standards contained within the RLEP 2012 and the SEPP (Housing) 2021:

RLEP	Development Standard	Proposal	Proposed variation	Proposed variation (%)
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Cl 6.17: Building Height (max)	19m in the section fronting Houston Lane.	21.86m	2.86m	15.05%
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SEPP (Housing) 2021	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl. 68 (2)(c): Communal Living Area	158m ²	74.65m ² (N.b. the 53.19m ² for the basement area is not considered communal living space.)	83.35m ²	52.75%
Cl. 68 (2)(d): Communal Open Spaces	101.18m ²	89.98m ² (N.b. the area in ground courtyard has unacceptable amenity and not counted).	11.2m ²	11.07%
Cl. 69 (1)(a): Private Room Floor Area	Maximum 25m ²	28m ²	3m ²	12%
Cl. 69 (1)(a)(i): Single Room Floor Area	Minimum 12m ² for a single occupant	9.75m ²	2.25m ²	18.75m ²
Cl. 69 (1)(b): Lot Size	Minimum 800m ²	505.9m ²	294.1m ²	36.76%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Height of Building

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

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

The applicant's written request seeks to justify the contravention of the Height of Buildings development standard by demonstrating that compliance is unreasonable or unnecessary in

the circumstances of the case because the relevant objectives of the standard are still achieved.

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

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

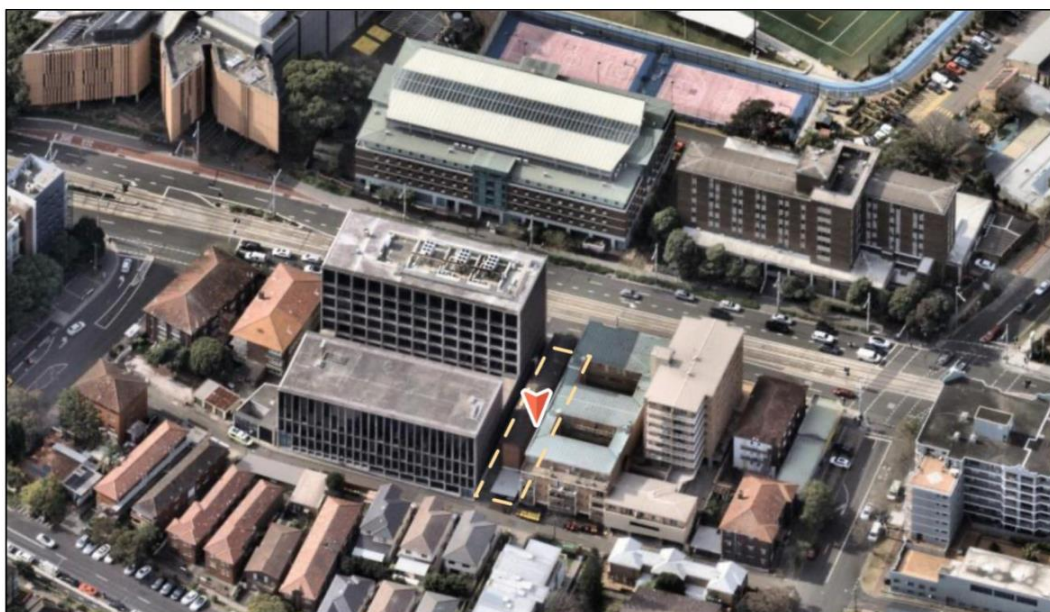
The applicant's written justification argues that this objective is satisfied by noting the follow:

The portion of Anzac Parade surrounding the development site is undergoing significant change, facilitated by the Kensington and Kingsford Planning Strategy. The Strategy envisions increased building heights compared to existing development and facilitated up to 31m on the subject site. As the proposal is not higher than 31m for the portion of the site affected by the 31m height limit, it will not exceed the greatest maximum scale of development that Council and the NSW Government consider suitable for the lot – the scale considered to be the desired future character of the locality.

With regards to the desired future character, the strict terms of clause 4.3 of the Randwick LEP 2012 does not define the desired future character (Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115 at [53]). The desired future character of the locality establishes the height for buildings on land in the locality and not the other way around (cf SJD DB2 Pty Ltd at [56]). This means that the height limit set out under clause 4.3 alone does not establish the desired future character and can be evaluated by reference to matters other than the strict provisions of clause 4.3 (cf SJD DB2 Pty Ltd at [59]). Furthermore, in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 [63] Preston CJ states:

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

The existing and approved development within a locality therefore forms part of the desired future character of neighbourhood in terms of building height. With regards to such, there are numerous examples of approved or recently constructed development along Anzac Parade which matches or exceeds the proposal in scale including but not limited to those visible in the figure below.



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

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

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

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

Visual Bulk/Intrusion:

The extent of additional height above the permitted maximum will not result in adverse visual bulk or intrusion to neighbouring properties noting that the proposed development will be viewed in the context of the scale and height of other tall buildings within the immediate locality, and will thus not appear visually jarring or overdeveloped from surrounding properties.

Adequate articulatory details including window openings and materiality changes assist to further reduce bulk.

Privacy:

The extent of additional height will not adversely impacting neighbouring properties privacy. Adequate distancing between habitable areas of other residences is achieved by way of not locating windows to either side boundary.

Solar Access:

The extent of additional height above the maximum permissible height would result in negligible additional shadow cast onto habitable spaces of residential uses. As per the Shadow Diagrams submitted with this DA, most shade falls upon the rooftop of the southerly neighbour.

Views

The site is positioned within a mixed-use town centre and interfaces with residential development. Due to the density anticipated by the LEP controls along with the strategic distribution of the building's mass, the proposal will not result in unacceptable private view impacts to surrounding properties.

The site is located within a highly urbanised setting whereby the controls permit significant density for the locality. In consideration of the site's context, it can reasonably be anticipated that adjacent properties will experience some degree of view loss from any future development at the site consistent with the planning controls.

Section 6.17 of the RLEP 2012:

- (a) to allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,

The proposal contributes to community infrastructure for the locality by way of a Voluntary Planning Agreement. It also utilises the greater building heights and densities allowed in Kensington by this clause.

- (b) to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,

As outlined in earlier in this section, the proposal is consistent with the desired future character of the locality. The variation occurs in a location which is concealed from obvious view from the primary frontage (Anzac Parade).

- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

The variation is relatively minor and only occurs for a limited portion of the site which is affected by the 19m maximum height limit opposed to the 31m maximum height limit. As such, the variation does not result in a significant intensification of development compared to a compliant scheme. The proposal is compatible with the existing and planned infrastructure.

In accordance with the decision in Wehbe, compliance with a development standard is demonstrated to be unreasonable or unnecessary in this one way alone. On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in the Section below.

Assessing officer's comment: In conclusion, the applicant's written request has not adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case.

The reasons in forming this opinion are:

- The applicant states that there are numerous examples of recently approved developments which are at a similar scale, but doesn't provide any examples.
- The proposal will have excessive bulk when viewed from Houston Lane and from 231 – 233 Anzac Parade.
- The visual privacy impacts of the roof top terrace have not been demonstrated.
- It is unclear whether the common room on level 5 will be able to overlook the rooms in the eastern tower or communal open space at 223 Anzac Parade.
- Council has not received or reviewed any voluntary planning agreement, on the NSW Planning Portal the document submitted as a VPA was a Protection of Airspace Form.

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

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

1. *The non-compliance is entirely consistent with the character of the locality*
 - a) *The proposed development is consistent with the precincts' high density character, defined by tall multi-storey mixed use buildings with minimal boundary setbacks.*
 - b) *The proposed variation can also be considered compatible with other forms of development in the visual catchment which assists in being compatible with the desired future character.*
2. *The non-compliances achieve a high level of design excellence, based on site analysis:*
 - a) *The proposal delivers a high quality urban and architectural design that enhances the local character of the locality, provides a high level of amenity for the residents and is compatible with the surrounding character.*
 - b) *The arrangement of bulk and scale and subsequent building height non-compliance have been informed by the existing and desired streetscape character of the locality. As such, the proposed non-compliance is considered an appropriate response to the*

streetscape, whilst protecting the amenity of neighbouring properties and public domain.

c) The maximum extent of non-compliance is appropriately integrated with the overall building form. The non-compliant elements will be finished in materials that are compatible with the character of the locality.

d) The non-compliance will not be visually jarring as the built form when viewed in the context of the scale and height of similar tall buildings nearby.

3. *The non-compliance will have no material impacts on surrounding development*

a) It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality.

Specifically:

- The extent of the additional height creates no detrimental overshadowing impacts to adjoining development when considered against the backdrop of the permissible building controls. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant or nil;*

- The height breach does not result in any adverse additional privacy impacts; and*

- The height breach will not result in any view loss as the subject site does not contain any significant views or vistas across or from the public domain. As such, the extent of view loss caused by the non-compliant elements would be insignificant or nil.*

4. *Orderly and economic use of land*

a) The social benefits of providing a development that improves the functionality and amenity of the mixed use development should be given weight in the consideration of the variation request.

b) Given the nature of alterations and additions, strict compliance with the standard would result in a building that is dwarfed by adjacent buildings of greater height, scale and density which would not be an appropriate planning outcome.

5. *The proposal meets aims and objectives of key planning documents*

a) The proposed development meets the objectives of the development standard and meets the objectives of the E2 Commercial Centre zone (detailed in the accompanying Statement of Environmental Effects);

b) The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential and commercial facilities that better meet the needs and significantly improve the living amenity opportunities of the residents (1.3(c));*

- The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).*

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

The assessing officers' reasons in forming this opinion are:

- The building to the North is not located in the K2K and buildings to the south (on this block) are not built to this height, they will be required to comply with the building height development standard.

- Overall, the design does not achieve a high level of urban and architectural design, as commented on by the Design Excellence panel.
- The privacy impacts from the roof terrace have not been demonstrated.
- The proposal does not meet the objectives of the E2 Zone or Section 1.3 of the EPA Act.

Conclusion

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

7.2. Lot Size

The applicant's written justification for the departure from the Lot Size 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 Lot Size 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.

There are no objectives specifically relating to the minimum lot size standard, therefore, the principles of the housing SEPP have been used:

- enabling the development of diverse housing types, including purpose-built rental housing,*
- encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- ensuring new housing development provides residents with a reasonable level of amenity,*
- promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- minimising adverse climate and environmental impacts of new housing development,*
- reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- mitigating the loss of existing affordable rental housing.*

The applicant's written justification argues that the principles have been achieved, as per the following:

The proposed co-living development is considered to be consistent with these principles.

The proposed co-living housing will provide for greater housing diversity in a growing area, that will meet the needs of households in need of less expensive housing as co-living rooms are often inherently more affordable than renting a self-contained dwelling due to their generally smaller unit sizes and inability to be owner occupied. No existing affordable housing is being reduced, and the new proposal does not impact any adverse climate or environmental impacts.

For the above reasons, I am of the view that the variation requested, and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Assessing officer's comment: In conclusion, the applicant's written request has not adequately demonstrated that compliance with the Lot Size development standard is unreasonable or unnecessary in the circumstances of the case.

The assessing officers' reasons in forming this opinion are:

- This co-living development is not required to be affordable housing and will be rented at market rate.
- The proposal does not provide adequate amenity, as detailed in the key issues of this report. This is a direct result of the undersized lot and subsequent undersized lot frontage of 10m.
- The site is not large enough for this development.

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 Lot Size development standard as follows:

1. The development represents a successfully functioning co-living and mixed use building.
 - a) *The proposed design features a functional and high-quality mixed-use development, with high levels of amenity for residents, visitors and workers.*
2. The non-compliance is entirely consistent with the character of the locality
 - a) *The proposed development is consistent with the precincts' high density character, defined by tall multi-storey mixed use buildings with minimal boundary setbacks.*
 - b) *The proposed variation can also be considered compatible with other forms of development in the visual catchment which assists in being compatible with the desired future character.*
3. The non-compliance will have no material impacts on surrounding development
 - a) *It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:*
 - *The undersized lot results in no detrimental overshadowing impacts to adjoining development when considered against the backdrop of the permissible building controls. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant or nil;*
 - *The lot size breach does not result in any adverse additional privacy impacts; and*
 - *The lot size breach will not result in any view loss as the subject site does not contain any significant views or vistas across or from the public domain. As such, the extent of view loss caused by the non-compliant elements would be insignificant or nil.*
4. Orderly and economic use of land
 - a) *The social benefits of providing a development that improves the functionality and amenity of the mixed-use development should be given weight in the consideration of the variation request.*
 - b) *Given the nature of alterations and additions, strict compliance with the standard would result in a site that is sterilised.*
5. The proposal meets aims and objectives of key planning documents
 - a) *The proposed development meets the objectives of the development standard and meets the objectives of the E2 Commercial Centre zone (detailed in the accompanying Statement of Environmental Effects);*
 - b) *The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*
 - *The proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential and*

- *commercial facilities that better meet the needs and significantly improve the living amenity opportunities of the residents (1.3(c));*
- *The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).*

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

The assessing officers' reasons in forming this opinion are:

- The proposal has unacceptable amenity for occupants, visitors and workers, as demonstrated in the key issues section of this report.
- The lot is adjoined by two much larger lots. The proposal does not meet the requirement for amalgamation of undersized lots, which this lot is considered to be.
- The variation to the lot size has resulted in a constrained development, which does impact adjoining properties, such as 221 – 227 Anzac Parade (the built form will protrude into the courtyard), 231 -233 (blocking out of light, enclosing breezeways), properties on Houston Lane from the inappropriate access for the development site.
- The proposal does not meet the objectives of the E2 Zone or Section 1.3 of the EPA Act.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have not been satisfied and that development consent must not be granted for development that contravenes the Lot Size development standard.

7.3. Room Size

The applicant's written justification for the departure from the Room Size 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 Lot Size 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.

There are no objectives specifically relating to the minimum room size standard, therefore, the principles of the housing SEPP have been used:

- (i) *enabling the development of diverse housing types, including purpose-built rental housing,*
- (j) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (k) *ensuring new housing development provides residents with a reasonable level of amenity,*
- (l) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (m) *minimising adverse climate and environmental impacts of new housing development,*
- (n) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (o) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (p) *mitigating the loss of existing affordable rental housing.*

The applicant's written justification argues that the principles have been achieved, as per the following:

The proposed co-living development is considered to be consistent with these principles.

The proposed co-living housing will provide for greater housing diversity in a growing area. The proposed variation relating to room size of Unit 50 on Level 4 is a direct response to the need for increased internal circulation space associated with a DDA-compliant unit. Whilst a compliant internal area for this room is technically possible, it would prevent the occupants from being able to utilise the space if in need of mobility aids. Compliance would therefore prevent anyone with additional accessibility needs from being able to reside on site, and in turn reduce the diversity of housing for the area. Compliance would result in persons with a disability being excluded from the development site, conflicting with aim (b) of the Housing SEPP.

For the above reasons, I am of the view that the variation requested, and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Assessing officer's comment: In conclusion, the applicant's written request has not adequately demonstrated that compliance with the Room Size development standard is unreasonable or unnecessary in the circumstances of the case.

The assessing officers' reasons in forming this opinion are:

- The proposal is varying the room size for the twin DDA compliant room, as the applicant states, they could comply with this development standard.
- It is questioned whether a twin DDA compliant room is necessary or if this should be a single.
- The main issue with the room sizes is the undersized rooms because of the incorrect application of the exclusion zones, the variation request cannot be supported because it has not identified the undersized rooms.

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 Room Size development standard as follows:

1. The development represents a successfully functioning co-living and mixed use building.
The proposed design features a functional and high quality mixed use development, with high levels of amenity for residents, visitors and workers.
2. The proposed variation is a direct response to the need for increased internal circulation space associated with a DDA-compliant unit.
Whilst a compliant internal area for this room is technically possible, it would prevent the occupants from being able to utilise the space if in need of mobility aids. Compliance would therefore prevent anyone with additional accessibility needs from being able to reside on site, and in turn reduce the diversity of housing for the area. Compliance would result in persons with a disability being excluded from the development site, conflicting with aim (b) of the Housing SEPP. Refer to the Access Report prepared by Access Studio dated February 2025 for information on the specific standards and sizing requirements to achieve accessibility compliance.
3. The non-compliance will have no material impacts on surrounding development.
It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. The oversized room size of Unit 50 results in no detrimental overshadowing, view loss or bulk impacts to adjoining development when considered against the backdrop of the permissible building controls. The oversized room size is only noticeable internally, and were the room to be reduced in size to comply the building bulk would likely remain the same externally.

4. *The proposal meets aims and objectives of key planning documents.*
The proposed development meets the objectives of the development standard and meets the objectives of the E2 Commercial Centre zone (detailed in the accompanying Statement of Environmental Effects). The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
- *The proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential and commercial facilities that better meet the needs and significantly improve the living amenity opportunities of the residents (1.3(c));*
 - *The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).*

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

The assessing officers' reasons in forming this opinion are:

- The development does not provide good amenity for residents and results in undersized rooms in addition to a single oversized room, which could easily be made to comply.
- The overall design and overdevelopment of the site (which results in these undersized rooms – because they are four across a width of 10m) will result on impacts on surrounding development, including the adjoining properties to the north, south and west.
- The proposal does not meet the objectives of the E2 Commercial Centre or Section 1.3 of the EPA Act.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have not been satisfied and that development consent must not be granted for development that contravenes the Room Size development standard.

7.4. Communal Living Area

The Applicant has failed to provide a written request to vary the Communal Living Area development standard applying to the site under section 68(2)(c) of the SEPP (Housing) 2021.

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

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the minimum Communal Living Area development standard.

7.5. Communal Open Space

The Applicant has failed to provide a written request to vary the Communal Open Space development standard applying to the site under section 68(2)(d) of the SEPP (Housing) 2021.

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

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the minimum Communal Open Space development standard.

7.6. Single Occupancy Room Size

The Applicant has failed to provide a written request to vary the Single Occupancy Room Size development standard applying to the site under section 69(1)(a)(i) of the SEPP (Housing) 2021.

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

On this basis, the requirements of clause 4.6(3) have **not** been satisfied and development consent **should not** be granted for development that contravenes the minimum Single Occupancy Room Size 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 4.

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 4 and the discussion in key issues below

Section 4.15 'Matters for Consideration'	Comments
development control plan	
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have not been satisfied. <u>Integrated Development</u> Concurrence and the general terms of any approval have not been provided by Water NSW in relation dewatering of the site, pursuant to Section 90(2) of the <i>Water Management Act 2000</i> . As such, the application cannot be approved.

<u>Housing and Productivity Contribution</u> Co-living is a commercial development (so it calculated based on the new floor area). This needs to be calculated on the NSW Planning Portal, which the applicant has failed to do.	
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 inconsistent with the dominant character in the locality. The proposal will 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 does not have sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered unsuitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been discussed in this report.
Section 4.15(1)(e) – The public interest	The proposal does not promote the objectives of the zone and will result in significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of Key Issues

9.1.1. Suitability and inclusion of central courtyard and communal open space

The central courtyard and the communal open space on the roof are not considered appropriate. Pursuant to the SEPP (Housing) 2021, the required communal open space is 101.18m². If this requirement is not met, then a clause 4.6 is required to be submitted.

The ground floor space is not supported and cannot be counted as communal open space because:

- The small outdoor area is dominated by an access ramp.
- The green spaces directly adjoin bedrooms
- The vertical height of this space is three times its width. Meaning it is a light well rather than a courtyard.
- This area will not achieve suitable natural light and no sunlight ingress at any time of year.

The rooftop communal open space is not supported in its current form because:

- There is an issue of the equity of the rooftop communal space.
- The area is above the building height development standard, which is not supported.
- The privacy impacts of the space have not been demonstrated.

Overall, the communal open space is not supported. See Section 7 regarding variation to the communal open space development standard above.

9.1.2. Suitability and inclusions of communal living areas

The communal living spaces are not supported and have not been correctly calculated. The applicant's calculations include areas such as corridors and stairs, which do not meet the intent of the communal living space. Council's approximate calculations can be seen below, in Figures 18-20.

Numerical Requirements:

- *Minimum:* $30\text{m}^2 + (64 \times 2) = \mathbf{158\text{m}^2}$ required.
- *Proposed:* $34.43\text{m}^2 + 40.22\text{m}^2 = \mathbf{74.65\text{m}^2}$ (The 53.19m^2 for the basement area is not considered communal living space.)

Further reasons why the areas are not supported area are as follows:

- The communal areas provided in the lower ground level do not have access to natural light or ventilation.
- The floor to ceiling height is not provided but appear to be less than 2.4m, adding to their inappropriateness.
- The lower ground floor area is a thoroughfare to the bike store and potentially other store, pump or waste rooms.
- The gym is likely to have noise impacts on the common area.
- The ground floor common area is also a thoroughfare to get to the western tower from the Anzac parade frontage. This area is also dominated by large stairs.
- The common room on level 5 is partially above the height limit and although it is a suitable space it is difficult to access from the eastern tower.

Overall, the communal living space is unacceptable and does not meet the minimum area requirements. Therefore, a clause 4.6 should have been submitted. Instead of providing a clause 4.6 to justify the non-compliances, it is recommended that the communal living spaces are fully redesigned to comply with the requirements. See Section 7 regarding variation to the communal living area development standard above.

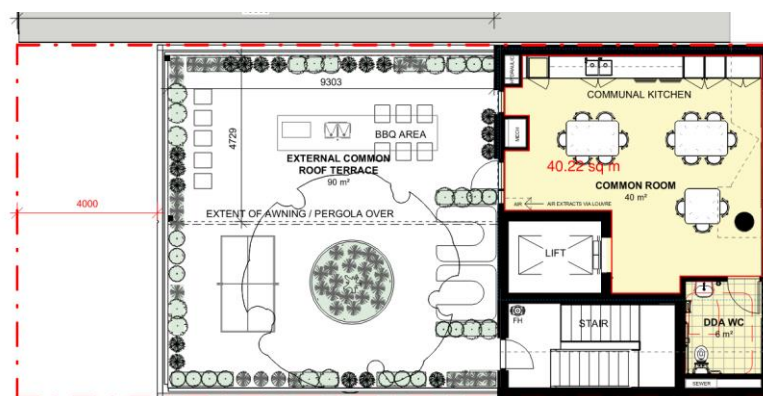


Figure 18: Calculated communal living space on level 5 of the western tower.

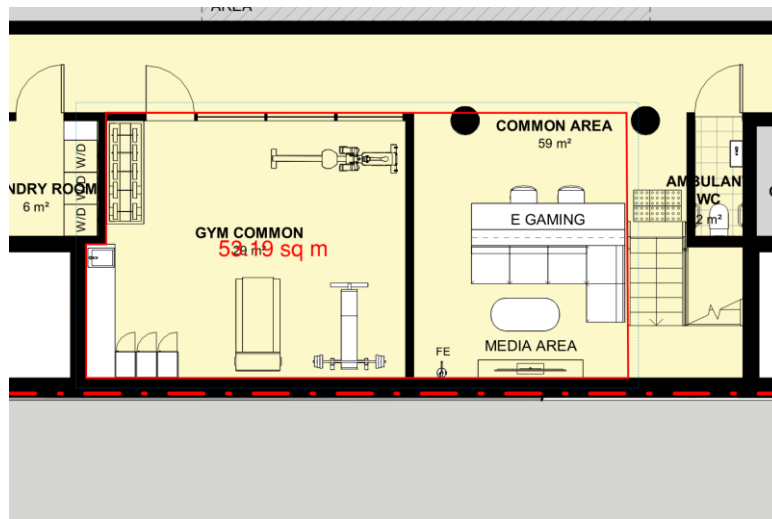


Figure 19: Calculated communal living area on lower ground floor

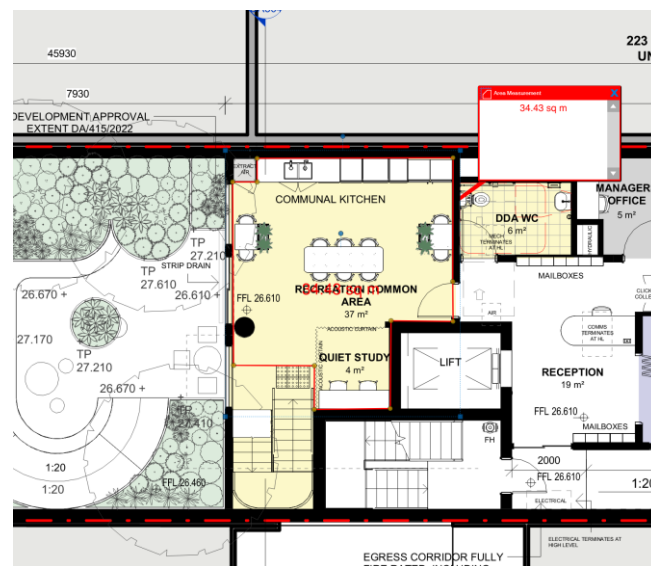


Figure 20: Calculated communal living area on the ground floor

9.1.3. Development Engineering key issues

A summary of key issues raised in the development engineering referral (see referrals section for more detail) are:

- No service and delivery parking has been provided.
- Inadequate motorcycle parking
- Waste Management - the submitted waste management plan does not meet the council requirements and provides incorrect waste generation rates and collection frequencies.
 - The waste collection will be problematic due to the narrow site frontage.
 - The bulky waste store is too small and inappropriately located
 - Bin presentation and collection issues
 - Commercial waste – collection issues.
- Construction Traffic Management Issues
 - A Construction Traffic Management Plan needs to be prepared.

9.1.4. Landscape Officer key issues

A summary of key issues raised in the landscape officer referral (see referrals section for more detail) are:

- Landscape Plans do not reflect the areas shown in the landscape area plan (DA1007)

9.1.5. Lot Amalgamation and the 10m frontage

The application is not supported because the site is too narrow for a co-living development and the applicant has not demonstrated their attempts to negotiate with the neighbouring properties. The proposed site (existing) is too small for the development proposed because:

- The 10m frontage results in poor outcomes in the design of units, including:
 - 2.2m width of rooms is not supported
 - The 4 units across the width of the block is not supported.
 - Inappropriate and unacceptable internal circulation, ventilation and daylight.
 - Single aspect rooms
 - The rooms are essentially corridors and provide no amenity.
 - The rooms are non-complaint with the room size development standard because the circulation spaces/exclusions have been incorrectly applied.

9.1.6. ADG Building Separation

Section 69(2)(b) of the SEPP (Housing) 2021 refers to the Apartment Design Guide (ADG) for building separation distances.

The separation distances depend on the building height and the room use, as shown below:

Minimum separation distances for buildings are:
<i>Up to four storeys (approximately 12m):</i>
• 12m between habitable rooms/balconies
• 9m between habitable and non-habitable rooms
• 6m between non-habitable rooms
<i>Five to eight storeys (approximately 25m):</i>
• 18m between habitable rooms/balconies
• 12m between habitable and non-habitable rooms
• 9m between non-habitable rooms

Figure 21: Building Separation Distances (Source: Apartment Design Guide)

There are numerous non-compliances with this guideline, as outlined below:

Ground Floor

- There is only 7.93m between the habitable studios in the western tower and the communal living area in the eastern tower.
- There is approximately 10.5m between the western ground floor rooms in the western tower and the balcony of 16A Houston Lane.

Levels 1 - 4

- The distance between the habitable rooms – wall to wall is 7.955m, which does not comply with the 12m requirement.

Level 5

- The distance between the communal living room and the studios is 7.93m.

Levels 6 -7

- The eastern tower complies with ADG building separation.

Overall, due to the several non-compliances, the proposal cannot be supported and should be amended in a future application to respond better to the site constraints.

9.1.7. Inclusion/exclusion of circulation spaces

The submitted plans demonstrating the room areas provided by the applicant are not considered to be correctly calculated.

Clause 69(1)(a) excludes the area of bathrooms and kitchens. You must also refer to *Woodhouse & Danks Pty Ltd v Ku-ring-gai Council – NSW Caselaw* (paragraphs 193 – 202). This states that the area in front of the kitchen that is also the main access into and out of the room must be excluded from the room size calculation.

This means that many of the rooms are below the minimum size requirements which is not supported.

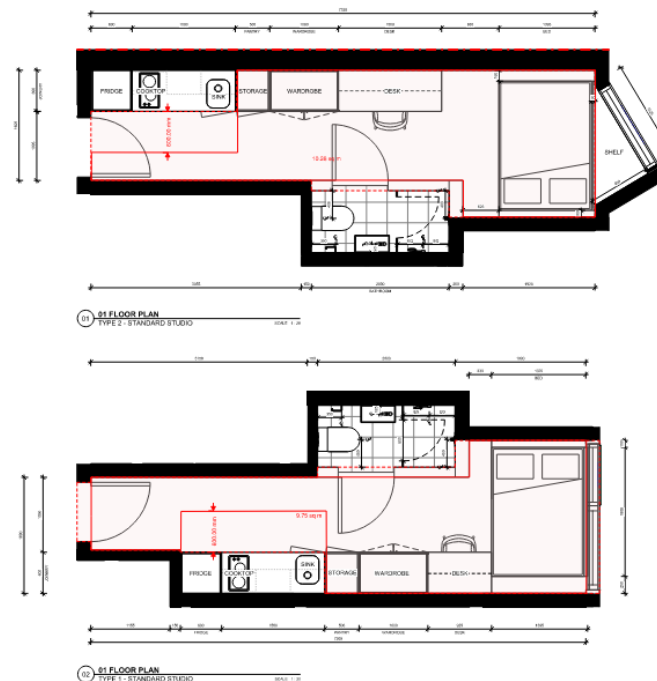


Figure 22: Markup of internal room sizes, demonstrating these room configurations are below the 12m² minimum

The configuration of the bathrooms is not supported, and they are considered to be too narrow.

9.1.8. Other miscellaneous points

- Unit 5 and Unit 6 have an unacceptable interface with the central ground floor courtyard. These rooms do not have adequate privacy. These should be deleted and replaced with communal living space.
- Unit 54 has too much internal articulation and is not a usable/livable space.
- It is unclear how the bicycle store and substation will be accessed.
- The laundry is too small for 70 rooms and is also difficult and unappealing to access.
- The configuration of the retail is unclear, there is a large bin room, no level access as well as a fire booster. It is unclear how the retail will function alongside the co-living development.

9.1.9. Visual Privacy impacts of the common roof terrace

The sight lines and visual privacy impacts of the roof terrace have not been provided.

9.1.10. Impacts on balconies and breezeways at 231-233 Anzac Parade

231 – 233 Anzac Parade is located directly to the south of the development site. This site has breezeways along the common boundary with the development site.

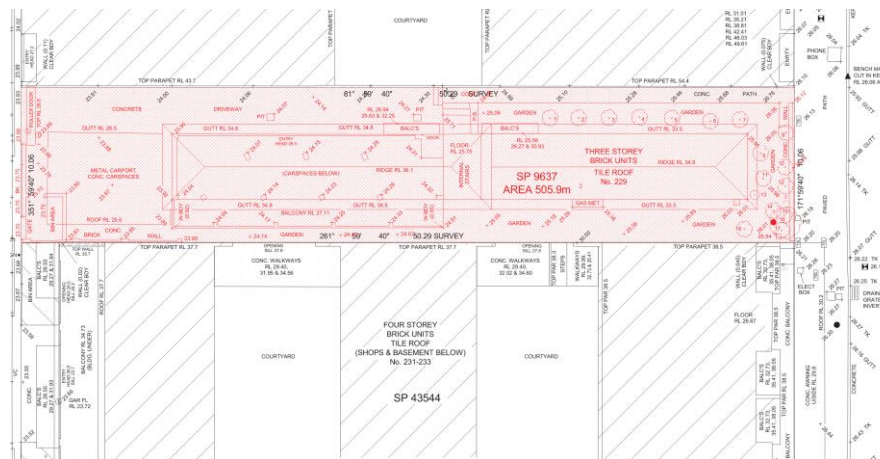


Figure 23: Survey Plan for the 229 Anzac Parade, showing the breezeways at 231-233 Anzac Parade

As shown on the floor plans, these breezeway areas will be blocked out by walls from the proposed development. This configuration continues until level 5 on the west and level 7 on the east.

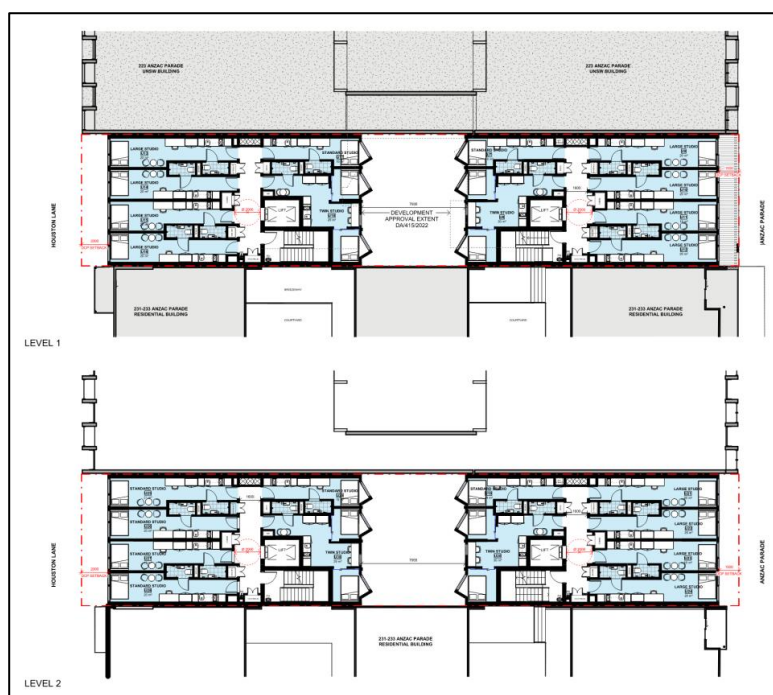


Figure 24: Floor Plans for level 1 and 2 (Source: Applicant)

10. Conclusion

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/242/2025 for Integrated development application for demolition of existing structures and the construction of a part seven (7) / part eight (8) storey mixed-use co-living development comprising of ground floor retail/commercial tenancy,

and 70 self-contained accommodation rooms on upper levels, communal living areas and central courtyard, roof top communal space, and lower ground level containing plant and service areas, waste rooms, bicycle storage, motorbike parking and car parking spaces and substation, ancillary, landscaping and associated site works (Variations to Maximum Building Height, Minimum Lot Size and Minimum Room Size) at No. 229 Anzac Parade, Kensington for the following reasons:

1. Pursuant to Section 4.47 of the *Environmental Planning and Assessment Act 1979*, concurrence and the general terms of any approval have not been provided by Water NSW in relation dewatering, pursuant to Section 90(2) of the *Water Management Act 2000*.
2. Pursuant to clause 2.3 of RLEP 2012, the proposal is inconsistent with the objectives of the E2 Commercial Centre Zone in that it does not complement the desired future built form outcomes of the locality, does not have a high amenity and protect the amenity of residents, is inconsistent with the Council's strategic planning for residential development in the area, and does not facilitate a high standard of urban design.
3. Pursuant to clause 4.3 of RLEP 2012, the proposed height of the building fronting Houston Lane is excessive and results in non-compliance with the height of buildings development standard.
4. Pursuant to clause 4.6 of RLEP 2012, the Applicant has failed to submit a written request to vary the communal living area, communal open space, and room size development standards in SEPP (Housing) 2021. The Applicant has failed demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
5. Pursuant to clause 69(1)(a) of the SEPP (Housing) 2021, the proposed variation to the maximum room size is not supported as the room size is excessive and unnecessary.
6. Section 69(1)(b)(ii) of the SEPP (Housing) 2021, the suitability of the site for the proposed development as not been adequately demonstrated as the site does not comply with the relevant lot size development standard.
7. Pursuant to clause 69(1)(f) of the SEPP (Housing) 2021, the proposal does not provide adequate bathroom, laundry and kitchen facilities.
8. Pursuant to clause 69(1)(h) of the SEPP (Housing) 2021, the proposal does not include adequate bicycle and motorcycle parking spaces.
9. Pursuant to clause 69(2)(b) of the SEPP (Housing) 2021, the proposal does not comply with the minimum separation distances specified in the Apartment Design Guide.
10. Pursuant to clause 6.11 of RLEP 2012 and Part 4 of the K2K DCP, the proposed development does not exhibit design excellence.
11. Pursuant to clause 6.20 of RLEP 2012 and Part 19 of the K2K DCP, the proposal does not provide an active street frontage.
12. Pursuant to clause 2.119 of SEPP (Transport and Infrastructure) 2021, the proposal has not provided practicable and safe, vehicular access to the land from Houston Lane and has failed to provide a Construction Site Traffic Management Plan for the site.
13. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the following controls in the Part E6 of the K2K DCP:
 - a) Pursuant to Section 6, the proposal fails to comply with the maximum storey height, the setback controls and the frontage width, which results in an excessive built form and unacceptable built form due to the lot amalgamation pattern.
 - b) Pursuant to Section 12, the proposal fails to comply with the Floor to Ceiling Height controls.

- c) Pursuant to Section 14, the proposal fails to comply with the acoustic privacy controls.
 - d) Pursuant to Sections 16 & 18, the building design fails to appropriately provide articulation or suitable awning structures.
 - e) Pursuant to Section 20, the proposal fails to comply with the Landscape Area controls.
 - f) Pursuant to Section 21 of the K2K DCP, the proposal fails to comply with the Transport, Traffic, Parking & Access controls.
 - g) Pursuant to Section 26 of the K2K DCP, the proposal fails to comply with the Student Accommodation controls.
14. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to waste management, sustainability, and water management.
15. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
16. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.

Appendix 1: Referrals

1. External Referral Comments:

1.1. Water NSW

Contact: Jayde Allegri
Phone: 0460009036
Email: jayde.allegri@waternsw.com.au

Our Ref: IDAS1161560

Joseph Edmonds
Randwick City Council

Email:
joseph.edmonds@randwick.nsw.gov.au

REQUEST FOR FURTHER INFORMATION

Dear Mr Edmonds,

**RE: Proposed Development DA/242/2025
8//SP93847, CP//SP9637, 4//SP9637, 3//SP9637, 7//SP93847, 2//SP9637, 5//SP9637
ADDRESS: 229 ANZAC PARADE KENSINGTON 2033**

Reference is made to Planning Portal No CNR 80740.

WaterNSW has reviewed the information provided with the development application related to water supply works.

WaterNSW requests that the consent authority stop-the-clock for this development and arrange for the applicant, TAL GP PROJECTS NO 5 PTY LTD to provide the following information to enable assessment of the application:

1. Confirmation of the proposed basement construction design, being either tanked (fully watertight) or drained (requiring permanent ongoing dewatering).
2. If a tanked basement design is proposed, the following information is requested.
 - (i) Volume of water to be extracted annually if available.
 - (ii) Duration of the water take for dewatering if available.
 - (iii) Method of measuring the water take and recording.
3. If a drained basement design is proposed, WaterNSW and the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) will require additional modelled data to support a hydrogeological review and assessment. The Geotechnical report (or equivalent) will need to be updated accordingly and satisfy requirements detailed in the [Minimum requirements for building site groundwater investigations and reporting](#). Further information can also be found at <https://www.industry.nsw.gov.au/water/science/groundwater/aquifer-interference-activities>.

WaterNSW ABN 21 147 934 787
169 Macquarie Street Parramatta NSW 2150
PO Box 398, Parramatta NSW 2124
t. 1300 662 077 e. Customer.Helpdesk@waternsw.com.au

WaterNSW | We're at the source

Please address the information requested as soon as possible. If the information has not been received by WaterNSW **within 28 days**, and no request for an extension of time has been received, WaterNSW may refuse to issue General Terms of Approval.

Should there be any further enquiry in this matter, please email jayde.allegri@waterNSW.com.au

Yours sincerely,

D35/25

1.2. Sydney Water



22 April 2025

Our reference: N/A

Joseph Edmonds
Randwick City Council
joseph.edmonds@randwick.nsw.gov.au

RE: Development Application DA/242/2025 at 229 Anzac Parade, Kensington

Thank you for notifying Sydney Water of DA/242/2025 at 229 Anzac Parade, Kensington, which proposes demolition of existing structures and construction of a part seven/part eight storey mixed use co-living development, comprising 70 student accommodation rooms, a retail tenancy, communal areas, a partial basement level for parking, landscaping, and associated site works. A GFA of 2022.01m² is proposed. Sydney Water has reviewed the application based on the information supplied and provide the following comments to assist in understanding the servicing needs of the proposed development.

Water and Wastewater Servicing

- Our preliminary assessment indicates that water and wastewater servicing should be available for the proposed development.
- Amplifications, adjustments, deviations and/or minor extensions may be required.
- Detailed requirements will be provided at the Section 73 application stage.

Next steps

- Should Council decide to progress with the subject development application, Sydney Water would require the following conditions be included in the development consent.
 - Section 73 Compliance Certificate
 - Building Plan Approval
 Further details of the conditions can be found in **Attachment 1**.
- Council is advised to forward the enclosed *Sydney Water Development Application Information Sheet (for proponent)* to assist the proponent in progressing their development. This Info Sheet contains details on how to make further applications to Sydney Water and provides more information on Infrastructure Contributions.

This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application. More information about the Section 73 application process is available on our web page in the [Land Development Manual](#).

Council can read further advice on requirements for this proposal in Attachments 1 and 2. Should Council require further information, please contact Fiona Feng from the Growth Analytics Team at urbangrowth@sydneywater.com.au.

Yours sincerely,

Growth Analytics Team

Growth and Development, Water and Environment Services
Sydney Water, 1 Smith Street, Parramatta NSW 2150

Enclosed:

- Sydney Water Development Application Information Sheet (for proponent)

Sydney Water Corporation ABN 49 776 225 038
1 Smith Street, Parramatta, NSW 2150 | PO Box 399, Parramatta, NSW 2124
Telephone 13 20 92 Media (24/7) 8849 5151 sydneywater.com.au



Attachment 1 – Recommended Development Conditions

Prior to the issue of an Occupation/Subdivision Certificate:

Section 73 Compliance Certificate

A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Our assessment will determine the availability of water and wastewater services, which may require extensions, adjustments, or connections to our mains. Make an early application for the certificate, as there may be assets to be built and this can take some time. A Section 73 Compliance Certificate must be obtained before an Occupation or Subdivision Certificate will be issued.

Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator.

Go to the Sydney Water website or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

Prior to the issue of a Construction Certificate/Complying Development Certificate:

Building Plan Approval (including Tree Planting Guidelines)

The plans must be approved by Sydney Water prior to demolition, excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Any amendments to plans will require re-approval. Please go to [Sydney Water Tap in®](#) to apply.

Sydney Water recommends developers apply for a Building Plan Approval early as to reduce unnecessary delays to further referrals or development timescales.

Tree Planting

Certain tree species placed in proximity to Sydney Water's underground assets have the potential to inflict damage through invasive root penetration and soil destabilisation. Section 46 of the Sydney Water Act specifies what might occur when there is interference or damage to our assets caused by trees.

For any trees proposed or planted that may cause destruction of, damage to or interference with our work and are in breach of the Sydney Water Act 1994, Sydney Water may issue an order to remove that tree or directly remove it and seek recovery for all loss and associated compensation for the removal.

For guidance on types of trees that can cause damage or interference with our assets see Sydney Water webpage Wastewater blockages. For guidance on how to plant trees near our assets, see Diagram 5 – Planting Trees within Sydney Water's [Technical guidelines – Building over and adjacent to pipe assets](#).

Sydney Water Corporation ABN 49 776 225 038
1 Smith Street, Parramatta, NSW 2150 | PO Box 399, Parramatta, NSW 2124
Telephone 13 20 92 Media (24/7) 8849 5151 sydneywater.com.au



Attachment 2 – Sydney Water Requirements for Commercial and Industrial Developments (for proponent's information)

Trade Wastewater Requirements

If this development is going to generate trade wastewater, the property owner must submit an application requesting permission to discharge trade wastewater to Sydney Water's sewerage system. You must obtain Sydney Water approval for this permit before any business activities can commence. It is illegal to discharge Trade Wastewater into the Sydney Water sewerage system without permission.

The permit application should be emailed to Sydney Water's Business Customer Services at businesscustomers@sydneywater.com.au

A Boundary Trap is required for all developments that discharge trade wastewater where arrestors and special units are installed for trade wastewater pre-treatment.

If the property development is for Industrial operations, the wastewater may discharge into a sewerage area that is subject to wastewater reuse. Find out from Business Customer Services if this is applicable to your development.

Backflow Prevention Requirements

Backflow is when there is unintentional flow of water in the wrong direction from a potentially polluted source into the drinking water supply.

All properties connected to Sydney Water's supply must install a testable Backflow Prevention Containment Device appropriate to the property's hazard rating. Property with a high or medium hazard rating must have the backflow prevention containment device tested annually. Properties identified as having a low hazard rating must install a non-testable device, as a minimum.

Separate hydrant and sprinkler fire services on non-residential properties, require the installation of a testable double check detector assembly. The device is to be located at the boundary of the property.

Before you install a backflow prevention device:

1. Get your hydraulic consultant or plumber to check the available water pressure versus the property's required pressure and flow requirements.
2. Conduct a site assessment to confirm the hazard rating of the property and its services. Contact PIAS at NSW Fair Trading on 1300 889 099.

For installation you will need to engage a licensed plumber with backflow accreditation who can be found on the Sydney Water website:

<https://www.sydneywater.com.au/plumbing-building-developing/plumbing/backflow-prevention.html>

Sydney Water Corporation ABN 49 776 225 038

1 Smith Street, Parramatta, NSW 2150 | PO Box 399, Parramatta, NSW 2124

Telephone 13 20 92 Media (24/7) 8849 5151 sydneywater.com.au



Water Efficiency Recommendations

Water is our most precious resource and every customer can play a role in its conservation. By working together with Sydney Water, business customers are able to reduce their water consumption. This will help your business save money, improve productivity and protect the environment.

Some water efficiency measures that can be easily implemented in your business are:

- Install water efficiency fixtures to help increase your water efficiency, refer to WELS (Water Efficiency Labelling and Standards (WELS) Scheme, <http://www.waterrating.gov.au/>
- Consider installing rainwater tanks to capture rainwater runoff, and reusing it, where cost effective. Refer to <https://www.sydneywater.com.au/your-business/managing-your-water-use/water-efficiency-tips.html>
- Install water-monitoring devices on your meter to identify water usage patterns and leaks.
- Develop a water efficiency plan for your business.

It is cheaper to install water efficiency appliances while you are developing than retrofitting them later.

Contingency Plan Recommendations

Under Sydney Water's [customer contract](#) Sydney Water aims to provide Business Customers with a continuous supply of clean water at a minimum pressure of 15meters head at the main tap. This is equivalent to 146.8kpa or 21.29psi to meet reasonable business usage needs.

Sometimes Sydney Water may need to interrupt, postpone or limit the supply of water services to your property for maintenance or other reasons. These interruptions can be planned or unplanned.

Water supply is critical to some businesses and Sydney Water will treat vulnerable customers, such as hospitals, as a high priority.

Have you thought about a contingency plan for your business? Your Business Customer Representative will help you to develop a plan that is tailored to your business and minimises productivity losses in the event of a water service disruption.

For further information please visit the Sydney Water website at: <https://www.sydneywater.com.au/your-business/managing-trade-wastewater/commercial-trade-wastewater.html> or contact Business Customer Services on 1300 985 227 or businesscustomers@sydneywater.com.au.

1.3. Transport for NSW

Transport for NSW

9 May 2025

TfNSW Reference: SYD24-00432/01
Council's Reference: DA/242/2025 (CNR-80740)

Mr Ray Brownlee
General Manager
Randwick City Council
Administration Building & Customer Service Centre
30 Frances Street
RANDWICK NSW 2031

Attention: Joseph Edmonds



CONSTRUCTION OF MIXED-USE CO-LIVING DEVELOPMENT 229 ANZAC PARADE KENSINGTON

Dear Mr Brownlee,

Reference is made to Council's referral regarding the abovementioned Development Application (DA) which was referred to Transport for NSW (TfNSW) for comment under Section 2.98 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* and concurrence under Section 2.99 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* and Section 138 of the *Roads Act 1993*.

TfNSW notes that the site has frontage to a state classified road (Anzac Parade) and to a local road at the rear (Houston Lane) and the DA relates to the demolition of the existing structure (two-storey brick building) and construction of a part seven (7)/part eight (8) storey, mixed use, co-living development including seventy (70) student accommodation rooms and a commercial (retail) tenancy.

In relation to the proposed development and the protection of the Sydney Light Rail (SLR) Corridor on Anzac Parade, TfNSW has reviewed the DA and grants concurrence to the proposed development in the relation to the SLR Corridor under Section 2.99 of *State Environmental Planning Policy (Transport and Infrastructure) 2021*, as provided in the attached concurrence letter.

In relation to the stormwater connection to Anzac Parade (classified road), TfNSW has reviewed the DA and grants concurrence to the proposed stormwater connection to Anzac Parade under Section 138 of the *Roads Act 1993*, subject to Council's approval and the following conditions being included in any consent issued by the Council:

1. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact upon Anzac Parade are to be submitted to TfNSW for approval, prior to the issue of a Construction Certificate and commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.
2. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
3. Any public utility adjustment/relocation works on the state road network (i.e. Anzac Parade) will require detailed civil design plans for road opening/underboring to be submitted to TfNSW for review and acceptance prior to the issue of a Construction Certificate and the commencement of any works. The developer must also obtain any necessary approvals from the various public utility authorities and/or their agents. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.
4. The developer is required to enter a Works Authorisation Deed (WAD) with TfNSW, or other suitable arrangement as agreed to by TfNSW, for the works required by Conditions 1, 2 and 3 that impact Anzac Parade.
5. A Road Occupancy Licence (ROL) shall be obtained from the Transport Management Centre (TMC) for any works that may impact on traffic flows on Anzac Parade during construction activities. An ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

OFFICIAL

Level 4, 4 Parramatta Square, 12 Darcy Street
PO Box 973 Parramatta CBD NSW 2124

W transport.nsw.gov.au

6. For the life of the completed development all servicing of the site (e.g. delivery drop offs and pick ups) for the premises, including waste collection, must be undertaken from Houston Lane and not be undertaken from the Anzac Parade frontage of the site.
7. All vehicular access associated with demolition and construction works shall be from Houston Lane. A construction zone or demolition/construction truck parking zone will not be permitted on Anzac Parade.

Further to the above, the following advisory comments are provided for the Council's consideration in their assessment and determination of the DA:

1. The provisions of Section 2.120 (Impact of road noise or vibration on non-road development) of *State Environmental Planning Policy (Transport and Infrastructure) 2021* apply to the submitted application as the annual average daily traffic volume along this section of Anzac Parade is more than 20,000 vehicles.

As such, the developer will need to demonstrate to the satisfaction of the determining authority that the application is able to comply with provisions contained in Section 2.120 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* specifically in relation to measures to ensure the required noise levels as detailed in Subclause 3 are not exceeded when the building is ready to be occupied.

For more information, please contact Jim Tsirimiagos, Land Use Planner, on 0412 376 198, or by email at development.sydney@transport.nsw.gov.au.

Yours sincerely,

D35/25

1.4. Design Excellence Review Panel

Randwick Design Excellence Advisory Panel

Final Endorsed Comments



DA INFORMATION	
Application Number	DA/242/2025
Address	229 Anzac Parade, Kensington
Meeting Date	05 May 2025
Panel Members	Tony Caro (Chair), Jonathon Knapp, Brian Meyerson
Report Date	08 May 2025

INTRODUCTION

This document provides a summary of advice and recommendations arising from the Design Excellence Advisory Panel (DEAP) meeting held in relation to the above application.

The DEAP comments are intended to assist Council in their design consideration of an application, including assessment against Chapter 4 of the Housing SEPP and the design principles for residential apartment development (as applicable).

The DEAP is appointed by Randwick City Council as an advisory group, not a decision-making body. The written and verbal comments are the professional opinions of the Panel members and constitute expert design quality advice. The Panel members are suitably qualified persons with expertise in architecture, planning, urban design, heritage, and/or landscape architecture.

To address the DEAP comments, the Applicant may be requested to submit amended plans. Prior to preparing any amended plans, the Applicant must discuss the DEAP comments (and any other matter(s) that may require amendment) with the relevant Council assessing officer. Any amended plans submitted to Council must be accompanied by a written response that details how each of the DEAP comments have been satisfactorily addressed.

PROJECT DESCRIPTION

Integrated development application for demolition of existing structures and the construction of a part seven (7) / part eight (8) storey mixed-use co-living development comprising of ground floor retail/commercial tenancy, and 70 self-contained accommodation rooms on upper levels, communal living areas and central courtyard, roof top communal space, and lower ground level containing plant and service areas, waste rooms, bicycle storage, motorbike parking and car parking spaces and substation, ancillary, landscaping and associated site works.

PANEL COMMENTS

The new development proposal is to be assessed as a Co-Living development to comply with SEPP Housing 2021, together with Councils relevant planning controls. The Panel notes that this is a good site for student housing given its proximity to UNSW.

The site has an existing Development Consent for market/ADG compliant housing obtained by a previous owner, however the present owner has elected to prepare a new Development Application for the above. As this is a new DA proposal, it should be noted that elements of the previous consent are not necessarily relevant or transferable to this application.

1. Context and Neighbourhood Character

To the immediate north of this 500 sqm x10m wide site is an 8 storey, well-designed UNSW educational facility (223 Anzac Pde). To the south is an existing 4 storey residential building (231 Anzac Pde) that could be subject to future redevelopment. Both adjacent existing buildings have nil setbacks to all boundaries, being Anzac Parade, Houston Lane to the rear, and side boundaries.

Low density existing residential development is located to the west across Houston Lane.

2. Built Form and Scale

The development is compliant with Council's primary building envelope controls for height, density and setbacks.

However the Panel has concerns with its formal relationship to the northern neighbour in particular. Whilst the proposed setbacks for the subject development comply with Council's urban design controls, this means that the significant bulk and mass of the adjacent building side wall will be visible from the street, as well as impacting upon the character and amenity of the subject proposal. The setbacks also mean that the width of the proposed central courtyard/lightwell is reduced beyond its already challenging dimension (8m). The Panel therefore recommends that the scheme should correlate with the northern and southern neighbours by building to the Anzac Pde alignment, without the need for a mid level podium setback.

It may also be preferable to align a zero setback on the rear lane frontage, pending further investigation of impacts and discussion with Council.

3. Density

This is a key concern for the Panel, as the site is grossly non-compliant with SEPP Housing 2021 requirements of 800sqm minimum site area (62.5% shortfall), and 20m minimum street frontage width (100% shortfall) for co-living development.

It should be understood that the Panel's primary task is to advise Council and proponents in regard to a proposal's **design quality**, which includes provision of acceptable residential amenity. The Panel is generally less focussed upon strict metric compliance, preferring to concentrate its advice on urban/architectural design quality and liveability propositions.

In this case, the Panel have formed a view that the proposed dwelling number (70) and consequential typical dwelling internal width of approx. 2.2m is not acceptable. Other examples along the K2K corridor range from 2.65-2.9 internal.

The architects advised however that this width is seen in many similar developments by student housing providers. The Panel challenges this, considering that a minimum of 2.8m clear internal width (ideally 3m to meet accepted definitions of habitable space) is more appropriate for achieving acceptable spatial and functional amenity for long term human occupation in such small units.

This would mean the typical floor should revert from a 4-unit to a 3-unit module across the four facades within the 10m site width.

The Panel recommends that the architects prepare a case study of good Australian precedents for Council, to determine and agree upon an acceptable minimum unit width.

4. Sustainability

Not discussed at meeting.

5. Landscape

Not discussed at meeting. The rooftop Communal space would benefit from creative landscape advice.

6. Amenity

The Panel has numerous concerns in regard to liveability within the proposed common areas and private unit configurations:

Living Units

- Lack of an adequate "habitable room" or space within typical units. The narrowness of the units as referred to in Item 3 above means that occupants are required to live in a long, dark corridor with a bed squeezed in at the end. Occupants would need to crawl across the bed to open the sole window.
- The narrow internal unit width is achieved by aligning pairs of bathrooms on party wall centres rather than inside the unit module, in order to achieve the proposed typical banks of 4 units. This configuration is not considered to provide acceptable amenity.
- The bathroom internal widths appear to be very narrow. 1m clear internal is recommended.
- How does a typical unit internal circulation corridor of 1m width (assumed, no dimensions provided) also provide adequate circulation when it is being used as a kitchen, study area or for bathroom access?
- How does this 1m wide corridor obtain natural light and ventilation?
- The stepped twin room plans on L5 and 6 are too internal and not acceptable.
- The two ground floor units western block should be deleted and communal facilities located in the Basement relocated to this location.

Communal and Service Areas

- The communal spaces provided on the Lower Ground Level (Basement) do not have access to natural light or ventilation. Room heights are not provided, and appear very low on sections.
- It is unclear how the sub-station is accessed by supply authority.
- The waste storage area appears to be over designed.
- The Laundry appears too small and inaccessible.
- It is not clear how the Ground Floor space designated Kitchen/Retail/Reception on Anzac Parade would function. It also has a bin room directly off it.
- The entrance to the building is via a Fire Egress Ramp.

Ground Floor Communal Courtyard

- This small outdoor space is dominated by an access ramp.
- Its vertical height is approximately three times its width, which means that it is a light well rather than a courtyard.
- This space won't achieve reasonable natural light, and no sunlight ingress at any time of the year.

Rooftop Communal Areas

- This is an important element of the scheme and likely to be used intensively.
- There is an issue with equity of access, as occupants in the eastern block do not have convenient access.

Noise and Privacy

- The Panel is concerned about acoustic privacy and potential impacts of poor air quality for units facing Anzac Parade. A workable solution to this must be presented to Council in any future submission.
- The Panel does not support the 8m width of the internal lightwell, this must be increased to a minimum of 12m, with the window configuration and screens provided that allow occupants to have some control over their privacy. The proposed angled windows do not appear to address this important issue effectively. This could be achieved by a combination

of nil street setbacks and wider rooms that would reduce the depth of the units, as described above.

7. Safety

Not discussed at meeting. To be provided to Councils satisfaction.

8. Housing Diversity and Social Interaction

Not discussed at meeting. Complies with SEPP2021 requirements.

9. Aesthetics

Not discussed at meeting. The provided imagery and elevations suggest a reasonably considered approach, however this will need to be adjusted to reflect comments provide in this report.

SUMMARY

The Panel does not support this proposal as presented. The applicant should consider and address the matters raised in consultation with Council where required, and return to Panel for further review.

D35/25

1.5. NSW Police

The application documentation was sent to NSW Police on 03 April 2025 to provide the opportunity for comments. A follow up email was sent on 12 June 2025, informing NSW Police that the application would be determined soon.

The following comments were received:

I have conducted a preliminary review of the application and given that the development does not directly link to a licensed premises, our office are not in a position to provide a submission to Council. Our Crime Prevention Officer is currently on annual leave and will miss the submission close date. From their position, please ensure that Council gives strong consideration to Crime Prevention through Environmental Design (CPTED) and its four key strategies. Being territorial re-enforcement, surveillance, access control and space/activity management.

D35/25

1.6. Sydney Airport / Australian Government



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

File reference: F22/1157-89

TO	CC	FROM
Paul Fischmann Mountains8 Pty Ltd fischmann@8hotels.com Jonathon Hasson jonathan@hasson.net.au	Peter Bleasdale Sydney Airport airspaceprotection@syd.com.au Civil Aviation Safety Authority airspace.protection@casa.gov.au Airservices Australia airport.developments@airservicesaustralia.com ifp@airservicesaustralia.com Randwick City Council Tegan Ward tegan.ward@randwick.nsw.gov.au council@randwick.nsw.gov.au	Flysafe Airspace Protection flysafe@infrastructure.gov.au

DECISION UNDER THE AIRPORTS (PROTECTION OF AIRSPACE) REGULATIONS 1996

Proposed Activity:	Construction of a building - Development
Location:	229 Anzac Parade, Kensington NSW
Coordinates:	E 336002; N 6245431 (MGA 94)
Proponent:	Mountains8 Pty Ltd

I refer to the application from Randwick City Council & NSW Planning Portal on behalf of Mountains8 Pty Ltd (the Proponent), received by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) on 11 July 2023 from Sydney Airport Corporation Limited (SACL). This application (SACL ref. 22/0878a) sought approval under the Airports (Protection of Airspace) Regulations 1996 (the Regulations) for the intrusion of a building at 229 Anzac Parade, Kensington NSW (the site) into airspace which, under the Regulations, is prescribed airspace for Sydney Airport.

Under regulation 6(1), 'prescribed airspace' includes 'the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services - Aircraft Operations (PANS-OPS) surface for the airport'.

The Inner Horizontal Surface of the OLS above this site is at a height of 51 metres above the Australian Height Datum (AHD) and hence prescribed airspace above the site commences at 51 metres AHD. At a maximum height of 55.46 metres AHD, the building will penetrate the OLS by 4.46 metres AHD.

Accordingly, the construction of the building constitutes a 'controlled activity' under Section 182 of the *Airports Act 1996* (the Act). Section 183 of the Act specifies that controlled activities cannot be carried out without approval. Details of the penetration of prescribed airspace are provided in Table 1.

Table 1: Height and location of the proposed activity that will intrude into prescribed airspace for Sydney Airport.

Activity	Coordinates (MGA 94)	Maximum height (AHD)	Penetration of prescribed airspace
Building	E 336002; N 6245431	55.46 metres	4.46 metres

Regulation 14 provides that a proposal to carry out a controlled activity must be approved unless carrying out the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned. Regulation 14(1)(b) provides that an approval may be granted subject to conditions.

Under the Regulations, the Secretary of the Department is empowered to make decisions in relation to the approval of controlled activities, and impose conditions on the approval. I am the Secretary's Delegate for the purposes of the Regulations.

Decision

As you may be aware, the Secretary is required under regulation 15(1AB) of the Regulations to make a decision about the proposal within 28 days of receiving the application.

Due to delays with our processes and the time taken to receive all the information that is relevant under the Regulations, a decision was not made within this timeframe. Therefore, under regulation 15(2) this proposal was taken to have been refused. However, as this information has now been received and the Department has now considered the application in full, I have re-made the decision.

In accordance with regulation 14, **I approve** the controlled activity for the intrusion of a building at 229 Anzac Parade, Kensington NSW into prescribed airspace for Sydney Airport to a **maximum height of 55.46 metres AHD**.

In making my decision, I have taken into consideration the opinions of the Proponent, the Civil Aviation Safety Authority, Airservices Australia (advice number YSSY-CA-805), airlines and SACL.

In accordance with regulation 14(1)(b), I impose the following conditions on my approval:

1. The building **must not exceed** a maximum height of **55.46 metres AHD, including all** lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
2. Separate approval **must be sought** under the Regulations for any equipment (e.g. cranes, concrete pumps) required to construct the building. Construction cranes or concrete pumps may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations.

Therefore, it is advisable that approval to operate construction equipment (e.g. cranes, concrete pumps) be obtained prior to any commitment to construct.

3. The proponent **must advise** Airservices Australia at least three business days prior to the controlled activity commencing by emailing ifp@airservicesaustralia.com and quoting YSSY-CA-805.
4. On completion of construction of the building, the Proponent **must provide** SACL with a written report from a certified surveyor on the finished height of the building.
5. A separate assessment and approval under the Regulations will be required for any further addition to the height of the building (including the installation of antennas) as it will increase the penetration of the OLS.

Breaches of approval conditions are subject to significant penalties under Sections 185 and 187 of the Act.

Yours sincerely

D35/25

1.7. AUSGRID

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

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

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

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

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

Ausgrid Underground Cables are in the vicinity of the development.

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

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

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

SafeWork Australia – Excavation Code of Practice.

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

The following points should also be taken into consideration.

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

Should ground levels change above Ausgrid's underground cables in areas such as footpaths and driveways, Ausgrid must be notified, and written approval provided prior to the works commencing.

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

New Driveways - Proximity to Existing Poles

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

New or modified connection

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

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website:
www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

Should you require further information please contact Ausgrid via email to Development@ausgrid.com.au

Regards,
Ausgrid Development Team

2. Internal Referral Comments:

2.1. Development Engineer

GENERAL COMMENTS

The application is not supported due to deficiencies in vehicle (service and delivery) parking, motorbike parking and waste management. There are also concerns on traffic and access during demolition excavation and construction. Detailed comments are provided below

It is the view of Development Engineering the proposed development represents an overdevelopment of the site as it is unable to provide suitable parking facilities and waste management infrastructure, primarily due to the very narrow frontage of only 10m. There are competing requirements which makes servicing the site from Houston Lane extremely problematic on such a narrow frontage.

The site lies within and at the northern extremity of the Kingsford component of the Kensington to Kingsford DCP being Part E6 of the Randwick DCP. All applicable controls are therefore derived from this document and the SEPP Housing (2021).

PARKING ISSUES

Summary

The proposed development is not supported on parking grounds as it is required to provide a minimum of 1-2 spaces for service and delivery parking which has not been provided. The amount of motorbike parking is also considered to be inadequate.

Vehicle Parking Provision - Student Housing Component

Under Clause 68 (e) Part 3 of State Environmental Planning Policy (Housing) 2021 being a non-discretionary standard, parking is to be provided for Co-Living Housing at the following rates unless a relevant planning instrument specifies a lower number:

- (i) For development on land in an accessible area – 0.2 parking spaces for each private room, or
- (ii) Otherwise – 0.5 parking spaces for each private room.

In this regard Part C of the Kensington & Kingsford DCP 2020 being Part E6 of the Randwick DCP specifies the following lower parking rate applicable to the proposed student housing component.

Student Accommodation

- 0 spaces

Hence no parking is required for the student housing component

Service and Delivery

Part C of the Kensington & Kingsford DCP 2020 being Part E6 of the Randwick DCP specifies the following parking rate for service and delivery parking for residential developments.

- 1 space per 30-100 apartments plus 1 space per 100 apartments thereafter

The architectural plan and traffic Management report by Traffix Pty Ltd indicate potentially a single space can be provided in front of the substation however this is only 5m long and would only be suitable for small vehicles as acknowledged in the traffic report.

This would make the proposed carspace unsuitable for service and delivery parking and a carspace of minimum length 5.4m in accordance with As 2890.1 plus any considered additional requirements in relation to servicing and delivery is required to be provided. The siting of the

space in front of the substation may also be problematic and would unlikely be consistent with the requirements of Ausgrid.

The kerbside lane on Anzac Parade is a busy trafficable lane and is currently labelled “No Parking” while the Houston Lane frontage is also unavailable and is labelled “No Stopping” on both sides of the laneway. Any vehicles servicing the site would therefore have to park a considerable distance away and within an area that is already experiencing high parking pressures.

Although it is acknowledged the residential component is student housing only the difficulties in servicing the site need to be acknowledged and it is considered a requirement for one AS 2890.1 compliant carspace for service and delivery parking for the proposed 70 room student accommodation is certainly justified in this instance.

Vehicle Parking Provision - Commercial Component

Part C of the Kensington & Kingsford DCP 2020 being Part E6 of the Randwick DCP specifies the following parking rate applicable to the proposed commercial component.

/

- 1 space per 125m² (Commercial)
- 1 space per 100m² (Café/restaurant)

Car Parking Required = 48/125 or 48/100 (assuming café worst case)
 = 0.4 or 0.5 spaces (café)
 = 1 space (rounded)

Car Parking Proposed = 1 small space (5m length)

Although the parking shortfall is technically minor (half a space if not rounding) the shortfall is not supported in this instance due to concerns with servicing of the commercial tenancy similar to the concerns raised for servicing of the student accommodation. Any vehicles servicing the site would have to park a considerable distance away and within an area that is already experiencing high parking pressures

It is therefore considered a minimum of 1 space be also required for the commercial tenancy and should be dedicated to service and delivery parking. Sharing of service and delivery parking with the student accommodation may be considered.

Motorbike & Bicycle Parking - Student Housing Component

The State Environmental Planning Policy (Housing) 2021 is relatively silent on the amount of motorbike and bicycle parking required other than clause 69 (1) (h) where it states;

(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.

In this regard Section 21 Part C of the Kensington to Kingsford (K2K) DCP specifies the following rates for motorbike and bicycle parking for student accommodation/boarding houses.

- Motorbike parking is to be provided at 1 space per 5 rooms
- Bicycle parking is to be provided at 1 space per 5 rooms

It is noted in the DCP that this rate is based on the Old Affordable Housing SEPP 2009 which has been superseded by the Housing SEPP (2021) and so it is acknowledged there is a degree of flexibility in the application of these rates.

Motorbike Parking Required (under K2K DCP) = 70/5 = 14 spaces

Motorbike Parking provided = 2 spaces

Motorbike Parking Shortfall (under K2K DCP) = 12 spaces (86%)

Bicycle Parking Required (under K2K DCP) = $70/5 = 14$ spaces

Bicycle Parking provided = 26 spaces (complies)

Bicycle Parking surplus = 12 spaces

The motorbike parking shortfall is considered to be excessive even when applying a degree of flexibility in the application of the DCP rates. Based on present information it is considered a minimum of 6 motorbike spaces should be provided. This also takes into account the surplus of bicycle parking.

Motorbike & Bicycle Parking - Commercial Component

Section 21 Part C of the Kensington to Kingsford (K2K) DCP also specifies the following rates for motorbike and bicycle parking for the commercial component

- Motorbike parking is to be provided at 1 space per 12 car spaces
- Bicycle parking is to be provided at 1 space per 1000m²

Application of the above rates to the commercial tenancy of GFA 48m² with 0 parking (or 1 required) will result in a zero-parking requirements for both motorbike and bicycle parking.

WASTE MANAGEMENT ISSUES

Summary

The application is not supported on waste management grounds as the submitted Waste Management Plan does not meet Council requirements and provides incorrect waste generation rates and collection frequencies. Waste collection will also be problematic exacerbated by the narrow site frontage,

Comments on the number of Waste Bins – Student Housing Component

Council's Waste Management Guidelines specify the following waste generation rates for boarding houses

- 9L per occupant per day for garbage
- 3L per occupant per day for recycling

Since March 2021 Council has also introduced a Food Organics Garden Organics (FOGO) service. To now take into account some diversion to FOGO the main garbage rate has been revised down slightly to 8L per occupant per day. Council's Waste management team have also advised that FOGO generation is to be taken as 14L per room per week.

The proposed development comprises of 70 student rooms. Of these 12 rooms are indicated to be twin rooms resulting in a maximum of 82 occupants.

Assuming Council's standard collection frequencies of once per week for garbage and FOGO and once per fortnight for recycling the following calculations have determined the amount of bins required.

Normal Garbage (red lid)

Waste generated (Normal garbage) = 82 occupants x 8L x 7 days = 4592L (weekly collection)

Number of bins required = $4592/240$ (assuming standard 240L bin)
= 19 x 240L bins

OR

= $4592/660$ (660L sized bins)
= 6.96

$$= 7 \times 660\text{L bins}$$

Recycling (yellow lid)

Waste generated (Recycling) = $82 \times 3\text{L} \times 14\text{days} = 3444\text{L}$ (fortnightly collection)

$$\begin{aligned}\text{Number of bins required} &= 3444/240 \text{ (assuming standard 240L bin)} \\ &= 14.35 \\ &= 15 \times 240\text{L bins}\end{aligned}$$

OR

$$\begin{aligned}&= 3444/660 \text{ (660L sized bins)} \\ &= 5.2 \\ &= 6 \times 660\text{L bins}\end{aligned}$$

Food organic garden Organics (FOGO) - (green lid)

FOGO collection frequency is currently once per week. The submitted WMP incorrectly indicates one collection per fortnight and has significantly overestimated the number of FOGO bins required.

Waste generated (FOGO) = $70 \text{ rooms} \times 14\text{L} = 980\text{L}$ per week

$$\begin{aligned}\text{Number of bins required} &= 980/240 \text{ (assuming standard 240L bin \& weekly collection)} \\ &= 4.08 \\ &= 4 \times 240\text{L bins}\end{aligned}$$

In summary based on council's current collection frequencies of 1 collection per week for garbage and FOGO and 1 collection per fortnight for recycling the proposed 70 room student accommodation would be required to provide space for

- 7 x 660L bins of garbage (red lid)
- 6 x 660L bins for recycling (yellow lid)
- 4 x 240L bins for FOGO (green lid)

The proposed waste storage room on the lower ground floor appears to be significantly oversized and would likely accommodate double the required amount of bins. It therefore satisfies Councils' requirements with regards to bin provision but there is significant scope to reduce the dedicated waste bin storage area.

Bulky Waste Issues

The area dedicated to the storage of bulky waste is far too small (4m²) and shall be increased to a minimum of 10m² with a minimum internal dimension of 3m. The doors must also open outwards and increased in width to maximise the room available and accessibility. The bulky waste room should also be located as close to the collection area (i.e. the laneway) as much as possible. There is currently a long & undesirable travel path for the transportation of bulky waste through common areas to the collection area which is not supported.

Bin presentation and Collection Issues

The submitted Waste Management Plan indicates bins will be stored within the waste bin storage room and waste contractors will be required to enter the premises and wheel the bins out to the waste collection vehicle empty the bins and then wheel them back in to the waste storage rooms. The travel path between the waste storage room and the laneway is approximately 13-20m.

For Council collection, this arrangement is not supported as Council's waste management team have indicated they do not offer a wheel out wheel in service. Collection and emptying of this number of bins will require a council collection vehicle to be parked in the rear laneway for approximately 20-30 minutes and is likely to lead to significant traffic delays on Houston Lane. Because of the narrow frontage there is no scope to provide an indented bay for waste collection vehicle trucks which would allow vehicles to pass in the laneway. It also prevents A bin presentation areas being provided immediately adjacent to the site frontage as what has

been approved & provided with the neighbouring development to the south at 231-233 Anzac Parade.

Commercial waste - Collection Issues

The architectural plans indicate the commercial waste bin storage area would only be accessible for collection from Anzac Parade as there appears to be no clear travel path available for commercial bins to be presented to Houston Lane. The submitted WMP however states on page 9 that collection of commercial bins will be from Houston Lane. It should therefore be confirmed where the proposed collection of the commercial waste will be undertaken and if this is feasible.

CONSTRUCTION TRAFFIC MANAGEMENT ISSUES

The kerbside lane on Anzac Parade in front of the site is currently signposted “No Parking” while the Houston Lane frontage is signposted “No Stopping” on both sides of the laneway.

It may therefore be problematic for construction vehicles to service the site during demolition, excavation and construction and there is potential for significant impacts on surrounding residents and traffic flow especially in Houston Lane.

Further information on how the proposed development will be constructed is therefore required now prior to the issuing of any development consent to assess likely impacts. A Construction Traffic Management Plan is to be prepared to demonstrate how the proposed development will proceed through the various stages of construction.

It is recommended however the CTMP only be prepared if all other issues have been resolved and a final iteration of the plans are provided.

The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:

- A description of the demolition, excavation and construction works
- A site plan/s showing the site, roads, footpaths, site access points and vehicular movements
- Any proposed road and/or footpath closures
- Proposed site access locations for personnel, deliveries and materials
- Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site)
- Provision for loading and unloading of goods and materials
- Impacts of the work and vehicular movements on the road network, traffic and pedestrians
- Proposed hours of construction related activities and vehicular movements to and from the site
- Proposed approvals from other Agencies and Authorities (including Transport for NSW, Police)
- Any activities proposed to be located or impact upon Council’s road, footways or any public place
- Measures to maintain public safety and convenience

2.2. Landscape Officer

There is no vegetation within or adjoining this development site that will pose a constraint in any way to this application, and while Landscape Plans have been submitted, there is a discrepancy in the extent of treatment that will be provided, as discussed below.

Despite the Landscaped Area Plan by WMK Architecture, dwg DA1007, highlighting landscaped areas such as Green Walls along both the southern and northern elevations of the central courtyard, between the Ground Floor and Level 3, a podium planter at Level 3, fronting Houston Lane at the rear, another podium planter at Level 4, fronting Anzac Parade, and planting at the eastern end of the Rooftop, these areas have then not been included on the submitted Landscape Plans, which indicates treatment will be limited to only the Ground Floor Level central courtyard and for the external Communal Area/Terrace at the western end of the Rooftop.

As part of addressing any other Issues and/or providing amended plans and details, the applicant will also be required to clarify whether these landscape areas do form part of the application, and if so, the Landscape Plans will need to be updated to show the same level of detail and treatment for these areas, together with re-calculating landscape areas (if needed).

Details of the Green Wall system including species selection and composition, materials for the proposed trellis system, maintenance schedule and similar, together with the method of fixing to the building must be provided, and if attachment to an adjoining common boundary wall is sought or required, then owners consent from the neighbours must be provided for this.

The calculations provided by the applicant on the same plan referred to above show that while strict numerical compliance has not been achieved with the K2K DCP requirement to achieve 100% of site area as Landscape Area (92%) proposed; providing that the additional areas discussed above are now included in the revised landscape plans, it is considered that Landscaped Areas will be maximised at this site, so would be regarded to fulfil the intent of the control, also noting this would be similar to what was approved for DA/415/2022 (420.20sqm - 83.20% of total site area).

2.3. Building Regulation

Standard building and construction conditions would be applied. Plus, additional or modified conditions to specify that a CC must be obtained before commencing any work and that an OC must be obtained before any use or occupation of the building. Together with a condition which state that works must comply with the BCA with details of the certification provided to the engaged Principal Certifier.

Works would also need to comply with the Access Report or any subsequent provided with the application or new application

Works would also need to comply with the Fire Engineering Report or any subsequent provided with the application or new application

If any proposed works do not comply with the Deemed-to-Satisfy (DtS) provisions of the BCA, a Performance Solution report would be required. Any report in this regard will need to be submitted as part of the Construction Certificate application, along with a validation report to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Furthermore, any proposed variations to the recommendations or requirements outlined in the subject reports must be submitted to and approved by the Director of City Planning prior to the issue of the Construction Certificate.

2.4. Environmental Health

Proposed Development:

Council is in receipt of a development application for the demolition of existing structures and the construction of a part seven (7) / part eight (8) storey mixed-use co-living development comprising of ground floor retail/commercial tenancy, and 70 self-contained accommodation rooms on upper levels, communal living areas and central courtyard, roof top communal space, and lower ground level containing plant and service areas, waste rooms, bicycle storage, motorbike parking and car parking spaces and substation, ancillary, landscaping and associated site works.

Comments:*Acoustics*

An acoustic assessment prepared by Acoustic Logic dated 6 February, 2025 was submitted with the development application. Although the acoustic report provided recommendations for the construction of the building, it has not provided details of the acoustic impact of the communal areas, including the gym or recommendations to ensure that these areas will comply with required acoustic criteria.

Air Quality

In accordance with the adopted K2K DCP Section 34, the applicant is required to submit a report from a suitably qualified air quality consultant that outlines the objectives to encourage the design to provide good indoor air quality for occupants and to protect residents from the harmful effects of air pollution. A report must be provided which addresses the following criteria:

- a) Include a report from a suitably qualified air quality consultant that addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants;
- b) DAs are to submit a statement which explains how the proposal has addressed the NSW Government "Development near rail corridors and busy roads – Interim Guideline"; and
- c) Air Intake for proposals are to be sited well away from Anzac Pde or the pollution source (e.g. top of tall buildings) or be provided with filtration to remove particulates.

Recommendation:

The following information is required to be submitted to Council prior to determination of the development application.

1. Noise Emissions

An additional acoustic report or statement is required and must be prepared by a suitably qualified and experienced consultant in Acoustics and be submitted to Council prior to determination of the application.

The report is to include (but not be limited) to;

- Noise emissions arising from the use and operation of the proposed development (including use of any internal or external communal area and associated activities which may generate noise);
- Interior acoustic privacy (in accordance with Council's Development Control Plan);

Air Quality

2. In accordance with Section 34 of Council's K2K DCP, the applicant is to submit a report from a suitably qualified air quality consultant demonstrating compliance with the following:

1. How the development proposal addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants, and
1. a statement which explains how the development proposal has addressed the NSW Government 'Development near rail corridors and busy roads – Interim Guideline' and
2. Air intake for proposals are to be sited well away from Anzac Parade or the pollution source (e.g. on top of tall buildings) **or** be provided with filtration to remove particulates

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

Building Height

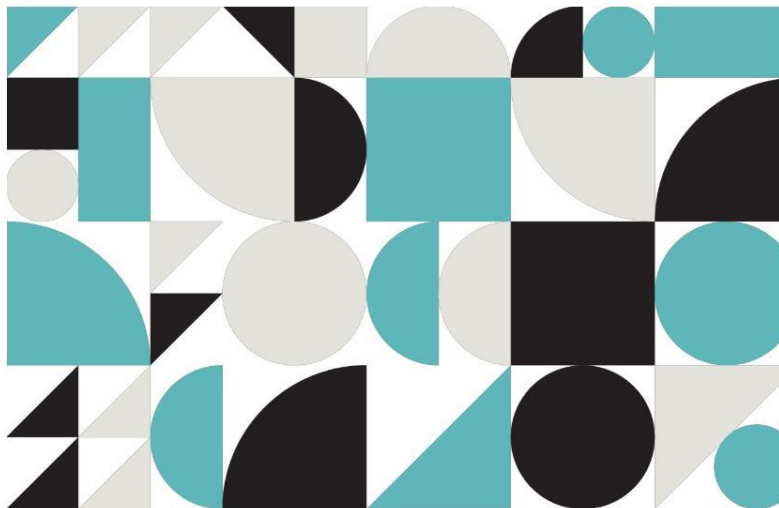


Clause 4.6 Variation Request – Height of Building

Clause 4.6 Variation Request Statement

Height of Buildings (Clause 4.3 and 6.17)

229 Anzac Parade, Kensington



Prepared by Paro Consulting for TAL GP Projects

March 2025

Clause 4.6 Variation Request – Height of Building

Document status

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Disclaimer

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Clause 4.6 Variation Request – Height of Buildings

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Clause 4.6 Variation Request – Height of Buildings

1. Executive Summary

This Clause 4.6 variation request statement has been prepared in relation to Clause 4.3 'Height of Buildings' and Clause 6.17 'Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres' of the *Randwick Local Environmental Plan 2012* (Randwick LEP 2012) to accompany a Development Application (DA) at 229 Anzac Parade, Kensington (the site). The DA seeks consent for the demolition of existing structures and the construction of a mixed-use co-living development comprising of seventy (70) student accommodation rooms, a retail tenancy, communal areas, parking, landscaping and associated site works (the proposal).

Clause 4.3 states that 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. In the context of 229 Anzac Parade, the Height of Buildings Map shows an applicable 24 metre maximum height.

Clause 6.17 states that despite clause 4.3, the consent authority may consent to development on a site that results in additional building height if the development includes community infrastructure on the site. A building is eligible for an amount of additional building height determined by the consent authority but no more than that which may be achieved by applying the maximum height specified in relation to that area on the Alternative Building Heights Map. In the context of 229 Anzac Parade, the Alternative Building Heights Map shows an applicable 19 metre maximum height along Houston Lane, and an applicable 31m maximum height along Anzac Parade.

The maximum height of the proposed development is 21.8m on the portion of the site subject to a 19 metre maximum, as measured to the top of the roof terrace pergola, and is therefore non-compliant. The proposal exceeds the maximum height permissible on the 19m maximum portion of the site by 2.8m / 14.7% when considered against Clause 6.17. Compliance is achieved across the portion of the site affected by the 31m height limit.

This Clause 4.6 variation request statement demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

Clause 4.6 Variation Request – Height of Buildings

2. Introduction

This is a formal written request prepared in accordance with Clause 4.6 of the Randwick LEP 2012. This request seeks a variation from the Height of Buildings development standard prescribed in Clause 4.3 'Height of Buildings' and Clause 6.17 'Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres' of the Randwick LEP 2012. The variation request relates to a development application submitted to Randwick Council for the demolition of existing structures and the construction of a mixed-use co-living development comprising of seventy (70) student accommodation rooms, a retail tenancy, communal areas, parking, landscaping and associated site works at 229 Anzac Parade, Kensington.

This request has been prepared in accordance with Clause 35B of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) which requires that a DA involving contravention of development standard must be accompanied by a document that sets out the grounds that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

This request has been prepared having regard to the Department of Planning and Environment's Guide to Varying Development Standards (November 2023) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

This request is structured to explicitly address the matters required to be addressed by the applicant under Clause 4.6(3)(a) and (b) for which the consent authority must be satisfied has been demonstrated according to Preston CJ in *Wehbe V Pittwater Council* (2007) NSW LEC 827 ('Wehbe').

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Clause 4.6 Variation Request – Height of Buildings

3. Standard to be Varied

The standard that is proposed to be varied is the height of buildings for development as set out in Clause 4.3(2) of the Randwick LEP 2012.

Clause 4.3 Height of buildings of the Randwick LEP 2012 states:

“(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.”

Clause 6.17 Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres of the Randwick LEP 2012 states:

“(2) Despite clauses 4.3 and 4.4, the consent authority may consent to development on a site that results in additional building height or additional floor space, or both, in accordance with subclause (4) if the development includes community infrastructure on the site.

(3) In deciding whether to grant development consent, the consent authority must—

(a) be satisfied that the development is consistent with the objectives of this clause, and

(b) be satisfied that the community infrastructure is reasonably necessary at Kensington and Kingsford town centres, and

(c) take into account the nature of the community infrastructure and its value to the Kensington and Kingsford town centres community.

(4) Under subclause (2), a building on land in any of the areas identified on—

(a) the Alternative Building Heights Map—is eligible for an amount of additional building height determined by the consent authority but no more than that which may be achieved by applying the maximum height specified in relation to that area, and

(b) the Alternative Floor Space Ratio Map—is eligible for an amount of additional floor space determined by the consent authority but no more than that which may be achieved by applying the maximum floor space ratio specified in relation to that area.

(5) In this clause—

community infrastructure means development for the purposes of community facilities, recreation areas, recreation facilities (indoor), recreation facilities (outdoor), public roads or drainage.”

As the proposal includes a Voluntary Planning Agreement for the purposes of community infrastructure the proposal is considered to include community infrastructure.

The Height of Building Map (**Figure 1** below) illustrates that a maximum building height of 24m applies to the land, as measured from ground level (existing). The Alternative Building Heights Map (**Figure 2** below) illustrates that a maximum building height of 19m and 31m applies to the land, as measured from ground level (existing).

Clause 4.6 Variation Request – Height of Buildings



Figure 1: Height of Buildings Map with the site outlined in yellow (NSW Planning Portal)



Figure 2: Alternative Building Heights Map with the site outlined in yellow (NSW Planning Portal)

Building Height – Interpretation

Building height (or **height of building**) means under the LEP standard instrument:

- “(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,

Clause 4.6 Variation Request – Height of Buildings

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like”.

ground level (existing) means under the LEP standard instrument:

“The existing level of a site at any point”.

Nominating the “ground level (existing)” is usually achieved by taking the lowest level directly and vertically beneath the highest part of the proposed development on a site (based on surveyed RLs) to determine a maximum building height dimension. However, where an existing building occupies the whole of the site area so that there is no longer any ‘ground’ as in soil/ garden/paving around the building from which the existing ground level could be determined, this task is not so straight forward.

The issue is compounded where ‘below ground’ excavation has previously occurred on the site (for example below ground basements) and even more so where excavations have occurred only in parts or pockets of a site. In such a situation, if the lowest point of the existing development (i.e. the floor of the lowest basement) is taken to be ground level (existing) then development potential may be artificially and considerably limited and there may also be differing ‘existing levels’ on that land at multiple points.

Bettar v Council of the City of Sydney [2014] NSWLEC 1070

The original and therefore leading decision on determining “ground level (existing)” on land that is sloping or completely excavated is the decision of Commissioner O’Neill in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* (‘Bettar’). In Bettar, consent was sought for amongst other things, a four and five storey residential flat building on a site where an existing building at ready occupied the entire site. Meaning there was no longer any “ground” for determining the existing ground level. In addition, there was an existing part basement excavated into one part of the site. Council’s argument focused entirely on the existing building on the site and took the approach that the “ground level (existing)” should be calculated using the ground floor level of the existing building and then dropping it down to the basement level in the part of the site where the existing basement was located.

The Commissioner determined that once the existing building is demolished the ground levels of that prior building would no longer be discernible or relevant as a starting point for measuring the height of any new building and that it would be conceivable that surrounding properties (with differing ground floor levels) could have starkly different height limits arising from the same development standard. The Commissioner held at paragraph [40a] that this would result in an *“absurd height plane with a large and distinct full storey dip in it as it moves across the site and crosses the basement of the existing building, which relates only to a building that is to be demolished and has no relationship to the context of the site.”*

The Commissioner preferred the approach of the Applicant on this issue which was for the existing ground level of the site to be determined by extrapolating the ground levels found on the footpath (i.e. — outside the site) across the entire site to measure the vertical distance to the highest point of the building. The Commissioner’s reasoning for this, given at paragraph [41], was that *“the level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site and remains relevant once the existing building is demolished”*. In our experience, this has become known as the extrapolation method for determining “ground level existing”.

Stamford Property Services Pty Ltd v City of Sydney [2015] NSWLEC 1189

Similar circumstances came before the Court once again in *Stamford Property Services Pty Ltd v City of Sydney [2015] NSWLEC 1189* (‘Stamford’) although this time on a much larger and more steeply sloping site than in Bettar. Consent was sought for

Clause 4.6 Variation Request – Height of Buildings

amongst other things the partial retention of existing development on the site and the construction of a 19 storey tower building with basement parking on a Sydney CBD site. The context of the site was once again of paramount concern to Commissioner Pearson and Acting Commissioner Smithson, who found at paragraph [28] that *“The extent of excavation from site to site could lead to different height limits applying to adjoining buildings on redevelopment of any of those sites”*.

Unlike the site in Bettar, which had two street frontages and vacant adjoining land from which levels could be measured, here the highly developed surrounds meant there were limited levels from which to even extrapolate a ground level (existing). Nevertheless, the Court noted that the availability of survey information necessary in order to be able to apply the Bettar extrapolation method may vary from site to site, but was still possible even with limited information and that there was sufficient actual and surveyed levels from the public domain in this case to arrive at a “ground level (existing)” figure for the (excavated) centre of the site being an average between two surveyed points, rather than a surveyed (and excavated) ground level.

Tony Legge v Council of the City of Sydney [2010] NSWLEC 1424

Solidifying the application of the decision in Bettar and Stanford to sites that are wholly built out in Tony Legge v Council of the City of Sydney NSWLEC 1424 (‘Tony Legge’) the Commissioner found at paragraph [41] that *‘it is appropriate to take the levels of the site at its interface with the public domain’*. Further and importantly, the decision in Tony Legge reinforces the importance of placing the proposed building in its context rather than relying on the present built form of any existing development on a site.

Overall, I see the courts consistently taking a more practical approach to measuring height, albeit that it tends to be very reminiscent of the old ‘natural ground level’ approach to measuring height in instances where ground level (existing) is no longer discernible. In other words, it takes a non-literal approach but rather a pragmatic and workable approach to determining ‘ground level (existing)’.

4. Extent of Variation

The maximum height of the proposed development is 21.8m on the portion of the site subject to a 19 metre maximum, as measured to the top of the roof terrace pergola, and is therefore non-compliant. The proposal exceeds the maximum height permissible on the 19m maximum portion of the site by 2.8m / 14.7% when considered against Clause 6.17. Compliance is achieved across the portion of the site affected by the 31m height limit.

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5. Objectives and Provisions of Clause 4.6

The objectives and provisions of Clause 4.6 of the Randwick LEP 2012, are as follows:

(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.

Note— When this Plan was made it did not include all of these zones.

(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,

Clause 4.6 Variation Request – Height of Buildings

(caa) clause 5.5,

(ca) clause 6.16(3)(b).

It is noted that Clauses 4.3 and 6.17 are not “expressly excluded” from the operation of Clause 4.6 in the Randwick LEP 2012.

6. Key questions

Is the Planning Control a Development Standard?

The standard to be varied is a Development Standard to which Clause 4.6 applies. Clause 4.3 of the Randwick LEP 2012 is contained within Part 4 which is titled ‘Development Standards’ to be complied with and is a numeric development standard capable of being varied under clause 4.6 of the LEP. Clause 6.17 is contained within Part 6 which is titled ‘Additional local provisions’ and acts as an extension of clauses included within Part 4 – so it is a numeric development standard capable of being varied under clause 4.6 of the LEP.

It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of Randwick LEP 2012. It is also noted that Clause 4.3 and Clause 6.17 are not “expressly excluded” from the operation of Clause 4.6 in the Randwick LEP 2012. It is also noted that clauses 4.3 and 6.17 do not contain a provision which specifically excludes the application of clause 4.6.

On this basis it is considered that clause 4.3 and clause 6.17 are development standards for which clause 4.6 applies.

Clause 4.6 Variation Request – Height of Buildings

7. Unreasonable and Unnecessary (Clause 4.6(3)(a))

In this Section, we demonstrate why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of Randwick LEP 2012.

Clause 4.6(3)(a) of the Randwick LEP 2012, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

"compliance with the development standard is unreasonable or unnecessary in the circumstances"

In *Wehbe V Pittwater Council (2007)* NSW LEC 827 ('Wehbe') Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

"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:

"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)."

In *Wehbe*, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, His Honour said that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways. The five methods outlined in *Wehbe* are as follows (with our emphasis placed on the **First Method** for the purposes of this Clause 4.6 variation statement):

- "1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)."*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
- 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 (Fourth Method).*
- 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method). Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method".*

Clause 4.6 Variation Request – Height of Buildings

Relevantly, in *Initial Action Pty Ltd v Randwick Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The Objectives of Clause 4.3 Height of Buildings of the Randwick LEP 2012 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.”*

In order to address the requirements of sub-clause 4.6(3)(a) of the LEP, the objectives of clause 4.3 are addressed below.

The objectives of Clause 6.17 of the Randwick LEP 2012 are as follows:

- (a) to allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,*
- (b) to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,*
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.*

In order to address the requirements of sub-clause 4.6(3)(a) of the LEP, the objectives of clause 6.17 are also addressed below.

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

The compatibility with the desired future character of the area is addressed in the submitted SEE and elaborated upon here.

The portion of Anzac Parade surrounding the development site is undergoing significant change, facilitated by the Kensington and Kingsford Planning Strategy. The Strategy envisions increased building heights compared to existing development and facilitated up to 31m on the subject site. As the proposal is not higher than 31m for the portion of the site affected by the 31m height limit, it will not exceed the greatest maximum scale of development that Council and the NSW Government consider suitable for the lot – the scale considered to be the desired future character of the locality.

With regards to the desired future character, the strict terms of clause 4.3 of the Randwick LEP 2012 does not define the desired future character (*Woollahra Municipal Council v SJD DB2 Pty Ltd* [2020] NSWLEC 115 at [53]). The desired future character of the locality establishes the height for buildings on land in the locality and not the other way around (cf *SJD DB2 Pty Ltd* at [56]). This means that the height limit set out under clause 4.3 alone does not establish the desired future character and can be evaluated by reference to matters other than the strict provisions of clause 4.3 (cf *SJD DB2 Pty Ltd* at [59]).

Furthermore, in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] Preston CJ states:

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

The existing and approved development within a locality therefore forms part of the desired future character of neighbourhood in terms of building height. With regards to such, there are numerous examples of approved or recently constructed development along Anzac Parade which matches or exceeds the proposal in scale including but not limited to those visible in figure 4.

The proposal is therefore compatible with the height, bulk and scale of the desired future character of the neighbourhood locality and would positively contribute to the streetscape, satisfying objective (a).



Figure 4: Imagery of surrounding locality with the site outlined in yellow (NearMaps, 2024)

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”*

N/A - There are no local or state heritage conservation areas or heritage items within close proximity of the development site, as confirmed by figure 5.

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Figure 5: Heritage Map with the site outlined in yellow (NSW Planning Portal)

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

The suitability of the proposal on amenity grounds is addressed in the submitted SEE and elaborated upon here.

The proposal is not considered to adversely impact on the amenity of adjoining and neighbouring land in the following aspects.

Visual Bulk/Intrusion

The extent of additional height above the permitted maximum will not result in adverse visual bulk or intrusion to neighbouring properties noting that the proposed development will be viewed in the context of the scale and height of other tall buildings within the immediate locality, and will thus not appear visually jarring or overdeveloped from surrounding properties.

Adequate articulatory details including window openings and materiality changes assist to further reduce bulk.

Privacy

The extent of additional height will not adversely impacting neighbouring properties privacy. Adequate distancing between habitable areas of other residences is achieved by way of not locating windows to either side boundary.

Solar Access

The extent of additional height above the maximum permissible height would result in negligible additional shadow cast onto habitable spaces of residential uses. As per the Shadow Diagrams submitted with this DA, most shade falls upon the rooftop of the southerly neighbour.

Views

The site is positioned within a mixed-use town centre and interfaces with residential development. Due to the density anticipated by the LEP controls along with the strategic distribution of the building’s mass, the proposal will not result in unacceptable private view impacts to surrounding properties.

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The site is located within a highly urbanised setting whereby the controls permit significant density for the locality. In consideration of the site's context, it can reasonably be anticipated that adjacent properties will experience some degree of view loss from any future development at the site consistent with the planning controls.

Objective (a): “to allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,”

The proposal contributes to community infrastructure for the locality by way of a Voluntary Planning Agreement. It also utilises the greater building heights and densities allowed in Kensington by this clause.

Objective (b): “to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,”

As outlined in earlier in this section, the proposal is consistent with the desired future character of the locality. The variation occurs in a location which is concealed from obvious view from the primary frontage (Anzac Parade).

Objective (c): “to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,”

The variation is relatively minor and only occurs for a limited portion of the site which is affected by the 19m maximum height limit opposed to the 31m maximum height limit. As such, the variation does not result in a significant intensification of development compared to a compliant scheme. The proposal is compatible with the existing and planned infrastructure.

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in this one way alone. On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in the Section below.

Clause 4.6 Variation Request – Height of Buildings

8. Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

In this Section, we demonstrate there are sufficient environmental planning grounds to justify contravening the height development standard as required by clause 4.6(3)(b) of the LEP. In *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018*, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard.

Clause 4.6(3)(b) of the Randwick LEP 2012, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

"there are sufficient environmental planning grounds to justify contravening the development standard".

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. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action) (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 [2015] 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 [2015] NSWLEC 90 at [31]."

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in Initial Action.

On the above basis, the following environmental planning grounds are submitted to justify contravening the maximum building height:

1. **The non-compliance is entirely consistent with the character of the locality**
 - a) The proposed development is consistent with the precincts' high density character, defined by tall multi-storey mixed use buildings with minimal boundary setbacks.
 - b) The proposed variation can also be considered compatible with other forms of development in the visual catchment which assists in being compatible with the desired future character.
2. **The non-compliances achieve a high level of design excellence, based on site analysis**
 - a) The proposal delivers a high quality urban and architectural design that enhances the local character of the locality, provides a high level of amenity for the residents and is compatible with the surrounding character.

Clause 4.6 Variation Request – Height of Buildings

- b) The arrangement of bulk and scale and subsequent building height non-compliance have been informed by the existing and desired streetscape character of the locality. As such, the proposed non-compliance is considered an appropriate response to the streetscape, whilst protecting the amenity of neighbouring properties and public domain.
 - c) The maximum extent of non-compliance is appropriately integrated with the overall building form. The non-compliant elements will be finished in materials that are compatible with the character of the locality.
 - d) The non-compliance will not be visually jarring as the built form when viewed in the context of the scale and height of similar tall buildings nearby.
- 3. The non-compliance will have no material impacts on surrounding development**
- a) It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
 - The extent of the additional height creates no detrimental overshadowing impacts to adjoining development when considered against the backdrop of the permissible building controls. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant or nil;
 - The height breach does not result in any adverse additional privacy impacts; and
 - The height breach will not result in any view loss as the subject site does not contain any significant views or vistas across or from the public domain. As such, the extent of view loss caused by the non-compliant elements would be insignificant or nil.
- 4. Orderly and economic use of land**
- a) The social benefits of providing a development that improves the functionality and amenity of the mixed use development should be given weight in the consideration of the variation request.
 - b) Given the nature of alterations and additions, strict compliance with the standard would result in a building that is dwarfed by adjacent buildings of greater height, scale and density which would not be an appropriate planning outcome.
- 5. The proposal meets aims and objectives of key planning documents**
- a) The proposed development meets the objectives of the development standard and meets the objectives of the E2 Commercial Centre zone (detailed in the accompanying Statement of Environmental Effects);
 - b) The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - The proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential and commercial facilities that better meet the needs and significantly improve the living amenity opportunities of the residents (1.3(c));
 - The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development.

Insistence on compliance with the height development standard will result in the proposal failing to meet the student accommodation needs of the locality.

It is noted that in Initial Action, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of*

Clause 4.6 Variation Request – Height of Buildings

views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. 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.

87. *The second matter was in cl 4.6(3)(b). 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.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6 Variation Request – Height of Buildings

9. Conclusion

Having regard to all of the above, it is our opinion that this Clause 4.6 variation request demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application and insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied, and the variation is worthy of support.

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Lot Size



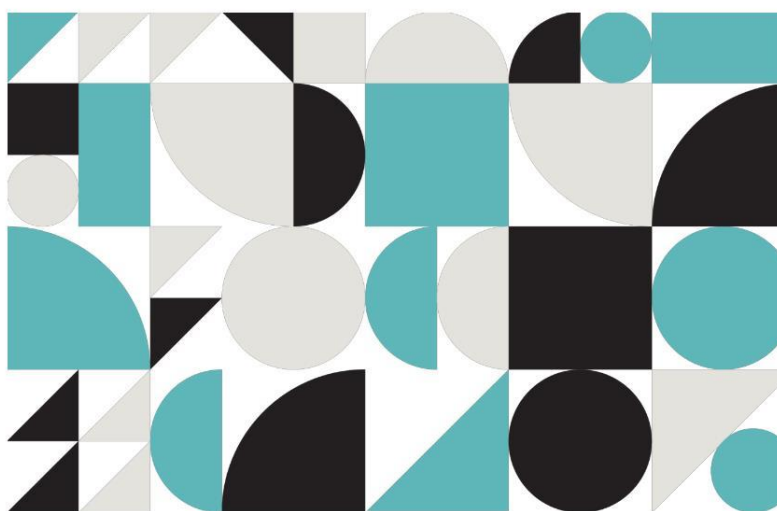
Clause 4.6 Variation Request – Minimum lot size for co-living housing

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Clause 4.6 Variation Request Statement

Minimum lot size for co-living housing (Clause 69)

229 Anzac Parade, Kensington




Prepared by Paro Consulting for TAL GP Projects

February 2025

Clause 4.6 Variation Request – Minimum lot size for co-living housing

Document status

Revision	Date	Name	Signature
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Disclaimer

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Clause 4.6 Variation Request – Minimum lot size for co-living housing

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Clause 4.6 Variation Request – Minimum lot size for co-living housing

1. Executive Summary

This Clause 4.6 variation request statement has been prepared in relation to Clause 69 'Standards for co-living housing' of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) to accompany a Development Application (DA) at 229 Anzac Parade, Kensington (the site). The DA seeks consent for the demolition of existing structures and the construction of a mixed-use co-living development comprising of seventy (70) student accommodation rooms, a retail tenancy, communal areas, parking, landscaping and associated site works (the proposal).

Clause 69 requires the minimum lot size for co-living housing to not be less than 800sqm where the development site is zoned something other than R2 Low Density Residential. In the context of 229 Anzac Parade, the land zone is E2 Commercial Centre and the lot size is 505.92sqm.

This represents a shortfall of 294.08sqm, or 37% when considered against Clause 69.

This Clause 4.6 variation request statement demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

Clause 4.6 Variation Request – Minimum lot size for co-living housing

2. Introduction

This is a formal written request prepared in accordance with Clause 4.6 of the Randwick LEP 2012. This request seeks a variation from the minimum lot size for co-living housing development standard prescribed in Clause 69(1)(b)(ii) of the Housing SEPP. The variation request relates to a development application submitted to Randwick Council for the demolition of existing structures and the construction of a mixed-use co-living development comprising of seventy (70) student accommodation rooms, a retail tenancy, communal areas, parking, landscaping and associated site works at 229 Anzac Parade, Kensington.

This request has been prepared in accordance with Clause 35B of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) which requires that a DA involving contravention of development standard must be accompanied by a document that sets out the grounds that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

This request has been prepared having regard to the Department of Planning and Environment's Guide to Varying Development Standards (November 2023) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

This request is structured to explicitly address the matters required to be addressed by the applicant under Clause 4.6(3)(a) and (b) for which the consent authority must be satisfied has been demonstrated according to Preston CJ in *Wehbe V Pittwater Council (2007) NSW LEC 827* ('Wehbe').

Clause 4.6 Variation Request – Minimum lot size for co-living housing

3. Standard to be Varied

The standard that is proposed to be varied is the minimum lot size for the construction of a co-living development as set out in Clause 69(1)(b)(iii) of the Housing SEPP.

Clause 69(1)(b) of the Housing SEPP states:

“(b) the minimum lot size for the co-living housing is not less than—

(i) for development on land in Zone R2 Low Density Residential—600m², or

(ii) for development on other land—800m², and

(iii) (Repealed)”

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Clause 4.6 Variation Request – Minimum lot size for co-living housing

4. Extent of Variation

Clause 69(1)(b)(ii) of the Housing SEPP requires the minimum lot size for co-living housing to not be less than 800sqm where the development site is zoned something other than R2 Low Density Residential. In the context of 229 Anzac Parade, the land zone is E2 Commercial Centre and the lot size is 505.92sqm.

This represents a shortfall of 294.08sqm, or 37% when considered against Clause 69.

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Clause 4.6 Variation Request – Minimum lot size for co-living housing

5. Objectives and Provisions of Clause 4.6

The objectives and provisions of Clause 4.6 of the Randwick LEP 2012, are as follows:

(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.*

Note— When this Plan was made it did not include all of these zones.

(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,*

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(caa) clause 5.5,

(ca) clause 6.16(3)(b).

It is noted that Clause 69 of the Housing SEPP is not “expressly excluded” from the operation of Clause 4.6 in the Randwick LEP 2012.

6. Key questions

Is the Planning Control a Development Standard?

The standard to be varied is a Development Standard to which Clause 4.6 applies. Clause 69 of the Housing SEPP is contained within a clause which is titled ‘Standards for co-living housing’ and is a numeric development standard capable of being varied under clause 4.6 of the LEP.

It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of Randwick LEP 2012. It is also noted that Clause 69 of the Housing SEPP is not “expressly excluded” from the operation of Clause 4.6 in the Randwick LEP 2012. It is also noted that clause 69 does not contain a provision which specifically excludes the application of clause 4.6.

On this basis it is considered that clause 69 is a development standard for which clause 4.6 applies.

Clause 4.6 Variation Request – Minimum lot size for co-living housing

7. Unreasonable and Unnecessary (Clause 4.6(3)(a))

In this Section, we demonstrate why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of Randwick LEP 2012.

Clause 4.6(3)(a) of the Randwick LEP 2012, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

"compliance with the development standard is unreasonable or unnecessary in the circumstances"

In *Wehbe V Pittwater Council* (2007) NSW LEC 827 ('Wehbe') Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

"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:

"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)."

In *Wehbe*, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, His Honour said that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways. The five methods outlined in *Wehbe* are as follows (with our emphasis placed on the **First Method** for the purposes of this Clause 4.6 variation statement):

- "1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)."*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
- 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 (Fourth Method).*
- 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method). Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method".*

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Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

There are no objectives relating specifically to the minimum lot size standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling boarding house development. The principles of the policy stipulated in clause 3 are:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) mitigating the loss of existing affordable rental housing.*

The proposed co-living development is considered to be consistent with these principles.

The proposed co-living housing will provide for greater housing diversity in a growing area, that will meet the needs of households in need of less expensive housing as co-living rooms are often inherently more affordable than renting a self-contained dwelling due to their generally smaller unit sizes and inability to be owner occupied. No existing affordable housing is being reduced, and the new proposal does not impact any adverse climate or environmental impacts.

For the above reasons, I am of the view that the variation requested, and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in this one way alone. On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in the Section below.

Clause 4.6 Variation Request – Minimum lot size for co-living housing

8. Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

In this Section, we demonstrate there are sufficient environmental planning grounds to justify contravening the minimum lot size for co-living development standard as required by clause 4.6(3)(b) of the LEP. In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018*, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard.

Clause 4.6(3)(b) of the Randwick LEP 2012, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

"there are sufficient environmental planning grounds to justify contravening the development standard".

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. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action) (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 [2015] 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 [2015] NSWLEC 90 at [31]."

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in Initial Action.

On the above basis, the following environmental planning grounds are submitted to justify contravening the minimum lot size of co-living housing development standard:

1. **The development represents a successfully functioning co-living and mixed use building.**
 - a) The proposed design features a functional and high quality mixed use development, with high levels of amenity for residents, visitors and workers.
2. **The non-compliance is entirely consistent with the character of the locality**
 - a) The proposed development is consistent with the precincts' high density character, defined by tall multi-storey mixed use buildings with minimal boundary setbacks.
 - b) The proposed variation can also be considered compatible with other forms of development in the visual catchment which assists in being compatible with the desired future character.

Clause 4.6 Variation Request – Minimum lot size for co-living housing

3. The non-compliance will have no material impacts on surrounding development

- a) It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
- The undersized lot results in no detrimental overshadowing impacts to adjoining development when considered against the backdrop of the permissible building controls. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant or nil;
 - The lot size breach does not result in any adverse additional privacy impacts; and
 - The lot size breach will not result in any view loss as the subject site does not contain any significant views or vistas across or from the public domain. As such, the extent of view loss caused by the non-compliant elements would be insignificant or nil.

4. Orderly and economic use of land

- a) The social benefits of providing a development that improves the functionality and amenity of the mixed use development should be given weight in the consideration of the variation request.
- b) Given the nature of alterations and additions, strict compliance with the standard would result in a site that is sterilised.

5. The proposal meets aims and objectives of key planning documents

- a) The proposed development meets the objectives of the development standard and meets the objectives of the E2 Commercial Centre zone (detailed in the accompanying Statement of Environmental Effects);
- b) The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
- The proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential and commercial facilities that better meet the needs and significantly improve the living amenity opportunities of the residents (1.3(c));
 - The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development.

Insistence on compliance with the lot size development standard will result in the proposal failing to meet the student accommodation needs of the locality.

It is noted that in Initial Action, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 69(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. 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.*

Clause 4.6 Variation Request – Minimum lot size for co-living housing

87. *The second matter was in cl 4.6(3)(b). 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.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6 Variation Request – Minimum lot size for co-living housing

9. Conclusion

Having regard to all of the above, it is our opinion that this Clause 4.6 variation request demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application and insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied, and the variation is worthy of support.

Room Size



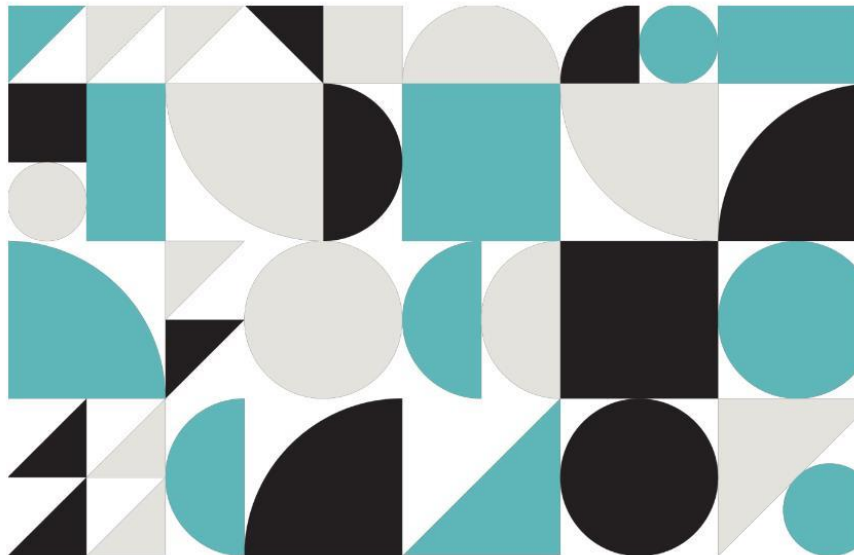
Clause 4.6 Variation Request – Maximum room size for co-living housing

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Clause 4.6 Variation Request Statement

Maximum room size for co-living housing (Clause 69)

229 Anzac Parade, Kensington





Prepared by Paro Consulting for TAL GP Projects

March 2025

Clause 4.6 Variation Request – Maximum room size for co-living housing

Document status

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Disclaimer

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Clause 4.6 Variation Request – Maximum room size for co-living housing

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Clause 4.6 Variation Request – Maximum room size for co-living housing

1. Executive Summary

This Clause 4.6 variation request statement has been prepared in relation to Clause 69 'Standards for co-living housing' of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) to accompany a Development Application (DA) at 229 Anzac Parade, Kensington (the site). The DA seeks consent for the demolition of existing structures and the construction of a mixed-use co-living development comprising of seventy (70) student accommodation rooms, a retail tenancy, communal areas, parking, landscaping and associated site works (the proposal).

Clause 69 requires the maximum room size for co-living housing to not be more than 25sqm (excluding private kitchen and bathroom facilities). In the context of 229 Anzac Parade, proposed Unit 50 on Level 4 has a room size of more than 25sqm (excluding private kitchen and bathroom facilities). Specifically, it has a room size of 28sqm (excluding private kitchen and bathroom facilities) in order to meet the accessibility requirements for a DDA-compliant unit.

The proposed variation is a direct response to the need for increased internal circulation space associated with a DDA-compliant unit. Whilst a compliant internal area for this room is technically possible, it would prevent the occupants from being able to utilise the space if in need of mobility aids. Compliance would therefore prevent anyone with additional accessibility needs from being able to reside on site, and in turn reduce the diversity of housing for the area.

This represents a variation of 3sqm, or 12% when considered against Clause 69.

This Clause 4.6 variation request statement demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

Clause 4.6 Variation Request – Maximum room size for co-living housing

2. Introduction

This is a formal written request prepared in accordance with Clause 4.6 of the Randwick LEP 2012. This request seeks a variation from the maximum room size for co-living housing development standard prescribed in Clause 69(1)(a) of the Housing SEPP.

The variation request relates to a development application submitted to Randwick Council for the demolition of existing structures and the construction of a mixed-use co-living development comprising of seventy (70) student accommodation rooms, a retail tenancy, communal areas, parking, landscaping and associated site works at 229 Anzac Parade, Kensington.

This request has been prepared in accordance with Clause 35B of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) which requires that a DA involving contravention of development standard must be accompanied by a document that sets out the grounds that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

This request has been prepared having regard to the Department of Planning and Environment's Guide to Varying Development Standards (November 2023) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

This request is structured to explicitly address the matters required to be addressed by the applicant under Clause 4.6(3)(a) and (b) for which the consent authority must be satisfied has been demonstrated according to Preston CJ in *Wehbe V Pittwater Council (2007) NSW LEC 827* ('Wehbe').

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3. Standard to be Varied

The standard that is proposed to be varied is the maximum room size within a co-living development as set out in Clause 69(1)(a) of the Housing SEPP.

Clause 69(1)(a) of the Housing SEPP states:

“(a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m² and not less than—

(i) for a private room intended to be used by a single occupant—12m², or

(ii) otherwise—16m², ...”

Clause 4.6 Variation Request – Maximum room size for co-living housing

4. Extent of Variation

Clause 69 requires the maximum room size for co-living housing to not be more than 25sqm (excluding private kitchen and bathroom facilities). In the context of 229 Anzac Parade, proposed Unit 50 on Level 4 has a room size of more than 25sqm (excluding private kitchen and bathroom facilities). Specifically, it has a room size of 28sqm (excluding private kitchen and bathroom facilities) in order to meet the accessibility requirements for a specialist disability accommodation unit.

This represents a variation of 3sqm, or 12% when considered against Clause 69.

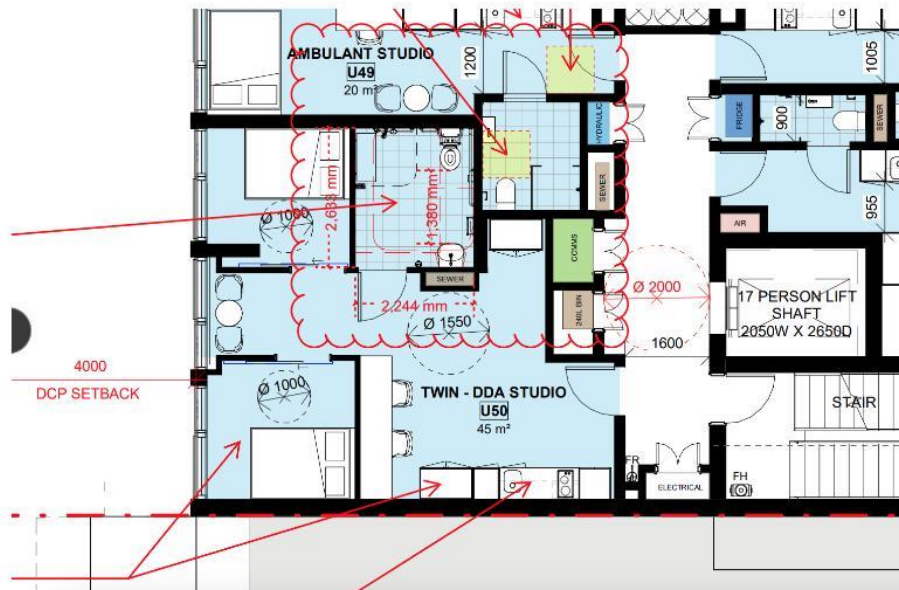


Figure 1 – Excerpt from the Level 4 floor plan showing the proposed DDA-compliant studio.

Clause 4.6 Variation Request – Maximum room size for co-living housing

5. Objectives and Provisions of Clause 4.6

The objectives and provisions of Clause 4.6 of the Randwick LEP 2012, are as follows:

(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.*

Note— When this Plan was made it did not include all of these zones.

(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,*

Clause 4.6 Variation Request – Maximum room size for co-living housing

(caa) clause 5.5,

(ca) clause 6.16(3)(b).

It is noted that Clause 69 of the Housing SEPP is not “expressly excluded” from the operation of Clause 4.6 in the Randwick LEP 2012.

6. Key questions

Is the Planning Control a Development Standard?

The standard to be varied is a Development Standard to which Clause 4.6 applies. Clause 69 of the Housing SEPP is contained within a clause which is titled ‘Standards for co-living housing’ and is a numeric development standard capable of being varied under clause 4.6 of the LEP.

It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of Randwick LEP 2012. It is also noted that Clause 69 of the Housing SEPP is not “expressly excluded” from the operation of Clause 4.6 in the Randwick LEP 2012. It is also noted that clause 69 does not contain a provision which specifically excludes the application of clause 4.6.

On this basis it is considered that clause 69 is a development standard for which clause 4.6 applies.

Clause 4.6 Variation Request – Maximum room size for co-living housing

7. Unreasonable and Unnecessary (Clause 4.6(3)(a))

In this Section, we demonstrate why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of Randwick LEP 2012.

Clause 4.6(3)(a) of the Randwick LEP 2012, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

"compliance with the development standard is unreasonable or unnecessary in the circumstances"

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 ('Wehbe') Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

"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:

"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)."

In *Wehbe*, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, His Honour said that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways. The five methods outlined in *Wehbe* are as follows (with our emphasis placed on the **First Method** for the purposes of this Clause 4.6 variation statement):

"1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)."

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).

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 (Fourth Method).

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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method). Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method".

Clause 4.6 Variation Request – Maximum room size for co-living housing

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

There are no objectives relating specifically to the maximum room size standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling boarding house development. The principles of the policy stipulated in clause 3 are:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and **people with a disability**,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) mitigating the loss of existing affordable rental housing.*

The proposed co-living development is considered to be consistent with these principles.

The proposed co-living housing will provide for greater housing diversity in a growing area. The proposed variation relating to room size of Unit 50 on Level 4 is a direct response to the need for increased internal circulation space associated with a DDA-compliant unit. Whilst a compliant internal area for this room is technically possible, it would prevent the occupants from being able to utilise the space if in need of mobility aids. Compliance would therefore prevent anyone with additional accessibility needs from being able to reside on site, and in turn reduce the diversity of housing for the area. Compliance would result in persons with a disability being excluded from the development site, conflicting with aim (b) of the Housing SEPP.

For the above reasons, I am of the view that the variation requested, and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in this one way alone. On this basis, the requirements of Clause 4.6(3)(a) are satisfied. Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in the Section below.

Clause 4.6 Variation Request – Maximum room size for co-living housing

8. Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

In this Section, we demonstrate there are sufficient environmental planning grounds to justify contravening the maximum room size for co-living development standard as required by clause 4.6(3)(b) of the LEP. In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018*, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard.

Clause 4.6(3)(b) of the Randwick LEP 2012, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating that:

"there are sufficient environmental planning grounds to justify contravening the development standard".

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. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action) (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 [2015] 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 [2015] NSWLEC 90 at [31]."

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in Initial Action.

On the above basis, the following environmental planning grounds are submitted to justify contravening the maximum room size for co-living housing development standard:

- 1. The development represents a successfully functioning co-living and mixed use building.** The proposed design features a functional and high quality mixed use development, with high levels of amenity for residents, visitors and workers.
- 2. The proposed variation is a direct response to the need for increased internal circulation space associated with a DDA-compliant unit.** Whilst a compliant internal area for this room is technically possible, it would prevent the occupants from being able to utilise the space if in need of mobility aids. Compliance would therefore prevent anyone with additional accessibility needs from being able to reside on site, and in turn reduce the diversity of housing for the area. Compliance would result in persons with a disability being excluded from the development site, conflicting with

Clause 4.6 Variation Request – Maximum room size for co-living housing

aim (b) of the Housing SEPP. Refer to the Access Report prepared by Access Studio dated February 2025 for information on the specific standards and sizing requirements to achieve accessibility compliance.

3. The non-compliance will have no material impacts on surrounding development. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. The oversized room size of Unit 50 results in no detrimental overshadowing, view loss or bulk impacts to adjoining development when considered against the backdrop of the permissible building controls. The oversized room size is only noticeable internally, and were the room to be reduced in size to comply the building bulk would likely remain the same externally.

4. The proposal meets aims and objectives of key planning documents. The proposed development meets the objectives of the development standard and meets the objectives of the E2 Commercial Centre zone (detailed in the accompanying Statement of Environmental Effects). The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential and commercial facilities that better meet the needs and significantly improve the living amenity opportunities of the residents (1.3(c));
- The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development.

Insistence on compliance with the room size development standard will result in the proposal failing to meet the student accommodation needs of the locality.

It is noted that in Initial Action, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 69(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. 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.*
87. *The second matter was in cl 4.6(3)(b). 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.*

Clause 4.6 Variation Request – Maximum room size for co-living housing

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome compared to a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

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Clause 4.6 Variation Request – Maximum room size for co-living housing

9. Conclusion

Having regard to all of the above, it is our opinion that this Clause 4.6 variation request demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application and insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied, and the variation is worthy of support.

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Appendix 3: Co-Living Housing SEPP (Housing) 2021 Compliance Table

Section	Design Criteria	Proposal	Compliance
Part 3: Co-living housing			
67	Co-living housing may be carried out on certain land with consent		
	Development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing is permitted under another environmental planning instrument, or development for the purposes of residential flat buildings or shop top housing is permitted under Chapter 5 or another environmental planning instrument.	RFB development permitted in Zone E2, so co-living development is permitted development as per this SEPP clause.	Yes
68	Non-discretionary development standards—the Act, s 4.15		
	(2) The following are non-discretionary development standards in relation to development for the purposes of co-living housing—		
	(a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than— (i) the maximum permissible floor space ratio for residential accommodation on the land, and (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,	Maximum FSR = 4.4:1 (including 10% bonus for co-living). Proposal = 2086.69m ² of GFA which equates to 4.1247:1	Yes
	(c) for co-living housing containing more than 6 private rooms— (i) a total of at least 30m ² of communal living area plus at least a further 2m ² for each private room in excess of 6 private rooms, and (ii) minimum dimensions of 3m for each communal living area,	30m ² + (64 x 2) = 158m ² required. Provided = 34.43m ² + 40.22m ² = 74.65m ² (the 53.19m ² for the basement area is not considered communal living space.)	No, Clause 4.6 not submitted.
	(d) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	505.9m ² * 0.2 = 101.18m ² required. Area in ground courtyard has unacceptable amenity and not counted. Proposed = 89.98m ² .	No, Clause 4.6 not submitted.
	(e) unless a relevant planning instrument specifies a lower number— (i) for development on land in an accessible area—0.2 parking spaces for each private room, or (ii) otherwise—0.5 parking spaces for each private room,	See Section E6 RDCP below.	N/A
69	Standards for co-living housing		
	(1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—		
	(a) each private room has a floor area, excluding an area, if any, used for the	Some rooms as small as 9.75m ²	No, see Clause 4.6

Section	Design Criteria	Proposal	Compliance
	purposes of private kitchen or bathroom facilities, that is not more than 25m ² and not less than— (i) for a private room intended to be used by a single occupant—12m ² , or (ii) otherwise—16m ² , and		Assessment above
	(b) the minimum lot size for the co-living housing is not less than— (i) for development on land in Zone R2 Low Density Residential—600m ² , or (ii) for development on other land— 800m² , and	Site Area = 505.9m ²	No, see Clause 4.6 Assessment above
	(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and	Manager's office provided on ground floor, however has poor amenity as it relies solely upon mechanical lighting and ventilation.	No.
	(e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and	Retail shop provided to Anzac Parade. Co-living rooms front Houston Lane.	Yes No
	(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and	Each private room contains bathroom and kitchen facilities. Laundry facilities are provided in the lower basement however is inadequate for the size of the development.	No
	(g) each private room will be used by no more than 2 occupants, and	Requirement not included in PoM.	No
	(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.	Inadequate bicycle and motorbike parking provided. See Section E6 RDCP below.	No
	(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—		
	(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and	Inadequate separation provided. See Key Issues for detailed assessment.	No
	(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and	The level 5 solar access diagrams state that 3 hours of direct sunlight will be provided to the communal living space.	Yes
	(f) the design of the building will be compatible with— (i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition—the desired future character of the precinct.	The design of the development is incompatible with the desired future character of the precinct. See DEAP Referral comments in Appendix 1.	No
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Section	Design Criteria	Proposal	Compliance
	Development consent must not be granted for the subdivision of co-living housing into separate lots.	No subdivision proposed.	Yes

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Appendix 4: DCP Compliance Table**4.1. Section E6: Kensington and Kingsford Town Centres**

Clause	Control	Proposal	Compliance
PART A			
2.	Urban Design and Place-Making		
2.1	Guiding Principals		
	A statement must be submitted with all DAs that demonstrates consistency with the Guiding Principles of this Part.	No specific statement was provided to demonstrate consistency with E6.	No.
3.	Desired Future Character		
3.2	Strategic Node Sites		
	Submit a statement with the DA demonstrating how the proposed design meets the desired future character of the relevant town centre and where applicable, the strategic node site based on the block controls contained in Part B.	The site is not identified as a strategic node.	N/A.
4.	Design Excellence		
	All new development involving the construction of a new building or external alterations to an existing building is to meet the requirements of Clause 6.11 of the RLEP 2012 relating to design excellence. Buildings are to be designed to achieve at least 5-star green star performance as a component for achieving design excellence on strategic node sites.	The proposal is not considered to uphold the relevant provisions in relation to design excellence. Refer to comments by Council's Design Excellence Advisory Panel at Appendix 1.	No
5.	Floor Space Ratio		
	<p>a. The maximum FSR that can be achieved on a site is shown on the RLEP 2012 FSR Map. An alternative FSR is applicable in accordance with the RLEP 2012 Alternative FSR Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions Plan (see Part D for details on Community Infrastructure Contribution)</p> <p>b. In relation to the Kensington Town centre where an existing FSR Map does not apply, the Alternative FSR Map is applicable for the purposes of calculating the Community Infrastructure contribution referred to in clause (a) for any floor space above the existing height maximum control shown on the RLEP 2012 Height Map</p>	<p>The proposal complies with the maximum FSR pursuant to RLEP 2012.</p> <p>The retail space is not accessible because it has stairs to access it.</p>	<p>Yes (numerically)</p> <p>No (qualitatively)</p>

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	<p>c. A minimum non-residential FSR of 1:1 is to be provided at each strategic node site within the Todman Square, Kingsford Midtown and Kingsford Junction Precincts, in accordance with Clause 4.4 of the RLEP 2012</p> <p>d. Non-residential floor space must be designed to be accessible, useable and functional for the purposes of commercial, business, entertainment and retail activities and the like</p>		
6.	Built Form		
	<p>Lot Amalgamation</p> <p>a. A minimum street frontage of 20m is to be provided for each development site along Anzac Parade and Gardeners Road</p> <p>b. When development/redevelopment /amalgamation is proposed, sites between and adjacent to developable properties are not to be limited in their future development potential</p> <p>c. Where a development proposal results in an isolated site, the applicant must demonstrate that negotiations between the owners of the lots have commenced prior to the lodgement of the DA to avoid the creation of an isolated site. The following information is to be included with the DA:</p> <ul style="list-style-type: none"> i. evidence of written offer (s) made to the owner of the isolated site* and any responses received ii. schematic diagrams demonstrating how the isolated site is capable of being redeveloped in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve an appropriate urban form for the location, and an acceptable level of amenity iii. schematic diagrams showing how the isolated site could potentially be integrated into the development site in the future in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve a coherent built form outcome for the block. <p>d. Where lot consolidation cannot be achieved to comply with the</p>	<p>Concerns are raised regarding the creation of isolated sites.</p> <p>Insufficient information has been provided to justify the proposed lot amalgamation pattern. No communication demonstrating attempts to negotiate with neighbouring properties has been provided.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No

	maximum envelopes in the block diagrams, alternative designs may be considered where the proposal exhibits design excellence and can demonstrate consistency with the relevant objectives of the block controls (Part B).		
	<p>Building Heights</p> <p>a. The maximum height that can be achieved on a site is shown on the RLEP 2012 Height Map. An alternative maximum height is applicable in accordance with the RLEP 2012 Alternative Height Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions Plan. (see Part D for details on Community Infrastructure Contribution)</p> <p>b. The maximum number of storeys on a site is to comply with the following:</p> <ul style="list-style-type: none"> i. on sites with a maximum of 16m – 4 storeys ii. on sites with a maximum of 19m – 5 storeys iii. on sites with a maximum of 31m – 9 storeys iv. on sites with a maximum 57m – 17 storeys v. on sites with a maximum 60m – 18 storeys 	<p>The proposal does not comply with the maximum building height or maximum number of storeys.</p> <p>The proposal contains 7 storeys on a 19m building height, which does not comply.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No
	<p>Street Walls</p> <p>a. Buildings must be designed with a street wall height of 4 storeys</p> <p>b. On sites with contributory buildings, the consent authority may consider a variation to the four-storey street wall height requirement of between 2 and 6 storeys if the design:</p> <ul style="list-style-type: none"> i. results in an improvement to the contributory building in accordance with established heritage principles to avoid facadism ii. meets the objectives of this clause and exhibits design excellence iii. retains contributory or heritage elements; and iv. provides a transition to neighbouring sites. 	<p>The proposal provides a street wall height of 4 storeys.</p> <p>There are no contributory buildings.</p>	Yes

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	<p>Building Setbacks</p> <p>a. DAs are to comply with the minimum ground floor and upper level setbacks illustrated in the relevant block diagrams in Part B</p> <p>b. Development that results in an exposed party wall on an adjoining building is to incorporate architectural or vertical landscape treatment to improve visual amenity</p>	<p>The proposal provides suitable setback distances to the front and rear in accordance with this section of the DCP.</p> <p>The proposal has not addressed the exposed party wall facing the neighbouring properties to the north and south.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	No
7.	Through Site Links/Mid-Block Connections		
	<p>a. Through site links and mid-block connections are to be provided in accordance with the relevant block diagram in Part B</p> <p>b. Where new site links or variations are proposed, the consent authority is to consider the need for and desirability of the links or connections having regard to the objectives of this section</p> <p>c. Through site links and mid-block connections are to have an easement for public access on title or covenant on title unless identified for dedication to Council</p> <p>d. Through-site links/ mid-block links are to be designed to:</p> <p>i. have a minimum width of 6m, and a clear height of at least 6m</p> <p>ii. be direct and publicly accessible 24 hours a day</p> <p>iii. allow visibility along the length of the link and be open to the sky as much as is practicable</p> <p>iv. be easily identified by users and have a public character</p> <p>v. include signage advising of the publicly accessible status of the link and the places to which it connects</p> <p>vi. be clearly distinguished from vehicle accessways</p> <p>vii. align with breaks between buildings so that views are extended and there is less sense of enclosure</p> <p>viii. provide active edges and opportunities for natural surveillance</p>	N/A	N/A

	<p>ix. include materials and finishes (paving materials, tree planting, furniture etc.) integrated with adjoining streets and public spaces and be graffiti and vandalism resistant</p> <p>x. ensure no structures (for example, electricity substations, carpark exhaust vents, swimming pools etc.) are constructed in the through-site link; and</p> <p>xi. include landscaping to assist in guiding people along the link while enabling long sightlines.</p> <p>e. Through-site links are only to pass through or under a building where:</p> <p>i. the building's height is greater than 3 storeys; and</p> <p>ii. the maximum distance of the link under any structure is 18m</p>		
PART B			
10.	Block Controls		
10.2	Strategic Node Sites		
	The proposal is not located on a strategic node site.		
10.3	Block by Block Controls – Other Sites		
	<p>a. Development must be consistent with the relevant block envelope controls including heights, setbacks, street walls, mid-block links and laneways</p> <p>b. Built form within 'Flexible Zones' is to be designed to comply with the maximum building height in the RLEP 2012, objectives of this clause and the requirements of the ADG to achieve transition to adjoining lower scale development.</p>	There is no relevant block plan.	N/A.
PART C			
11.	Housing Mix		
	<p>a. Development is to comprise a mix of apartment types, where gardens, adaptability and accessibility are more easily achievable for elderly people, families with children, or people living with disabilities</p> <p>b. At least 20% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be self-contained</p>	<p>The development is for co-living (one and two occupants) with a commercial tenancy.</p> <p>Co-living cannot provide the differing types of rooms.</p>	Acceptable.

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	studio dwellings or one-bedroom dwellings, or both c. At least 20% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be 3 or more-bedroom dwellings and d. Family friendly apartments of 3 bedrooms or more are to be located on the lower four floors of the building.								
12.	Floor to Ceiling Heights								
	a. Minimum floor to ceiling heights are to be provided for all development in accordance with the following requirements: <table><tr><th>Ground Floor</th><th>First Floor</th><th>Upper</th></tr><tr><td>3.5m</td><td>3.3m</td><td>2.7m</td></tr></table>	Ground Floor	First Floor	Upper	3.5m	3.3m	2.7m	The proposed floor to ceiling heights at first floor levels do not comply with the numeric controls. The rear ground floor (Houston Lane) is 3.15m which does not comply.	No
Ground Floor	First Floor	Upper							
3.5m	3.3m	2.7m							
13.	Solar and Daylight Access								
	a. Solar access is to be provided in accordance with the recommendations of PART 4 of the Apartment Design Guide (ADG) b. Buildings must ensure that areas of private or public open space are oriented to achieve the recommended level of solar amenity as per the ADG	The level 5 solar access diagrams state that 3 hours of direct sunlight will be provided to the communal living space.	Yes.						
14.	Acoustic Privacy								
	<u>Residential uses</u> a. All new development is to be constructed to achieve the following acoustic amenity criteria for the residential component of the building in accordance with Australian Standard AS2107:2016 based on an acoustic report specified in clauses d) and k). For the purposes of this clause, the residential component includes dwellings situated within shop top housing, mixed use buildings, or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation. b. In naturally ventilated spaces for the residential component, the repeatable maximum Leq (1hour) should not exceed: i) 35 dB(A) between 10.00 pm and 7.00 am in sleeping areas when the windows are closed; ii) 40 dB(A) in sleeping areas when windows are open (24 hours); iii) 45 dB(A) in living areas (24 hours) when the windows are	Councils Environmental Health Officer reviewed the documentation submitted and considers that it is inadequate, and that additional information is required – please see the Env health Referral in Appendix 1.	No						

	<p>closed, and iv) 50 dB(A) in living areas (24 hours) when the windows are open.</p> <p>c. Where natural ventilation cannot achieve the limits listed in clause b) the development is to include mechanical ventilation, air conditioning or other complying means of ventilation (in accordance with the ventilation requirements of the Building Code of Australia and Australian Standard AS 1668.2-2012), when doors and windows are shut. In such circumstances the repeatable maximum Leq (1hour) with the alternative ventilation operating should not exceed:</p> <ul style="list-style-type: none"> i. 38 dB(A) between 10.00 pm and 7.00 am in sleeping areas; ii. 46 dB(A) in living areas (24 hours); iii. 45 dB(A) in sleeping areas between 7.00 am and 10.00 pm. <p>d. Notwithstanding the general noise criteria for environmental noise set out in clauses b) and c) for habitable rooms in the residential component of the proposed development is to incorporate noise control measures to ensure the standard LA10 Condition imposed by Liquor & Gaming NSW is satisfied inside those occupied spaces with doors and windows closed and the alternative ventilation is operating as follows:</p> <ul style="list-style-type: none"> i. The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7am and midnight. ii. The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) between midnight and 7am. iii. The noise from licensed premises shall be inaudible in any habitable room of any residential premises between the hours of midnight and 7am 		
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	<p>iv. For this clause, the LA10* can be taken as the average maximum deflection of the noise level emitted from the licensed premises.</p> <p>e. For the purpose of acoustic assessment with respect to clauses a), b) c) and d) the assessment must identify the noise environment for the site as a result of the existing situation (including any business operations that include outdoor areas for use by patrons, and/or the provision of music entertainment) and noise generated by commercial premises within the mixed use building (this may involve consideration of potential uses if the commercial use is unknown at the time of the application for the mixed-use building).</p>		
16.	Articulation and Modulation		
	<p>a. All buildings are to provide articulation by incorporating a variety of window openings, balcony types, balustrades, fins, blade walls, parapets, sun-shade devices and louvres to add visual depth to the façade;</p> <p>b. The design of buildings are to avoid large areas of blank walls. Where blank walls are unavoidable, they must be treated and articulated to achieve an appropriate presentation to the public domain;</p> <p>c. Ground floor shopfronts must demonstrate 'fine grained' articulation by dividing the façade into discreet bays or sections;</p> <p>d. Entries to business premises should be clearly defined and distinguished from entries to residential components;</p> <p>e. Specific architectural response to articulation and modulation is to be provided at key node sites through the architectural competition process;</p> <p>f. Building articulation should be sympathetic and complementary to the adjoining built form;</p> <p>g. Corner buildings are to be expressed by giving visual prominence to parts of the façade (eg a change in building articulation, material or colour, roof expression or increased height). Corner buildings should be designed to add variety and interest to the street and present each frontage as a main street.</p>	<p>The proposal does not provide a variety of window openings, balcony types, balustrades etc.</p> <p>The side elevations will be mostly obscured by neighbouring developments.</p> <p>The ground floor shopfront does not demonstrate fine grained articulation.</p>	No

17.	Materials and Finishes
	<div> <p>a. External walls are to be constructed of high quality and durable materials and finishes. Materials that may be subject to corrosion, susceptible to degradation or high maintenance costs are to be avoided;</p> <p>b. Architectural treatment of street facades is to clearly define a base, middle and top sections of a building so as to divide the mass of the building;</p> <p>c. A combination of finishes, colours and materials are to be used to articulate building facades;</p> <p>d. Design windows that can be cleaned from inside the building; and</p> <p>e. For sites adjoining heritage and contributory buildings, materials and finishes are to allow for their clear interpretation.</p> </div> <div> <p>The proposed materials and finishes are considered satisfactory.</p> </div> <div> <p>Yes</p> </div>
18.	Awnings
	<div> <p>a. Continuous pedestrian shelter must be provided to Anzac Parade, Gardeners Road and secondary streets by elements including awnings, posted verandas, colonnades or cantilevered building mass</p> <p>b. The design of new awnings should complement the design of adjoining awnings and complement the building façade</p> <p>c. Awnings are to be carefully located and set back to avoid obstructing vehicle sightlines, traffic signals, intersections, pedestrian crossings and other critical road infrastructure.</p> <p>d. Awnings should wrap around corners where a building is sited on a street corner</p> <p>e. Awning dimensions for buildings fronting Anzac Parade, secondary streets off Anzac Parade, and Gardeners Road are to provide:</p> <ul style="list-style-type: none"> ○ a minimum width of 3m ○ a minimum soffit height of 3.5m and no higher than 4.2m above the footpath ○ a minimum 1 metre setback from the kerb ○ a low profile, with slim vertical facias or eaves, generally not exceeding 300mm <p>f. In relation to laneways, awnings: - must be well designed to</p> </div> <div> <p>There is an awning over the ground floor on both Anzac Parade and Houston Lane.</p> <p>The design of the awning has not been shown to complement adjoining awnings.</p> <p>The impact of the awning to Houston Lane and vehicle movements has not been addressed.</p> </div> <div> <p>No</p> </div>

	provide shelter for entrances and should relate to the ground floor building uses such as outdoor dining; - are to be cantilevered with no posts (with a retractable arm); - must allow for a minimum 1.8m path of travel along the building edge.		
19.	Active Street Frontages		
	<p>a. Required active frontages are to be provided in accordance with RLEP 2012 (Clause 6.20) Active frontages Map</p> <p>b. Preferred active frontages are to be provided in accordance with Part B – Block Controls of this DCP</p> <p>c) A minimum of 80% of the street frontage on Anzac Parade is to incorporate transparent glazing on the ground floor façade</p> <p>d. The ground floor is to maximise entries or display windows and provide at least 1 pedestrian opening per 5m of facade on Anzac Parade or secondary streets and wrapping shopfronts around corners</p> <p>e. The ground floor of uses fronting lane ways must provide a continuous retail frontage with at least 1 pedestrian entry or door per 10m of façade</p> <p>f. The ground floor of uses fronting mid-block links/arcades must provide at least one 1 pedestrian entry or door per 15m of façade</p> <p>g. A minimum of 50% of a blank wall (larger than 10m²) visible from the public domain must incorporate greenery and/or public art</p> <p>h. Entrances to internally oriented shopping or commercial arcades and the arcades themselves, must be a minimum of 6m wide</p> <p>i. Solid non-transparent roller shutters are discouraged. Where security grills or screens are required, they are to be installed at least 1m behind the glazing line and of lattice design with an openness to allow viewing of the interior and internal lighting to spill onto the footpath</p> <p>j. Incorporate outdoor dining wherever possible in accordance with Part D12, Footpath Dining and Trading of DCP 2013.</p>	<p>The site requires an active frontage.</p> <p>The ground floor plans shows that there will be a fire booster and a fire egress on the frontage.</p> <p>Doesn't appear to meet the 80% transparent glass requirement.</p> <p>No greenery or public art proposed.</p>	No.
20.	Landscape Area		

	<p>a. The total landscaped area to be provided on a site is to be at least 100% of the total site area, spread throughout the site and building as shown in Figure 16.</p> <p>b. Landscaped open space requirements of Chapter C2 (Medium Density Residential) do not apply to land within the Kingsford and Kensington Town Centres other than clauses 2.2.2 and 2.3 relating to deep soil areas and private and communal open space.</p> <p>c. Landscaping must be suitable to the building orientation aspect, wind and other relevant environmental factors.</p> <p>d. A minimum of 40% of the total gross landscaped area including communal open space is to include areas with sufficient soil depth and structure to accommodate mature trees and planting. A combination of trees, shrubs and ground cover is encouraged to make the landscaping more attractive and long lasting.</p> <p>e. A minimum of 25% of the ground plane and share-ways are to be landscaped sufficient in size and dimensions to accommodate trees and significant planting.</p> <p>f. Green walls can only contribute up to 20% of the total gross landscaped area and will be assessed on the merits of the proposal in terms of quality of green infrastructure and verification from a qualified landscape architect.</p> <p>g. Roof tops can only contribute up to 30% of the total gross landscape area and the area is to be designed to maximise visibility of planting from the public domain. Rooftops may include communal food farms and food production areas.</p> <p>h. Technical, structural and ongoing maintenance arrangements of proposed roof top gardens and green walls are to be documented by a qualified landscape architect and incorporated into the development proposal.</p> <p>i. The area dedicated to roof top solar (PV infrastructure) is not to be counted as part of the total gross landscape area.</p> <p>j. Where green roofs and green walls are provided, these shall</p>	<p>This has been reviewed by Council's Landscape Officer and not supported.</p> <p>Please see their comments in the referrals section of this report (Appendix 1).</p>	No
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	<p>comply with requirements contained in Chapter B4 (clause 4).</p> <p>k. Despite the provision of a green wall, all facades are to meet design excellence requirements including building articulation and modulation specified in section 16 of this section of the DCP.</p> <p>l. In addition to the requirements of Part B4 (Landscaping and Biodiversity), all DAs for sites within the Kensington and Kingsford town centres must submit a landscape plan addressing the following requirements:</p> <ul style="list-style-type: none"> i. quantity of landscaping provided on site; ii. scaled drawings of all areas; iii. how landscaping would complement the architectural style of building and assists in its presentation to the streetscape and high visibility; iv. rainwater harvesting and other irrigation methods proposed; v. full construction details of soil profile, method of attachment to the building, and drainage/waterproofing; and vi. engineering certification confirming building can withstand planting and associated structures. <p>Note 1 'Ground plane' refers to spaces between buildings on the ground level providing for landscaping, pedestrian access and physical connections to the street.</p> <p>Note 2: 'Gross Landscape Area' refers to the sum of all landscaped areas within a development and may include (but is not limited to) ground plane, gardens, outdoor terraces, planter boxes, sky gardens, roof terraces, and green walls.</p>		
21.	Transport, Traffic, Parking & Access		
	<p>a. Vehicle parking within the Kensington and Kingsford town centres is to be provided in accordance with the rates outlined in the tables below. Parking requirements for all other development types not specified in the table below are contained in section 3.2 Vehicle Parking Rates (of Chapter B7)</p> <p>b. Where practical, parking access and/or loading is to be</p>	<p>This has been reviewed by Councils Development Engineer and is not supported, their comments can be seen in the referrals section.</p> <p>Concerns are raised regarding Houston Lane and the temporary stopping for servicing.</p>	No

	<p>provided from secondary streets (rather than directly off Anzac Parade or gardeners Road), set back at least 6m from the intersection or the rear lane</p> <p>c. Basement carpark access must comply with the requirements of B8: Water Management</p> <p>d. Parking access and/or loading areas are to be designed as recessive components of the elevation so as to minimise the visual impact</p> <p>e. Parking is to be accommodated underground where possible</p> <p>f. Sub-basement car parking is to be no more than 1.2m above existing ground level;</p> <p>g. Provide flexible hardstand area for the purposes of bicycle maintenance and repairs</p> <p>h. Where a variation to the DCP Car Parking rates is sought, the proponent shall respond directly to Control i), 3.3 Exceptions to Parking Rates of the DCP 2013</p> <p>i. A Green Travel Plan is required to accompany all DAs for new buildings and substantial alterations to existing buildings. The Green Travel Plans is to set out:</p> <ol style="list-style-type: none"> Future travel mode share targets, specifically a reduction in car driver mode share ii) Travel demand management strategies to encourage sustainable travel iii) Initiatives to implement and monitor travel measures such as car share and bike share; and iii) alignment with Control i), 3.3 Exceptions to Parking Rates of this DCP. <p>j. Car share spaces are to be provided in accordance with Part B7: 2.2 (Car Share) of this DCP</p> <p>k. All DAs are to provide electric charging stations in an accessible location on site.</p> <p><i>Note 1: Any provision of parking above the maximum requirements will be counted towards gross floor area.</i></p>	<p>No parking is proposed.</p> <p>The bike storage is inappropriately located and difficult to access.</p> <p>Refer to discussion at Section 9.1 of this report.</p>	
22.	Sustainability		
	<p>a. All buildings must achieve a minimum green star certification rating of 5 or equivalent (other recognised rating tools)</p>	<p>Insufficient information has been provided in relation to a site-wide sustainability strategy.</p>	<p>No</p>

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	<p>b. DAs for strategic node sites must be designed to achieve a GBCA exceeding Five-Star Green Star Design as Built with a sustainability strategy giving priority to the following innovations: -</p> <ul style="list-style-type: none"> • Waste collection (e.g. Automated underground waste) • Renewable energy opportunities • Water harvesting and re-use • Vertical and Roof Greening • Buildings shall incorporate passive design strategies in addition to materials which have less embodied energy, reducing operational energy and focussing on on-going well being of occupants <p>c. All development must address the requirements of Part B3- Ecologically Sustainable Development of this DCP</p> <p>d. Applications for new commercial office development premises and hotel/motel accommodation with a floor area of 1,000m² or more must achieve a minimum NABERS 6- star Energy and NABERS 5-star or 6-star Water rating</p> <p>e. All development must provide 1 electric vehicle charging point per 5 parking spaces where onsite parking is provided.</p> <p>f. All development must address the requirements of B6 Recycling and Waste Management</p> <p>g. All new buildings are to provide a space for storage and sorting of problem waste such as E-waste, clothing, and hazardous waste.</p> <p>h. All new development (other than alterations and additions, or development that is minor or ancillary in nature) is to incorporate a localised automated waste collection system in accordance with Council's Automated Collection System Guidelines.</p>	<p>A report has been provided to meet the 2022 National Construction Code Section J requirements via <i>deemed to satisfy provisions</i>.</p> <p>This does not meet the requirements of this section of the DCP.</p>	
23.	Water Management		
	<p>a. DAs must address Part B8 – Water Management of the Randwick DCP 2013 in relation to water conservation, groundwater and flooding and Water Sensitive Urban Design</p>	<p>Insufficient information has been provided in relation to water sensitive urban design.</p>	No

	<p>b. In addition to requirements of Part B8, applications for basement level/s must include:</p> <ul style="list-style-type: none"> i. detailed designs by a qualified hydrological or structural engineer for a water-proof retention system (fully-tanked structure) with adequate provision for future fluctuations of water table variation of at least +/- 1 metre; and ii. certification from a second qualified hydrological engineer experienced in the design of structures below a water table that the design of the groundwater management system will not have any adverse effects on surrounding property or infrastructure. 	Water NSW has requested additional information in their referral in Appendix 1.	
24.	Aircraft Operations		
	<p>a. DAs involving the use of cranes during construction and light poles must ensure compliance with Clause 6.8 of the RLEP 2012 in relation to Airport Operations</p> <p>b. Applications for new buildings and cranes during construction must meet the requirements of Part F3 - Sydney Airport Planning and Noise Impacts of the Randwick DCP 2013</p> <p>c. Applications for development that exceed 51m AHD at Kingsford will be subject to an assessment process under the Airports (Protection of Airspace) Regulations, 1996.*</p>	Concurrence has been received from the Sydney Airport Corporation (refer to Appendix 2).	Yes
26.	Student Accommodation		
	<p>DAs for all student accommodation or boarding house proposals must provide the following:</p> <ul style="list-style-type: none"> a) A design report that demonstrates compliance with the minimum amenity standards under the AHSEPP and where improvements to these standards have been incorporated into the development in order to achieve a higher standard of living amenity for occupants e.g. size of communal living areas, ceiling heights, bedroom width b) How the built form relates to the desired local character and surrounding context including relationship to heritage or 	<p>The proposal is assessed under the SEPP (Housing) – Co-Living.</p> <p>There is no block plan for this site and no contributory buildings. The built form does not relate to the desired local character.</p> <p>Sustainability measures have not been adequately demonstrated.</p> <p>N/A – Co-living standards apply.</p> <p>A Plan of management was provided.</p>	No.

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	<p>contributory buildings (Refer to Part B Block controls), delivery of high quality built form design and public/private domain interface at the ground level</p> <p>c) How the development delivers improved sustainability, natural cross ventilation and sunlight, passive thermal design reducing reliance on technology and operation costs and waste management</p> <p>d) Communal living areas with a minimum area of 20m² or 1.25m² per resident, whichever is greater and a minimum dimension of 3m</p> <p>e) A Management Plan in Accordance with the Management Plan Template in Part B of this DCP addressing the following additional requirements:</p> <ul style="list-style-type: none"> i) Maximum number of students to be accommodated at any one time ii) Provision for at-call contact details of a suitably responsible contact person for response 24 hours a day iii) On site security arrangements iv) A schedule detailing furnishings for sleeping rooms iv) Cleaning and maintenance arrangements v) Ongoing operational arrangements to minimise and manage noise transmission to adjoining properties vi) Management and staffing arrangements and overview of each role's key responsibilities vii) Measures to ensure ongoing workability of emergency systems including lighting and smoke detectors, sprinkler systems, and air conditioning viii) Placement and composition of furnishing and fittings to achieve the appropriate fire safety requirements ix) Measures to ensure how premises are to be regularly checked to ensure fire safety including that all required exits and egress paths are clear and free of locks and obstructions 	<p>An acoustic report was provided, but there is additional information required by Councils Env Health Team.</p> <p>The traffic and transport report is not supported.</p>	
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	<p>x) Provision of information on community and education services, including health, counselling and cultural services</p> <p>xi) House rules regarding occupancy and behaviour of students and visitors</p> <p>xii) Critical Incident Management and Emergency & Evacuation Procedures</p> <p>xiii) Management procedures over holiday periods.</p> <p>f) DAs for boarding houses and student accommodation must submit an Acoustic Report prepared by a suitably qualified acoustic consultant in accordance with the requirements of section 15 Part C of this DCP addressing:</p> <p>i) Potential noise sources from the operation of the development including any outdoor communal areas, mechanical plant and equipment and kitchen exhaust systems</p> <p>ii) Desirable acoustics performance criteria addressing potential external night time noise activities including outdoor dining, cafes, restaurants, small bars, outdoor performances and live music;</p> <p>iii) Mitigation measures such as appropriate sound proofing construction and management practices to achieve the relevant noise criteria (refer to section 15 PartC of this DCP)</p> <p>g) DAs for boarding houses (including student accommodation) incorporating 20 or more bedrooms are to be supported by a Traffic and Transport Report prepared by a suitably qualified person, addressing as a minimum the following:</p> <ul style="list-style-type: none"> - the prevailing traffic conditions - ingress and egress arrangements - waste collection - the likely impact of the proposed development on existing traffic flows and the surrounding street system - pedestrian and traffic safety - an assessment on-site parking provision for students, staff and business operations 		
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	- the recommendations of a site specific Green Travel Plan (as required under Section 22 Part C of this DCP) outlining initiatives to encourage active transports options and shared use of vehicles for students, employees and other visitors to the site		
PART D			
27.	Solar Access – Public Open Space		
	<p>a. New buildings and alterations and additions to existing buildings are to be designed to ensure that that the following locations shown on Figures 17a and 17b are not overshadowed by more than 10% in mid-winter (June 22nd) between the hours of 12noon and 2pm:</p> <ul style="list-style-type: none"> o Kensington Public School o Duke St Plaza o Bowral St Plaza o Uni Lodge Plaza o Addison St Plaza o Kokoda Park o Todman Ave Plaza o Meeks St Plaza o Borrodale Road widening o Town Square Plaza o Market Site corner o Triangle site corner o Dacey Gardens <p>b. New buildings and alterations to existing buildings are to retain solar access to a minimum of 50% of the site area of key public places identified in a) and shown on Figures 17a and 17b for a minimum of 3 hours in mid-winter (June 22nd).</p>	The proposal does not result in any overshadowing of the key locations identified.	Yes
28.	Wind Flow		
	<p>a. DAs are to include a Wind Impact Assessment for new buildings over nine (9) storeys in height. The findings of the Wind Impact Assessment are to provide design solutions to minimise the impact of wind on the public and private domain</p> <p>b. Development must not create a ground level environment where additional generated wind speeds exceed:</p> <ul style="list-style-type: none"> i. 10 metres per second for active frontages along Anzac Parade and 	N/A because the development is not over 9 stories.	N/A

	<p>ii. 16 metres per second for all other streets</p> <p>c. Buildings over 9 storeys are to incorporate design features that ameliorate existing adverse wind conditions so that the above criteria is achieved</p> <p>d. Building design is to minimise adverse wind effects on recreation facilities and open spaces within developments</p> <p>e. Balconies are to be designed to minimise wind impacts and maximise usability and comfort through recessed balconies, operable screens, pergolas and shutters</p> <p>f. Balconies must be recessed on buildings over 45m in height.</p>		
29.	Public Art		
	<p>a. Public Art is to be generally be consistent with Council's Public Art Strategy</p> <p>b. All sites with frontages greater than 12 metres and corner sites, must incorporate artistic elements into the built form such as creative paving, window treatments, canopy design, balustrading, signage and wayfinding, lighting to assist illumination levels after dark and the promotion of active uses in the public spaces</p> <p>c. In addition to clause 29(b) site specific public art is to be provided on identified sites, plazas and mid-block links as per the block by block controls in Part B of this DCP</p> <p>d. Public art is to be located in areas which offer the public a free and unobstructed visual experience of the work</p> <p>e. Incorporate creative lighting, decorative elements and/or murals in laneways, share ways and pedestrian links</p> <p>f. Submit an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA.</p>	The site frontage is less than 12m.	N/A.
30.	Affordable Housing		
	<p>a. All development within the 'Kensington and Kingsford Town Centres Affordable Housing Contributions Area' (Figure 18) must contribute towards the provision of affordable housing based on the following rates:</p>	The submitted documentation fails to provide specific details regarding an affordable housing monetary contribution.	No

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	<p><i>Table – Affordable Housing Contribution</i></p> <table><tr><th>Date of DA lodgement</th><th>Percentage of floor area towards affordable housing</th></tr><tr><td>From 13 August 2020 up to and including 13 August 2022</td><td>3%</td></tr><tr><td>After 13 August 2022</td><td>5%</td></tr></table> <p>* where less than whole unit is provided</p> <p>b. Affordable Housing contributions are to be provided in accordance with the Affordable Housing Plan 2019 for the Kensington and Kingsford Town Centres</p> <p>c. The affordable housing contribution rate is to apply to the residential gross floor area component of the development</p> <p>d. Contributions towards affordable housing are to be provided through a dedication of completed units with any remainder paid as a monetary contribution in accordance with the affordable housing contributions table referred to in clause a).</p>	Date of DA lodgement	Percentage of floor area towards affordable housing	From 13 August 2020 up to and including 13 August 2022	3%	After 13 August 2022	5%		
Date of DA lodgement	Percentage of floor area towards affordable housing								
From 13 August 2020 up to and including 13 August 2022	3%								
After 13 August 2022	5%								
31.	Community Infrastructure								
	<p>a. In accordance with Clause 6.17 of the RLEP 2012 an alternative building height and additional floor space ratio may be achievable where Council and the proponent of the DA have agreed to or entered into a planning agreement for the basis of paying the Community Infrastructure Charge</p> <p>b. The delivery of Community Infrastructure is to be carried out in accordance with the Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan 2019.</p>	No letter of offer or voluntary planning agreement was submitted to Council.	No						

Responsible officer: Joseph Edmonds, Environmental Planning Officer

File Reference: DA/242/2025