

Randwick Local Planning Panel (Public) Meeting

Thursday 14 August 2025



RANDWICK LOCAL PLANNING PANEL (PUBLIC) MEETING

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held online via Microsoft Teams on Thursday, 14 August 2025 at 1pm

Acknowledgement of Country

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

Declarations of Pecuniary and Non-Pecuniary Interests

Address of RLPP by Councillors and members of the public

Privacy warning;

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

Development Application Reports

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D36/25

Subject: 30-32 Moore Street, Coogee (DA/351/2025)

Executive Summary

Proposal:	Demolition of the existing structures to enable the construction of a 4-storey residential flat building, including 4 units (2 x 3 bedroom, 1 x 2 bedroom, 1 x 1 bedroom), basement car parking with 6 spaces and associated landscaping works.
Ward:	North Ward
Applicant:	Arkivis Pty Ltd
Owner:	Mrs C Panigiris & Mr T Panigiris
Cost of works:	\$3,906,231
Reason for referral:	The development is subject to Chapter 4 of the Housing and more than 10 unique objections were received.

Recommendation

- A. That the RLPP is satisfied that the applicant's written request to vary the building height development standard in Clause 4.3 of Randwick Local Environmental Plan 2012 has demonstrated that:
- i. Compliance with the 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 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/351/2025 for demolition of the existing structures to enable the construction of a 4-storey residential flat building, including 4 units (2 x 3 bedroom, 1 x 2 bedroom, 1 x 1 bedroom), basement car parking with 6 spaces and associated landscaping works, at Nos. 30-32 Moore Street, Coogee, subject to the development consent conditions attached to the assessment report.

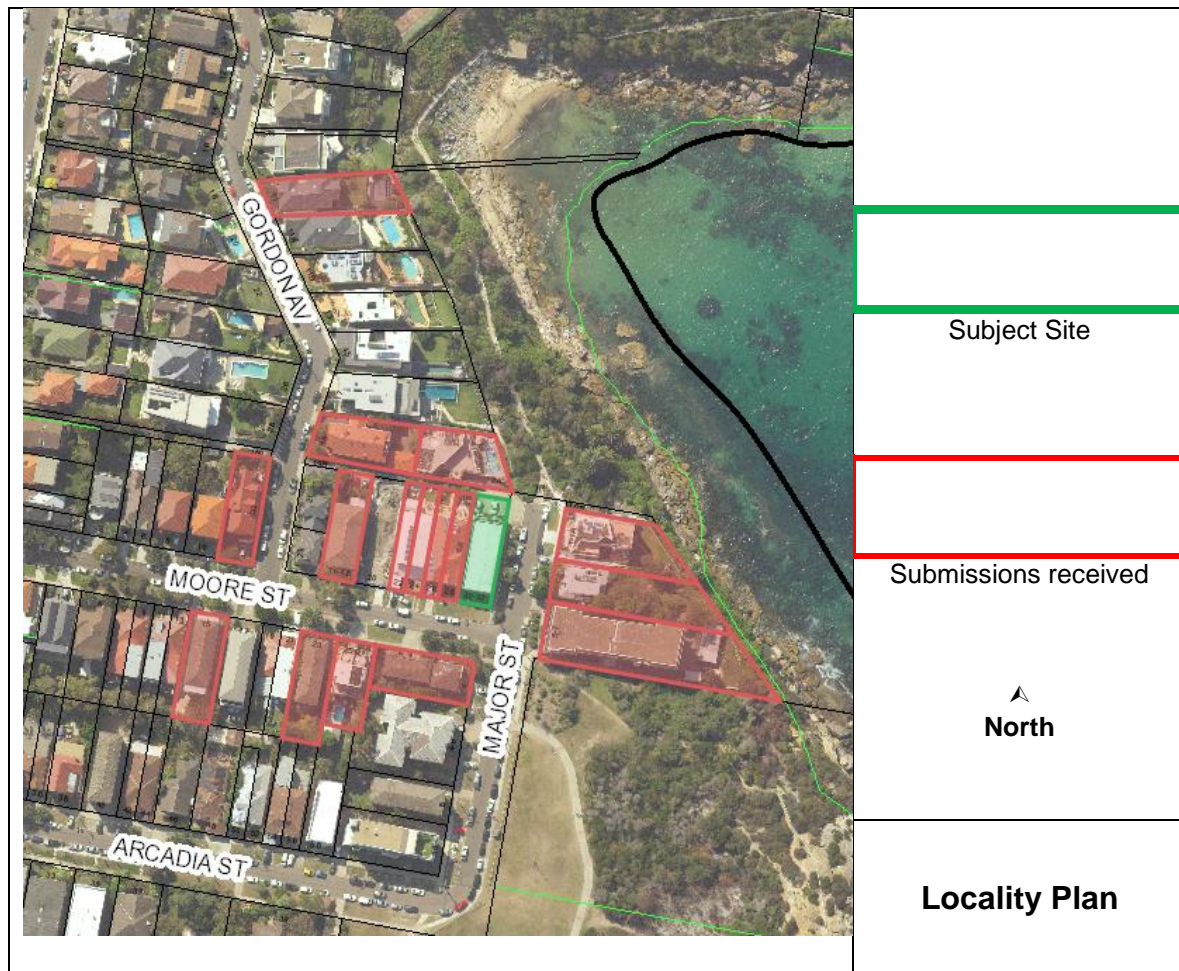
Attachment/s:



RLPP Dev Consent Conditions (med density res) - DA/351/2025 - 30-32 Moore Street, COOGEE NSW 2034 - DEV - Randwick City Council

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development is subject to Chapter 4 of the Housing and more than 10 unique objections were received.

The proposal seeks development consent for demolition of existing structures and construction of a four (4) storey residential flat building, including four (4) units, basement car parking with six (6) spaces and associated landscaping works.

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 and section 16(3) of State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

The proposed variation is supported as the proposal is consistent with the objectives of the height of buildings development standard and the R3 zone. The applicant's written request has adequately addressed the matters for consideration pursuant to clause 4.6 of RLEP 2012.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is known as 30-32 Moore Street, Coogee and is legally described as Lot 15 in DP 2349. The site has an area of 470.20m² and is generally rectangular in shape.

The site is located on the north-western corner of Moore Street and Major Street. The site has a 12.19m frontage to Moore Street and a 38.63m frontage to Major Street. The topography of the site slopes by approximately 2.5m from the south to the north.

The site is currently occupied by a two (2) storey residential flat building. Refer to Figures 1-2.

Surrounding development comprises dwellings, semi-detached dwellings, multi-dwelling housing, and residential flat buildings (RFBs). As shown in Figures 3-8, surrounding development generally ranges in height from one (1) to four (4) storeys.



Figure 1: Existing RFB at subject site, viewed from Moore Street (*Source: Council officer*)



Figure 2: Existing RFB at subject site, viewed from Major Street (*Source: Council officer*)

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Figure 3: Dwelling to north of subject site – No. 2A Major Street (Source: Council officer)



Figure 4: Semi-detached dwellings to west of subject site – Nos. 22, 24, 26, and 28 Moore Street (Source: Council officer)



Figure 5: Multi-dwelling housing to south of subject site – No. 2 Major Street (*Source: Council officer*)



Figure 6: RFB to east of subject site – No. 5-7 Major Street (*Source: Council officer*)



Figure 7: RFBs further to south of site – Nos. 8 and 10 Major Street (Source: Council officer)



Figure 8: RFBs further to west of site – Nos. 15 and 17 Moore Street (Source: Council officer)

3. Relevant history

DA/277/2022

The development application was approved by the RLPP on 11 April 2024 for demolition of existing building and construction of a 3 storey residential flat building including 3 x 3 bedroom units, and basement parking for 5 cars. The approval was subject to a deferred commencement condition, which was satisfied on 29 November 2024.

Requests for Information

On 28 April 2025, Council requested additional information from the Applicant relating to GFA calculations, the affordable housing component, historic rental records, and shadow diagrams. On 19 May 2025 and 26 May 2025, the Applicant submitted the requested information.

On 06 June 2025, Council requested further additional information relating to design excellence, building height, visual privacy, overshadowing, view analysis, and the foreshore scenic protection area. On 27 June 2025, the Applicant submitted amended plans and view diagrams. This amended documentation forms the basis of this report.

4. Proposal

The proposal seeks development consent for demolition of existing structures and construction of a four (4) storey residential flat building, including four (4) units, basement car parking with six (6) spaces and associated landscaping works. As shown in Figures 9-11, the proposed development comprises:

- Basement – parking for six (6) cars, storage, bin room, and services.
- Ground level – 1 x one (1) bedroom unit and 1 x two (2) bedroom affordable unit.
- Level 1 – 1 x three (3) bedroom unit.
- Levels 2 and 3 – 1 x split-level three (3) bedroom unit, including pool at Level 3.

The proposed development is generally consistent with the footprint of the building approved under DA/277/2022. As shown in the below table, the primary change is the addition of one (1) storey to accommodate one (1) affordable unit.

	Approved (DA/277/2022)	Proposed development
Gross floor area	447.87m ²	457.25m ²
Height (in meters)	10.86m	13.40m
Height (in storeys)	3 (plus basement)	4 (plus basement)
Apartments	1 x 3 bed (affordable) 2 x 3 bed Total = 3 x units	1 x 1 bed 1 x 2 bed (affordable) 2 x 3 bed Total = 4 x units
Car parking	5 x spaces	6 x spaces



Figure 9: Model of proposed development (Source: Arkhaus)

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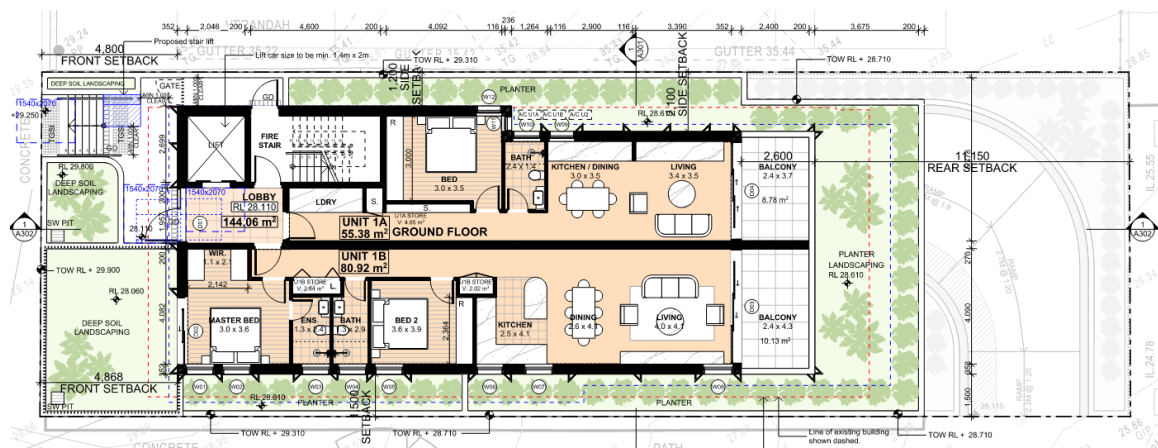


Figure 10: Proposed ground floor plan (Source: Arkhaus)

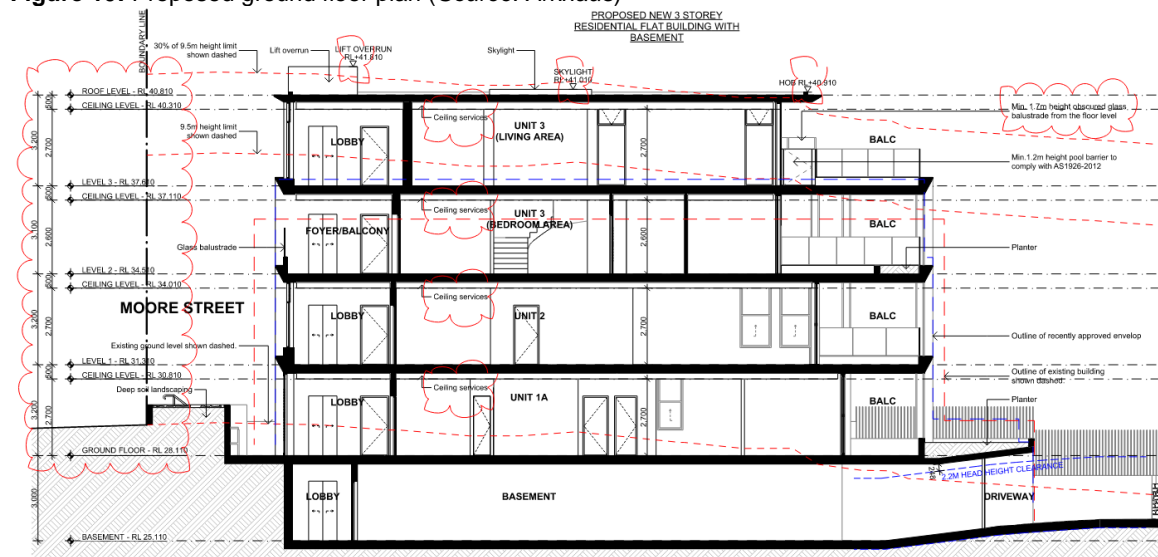


Figure 11: Proposed section plan (Source: Arkhaus)

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:


- 4/16-18 Moore Street
- 30 Gordon Avenue
- 6/5-7 Major Street
- 2A Major Street
- 13/5-7 Major Street
- 1/3 Major Street
- 2 Major Street (owners corporation – SP60183)
- Solutions Zane (prepared on behalf of 19 Gordon Avenue)
- 5/15 Moore Street
- 3/5-7 Major Street
- Unknown address x 2
- 2/2 Major Street (known as 31 Moore Street)
- 14/5-7 Major Street
- Lockrey Planning and Development Solutions Pty Ltd (prepared on behalf of 5/5-7 Major Street)
- 3/23 Moore Street x 2
- 25 Moore Street
- 9/5-7 Major Street
- 1/2 Major Street

- 11 Gordon Avenue
- DA Objection Pty Ltd (prepared on behalf of 28 Moore Street and Nos. 1A, 2A, and 3 Major Street) x 2
- 26 Moore Street
- 1 Major Street
- 22-24 Moore Street
- 28 Moore Street
- 24 Moore Street

Issue	Comment
Solar access impacts.	Refer to detailed discussion at Section 9.1 (Key Issues) of this report.
View impacts.	Refer to detailed discussion at Section 9.1 (Key Issues) of this report.
Visual privacy impacts.	Refer to detailed discussion at Section 9.1 (Key Issues) of this report.
Visual bulk and scale impacts.	As demonstrated in this report, the visual bulk and scale of the proposed development is considered acceptable. The proposed four (4) storey development is compatible with the existing and desired character of the locality.
Traffic, parking, and safety impacts.	Council's Development Engineer has reviewed the application and raised no concerns, subject to suitable conditions. Refer to discussion at Appendix 1 (Referrals) of this report.
Construction impacts, including excavation, noise, asbestos, groundwater seepage, and traffic management.	Suitable conditions are included to mitigate construction impacts, including conditions relating to excavation, noise, asbestos, groundwater seepage, and traffic management.
Foreshore and coastal impacts, including visual impact to foreshore area and public domain (Bondi to Coogee coastal walk).	Refer to detailed discussion at Section 6.4 (Coastal Management) of this report.
Excessive and non-compliant building height.	Refer to detailed discussion at Section 7 (Clause 4.6) of this report.
Non-compliant communal open space control.	The lack of communal open space area is acceptable on merit noting that suitably sized private open space is provided for each unit. Additionally, the site is in close proximity to public spaces, including Coogee Beach, Dunningham Reserve, and Gordons Bay.
Non-compliant setbacks and ADG separation distances.	Refer to detailed discussion at Section 9.1 (Key Issues) of this report relating to side setbacks and ADG separation distances. Compliant front and rear setbacks are provided in accordance with RDCP 2013.
Non-compliant FSR and lack of clause 4.6 variation request.	Council is satisfied that the proposal complies with the maximum FSR development standard. As such, a clause 4.6 variation request is not required in this instance.

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Issue	Comment
Non-compliant external wall height.	Refer to detailed discussion at Section 9.1 (Key Issues) of this report.
Insufficient landscaped area.	<p>The proposed quantum of landscaped area (235.37m²) complies with the minimum requirement of RDCP 2013 (50% or 235.1m²). The proposed quantum of deep soil area (83.76m²) is acceptable on merit noting that compliance with the 7% ADG control is achieved. The proposal represents a significant improvement in deep soil area relative to the existing situation.</p> <p>Council's Landscape Officer has reviewed the proposed landscape scheme and raises no concerns, subject to suitable conditions. Refer to detailed assessment at Appendix 1.</p>
Excessive tree canopy cover will block views.	<p>Refer to detailed discussion at Section 9.1 (Key Issues) of this report relating to view sharing.</p> <p>A condition is included to ensure that all tree planting in the rear setback area comprises species with a maximum mature height of 3m.</p>
Inadequate car parking.	The proposal provides six (6) on-site parking spaces, which complies with the relevant parking requirements. Refer to detailed discussion by Council's Development Engineer at Appendix 1.
On-site parking would encourage multiple car ownership.	The proposal provides six (6) on-site parking spaces, which complies with the relevant parking requirements. Refer to detailed discussion by Council's Development Engineer at Appendix 1.
Affordable housing component is disingenuous.	In accordance with the provisions of the Housing SEPP, a condition is included to ensure that Unit 1B is provided as affordable housing for at least 15 years. The Applicant has advised that Mission Australia will be engaged as the community housing provider for the affordable housing component.
The proposal would set precedent for overdevelopment in the locality.	As detailed in this report, the proposal is not considered to be an overdevelopment of the site. The proposal is permissible with consent in the R3 zone and does not result in any increase in the number of dwellings when compared with the existing building (which comprises four (4) units). As detailed in this report, the proposal is compatible with the existing and desired future character of the locality.
Extensive glazing would increase heat load.	The submitted BASIX Certificate confirms that the relevant thermal requirements are satisfied. Several east-facing windows are provided with internal venetian blinds.

Issue	Comment
SEE incorrectly refers to No. 2 Major Street as a three (3) storey semi-detached built form.	<p>As shown below, the building at No. 2 Major St comprises two (2) levels above an at-grade garage. As such, this property presents as the equivalent of three (3) storeys to Moore St.</p> 
A previous DA relating to 417A Maroubra Road, Maroubra was refused due to view impacts.	<p>Each DA is assessed in its own context. A previous decision relating to a different property within the LGA is not a matter for consideration under Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Refer to detailed discussion at Section 9.1 (Key Issues) of this report relating to view sharing.</p>
A previous DA in the Woollahra LGA was refused due to adverse amenity impacts.	<p>Each DA is assessed in its own context. A previous decision relating to a different property (located within a different LGA) is not a matter for consideration under Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Request that there are no permanent structures on the rooftop terrace.	<p>The proposal does not include any rooftop terraces. No consent is granted for any trafficable roof space or roof structures.</p>
Request that rear balcony columns are removed.	<p>A condition is included to delete the rear balcony columns.</p>
Inconsistency with LEP aims and zone objectives	<p>Council is satisfied that the proposed development is consistent with the LEP aims and zone objectives. Refer to detailed discussion at Section 6.6 (RLEP) of this report.</p>
Inconsistency with surrounding streetscape and character of the locality.	<p>For the reasons outlined in this report, Council is satisfied that the proposed development is consistent with the surrounding streetscape and character of the locality. Refer to detailed discussion at Section 6.2 (Housing SEPP – Character Test) of this report.</p> <p>It is considered that the locality is somewhat undergoing transition, and as such, consideration has been given to the existing character as well as the desired future character of the area. With regard to the Planning Principle established in <i>Project Venture Developments v Pittwater Council [2005]</i>, compatibility is different from sameness but is one whereby buildings can</p>

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Issue	Comment
	exist together in harmony. The Planning Principle establishes that buildings can exist together in harmony without having the same density, scale, or appearance.
The proposal is not suitable for the site and is not in the public interest.	For the reasons outlined in this report, Council is satisfied that the proposed development is suitable for the site and is in the public interest.
Insufficient information submitted with DA.	Sufficient information has been submitted for the purpose of DA assessment.
Incorrect calculation of building height.	With reference to the submitted survey plan, Council is satisfied that building height has been correctly calculated.
Request for reduction of built form, including increased setbacks and reduced building height.	In response to the concerns raised in the submissions, Council requested several amendments to the originally proposed built form. Amended plans have been submitted to adequately address the concerns raised.
Submitted Clause 4.6 Request is inadequate.	Council is satisfied that the submitted written request has demonstrated that compliance with the building height development standard is unnecessary and unreasonable in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention. Refer to detailed discussion at Section 7 (Clause 4.6) of this report.
Request for conditions of consent relating to construction certificate and occupation certificate stages of development.	Suitable conditions are included relating to construction certificate and occupation certificate stages of development.
Excessive swimming pool envelope.	A condition is included to delete the proposed swimming pool.
Estimated development cost is underestimated.	This is not a matter for consideration under Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
Inadequate information relating to site contamination and stormwater.	Sufficient information has been submitted for the purpose of DA assessment. Suitable conditions are included relating to site contamination and stormwater.
Request for conditions of consent relating to asbestos management and demolition.	Suitable conditions are included relating to asbestos management and demolition.
Request for conditions requiring a Construction Traffic Management Plan (CTMP).	Suitable conditions are included relating to preparation and implementation of a CTMP.
Selected building materials are inappropriate.	Council's Design Excellence Advisory Panel has reviewed the application and is generally supportive of the selected materials. A condition

Issue	Comment
	is included to replace the black cladding and charcoal paint with a grey colour.
Lack of design excellence.	<p>Council's Design Excellence Advisory Panel has reviewed the application and is generally supportive, subject to matters relating to sustainability, external materials/colours, landscaping, and privacy being addressed.</p> <p>Amended plans have been submitted to adequately address the relevant matters raised by the Panel. In this regard, the proposal is considered to result in a high level of design excellence.</p>
Acoustic impacts.	<p>The nature of the proposed development, being for four (4) residential dwellings, is unlikely to result in significant adverse noise impacts. The proposed balconies are for private use only.</p> <p>A condition is included to delete the proposed swimming pool, and associated equipment.</p> <p>Council's Environmental Health Officer has reviewed the proposal and raises no concerns, subject to suitable conditions. Refer to detailed assessment at Appendix 1.</p>
Insufficient detail regarding utility and infrastructure services.	Sufficient information has been submitted for the purpose of DA assessment. Suitable conditions are included to ensure that utility and infrastructure services are provided.
Property value impacts.	This is not a matter for consideration under Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
Approval of the application would cause "a loss of community spirit" and "tension in neighbourhoods".	This is not a matter for consideration under Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

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

6.2. SEPP (Housing) 2021

Chapter 2 – Affordable Housing – Infill Affordable Housing

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

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Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
15C Development to which division applies		
(1) This division applies to development that includes residential development if—		
(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and	The RFB is permitted with consent under RLEP 2012.	Yes
(b) the affordable housing component is at least 10%, and	The affordable housing component exceeds 10%.	Yes
(c) all or part of the development is carried out— (i) or development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.	The site is located within an accessible area, being within 400m of a bus stop on Arden Street.	Yes
(2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division.	Noted.	N/A
16 Affordable housing requirements for additional floor space ratio		
(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).	LEP standard = 0.75:1 AH component = 17.8% of total GFA Bonus FSR (30%) = 0.225:1 Max. FSR = 0.975:1 Proposed = 0.972:1	Yes
(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows— $\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$	Noted.	N/A
(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).	LEP control = 9.5m Bonus height (30%) = 2.85m Max. height = 12.35m Proposed = 13.4m	No, refer to clause 4.6 assessment
(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.	Noted.	N/A
19 Non-discretionary development standards—the Act, s 4.15		
(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—		
(a) a minimum site area of 450m ² ,	470.2m ²	Yes
(b) a minimum landscaped area that is the lesser of— (i) 35m ² per dwelling, or (ii) 30% of the site area,	Control = 140m ² Proposed = 235m ²	Yes
(c) a deep soil zone on at least 15% of the site area, where— (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,	Not applicable, refer subsection (3).	N/A

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
(d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,	Not applicable, refer subsection (3).	N/A
(e) the following number of parking spaces for dwellings used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms—at least 1 parking space,	Required = 0.5 space Proposed = total 6 spaces	Yes
(f) the following number of parking spaces for dwellings not used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	Required = 3.5 space Proposed = total 6 spaces	Yes
(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,	Complies, refer to ADG assessment.	Yes
(h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,	Not applicable.	N/A
(i) if paragraphs (g) and (h) do not apply, the following minimum floor areas— (i) for each dwelling containing 1 bedroom—65m ² , (ii) for each dwelling containing 2 bedrooms—90m ² , (iii) for each dwelling containing at least 3 bedrooms—115m ² plus 12m ² for each bedroom in addition to 3 bedrooms.	Not applicable.	N/A
(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.	Noted.	N/A
20 Design requirements		
(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.	Not applicable.	N/A
(2) Subsection (1) does not apply to development to which Chapter 4 applies.	Noted.	N/A
(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with— (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	Refer to discussion below.	Yes
21 Must be used for affordable housing for at least 15 years		
(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years	Suitable conditions are included to ensure that Unit 1B will be used as	Yes

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Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
commencing on the day an occupation certificate is issued for the development— (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider.	affordable housing for at least 15 years and will be managed by a registered community housing provider.	

Character Test

Pursuant to section 20(3) of the Housing SEPP, consent must not be granted to for in-fill affordable housing unless the consent authority has considered whether the design of the residential development is compatible with the desirable elements of the character of the local area, or for precincts undergoing transition, the desired future character of the precinct.

It is considered that the local area is somewhat undergoing transition, and as such, consideration has been given to the existing character as well as the desired future character of the area.

With regard to the Planning Principle established in *Project Venture Developments v Pittwater Council [2005]*, compatibility is different from sameness but is one whereby buildings can exist together in harmony. The Planning Principle establishes that buildings can exist together in harmony without having the same density, scale, or appearance.

As shown in Figure 12, the existing RFBs within the vicinity of the site (i.e. along Major Street and Moore Street) are primarily three (3) to four (4) storeys in height. As such, the proposed four (4) storey development is generally consistent with the height of surrounding development in the site’s locality. The general height pattern in the area builds towards a high spine on the western side of Major Street. The proposal responds to and reinforces that prevailing context and streetscape.



Figure 12: Contextual height analysis (Source: ABC Planning)

Within the Moore Street streetscape, the proposed development responds to the site's slope by positioning the ground level at approximately 1.1m below the footpath level. The proposed front fence largely conceals the ground level and results in the building being visually perceived as a three (3) storey building within the streetscape. For the Major Street streetscape, the increased upper-level setbacks limit the perceived visual bulk of the building. The building mass is reduced as the site slopes away towards the north.

The proposed development predominantly complies with the maximum height control under the Housing SEPP and fully complies with the maximum FSR control. The variation to the building height results from the site's topography (which slopes down from the south to the north) and the need to provide equitable access by way of a lift. A detailed assessment has been undertaken of the submitted Clause 4.6 Variation Request, where it is noted that the proposal would not result in significant adverse amenity impacts and that the height variation would satisfy the objectives of the development standard and the R3 zone.

Furthermore, the proposed building footprint is not considered to be excessive, noting that compliant landscaped area is provided in accordance with the Housing SEPP. The proposed built form is not considered to be excessive and would be commensurate of a level of development anticipated for the site. The medium density controls contemplate and encourage a mix of building typologies with varying heights. The established streetscape shows numerous examples of the compatibility of two (2) different built forms (i.e. dwellings and RFBs) with varying heights.

In view of the above, it is considered that the proposed development would not be incompatible with the existing or desired future character of the area.

Chapter 2 – Affordable Housing – Retention of Existing Affordable Rental Housing

Chapter 2, Part 3 of the Housing SEPP applies to existing affordable housing in the form of low-rental residential buildings. Consideration of this Part is required to determine whether the proposal will result in a reduction in affordable rental housing, and therefore whether a monetary contribution might be considered to substitute any loss.

The existing RFB at the site comprises 4 x two (2) bedroom apartments.

The Housing SEPP defines a low-rental residential building as follows:

low-rental residential building means a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that—

- (a) is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or
- (b) was used as a residential flat building containing a low-rental dwelling or as a boarding house, but the use has been changed unlawfully to another use, or
- (c) is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.

The Housing SEPP defines a low-rental dwelling as follows:

low-rental dwelling means a dwelling that was let at a rental level no greater than the median rental level during the relevant period in relation to a dwelling—

- (a) of the same type, and
- (b) with the same number of bedrooms, and
- (c) in the same local government area.

The relevant period is defined as “the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.”

The below table provides the median rent for two (2) bedroom units over the relevant period (i.e. previous five (5) year period) for the LGA. The data has been sourced from the Rent and Sales Report published by the NSW Department of Communities & Justice.

Quarter	Median Rent – 2 Bed Unit (Randwick LGA)
March 2020	\$630
June 2020	\$580
September 2020	\$560
December 2020	\$550
March 2021	\$550
June 2021	\$560
September 2021	\$590
December 2021	\$600
March 2022	\$600
June 2022	\$640
September 2022	\$680
December 2022	\$750
March 2023	\$800
June 2023	\$780
September 2023	\$800
December 2023	\$850
March 2024	\$880
June 2024	\$875
September 2024	\$850
December 2024	\$880

The below table provides the details of median rent received for the existing building in the previous five (5) year period, as provided by the Applicant.

Median Rent	2020	2021	2022	2023	2024	Low-Rental
<i>Randwick LGA</i>	\$580	\$575	\$667.50	\$807.50	\$871.25	
Unit 1	\$1,125	\$1,187.50	\$1,250	\$1,428	\$1,428	No
Unit 2	\$1,150	\$1,150	\$1,337.50	\$1,410.50	\$1,423	No
Unit 3	\$1,050	\$1,050	\$1,350	\$1,306.50	\$1,356.50	No
Unit 4	\$1,200	\$1,200	\$1,425	\$1,354	\$1,341.50	No

As shown in Table 2, the median rent of the existing units has not fallen below the median rent for a two (2) bedroom unit in the Randwick LGA. On this basis, further consideration of Chapter 2, Part 3 of the Housing SEPP is not required.

Chapter 4 – Design of Residential Apartment Developments

Chapter 4 of the Housing SEPP seeks to improve the design of residential apartment development. The proposed development is subject to Chapter 4 of the Housing SEPP as it involves a residential flat building comprising four (4) apartments and four (4) storeys.

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

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

Design Excellence Advisory Panel

The application was referred to Council's Design Excellence Advisory Panel for advice concerning the design quality of the development.

The Panel is generally supportive of the application.

The detailed comments provided by the Panel are provided at Appendix 1. A response to each of the matters raised by the Panel is provided in the below table.

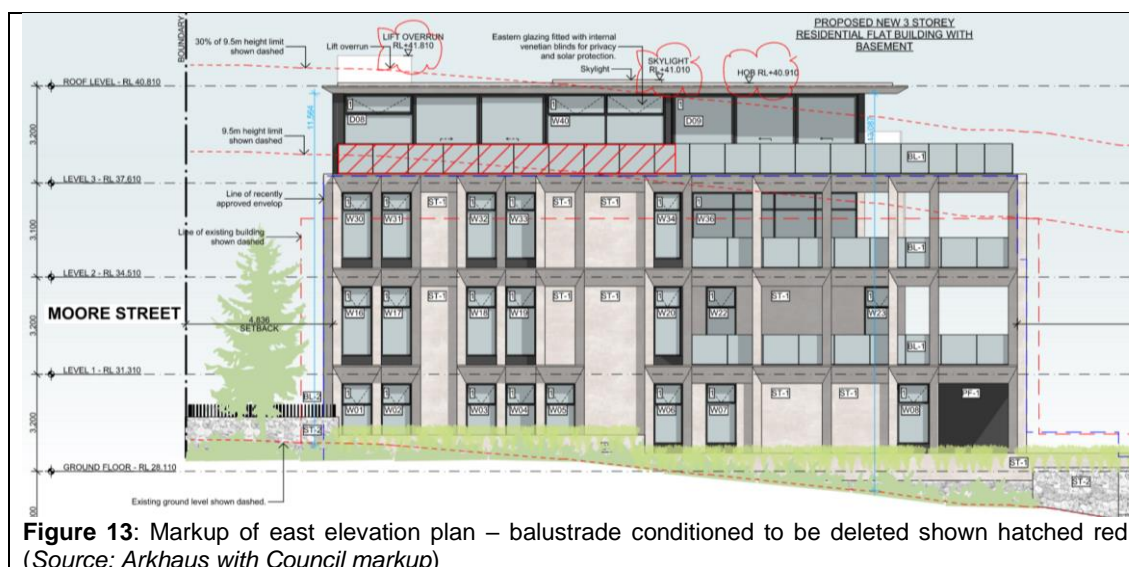
Panel Comment	Response
<p>1. <u>Context and Neighbourhood Character</u></p> <p><i>The proposal sits on a significant corner site, which is also a prominent location due to its proximity to Gordons Bay and the Coastal Walk.</i></p> <p><i>The surrounding developments are 2-4 storey houses and residential flat buildings. This 4 storey proposal is not uncharacteristic of the area. The recessive top floor assists in reducing the building's visual presence.</i></p>	<p><u>Applicant:</u> We acknowledged the Panel's comments and support.</p> <p><u>Council:</u> Noted.</p>
<p>2. <u>Built Form and Scale</u></p> <p><i>The Panel considers that the small height exceedance of the lift over-run and the NE roof corner is not significant and does not seem to lead to unacceptable visual amenity impacts on neighbours, based on the information provided by the Applicant. The Panel acknowledges that Council may undertake detail view loss analysis from nearby properties in assessing the DA.</i></p> <p><i>Building separation to the western boundary at 1,200 and 2,100mm is below the minimum design criteria under Part 3F Visual Privacy of the NSW ADG, and appropriate privacy treatment is required. – refer to '6. Amenity' below.</i></p>	<p><u>Applicant:</u> Regarding the small height exceedance of the lift over-run, the updated shadow diagram has been provided to show the additional shadow (in green) cast by this element.</p> <p>View loss diagrams from neighbouring properties have also been provided.</p> <p>Regarding the western boundary setbacks, we had proposed obscured glazing to all windows facing west, except for windows W42 and W43, the glazing type will remain as currently proposed, as privacy is achieved via a 1.7m-high privacy screen along the pool on the western boundary. Our drawings have been updated to show this screen.</p> <p><u>Council:</u> Refer to detailed discussion at Key Issues section of this report relating to view sharing and visual privacy.</p>
<p>3. <u>Density</u></p> <p><i>Refer to '1. Context and Neighbourhood Character'.</i></p>	<p><u>Applicant:</u> We acknowledged the Panel's comments and support.</p> <p><u>Council:</u> Noted.</p>
<p>4. <u>Sustainability</u></p> <p><i>Solar access and natural cross ventilation criteria under the NSW ADG are well satisfied.</i></p> <p><i>The applicant needs to consider thermal treatment and/or weather protection measures to the extensive glazing proposed within the northern and eastern facades of the top floor.</i></p>	<p><u>Applicant:</u> Thermal treatment and weather protection measures will be consistent with the BASIX report (Certified Energy, dated 04 April 2025, submitted 10 April 2025).</p> <p>The rooftop PV system is noted, and this will be coordinated at the CC stage.</p>

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<p><i>Provision of a rooftop Photo Voltaic (PV) system is supported and the applicant should investigate whether equitable power allocation to the individual apartments is possible. Alternatively, the PV system should be used to power the common areas and the basement.</i></p> <p><i>Reconsider using black metal cladding on the top floor due to its high thermal load, and consider substituting it with a mid-tone colour with a lower solar absorptance rating.</i></p> <p><i>Electric car charging infrastructure is recommended.</i></p> <p><i>The Panel expressed concerns regarding longevity and long term maintenance of the proposed external materials and finishes, particularly the cladding system, in this aggressive marine environment.</i></p>	<p>We have noted the recommendation regarding the black metal cladding and will consider a lighter shade (e.g. charcoal).</p> <p>Long-term material durability in a marine environment is also noted and appropriate products will be specified at CC stage.</p> <p><u>Council</u>: Noted. A condition is included to replace the proposed black metal cladding (MC-1) and dark charcoal paint (PF-1) with a lighter grey colour.</p>
<p>5. <u>Landscape</u></p> <p><i>The Panel notes that the deep soil area falls short of the DCP control but meets the minimum ADG criteria. The synthetic lawn proposed on the Landscape Plan to the Unit 1B garden on Moore St is not supported and should be replaced with natural turf or ground covers provided with adequate soil depths.</i></p> <p><i>Furthermore, all planter depths need to be sufficient for viable landscaping – refer to the NSW ADG Parts 40 and 4P for the recommended soil depths. The Panel suggests that floor slabs can be downturned, including in the basement, for allowing generous soil depths.</i></p>	<p><u>Applicant</u>: The use of synthetic turf and planter depths have been noted. We will coordinate with the landscape architect to implement natural turf and adequate soil depth.</p> <p><u>Council</u>: A condition is included to replace the proposed synthetic lawn with natural turf and/or ground cover planting.</p>
<p>6. <u>Amenity</u></p> <p><i>Privacy to the western neighbour has partially been achieved through obscured glazing to some windows, but this needs to be extended to W42 and 43 on the additional floor. In addition, the applicant needs to address overlooking of the neighbours' balconies from the proposed balconies on Levels 2 and Level 3, whilst retaining neighbours' cross views to Gordons Bay – consider a planter along the western balcony edge for these two levels.</i></p> <p><i>The Pool proposed on Level 3 creates both acoustic and visual privacy problems for the western neighbour. The Panel recommends it to be removed and replaced with planting on both Levels 2 and 3. This planting should extend along the western balcony to the northern balustrade to minimise potential privacy loss to the western neighbour.</i></p>	<p><u>Applicant</u>: In response to the pool concerns, we note that the neighbour's property is largely screened by the roof form. However, we have proposed a 1.7m-high privacy screen along the western edge of the pool, and a planter along the western boundary, to further mitigate any privacy impacts.</p> <p>For W42 and W43, the glazing type remains as currently proposed, with privacy addressed via the 1.7m screen. The updated drawings reflect these changes.</p> <p><u>Council</u>: Refer to detailed discussion at Key Issues section of this report relating to visual privacy. A condition is included to delete the proposed swimming pool and replace with a non-trafficable planter box.</p>
<p>7. <u>Safety</u></p>	<p><u>Applicant</u>: The pool equipment area is designed primarily to conceal pool equipment and A/C</p>

<p><i>Access to the Pool equipment on Level 2 appears to have a constrained head height.</i></p>	<p>units, and is not intended for regular access. The door access complies with the minimum head height clearance of 2.1m.</p> <p>The housing of the pool equipment is 1.7m which is enough for the pool equipment and does not present a functional issue.</p> <p><u>Council:</u> A condition is included to delete the proposed swimming pool and associated equipment area at Level 2.</p>
<p>8. <u>Housing Diversity and Social Interaction</u></p> <p><i>A two-bedroom Affordable Rental Housing unit will be a welcome addition to the area's housing diversity. On such a small site, and with extensive parklands nearby, common open space is not required.</i></p>	<p><u>Applicant:</u> We acknowledged the Panel's comments and support.</p> <p><u>Council:</u> Noted.</p>
<p>9. <u>Aesthetics</u></p> <p><i>1:20 design intent sections are recommended - demonstrating materials, construction systems, balustrade types and fixings, balcony edge treatments, window operation, any integrated planter beds, material junctions, rainwater and balcony drainage systems, and the placement of downpipes or similar elements - for design clarity and to avoid later modifications.</i></p> <p><i>The applicant should consider further investigation whether the extent of glazing within the expression of the top floor needs to be rationalised, to ensure kitchen and bathroom exhausts can be successfully incorporated into the façade design.</i></p> <p><i>Vertical fins appear too thin and need to be drawn in detail. Consider omitting those fins that are not framing windows for a more functional, less material intensive design.</i></p> <p><i>The top level glass balustrades appear excessive, and will be a potential cleaning and maintenance issue – consider a lesser glass balustrade in lieu to the inside face of opening doors to Unit 03 Living room on the eastern elevation.</i></p>	<p><u>Applicant:</u> We understand the importance of design clarity. These matters will be resolved and fully documented at the CC stage. At this DA stage, we believe the level of detail currently provided clearly conveys the intended architectural quality of the proposal. Further technical detailing (e.g. material junctions, drainage systems, glazing coordination, balustrades, and vertical fins) will be addressed in the next design phase.</p> <p><u>Council:</u> The submitted documentation is suitable for DA stage. Noting the concerns regarding excessive glazing at Level 3, a condition is included to delete the proposed balustrade adjoining the eastern edge of the eastern planter box – refer markup at Figure 13 below.</p>

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Design Quality Principles

The above table details how each of the nine (9) design quality principals have been considered in the amended proposal.

Apartment Design Guide

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

Clause	Design Criteria	Proposal	Compliance
Part 3: Siting the Development			
3D-1	Communal and Public Open Space		
	Communal open space has a minimum area equal to 25% of the site.	Nil proposed – acceptable on merit noting that suitably sized private open space is provided for each unit. The site is in close proximity to public spaces, including Coogee Beach.	On merit
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	Not applicable.	On merit
3E-1	Deep Soil		
	Deep soil zones are to meet the following requirements: 3m dimension, 7% site area	Required = 32.9m ² (7%) Proposed = 83.76m ² (17%)	Yes
3F-1	Visual Privacy		
	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	East side = 1.5m - 2.7m West side = 1.2m - 3.6m Rear (north) = 7.2m (basement) to 11.1m (upper levels)	On merit, refer Key Issues
	<div style="display: flex; justify-content: space-around;"> Building Habitable Non- </div>	It is noted that the proposed setbacks are	

Clause	Design Criteria			Proposal	Compliance											
	<table><tr><td>Height</td><td>Rooms and Balconies</td><td>habitable rooms</td></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Height	Rooms and Balconies	habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m		<p>greater than those of the existing building at the site:</p> <ul style="list-style-type: none">• East side = 0.5m (approx.)• West side = 1.3m (approx.)• Rear (north) = 6.9m - 10.5m (approx.) <p>Refer to discussion at Key Issues section of this report.</p>	
Height	Rooms and Balconies	habitable rooms														
Up to 12m (4 storeys)	6m	3m														
Up to 25m (5-8 storeys)	9m	4.5m														
Over 25m (9+ storeys)	12m	6m														
3J-1	Bicycle and Car Parking															
	<p>For development in the following locations:</p> <ul style="list-style-type: none">• on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or• on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>		<p>Required = 6 spaces</p> <p>Proposed = 6 spaces</p>	Yes												
Part 4: Designing the Building																
4A	Solar and Daylight Access															
	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter.</p>		<p>100% of units will receive at least two (2) hours of solar access.</p>	Yes												
	<p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>		<p>No units will receive no solar access.</p>	Yes												
4B	Natural Ventilation															
	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any</p>		<p>100% of units will be naturally cross ventilated.</p>	Yes												

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Clause	Design Criteria	Proposal	Compliance
	enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed		
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Proposed = > 18m, however suitable natural light and ventilation will be provided to all units.	Yes
4C	Ceiling Heights		
	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable – 2.4m Attic spaces – 1.8m at edge with min 30 degree ceiling slope Mixed use areas – 3.3m for ground and first floor <p>These minimums do not preclude higher ceilings if desired.</p>	Proposed = > 2.7m ceiling heights	Yes
4D	Apartment Size and Layout		
	<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> Studio - 35m² 1 bedroom - 50m² 2 bedroom - 70m² 3 bedroom - 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m² each.</p>	<p>1 bed = 55.38m² 2 bed = 81.44m² 3 bed = 118.93m²</p>	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Complies.	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Complies.	Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Complies.	Yes
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Complies.	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Complies.	Yes
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments 	Complies.	Yes

Clause	Design Criteria	Proposal	Compliance															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Complies.	Yes															
4E	Private open space and balconies																	
	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4 m²</td><td>-</td></tr><tr><td>1 bedroom</td><td>8 m²</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10 m²</td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12 m²</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum area	Minimum depth	Studio	4 m ²	-	1 bedroom	8 m ²	2m	2 bedroom	10 m ²	2m	3+ bedroom	12 m ²	2.4m	<p>1 bed = 8.78m² 2 bed = 10.13m² 3 bed = 24.41m²</p>	Yes
Dwelling type	Minimum area	Minimum depth																
Studio	4 m ²	-																
1 bedroom	8 m ²	2m																
2 bedroom	10 m ²	2m																
3+ bedroom	12 m ²	2.4m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Suitably sized balconies and landscaped planters are provided to the units at ground floor level.	On merit															
4F	Common Circulation and Spaces																	
	The maximum number of apartments off a circulation core on a single level is eight.	Complies.	Yes															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable.	N/A															
4G	Storage																	
	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none">• Studio apartments - 4m³• 1 bedroom apartments - 6m³• 2 bedroom apartments - 8m³• 3+ bedroom apartments - 10m³ <p>At least 50% of the required storage is to be located within the apartment.</p>	<p>1 bed = 9.93m³ 2 bed = 10.74m³ 3 bed = 16.04m³</p>	Yes															

Non-discretionary Development Standards

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

- (a) *the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide*

Assessing officer's comment: Compliant on-site car parking is provided.

- (b) *the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide*

Assessing officer's comment: Compliant apartment sizes are provided.

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- (c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide*

Assessing officer's comment: Compliant ceiling heights are provided.

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:

- (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 significant vegetation or trees. As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.4. SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

Chapter 2 of the Resilience and Hazards SEPP relates to coastal management.

Clause 2.10 of the SEPP requires the consent authority to consider whether the proposal is likely to cause an adverse impact on the coastal environment area.

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

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

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

Clause 2.11(1)(a) of the SEPP requires the consent authority to consider whether the proposal is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

Noting the location and nature of the proposed works, the proposal is unlikely to result in adverse impact on existing, safe access to and along the foreshore, beach, headland, or rock platform. Additionally, the proposal is unlikely to result in wind funnelling or the loss of views from public places to foreshores. There are no significant views available from public places to the foreshore which are viewed over and/or through the subject site.

The submitted shadow diagrams demonstrate that suitable solar access will be maintained to the foreshore area, including Dunningham Reserve. Between 10am and 2pm (midwinter), additional shadows (relative to the existing situation) will fall to the road reserve (and footpath) of Moore Street and Major Street only. As shown in Figures 14-15, additional shadows to Dunningham Reserve at 3pm (midwinter) will fall to an area that is not of high scenic or recreational value, being a planted area adjacent to the secondary pathway entrance to the reserve.

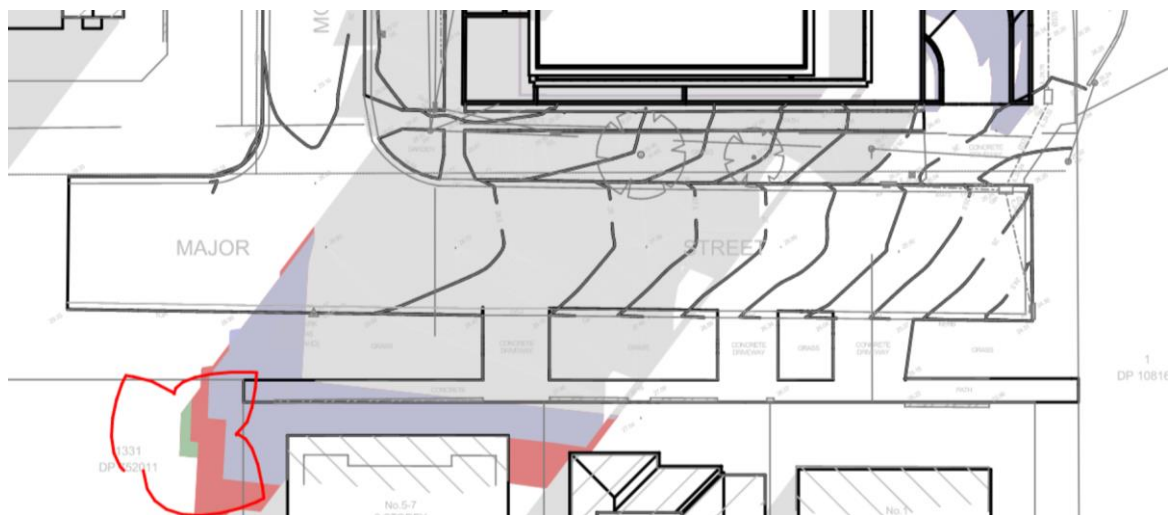


Figure 14: Extract of shadow diagram – 3pm midwinter (Source: Arkhaus)

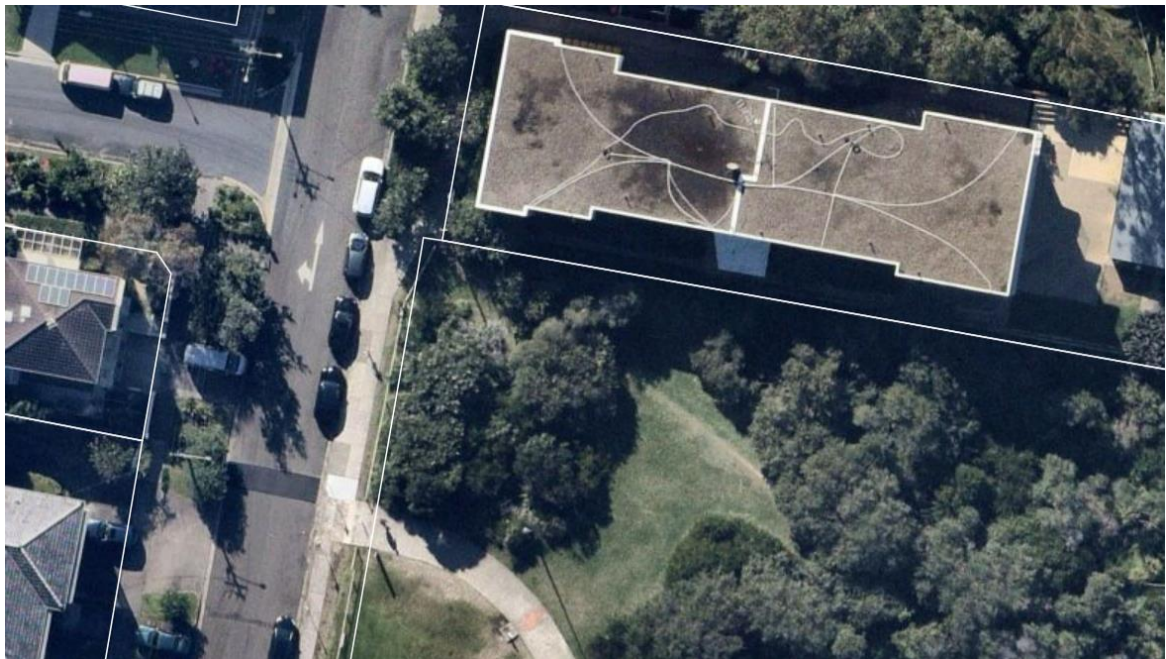


Figure 15: Aerial image of Dunningham Reserve (Source: NearMap)

In this regard, Council is satisfied that the non-compliant portion of the proposed building does not directly result in any significant adverse overshadowing of Dunningham Reserve.

Subject to conditions, the proposed building design and materials are considered to be consistent with the visual amenity and scenic qualities of the coast. Refer to photomontage of proposed development at Figure 16.



Figure 16: Photomontage of proposal, viewed from the coastal walkway (Source: Arkhaus)

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

Clause 2.11(1)(b) requires the consent authority to be satisfied that:

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact*

Council is satisfied that the proposed development has been designed to avoid the adverse impacts referred to in paragraph (a). Importantly, the non-compliant portion of the proposed building does not directly result in any significant adverse overshadowing of the foreshore area, including Dunningham Reserve.

Consistent with clause 2.11(1)(c), Council has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

On this basis, clause 2.11 of the Resilience and Hazards SEPP 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 residential purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development are such that any applicable provisions and requirements of the SEPP have been satisfactorily addressed. Refer to further discussion by Council's Environmental Health Officer at Appendix 1.

6.5. SEPP (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

Clause 2.48 of the Transport and Infrastructure SEPP applies to development comprising or involving any of the following:

- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
- (b) development carried out—*
 - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) immediately adjacent to an electricity substation, or*
 - (iii) within 5m of an exposed overhead electricity power line,*
- (c) installation of a swimming pool any part of which is—*
 - (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
 - (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
- (d) development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*

The application has been referred to Ausgrid (the relevant electricity supply authority) and suitable conditions have been provided.

6.6. Randwick Local Environmental Plan 2012 (RLEP)

The site is zoned R3 Medium Density Residential under Randwick Local Environmental Plan 2012 and the proposal, being for a residential flat building, is permissible with consent.

The proposal is consistent with the aims of RLEP, as it:

- Does not inhibit the use and development of land for arts and cultural activity, including music and other performance arts.
- Contributes to a liveable city that is accessible, safe, and healthy.
- Does not inhibit the ability to provide a diverse local economy with business and employment opportunities for the community.
- Supports the efficient use of land.
- Achieves a high standard of design that enhances the quality of life of the community.
- Promotes sustainable transport, public transport use, walking and cycling.
- Facilitates sustainable population and housing growth.
- Encourages the provision of housing mix and tenure choice, including affordable and housing, that meets the needs of people of different ages and abilities in the LGA.
- Promotes ecological sustainability and resilience.
- Protects, enhances and promotes the environmental qualities of the LGA.
- Does not inhibit the conservation of the environmental heritage, aesthetic and coastal character of the LGA.
- Does not inhibit the ability to protect, promote, and facilitate the Aboriginal culture and heritage of the LGA.
- Promotes an equitable and inclusive social environment.
- Does not inhibit the ability to promote opportunities for social, cultural and community activities.

Additionally, the proposal is consistent with the objectives of the R3 zone, as it

- Provides for the housing needs of the community within a medium density residential environment.
- Provides a variety of housing types within a medium density residential environment.
- Does not inhibit other land uses that provide facilities or services to meet the day to day needs of residents.
- Recognises the desirable elements of the existing streetscape and built form and contributes to the desired future character of the area.
- Protects the amenity of residents.
- Encourages housing affordability.
- Does not inhibit small-scale business uses in existing commercial buildings.

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)	LEP = 0.75:1 Maximum = 0.975:1 (with 30% Housing SEPP bonus)	0.972:1 (457.25m ² GFA)	Yes
CI 4.3: Building height (max)	LEP = 9.5m Maximum = 12.35m (with Housing SEPP bonus)	13.4m	No

6.6.1. Clause 4.6 - Exceptions to development standards

Refer to discussion at Section 7 of this report.

6.6.2. Clause 6.2 - Earthworks

The objective of clause 6.2 of RLEP 2012 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.

The proposal involves excavation works up to 4.5m depth to accommodate a basement level for car parking, residential storage, services, and bin storage. The proposed basement has been suitably designed to reduce the perceived bulk and scale of the building and to maximise opportunities for deep soil planting.

The development satisfies clause 6.2(3) in that:

- Conditions of consent are imposed to minimise impact on drainage patterns, soil stability, and adjoining structures;
- The proposed excavation area is suitably scaled for the subject site and is unlikely to have an adverse impact on the likely future use or redevelopment of the land;
- The site has been used for residential purposes for an extended period of time and is unlikely to contain contaminated soil;
- Subject to conditions, the proposed excavation will not result in any adverse impact on the amenity of adjoining properties;
- Conditions of consent are imposed to manage the removal of demolition and excavation waste;
- The proposal is unlikely to disturb relics – the site is not in a heritage conservation area nor is listed as a heritage item; and
- The scale and siting of the proposal minimises impact on waterways, water catchments, and environmentally sensitive areas.

6.6.3. 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 is generally consistent with the scale of surrounding development, which comprises one (1) to four (4) storey development.

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.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standard:

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Building height – clause 4.3 of RLEP and section 18 of Housing SEPP	12.35m	13.4m	1.05m	8.5%

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

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(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 subject site is surrounded by a mix of buildings typical of a medium density area, ranging from 2 storey detached dwellings to 5 storey plus apartment buildings.

The 3 – 4 storey scale of the development is compatible with the character of the locality which includes a range of 3 – 5 storey residential flat buildings and semi-detached dwellings.

The analysis within Section 4.2.3 of the SEE, demonstrates that the predominant built form for buildings on the western side of Major Street or adjacent to Dunningham Reserve are 4-storey plus. To the west, along Moore Street, the built form is more varied due to the large number of underdeveloped sites, however the trend of 3 plus storey buildings is clear, especially towards the eastern end and the intersection with Major Street.

No. 20 Moore Street was recently approved as a 3-storey RFB. This site has the same 9.5m height limit as the subject site and did not include any affordable housing. The proposal's 4-storey with a height limit of 12.35m corresponds to this established relationship between height in storeys and height in meters.

The general height patterns in the area build towards a high spine on the western side of Major Street. The proposal responds to and reinforces that prevailing context and streetscape.

The recent approval at 41 Arcadia Street for a 4-storey RFB, approved with a 5.41m height variation (no affordable housing), demonstrates that the desired future character of the area is to reinforce the 4-storey and above built form context along the western side of Major Street, providing a consistent streetscape and perceived density from the public domain and parkland, including the Bondi to Coogee Walk.

The controls contemplate and encourage a mixing of typologies and heights. The established and evolving streetscape show numerous examples of the compatibility of adjacent buildings with 2 and 4 storeys respectively. A relevant example is Number 2 and 4 Major Street, directly across from the site to the south, which demonstrates an established and similar relationship between a 4-storey RFB and a 2/3 storey dwelling.

The building height departure is limited to the top of the lift overrun and the rear north-east corner of the roof of Level 3. The remainder of the development complies with the building height standard.

The desired future character must also include the potential uplift under the same Infill Housing provisions on other sites with the same control. On this basis, the proposed height variation does not generate any incompatibility with the desired future character.

- (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 subject site is not a heritage item or near a conservation area or heritage item and the height breach will therefore have no adverse heritage impacts.

- (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 exceedance of the height control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this height would not create additional benefit for adjoining properties or the locality.

Overshadowing: As demonstrated in the Shadow Diagrams submitted with this application, the components of the development that do not comply with the building height control will not result in additional overshadowing to the adjoining properties to the west.

Shadow from the lift overrun will fall primarily on the front setback and Moore Street, while the north-east corner roof is on the opposite side to the western neighbour and not produce any shadow impacts. The properties to the south and east are both across streets with significant separation and the non-complying elements will have no shadow impacts that result in these properties receiving non-compliant amounts of solar access.

View Loss: As outlined in the accompanying View Loss Analysis (Appendix 2), the proposed development has been designed so as to not have an unreasonable impact on views.

The extent of views loss associated with the proposal are minor in nature, partial, not of high value and generally obtained across side boundaries from balconies not attached to living areas. In addition, the non-complying elements are not reasonable for any high-value view loss.

Furthermore, the proposed slimmed building envelope with large setbacks minimises view loss to all properties as higher value land-water interface views are generally obtained to the rear of the of the proposed RFB and not over the site, while the non-compliant elements of the upper storey are not responsible for the any material view loss. On this basis, the proposed design, which includes will benefit the neighbouring properties in relation to their coastal views.

Privacy: The building height departure is limited to the top of the lift overrun and rear north-east corner of the Level 3 roof. The remainder of the development complies with the building height standard.

The non-compliant elements will not result in any adverse privacy impacts to neighbouring properties. There are only two windows on Level 3, which are setback 3.6m from the western boundary and has been designed and sited to ensure adequate privacy to the adjoining properties.

Visual Bulk: The proposed building has been slimmed by reducing the width and depth through greater setbacks above that approved and those existing, and FSR distributed in a further a setback, indented and articulated upper storey. It is considered that this massing creates a building with less visual bulk than a proposal where FSR is located in wider floorplates and a smaller but height compliant Level 3.

Overall, this design results in a highly articulated building with visual bulk compatible with the surrounding streetscape and context, and that envisaged by the controls in the LEP and Housing SEPP that are relevant to the site.

Assessing officer's comment: Council is satisfied that the applicant's written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

As shown in Figure 17, the non-compliant portion of the proposed building is limited to the lift overrun (0.4m variation) and a portion of the roof form at the north-eastern corner (1.05m variation).

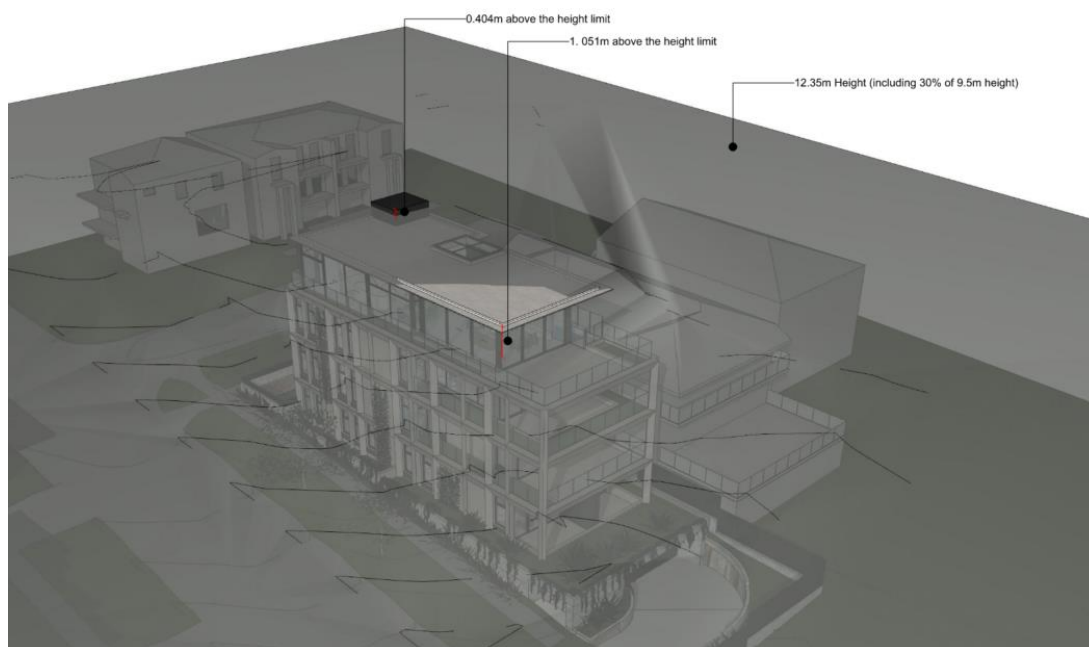


Figure 17: Height plane diagram (Source: Arkhaus)

The subject site experiences a considerable fall from the front (south) to the rear (north). It is considered that the height variation can be attributed to the topography of the site. The additional bulk at the rear of the building results from where the land has been excavated to provide a basement level.

The lift overrun is necessary to provide equitable access to the building and is not considered to result in any significant addition impact relative to view loss, overshadowing, visual privacy, or the like.

Notwithstanding, the proposal has incorporated suitable articulation, built form recesses, and material diversity to minimise the visual impact of the non-compliant portion of the building (i.e. the uppermost level). The rear alignment of the upper level has been setback behind the levels below to reduce the extent of non-compliance and to preserve views across the site from neighbouring properties.

The proposed development would predominantly present as four (4) storeys to Moore Street and Major Street and would not be inconsistent with the existing streetscape, which comprises three (3) and four (4) storey RFBs.

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

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

- *The building height departure is limited to the top of the lift overrun and to rear north-east corner of the roof of Level 3. The remainder of the development complies with the building height standard. Refer to the extract of the Height Plane Diagram above.*
- *The 4-storey scale of development is consistent with that anticipated by the height limit associated with the 12.35m height that is generated by the SEPP height incentive and will therefore be perceived as a compliant building within the Moore Street and Major Street streetscapes. Such outcome can also be applied to surrounding properties with the same zoning and controls.*
- *The proposal is consistent with the R3 Medium Density zone objectives and the building height objectives.*
- *Despite the building height non-compliance, the proposed height is compatible with neighbouring 4-storey buildings to the south and east of the site. The bulk and scale of the proposal are compatible with the locality's existing and desired future character, as established in Section 4.2.3 of this SEE.*
- *The components of the development that do not comply with the building height control (i.e. the top of the lift overrun and rear north-east corner of the Level 3 roof) will not generate any unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity, and a reduction in this height would not create additional benefit for adjoining properties or the locality.*
- *As demonstrated in the Shadow Diagrams submitted with this application, the components of the development that do not comply with the building height control will not result in additional overshadowing to the adjoining properties to the west. Shadow from the lift overrun will fall primarily on the front setback and Moore Street, while the north-east corner roof is on the opposite side to the western neighbour and not produce any shadow impacts. The properties to the south and east are both across streets with significant separation and the non-complying elements will have no shadow impacts that result in these properties receiving non-compliant amounts of solar access.*
- *As demonstrated by the attached View Loss Analysis (Appendix 2), the view loss impacts of the non-compliant elements to surrounding properties and the public domain are considered minor.*
- *The subject site is not a heritage item or near a conservation area or heritage item and the height breach will therefore have no adverse heritage impacts.*
- *The site falls approximately 3m from the rear front of the site (RL 29.14) to rear of the site (RL 25.86), with a gradual drop across the site from west to east, resulting in the north-east corner of the site being the lowest. Greater excavation, therefore, occurs at the rear of the site towards driveway entrance from Major Street. The height variation at the rear north-east corner of the building is partly due to the slope of the site, which has been established in the land and environment court judgement of Merman*

Investments v Woollahra Council [2021] as constituting sufficient environmental ground.

- *The proposal's compliance with the FSR control confirms that the development overall represents a suitable density for the site, with the non-compliant height related to the topography of the site and considered design that slims the footprint by increasing setbacks, resulting in a reduced bulk and scale.*
- *The recessed, indented and material palette of the upper storey and building overall further limits the visual bulk of the building. Overall, his design results in an improved streetscape outcome and reduced amenity impacts to surrounding buildings when compared to a building that contains the GFA in a wider footprint on the lower floors and a compliant height limit through a reduced 4th storey.*
- *The building height variation is partially attributed to the latest BCA requirements, which require more floor-to-floor height (i.e. slab thickness) to achieve the ADG 2.7m ceiling height requirement. The proposed floor-to-ceiling heights also ensure a high degree of internal amenity to each unit.*
- *The building height non-compliance is minor and related to lift overruns and roofs, and will therefore be indiscernible from the streetscape and surrounding properties.*
- *A reduction of the proposed building height would provide for an indiscernible benefit to the streetscape, reduce the amenity of the units and restrict the realisation of the full FSR afforded under the Housing SEPP, and the provision of affordable housing on the site.*
- *The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the Housing SEPP, including landscaping, deep soil, solar access, cross ventilation, private open space, apartment and room sizes, storage and car parking. The excess building height, thereby, does not compromise the ability to meet or outperform the above criteria.*
- *The proposal complies with the Housing SEPP controls for landscaping and deep soil. The high-quality landscape design that includes planting a variety of trees, shrubs, and turf. Landscaping is provided within the front, side and rear setback areas on the Ground Floor, including a consolidated deep soil area at the front and rear of the site and planter landscaping along the eastern and western side setbacks. Refer to the Landscape Plan prepared by Place Design Group submitted with this application. The proposed landscaping will enhance the amenity and visual setting of the proposed development and soften the visual built form of the proposal, notwithstanding the building height non-compliance.*
- *The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represent the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).*

Assessing officer's comment: Council is satisfied that the applicant's written request demonstrates that there are sufficient environmental planning grounds to justify the non-compliance.

The proposed upper level will improve internal amenity for future occupants and will provide additional housing stock, without unreasonably impacting upon the amenity of the neighbouring properties. In consideration of the size and scale of the surrounding developments within the vicinity of the site, the proposed height non-compliance is not considered to be unwarranted, and the additional height can be accommodated on the site without resulting in adverse amenity impacts.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

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

9.1. Key Issues

Housing and Productivity Contribution

The Housing and Productivity Contribution (HPC) came into effect on 1 October 2023 by way of the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*,

under section 1.4 of the *Environmental Planning and Assessment (EP&A) Act 1979*. The HPC was introduced by the NSW Government and is a state infrastructure contribution which shall support housing and productivity in key growth areas in NSW. Contributions will help deliver essential state infrastructure such as schools, hospitals, major roads, public transport infrastructure, and regional open space.

The HPC applies to development for the purpose of residential development, commercial development and industrial development as defined in the updated Ministerial planning order dated 30 June 2024. In the Order, residential development is defined as follows:

Residential development means:

- (a) *subdivision of land (other than strata subdivision) on which development for the purposes of residential accommodation is permitted with development consent by an environmental planning instrument applying to the land (residential subdivision),*
- (b) *medium or high-density residential development,*
- (c) *development for the purposes of a manufactured home estate.*

Medium or high-density development means:

- (a) *Attached dwellings,*
- (b) *Build-to-rent housing,*
- (c) *Dual occupancy;*
- (d) *Multi-dwelling housing,*
- (e) *Residential flat building,*
- (f) *Semi-detached dwellings,*
- (g) *Seniors living (independent living units),*
- (h) *Shop top housing.*

As the proposed development does not result in any increase in the number of dwellings on the site, the HPC is not applicable in this instance.

Side Setbacks

Pursuant to Part C1, Section 3.4.2 of RDCP 2013, minimum 2m side setbacks apply to the subject site. The proposed side setbacks range from 1.5m to 2.7m (east) and 1.2m to 3.6m (west). Minor numeric non-compliance is acceptable in this instance for the following reasons:

- The building façades are suitably articulated to provide visual interest and to minimise the perceived bulk and scale of the building, particularly as viewed from neighbouring properties.
- Relative to the previously approved development (DA/277/2022), increased setbacks (from 0.9m to 1.5m) are provided to a portion of the eastern side boundary. No reduction is proposed to the approved western side setback distances.
- Adequate landscaped, deep soil, and private open space areas are provided on the site.
- As outlined below, suitable visual privacy is maintained for the subject and neighbouring properties.
- As outlined below, suitable view sharing is maintained for neighbouring properties.
- The nature of the proposed land use, being for four (4) residential apartments, is unlikely to result in significant adverse acoustic privacy impacts.
- Adequate solar access and natural ventilation will be maintained for the subject and neighbouring properties.
- Suitable conditions are included to ensure that adequate fire safety measures are implemented in accordance with the NCC.

In this regard, the proposal is consistent with the objectives of Part C2, Section 3.4 of RDCP 2013, and is acceptable on merit.

Visual Privacy

Objective 3F-1 of the ADG prescribes building separation distances to achieve reasonable levels of external and internal visual privacy, as follows:

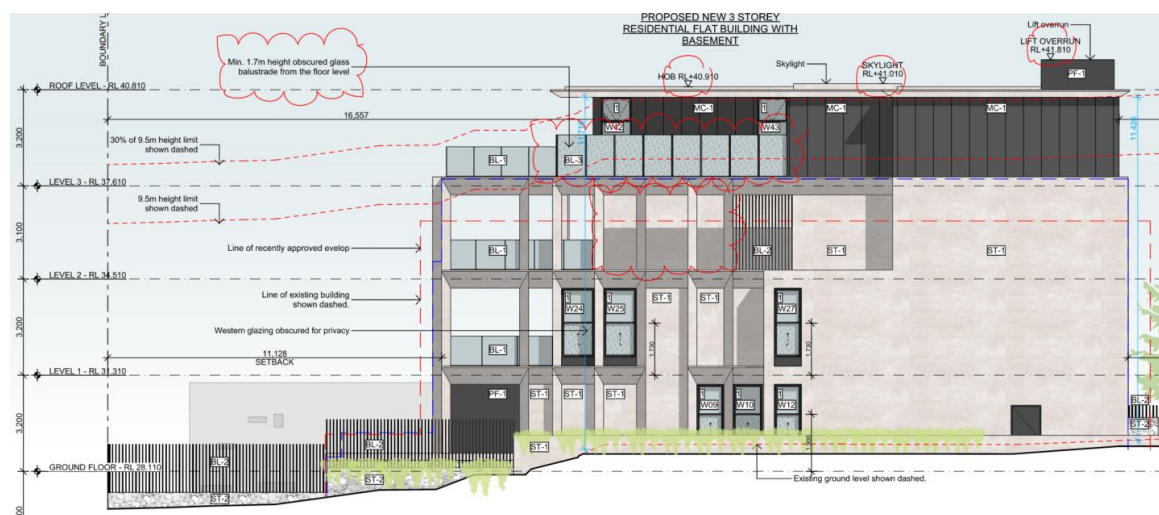
- Up to four (4) storeys: 6m to habitable rooms, 3m to non-habitable rooms.
- Up to eight (8) storeys: 9m to habitable rooms, 4.5m to non-habitable rooms.

Part C2, Section 5.3 of RDCP 2013 seeks to achieve reasonable levels of external and internal visual privacy between windows and balconies of neighbouring development.

As shown in Figure 18, opaque glazing is provided (to a height of 1.7m above FFL) to the proposed west-facing window openings at ground and first floor levels. A condition is included to ensure that opaque glazing is also provided to the west-facing windows at Level 3 (windows W42 and W43 to living room). This will provide suitable privacy mitigation to and from 28 Moore Street.

Concerns were raised by Council's Design Panel and in the public submissions regarding visual and acoustic privacy impacts associated with the proposed swimming pool at Level 3. Noting the proximity of the site to Coogee beach and several other public swimming areas, the swimming pool is considered to be unnecessary.

Council's request for information dated 06 June 2025 requested the deletion of the swimming pool, however, the amended plans submitted on 27 June 2025 did not incorporate this request. As such, a condition is included to delete the swimming pool (and associated equipment area below) and replace with a planter box. The balustrade to the west of the pool and the door to the equipment area (at Level 2) shall also be deleted.



D36/25



Figure 19: Photograph from upper balcony at 22 Moore St showing precedent for unscreened balconies and terraces (Source: Council officer)



Figure 20: Photograph from lower terrace at 28 Moore St showing precedent for unscreened balconies and terraces (Source: Council officer)

Concerns were raised in the public submissions regarding overlooking from the proposed east-facing openings to the properties at Nos. 1-1A, 3, and 5-7 Major Street (i.e. on the opposite side of Major Street) and from the proposed south-facing openings to the properties at No. 2 Major Street (i.e. on the opposite side of Moore Street).

However, it is noted that separation distances of at least 20m are maintained between the subject site and these neighbouring properties, which far exceeds the minimum ADG separation distances.

Additionally, all east-facing windows are proposed to be fitted with internal venetian blinds to maximise visual privacy whilst maintaining suitable solar access.

Noting the above, the proposal is considered to achieve suitable levels of visual privacy, and as such, is consistent with the objectives of Part C2, Section 5.3 of RDCP 2013 and Objective 3F-1 of the ADG.

External Wall Height

Part C2, Section 4.4 of RDCP 2013 establishes a maximum wall height of 8m for the subject site. The proposed building has a maximum wall height of 13.4m, which exceeds the numeric DCP control.

The non-compliant wall height is a result of the design of the proposed upper floor level. Due to the slope and crossfall of the site, achieving compliance with the maximum wall height of 8m would be difficult, unless it was in the form of a non-habitable roof space.

Providing the upper level as a non-habitable roof space would compromise the internal amenity of the apartment. As such, the proposed upper level has been designed to reduce its visual bulk by recessing it from the rear and side boundaries. The proposal is generally consistent with the established building line of the urban block, provides a high level of façade articulation, and incorporates material diversity. The proposal adopts a flat roof, which will minimise the overall building height.

Additionally, the selected materials for the upper level will minimise its perceived bulk as it presents as a visually recessive element in contrast to the lower levels of the building. These design measures will minimise the visual bulk and scale of the proposed building despite non-compliance with the building and external wall height controls. Overall, the architectural character and form of the proposal are considered to carry positive design merit.

Furthermore, the proposal will appear as a three (3) to four (4) storey development, which is not inconsistent with the surrounding locality, which comprises development ranging from two (2) to four (4) storeys. The proposed upper level has been sited to ensure there will be no unreasonable impacts upon neighbouring dwellings in terms of overshadowing, view loss, privacy, or visual amenity.

The proposed development is consistent with the objectives of Part C2, Section 4.4 of RDCP 2013, as follows:

- The proposed building form provides for interesting roof forms and is compatible with the streetscape.
- Suitable ceiling heights are provided for all habitable rooms to promote light and quality interior spaces.
- The bulk and scale of the development has been designed to minimise impacts on neighbouring properties in terms of overshadowing, privacy, and visual amenity.

On this basis, non-compliance with the external wall height control is acceptable in this instance.

Solar Access and Overshadowing

Part C2, Section 5.1 of RDCP 2013 requires that at least three (3) hours of solar access be provided to the living areas and POS areas of neighbouring properties between 8am to 4pm, midwinter.

The submitted shadow diagrams demonstrate that the proposal will result in some minor additional overshadowing of neighbouring properties. However, suitable solar access will be retained to these properties, as follows:

- 28 Moore Street – there will be some additional overshadowing of the eastern windows of this property between 8am and 11am (midwinter). However, more than three (3) hours of direct solar access will be retained to the northern living room windows and the rear POS

areas throughout the day. It is noted that the primary living areas of this property are oriented towards the north.

- 29 and 31 Moore Street – there will be some additional overshadowing of the northern windows (and Juliette balconies) of this property at 9am (midwinter). However, more than three (3) hours of solar access will be retained to these openings from 10am onwards (midwinter).
- 3 and 5-7 Major Street – there will be some additional overshadowing of the western windows and balconies of this property from 3pm onwards (midwinter). However, at least three (3) hours of direct solar access will be retained to these openings between 11am and 3pm (midwinter).

The extent of overshadowing resulting from the development is consistent with that which is envisaged under the relevant planning controls for the site. The proposal reflects the desired future character of the locality (which is currently undergoing built form transition) and is compatible with the scale of development in the wider locality. The extent of proposed overshadowing is largely dictated by the orientation of the subject and adjoining sites and the subdivision pattern of the urban block.

The proposal is consistent with the objectives of Part C2, Section 5.1 of RDCP 2013, as follows:

- The design, orientation and siting of development maximises solar access to the living areas of dwellings and open spaces, as well as other areas of the development.
- The development retains reasonable levels of solar access to the neighbouring properties and the public domain.
- Adequate ambient lighting is provided to minimise the need for artificial lighting during daylight hours.

View Sharing

View sharing is to be considered where there is a potential for view loss impacts to ensure the equitable distribution of views between new development, neighbouring properties, and the public domain. The proposed development has been designed to maintain existing ocean views from neighbouring residential properties.

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the Planning Principle for view sharing established by *Tenacity Consulting v Warringah [2004] NSWLEC 140* which establishes a four (4) step assessment of view sharing.

1. The assessment of the views affected

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

- **22-24, 26, and 28 Moore St** – Views of the ocean, horizon, Clovelly headland, and Gordons Bay.
- **25 Moore St** – Views of the ocean, horizon, and Clovelly headland.
- **4/16-18 Moore St** – Views of the ocean, horizon, and Clovelly headland.
- **1/2, 2/2 and 3/2 Major St** – District views.
- **19 Gordon Ave** – Views of the ocean, horizon, Clovelly headland, and Gordons Bay.

2. From what part of the property are views obtained?

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position

may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

- **22-24, 26, and 28 Moore St** – The views are obtained from an upper balcony (accessed from a bedroom) and a lower balcony (accessed from a living area).
- **25 Moore St** – The views are obtained from an upper balcony (accessed from a bedroom).
- **4/16-18 Moore St** – The views are obtained from a kitchen/dining room window.
- **1/2, 2/2 and 3/2 Major St** – The views are obtained from an upper balcony (accessed from a bedroom).
- **19 Gordon Ave** – The views are obtained from an upper balcony (accessed from a bedroom) and a lower balcony (accessed from a living room).

NB: All views have been considered from a standing position.

3. What is the extent of the impact?

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

- **22-24, 26, and 28 Moore St** – as shown in Figures 21-29, the proposal is likely to result in a minor loss of sky views from a standing position looking towards the east. However, expansive views of the sky, ocean, horizon, Clovelly headland, and Gordons Bay will be retained to the north and north-east of each property.

It is noted that the impacted views do not relate to iconic views, and they are obtained over a side boundary. Additionally, it is noted that the proposal has been designed with an increased rear setback (relative to the existing building) to partially improve views of the ocean and horizon.



Figure 21: View from lower balcony at 22 Moore St – proposed massing shown purple (Source: Council officer with Arkhaus overlay)

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Figure 22: View from upper balcony at 22 Moore St – proposed massing shown purple (Source: Council officer with Arkhaus overlay)



Figure 23: View from upper balcony at 22 Moore St – NB: no impact proposed (Source: Council officer)



Figure 24: View from lower balcony at 26 Moore St – proposed massing shown purple (Source: Council officer with Arkhaus overlay)



Figure 25: View from lower balcony at 26 Moore St – NB: no impact proposed (Source: Council officer)

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Figure 26: View from upper balcony at 26 Moore St – proposed massing shown purple (Source: Council officer with Arkhaus overlay)



Figure 27: View from lower balcony at 28 Moore St – proposed massing shown purple (Source: Council officer with Arkhaus overlay)



Figure 28: View from upper balcony at 28 Moore St – proposed massing shown purple (Source: Council officer with Arkhaus overlay)



Figure 29: View from upper balcony at 28 Moore St – NB: no impact proposed (Source: Council officer)

- **25 Moore St** – as shown in Figures 30-31, the proposal is likely to result in a minor loss of sky views from a standing position looking towards the north-east. However, views of the ocean and horizon will be retained to the east. Additionally, views of the Clovelly headland (which are already obscured by existing vegetation) will be retained.

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Figure 30: View from upper balcony at 25 Moore St – proposed massing shown purple (Source: Council officer with Arkhaus overlay)



Figure 31: View from upper balcony at 25 Moore St – NB: no impact proposed (Source: Council officer)

- **4/16-18 Moore St** – as shown in Figure 32, the proposal is unlikely to result in any loss of views from a standing position. The proposal has been designed with an increased rear setback (relative to the existing building) to partially improve views of the ocean and horizon.



Figure 32: View from kitchen/dining room at 4/16-18 Moore St – NB: no impact proposed (Source: Council officer)

- **1/2, 2/2 and 3/2 Major St** – as shown in Figures 33-34, the proposal is likely to result in a minor loss of sky views from a standing position looking towards the north. However, expansive district views (including sky views) will be retained to the north and north-east of each property.

Council officers were unable to obtain access to the property at 1/2 Major St to photograph existing views. Notwithstanding, it is considered that the views from this property would be similar to those obtained by the adjoining townhouse at 2/2 Major St. Additionally, as shown in Figure 35, this property benefits from ocean views towards the east, which will not be impacted by the proposal.



Figure 33: View from upper balcony at 2/2 Major St – proposed massing shown purple (Source: Council officer with Arkhaus overlay)



Figure 34: View from upper balcony at 3/2 Major St – proposed massing shown purple (*Source: Council officer with Arkhaus overlay*)



Figure 35: View from upper bedroom at 1/2 Major St – NB: no impact proposed (*Source: Domain*)

- **19 Gordon Ave** – as shown in Figures 36-37, the proposal is likely to result in a minor loss of sky and ocean views from a standing position looking towards the south-east. However, expansive views of the ocean, horizon, Clovelly headland, and Gordons Bay will be retained to the east.



Figure 36: View from upper balcony at 19 Gordon Ave – proposed massing shown purple (Source: Council officer with Arkhaus overlay)



Figure 37: View from upper balcony at 19 Gordon Ave – NB: no impact proposed (Source: Council officer)

4. What is the reasonableness of the proposal that is causing the impact?

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The Court poses two (2) questions in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* at paragraphs 23-33. The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether

a more skilful design could provide the same development potential whilst reducing the impact on views.

The following comments are made with regard to the reasonableness of the proposal:

- As demonstrated above, the proposal will have a minor impact on sky and ocean views obtained from neighbouring properties. However, expansive views of the sky, horizon, ocean, and Clovelly headland will be largely retained.
- The proposal presents as a three (3) to four (4) storey RFB and predominantly complies with the 9.5m building height development standard, with only a minor breach (refer to clause 4.6 assessment in this report above).
- The proposal reflects the desired future character of the locality, which is a dense urban area in the foreshore area. Surrounding development comprises two (2) to four (4) storey (or equivalent) development and it is considered that the proposal is compatible with the scale of neighbouring development.
- The properties at Nos. 16-18, 22-24, 26, and 28 Moore Street are located to the west of the subject site and the affected views are obtained across side boundaries. It has been established in the Tenacity planning principle that *“the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries”*.
- The bulk and scale of the proposed built form is considered to be reasonable in the context of the surrounding streetscape.
- Strict compliance with the external wall height and building height controls would not provide for improved view sharing outcomes to neighbouring properties.
- The proposal has demonstrated an outcome that protects views across the front and rear boundaries of the site as demonstrated in the above analysis. As such, it is considered that the proposal (subject to conditions) represents a skilful design that minimises adverse view impacts to neighbouring properties.
- It is considered that a more skilful design could reduce view impacts without compromising the intent of the redevelopment of the site. Consistent with the conditions imposed on DA/277/2022, a condition is included to delete the rear balcony columns at all floor levels. To improve view sharing for neighbouring properties, the balconies can reasonably be designed without the need for structural column support.

In conclusion, the proposal satisfies the aims and objectives for view sharing pursuant to Part C1, Section 5.6 of RDCP 2013, as well as the case law established by *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

10. Conclusion

That the application for demolition of the existing structures to enable the construction of a 4-storey residential flat building, including 4 units; 2 x 3 bedroom, 1 x 2 bedroom, 1 x 1 bedroom, basement car parking with 6 spaces and associated landscaping works, at No. 30-32 Moore Street, Coogee, be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within RLEP 2012, the Housing SEPP, and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R3 zone in that it will provide for the housing needs of the community whilst enhancing the aesthetic character of the locality 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.

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Appendix 1: Referrals

1. Development Engineer

General Comments

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

Drainage Comments

The Planning Officer is advised that the submitted drainage plans should not be approved in conjunction with the DA, rather, the Development Engineer has included a number of conditions in this memo that relate to drainage design requirements. The applicant is required to submit detailed drainage plans to the Principal Certifier for approval prior to the issuing of a construction certificate.

The stormwater must be discharged (by gravity) either:

- i. Directly into Council’s underground drainage system located in Major Street via a new and/or existing kerb inlet pit; or
- ii. Directly into Council’s underground drainage system located in Kildare Lane via a new and/or existing grated inlet pit.

Due to the location of the development within the “Randwick City Council On-Site Detention Map”, on-site detention **is not** required.

Flooding Comments

The site lies within the catchment for the Council commissioned and adopted ‘Clovelly Flood Study’. The study does not predict the site will be impacted by flooding for all storm events up to and including the 1% AEP (1 in 100yr) storm event and the property has not been tagged as a “flood control lot”.

No flood controls are therefore applicable and there are no objections to the proposal from a flooding perspective.

Parking Comments

Parking Requirements for the future development will be assessed as per the following applicable parking rates specified in Part B7 of Randwick Council’s Development Control Plan 2013.

- 0.5 spaces per studio unit
- 1.0 space per 1-bedroom unit
- 1.2 spaces per 2-bedroom dwelling
- 1.5 spaces per 3-bedroom unit
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

Parking required under DCP = (2 x 1.5) + (1 X 1.2) + (1 X 1) + 4/4 (visitor)
= 6.2

Parking proposed = 6 spaces (complies)

Bicycle Parking

For Flats/multi dwelling bicycle parking to be provided at 1 space per 2 units plus 1 visitor space per 10 units.

Bicycle Parking Required = 4/2 + 4/10
= 2.4

Bicycle Parking proposed = 3 (complies)

Carpark Layout

The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of Australian Standard 2890.1:2004.

Undergrounding of site feed power lines

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

Should a 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** located within 15m of a power pole on the same side of the street hence the above clause **is** applicable. A suitable condition has been included in this report.

Waste Management Comments

Waste Management provisions must be implemented in general accordance with the Waste Management Plan submitted with the development application (Prepared by Dickens Solutions dated March 2025), subject to some minor amendments. A suitable condition has been included in this report.

Comments on the number of Waste Bins

Appendix 3 in Part B6 of Council's DCP specifies a waste bin requirement rate for residential flat buildings houses of 1 x 240L bin per 2 rooms for normal garbage and 1 x 240L bin per 2 rooms for recycling.

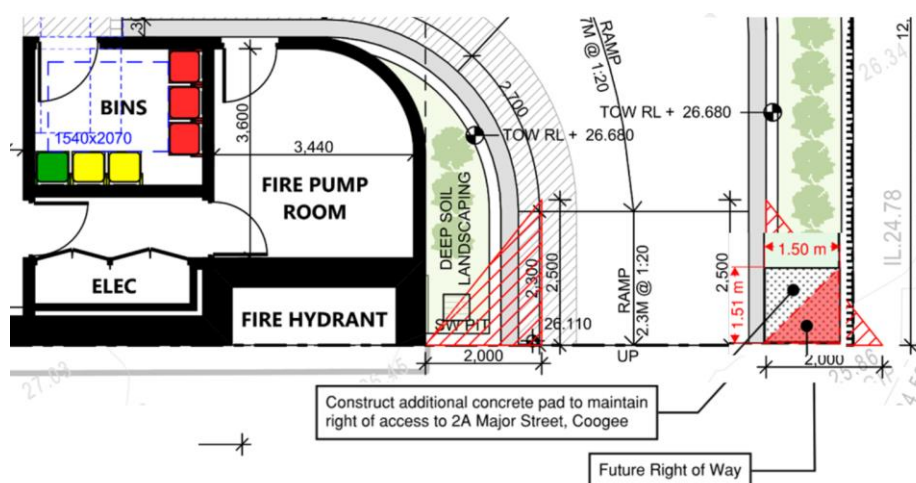
i.e. Garbage/recycling Bins Required = Number of units/2 (rounded up to nearest whole number))

There are no specific requirements for green waste in Part B6 of the DCP however since March of 2021 Council has introduced a Garden Organic Food organic (FOGO) collection service. As some landscape areas are also proposed it is recommended that a minimum of 1 x 240L bins also be provided for FOGO.

Total Number of BINS required = 2 (normal) + 2 (recycling) + 1 (FOGO)
= 5 x 240L BINS

Right of Access Comments

Due to the need to maintain vehicle access into the neighboring property at 2A Major Street the applicant is required to construct/maintain concrete pad at the northeastern corner of the site to provide and maintain right of access (refer to image below for location of concrete pad).



A legal right of way is required to be registered on the title prior to occupation certificate to facilitate the above arrangement.

Coastal Walk Footpath Comments

Due to expected increased vehicular traffic at intersection of Major Street/Kildare Lane, it is recommended that to maintain pedestrian safety the applicant shall be required to construct a 1.3m wide footpath across the northern verge at the end of Major street to provide direct pedestrian access to the Coastal Walk. Council's landscape Officer has raised no objections to the removal of vegetation as required at this location.



2. Environmental Health Officer

Contamination

A preliminary site investigation prepared by Benbow Environmental concluded the following:

The findings of the Preliminary Site Investigation are summarised as follows:

- The site has been used for residential purposes for at least the past 80 years which carries low contaminant risk.
- The existing building should be cleared of hazardous materials prior to demolition, and any found should be managed by a suitably trained consultant during demolition.
- A preliminary hydrology study should be undertaken to determine whether the development works are likely to affect groundwater levels.
- The potential for contamination of soil or groundwater to the site is considered low if managed appropriately during demolition.
- Workers during demolition must wear appropriate PPE for lead/ACM exposure.
- It is recommended that all waste removed offsite (including construction and demolition waste, and excavated soil) must be classified appropriately before disposal.

The site is not considered as contaminated and is therefore suitable for use. A Detailed Site Investigation is not considered warranted.

Based on the information provided and the historical residential use in a predominantly residential area no further contamination information is required.

It is recommended standard hazardous building assessment be required as part of building compliance conditions including but not limited to asbestos conditions.

Acoustics

Acoustic report prepared by Koikas Acoustics dated 17th March 2025 details general design requirements and advice requiring further detailed design requirements for mechanical plant prior to construction certificate.

Appropriate conditions have been included in this report.

Acid Sulphate Soils

GCA consultants have provided the following advice in relation to acid sulphate soils:

“Therefore, GCA recommends an Acid Sulphate Soils Management Plan (ASSMP) be prepared prior to construction of the proposed development within the subject site.”

Based on the advice appropriate conditions have been included in this report.

3. Landscape Officer

*About halfway along the length of Council’s Major Street verge are two mature, *Lagunaria patersonii* (Norfolk Island Hibiscus) of between 5-8m in height, with the most northern specimen being the smaller of the two, which despite having a presence in the streetscape, both display multiple, competing trunks and epicormic growth, have been crown lifted to improve sight lines/pedestrian access as well as being topped beneath the overhead wires, all of which has reduced their lifespan and condition rating to poor.*

Further, they are also known as a highly undesirable species as after flowering, their seed pods release fibres which are highly irritable to both humans and animals, so for this reason are no longer available for purchase, and is why they are listed as an ‘exempt species’ in Council’s DCP, and as we seek their eradication in all cases, means they can be removed at any time by private property owners, without consent, irrespective of any building works.

The closest works to these trees for this application will be demolition of the existing building and then piling for the eastern wall of the Basement Level, and while neither street tree should be affected by this given a combination of their relatively small size, distance from the new footprint and the presence of existing surfacing and structures, consistent with past advice (DA/277/2022), Council will still require their removal (at the applicant’s cost) as this will then allow more desirable endemic species to be provided in their place, which will be of more benefit to both the streetscape, local environment/biodiversity/Gordons Bay Reserve, with relevant conditions provided.

There is a mixture of turf and small plants within the rest of the Major Street verge, and while no objections are raised to their removal where needed to accommodate the required external civil works, which includes a 1.3m wide section of new footpath at the northern boundary as indicated in the Development Engineers comments and marked up photo shown above, conditions simply require that this area then be restored to Council’s satisfaction upon completion.

The various small shrubs within the small courtyard fronting Moore Street are all insignificant and given their direct conflict with the works can be removed, along with any others elsewhere throughout the site, subject to full implementation of the adopted Landscape Plans.

*As previously detailed, Council does not support the use/selection of *Opuntia ficus-indica* (Barbary Fig/Prickly Pear) in such an environmentally sensitive zone immediately adjacent Gordons Bay Reserve, as this area contains remnant native coastal vegetation which Council invests significant time, funds and resources to maintaining and protecting, so this will need to be deleted and replaced with more suitable coastal species, with several other amendments also required to ensure the best result for the site and application.*

4. Building Officer

The ‘Building Innovation Australia BCA & Access Report’ that have been submitted with this application are considered to be satisfactory.

It is recommended that the said report recommendations outlined be adopted as a condition of development consent with details of the certification provided to the engaged Principal Certifier. As such, the Access and performance solution report will also need to be incorporated into the development consent and construction certificate application with a validation report provided to the Principal Certifier.

Any proposed variations to the recommendations and requirements in the subject reports shall be submitted to and approved by the Director City Planning, prior to approval of the construction certificate.

5. Design Excellence Advisory Panel

1. Context and Neighbourhood Character

The proposal sits on a significant corner site, which is also a prominent location due to its proximity to Gordons Bay and the Coastal Walk.

The surrounding developments are 2-4 storey houses and residential flat buildings. This 4 storey proposal is not uncharacteristic of the area. The recessive top floor assists in reducing the building's visual presence.

2. Built Form and Scale

The Panel considers that the small height exceedance of the lift over-run and the NE roof corner is not significant and does not seem to lead to unacceptable visual amenity impacts on neighbours, based on the information provided by the Applicant. The Panel acknowledges that Council may undertake detail view loss analysis from nearby properties in assessing the DA.

Building separation to the western boundary at 1,200 and 2,100mm is below the minimum design criteria under Part 3F Visual Privacy of the NSW ADG, and appropriate privacy treatment is required. – refer to '6. Amenity' below.

3. Density

Refer to '1. Context and Neighbourhood Character'.

4. Sustainability

Solar access and natural cross ventilation criteria under the NSW ADG are well satisfied.

The applicant needs to consider thermal treatment and/or weather protection measures to the extensive glazing proposed within the northern and eastern facades of the top floor.

Provision of a rooftop Photo Voltaic (PV) system is supported and the applicant should investigate whether equitable power allocation to the individual apartments is possible. Alternatively, the PV system should be used to power the common areas and the basement.

Reconsider using black metal cladding on the top floor due to its high thermal load, and consider substituting it with a mid-tone colour with a lower solar absorptance rating.

Electric car charging infrastructure is recommended.

The Panel expressed concerns regarding longevity and long term maintenance of the proposed external materials and finishes, particularly the cladding system, in this aggressive marine environment.

5. Landscape

The Panel notes that the deep soil area falls short of the DCP control but meets the minimum ADG criteria. The synthetic lawn proposed on the Landscape Plan to the Unit 1B garden on Moore St is not supported and should be replaced with natural turf or ground covers provided with adequate soil depths.

Furthermore, all planter depths need to be sufficient for viable landscaping – refer to the NSW ADG Parts 4O and 4P for the recommended soil depths. The Panel suggests that floor slabs can be downturned, including in the basement, for allowing generous soil depths.

6. Amenity

Privacy to the western neighbour has partially been achieved through obscured glazing to some windows, but this needs to be extended to W42 and 43 on the additional floor. In addition, the applicant needs to address overlooking of the neighbours' balconies from the proposed balconies on Levels 2 and Level 3, whilst retaining neighbours' cross views to Gordons Bay – consider a planter along the western balcony edge for these two levels.

The Pool proposed on Level 3 creates both acoustic and visual privacy problems for the western neighbour. The Panel recommends it to be removed and replaced with planting on both Levels 2 and 3. This planting should extend along the western balcony to the northern balustrade to minimise potential privacy loss to the western neighbour.

7. Safety

Access to the Pool equipment on Level 2 appears to have a constrained head height.

8. Housing Diversity and Social Interaction

A two-bedroom Affordable Rental Housing unit will be a welcome addition to the area's housing diversity. On such a small site, and with extensive parklands nearby, common open space is not required.

9. Aesthetics

1:20 design intent sections are recommended - demonstrating materials, construction systems, balustrade types and fixings, balcony edge treatments, window operation, any integrated planter beds, material junctions, rainwater and balcony drainage systems, and the placement of downpipes or similar elements - for design clarity and to avoid later modifications.

The applicant should consider further investigation whether the extent of glazing within the expression of the top floor needs to be rationalised, to ensure kitchen and bathroom exhausts can be successfully incorporated into the façade design.

Vertical fins appear too thin and need to be drawn in detail. Consider omitting those fins that are not framing windows for a more functional, less material intensive design.

The top level glass balustrades appear excessive, and will be a potential cleaning and maintenance issue – consider a lesser glass balustrade in lieu to the inside face of opening doors to Unit 03 Living room on the eastern elevation.

Summary

The Panel supports this proposal, subject to the applicant addressing the above comments.

6. Sydney Water



28 May 2025

Our reference: N/A

Julia Warren
 Randwick City Council
julia.warren@randwick.nsw.gov.au

RE: Development Application DA/351/2025 at 30-32 Moore Street, Coogee

Thank you for notifying Sydney Water of DA/351/2025 at 30-32 Moore Street, Coogee, which proposes the demolition of existing structures, and the construction of a 4-storey residential apartment building comprising four apartments, basement parking and associated landscaping works. Sydney Water has reviewed the application based on the information supplied and provides the following Sydney Water requirements to assist in understanding the servicing needs of the proposed development.

Sydney Water position: Condition of Consent applies	
Condition of Consent which applies:	Section 73 and Building Plan Approval required See Attachment 1 for recommended wording for Sydney Water conditions to be included in the consent letter.
Additional comments:	We recommend the proponent contact Sydney Water as early as possible to prevent development delays where significant adjustments or design variations are required.
Other information:	<p>This advice is not formal approval of our servicing requirements. Detailed requirements will be provided once the development is referred to Sydney Water for further applications.</p> <p>The <i>Sydney Water Development Application Information Sheet (for proponent)</i> enclosed contains details on how to make further applications to Sydney Water and further information on Infrastructure Contributions. A copy of this should be provided to the proponent in conjunction with the development consent.</p> <p>Please note that the available capacity may change over time depending on the rate of development and increased demand elsewhere in the potable water and wastewater catchments. Sydney Water does not reserve capacity pre-development and it is advised that the proponent applies directly to Sydney Water for a Section 73 Compliance Certificate as soon as feasible.</p>

Sydney Water Corporation ABN 49 776 225 038
 2 Parramatta Square, 1 Smith Street, Parramatta, NSW 2150 | PO Box 399, Parramatta, NSW 2124
 Telephone 13 20 92 sydneywater.com.au



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 Overhead Powerlines are in the vicinity of the development.

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

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

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

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

New Driveways - Proximity to Existing Poles

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

For Official use only

D36/25

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

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

Clause 4.6 - Height

30-32 Moore Street, Coogee



APPENDIX 1

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

30 – 32 Moore Street, Coogee

*Demolition of existing building and construction of a 4-storey residential flat building
comprising of 4 units (1 x 1-bedroom, 1 x 2-bedroom and 2 x 3-bedroom), basement parking
and associated landscaping (Infill Affordable Housing)*

PREPARED BY

ABC PLANNING PTY LTD

April 2025

1

ABC Planning Pty Ltd

April 2025

D36/25

Clause 4.6 - Height30-32 Moore Street, Coogee

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

This Clause 4.6 variation request has been prepared to accompany the development application for demolition of existing building and construction of a 4-storey residential flat building comprising of 4 units (1 x 1-bedroom, 1 x 2-bedroom and 2 x 3-bedroom), basement parking and landscaping (Infill Affordable Housing) at 30 – 32 Moore Street, Coogee.

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

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

- Driveway from Major Street to the Basement Level.
- 6 basement level parking spaces and 3 bicycle racks.
- Storage rooms, a bin room and a plant/services room on the Basement Level.
- Pedestrian entry leading from Moore Street.
- Total of 4 units (1 x 1-bedroom, 1 x 2-bedroom and 2 x 3-bedroom). Unit 1B (1 x 2-bedroom unit) will be provided as affordable housing.
- Landscaping around the perimeters of the building on the Ground Floor, including consolidated deep soil areas at the front and rear of the site and on structure planter landscaping.

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

Clause 4.6 Exceptions to development standards

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

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

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

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

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

Note—

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

(4) *The consent authority must keep a record of its assessment carried out under subclause (3).*

*Clause 4.6 - Height**30-32 Moore Street, Coogee*

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

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

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

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

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.3 of the Randwick LEP 2012 and the associated building height map, along with the 30% uplift via the SEPP Housing 2021.

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Figure 1: Height of Buildings Map

Clause 4.3 of Randwick LEP 2012 and the associated building height map prescribes a maximum building height limit of 9.5m for a development on the site. Clause 16(3) of the Housing SEPP permits a 30% uplift above the base height, thereby allowing for a building height limit of **12.35m**.

The proposed development has a maximum building height of 13.40m, representing a 8.5% (1.05m) variation to the Building Height Development Standard.

The building height departure is limited to the top of the lift overrun and the rear north-east corner of the roof of Level 3. The remainder of the development complies with the building height standard. Refer to the extract of the Height Plane Diagram below.

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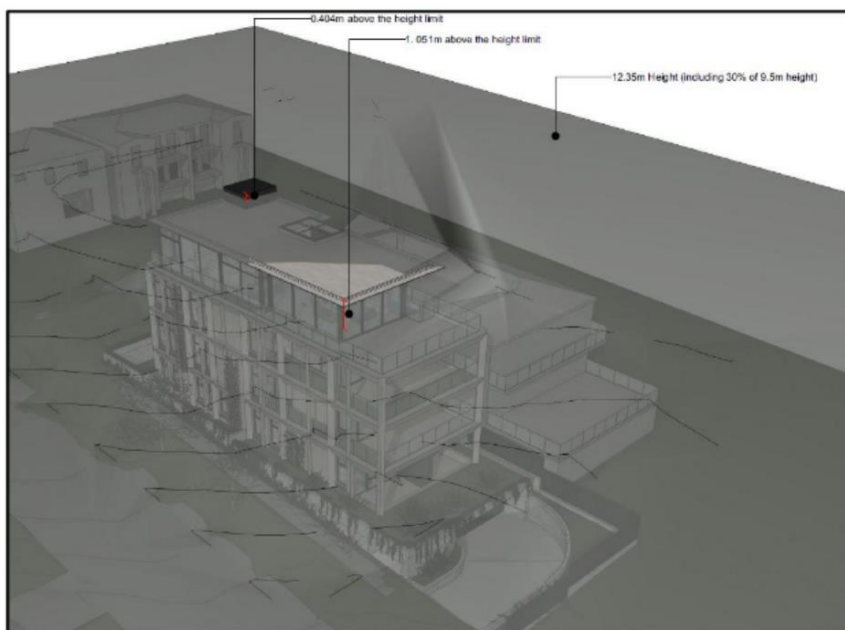


Figure 2: Extract of the height plane diagram demonstrating that the height breach is restricted to the upper portion of the lift overrun and the north – east corner of the roof; the remainder of the development complies with the building height standard

Justification for Contravention of the Development Standard

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

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

5-Part test

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

The 5-Part Test is summarised as follows:

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

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

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

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

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

Consistency with the objectives of the building height development standard in the LEP	
Objectives	Assessment
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	<p>The subject site is surrounded by a mix of buildings typical of a medium density area, ranging from 2 storey detached dwellings to 5 storey plus apartment buildings.</p> <p>The 3 – 4 storey scale of the development is compatible with the character of the locality which includes a range of 3 – 5 storey residential flat buildings and semi-detached dwellings.</p> <p>The analysis within Section 4.2.3 of the SEE, demonstrates that the predominant built form for buildings on the western side of Major Street or adjacent to Dunningham Reserve are 4-storey plus. To the west, along Moore Street, the built form is more varied due to the large number of underdeveloped sites, however the trend of 3 plus storey buildings is clear, especially towards the eastern end and the intersection with Major Street.</p> <p>No. 20 Moore Street was recently approved as a 3-storey RFB. This site has the same 9.5m height limit as the subject site and did not include any affordable housing. The proposal's 4-storey with a height limit of 12.35m corresponds to this established relationship between height in storeys and height in meters.</p> <p>The general height patterns in the area build towards a high spine on the western side of Major Street. The proposal responds to and reinforces that prevailing context and streetscape.</p>

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	<p>The recent approval at 41 Arcadia Street for a 4-storey RFB, approved with a 5.41m height variation (no affordable housing), demonstrates that the desired future character of the area is to reinforce the 4-storey and above built form context along the western side of Major Street, providing a consistent streetscape and perceived density from the public domain and parkland, including the Bondi to Coogee Walk.</p> <p>The controls contemplate and encourage a mixing of typologies and heights. The established and evolving streetscape show numerous examples of the compatibility of adjacent buildings with and 2 and 4 storeys respectively. A relevant example is Number 2 and 4 Major Street, directly across from the site to the south, which demonstrates an established and similar relationship between a 4-storey RFB and a 2/3 storey dwelling.</p> <p>The building height departure is limited to the top of the lift overrun and the rear north-east corner of the roof of Level 3. The remainder of the development complies with the building height standard.</p> <p>The desired future character must also include the potential uplift under the same Infill Housing provisions on other sites with the same control. On this basis, the proposed height variation does not generate any incompatibility with the desired future character.</p>
<i>(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</i>	The subject site is not a heritage item or near a conservation area or heritage item and the height breach will therefore have no adverse heritage impacts.
<i>(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.</i>	<p>The proposed exceedance of the height control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this height would not create additional benefit for adjoining properties or the locality.</p> <p><u>Overshadowing:</u> As demonstrated in the Shadow Diagrams submitted with this application, the</p>

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	<p>components of the development that do not comply with the building height control will not result in additional overshadowing to the adjoining properties to the west.</p> <p>Shadow from the lift overrun will fall primarily on the front setback and Moore Street, while the north-east corner roof is on the opposite side to the western neighbour and not produce any shadow impacts. The properties to the south and east are both across streets with significant separation and the non-complying elements will have no shadow impacts that result in these properties receiving non-compliant amounts of solar access.</p> <p><u>View Loss:</u> As outlined in the accompanying View Loss Analysis (Appendix 2), the proposed development has been designed so as to not have an unreasonable impact on views.</p> <p>The extent of views loss associated with the proposal are minor in nature, partial, not of high value and generally obtained across side boundaries from balconies not attached to living areas. In addition, the non-complying elements are not reasonable for any high-value view loss.</p> <p>Furthermore, the proposed slimmed building envelope with large setbacks minimises view loss to all properties as higher value land-water interface views are generally obtained to the rear of the of the proposed RFB and not over the site, while the non-compliant elements of the upper storey are not responsible for the any material view loss. On this basis, the proposed design, which includes will benefit the neighbouring properties in relation to their coastal views.</p> <p><u>Privacy:</u> The building height departure is limited to the top of the lift overrun and rear north-east corner of the Level 3 roof. The remainder of the development complies with the building height standard.</p> <p>The non-compliant elements will not result in any adverse privacy impacts to neighbouring properties. There are only two windows on Level 3, which are setback 3.6m from the western</p>
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	<p>boundary and has been designed and sited to ensure adequate privacy to the adjoining properties.</p> <p><u>Visual Bulk:</u> The proposed building has been slimmed by reducing the width and depth through greater setbacks above that approved and those existing, and FSR distributed in a further a setback, indented and articulated upper storey. It is considered that this massing creates a building with less visual bulk than a proposal where FSR is located in wider floorplates and a smaller but height compliant Level 3.</p> <p>Overall, this design results in a highly articulated building with visual bulk compatible with the surrounding streetscape and context, and that envisaged by the controls in the LEP and Housing SEPP that are relevant to the site.</p>
Consistency with the objectives of the R3 Medium Density Residential zone	
Objectives	Assessment
<ul style="list-style-type: none"> To provide for the housing needs of the community within a medium density residential environment. To provide a variety of housing types within a medium density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area. To protect the amenity of residents. To encourage housing affordability. To enable small-scale business uses in existing commercial buildings. 	<p>The site is zoned R3 Medium Density Residential under the provisions of Randwick LEP 2012.</p> <p>The proposed building height variation does not prevent the proposal from achieving the objectives of the R3 Medium Density Residential zone.</p> <p>The proposal is consistent with the objectives of the R3 zone as follows:</p> <ul style="list-style-type: none"> Despite the building height variation, the proposed development will provide for the housing needs of the community within a medium density residential environment. The proposal includes a mix of 1, 2 and 3-bedroom units, including affordable housing, which will assist in promoting housing choice, flexibility and affordability. The proposal will not inhibit other land uses that provide facilities or services to meet the day-to-day needs of residents. The sensitive design ensures the medium density residential character of the area and amenity of the streetscape is maintained. The proposed height, concealed parking, scale and external finishes will be in keeping with the character of the neighbourhood and streetscape. The proposed landscaping will add amenity to the area and ensure that the development sits well within the local context.

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

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

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

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

- The building height departure is limited to the top of the lift overrun and to rear north-east corner of the roof of Level 3. The remainder of the development complies with the building height standard. Refer to the extract of the Height Plane Diagram above.
- The 4-storey scale of development is consistent with that anticipated by the height limit associated with the 12.35m height that is generated by the SEPP height incentive and will therefore be perceived as a compliant building within the Moore Street and Major Street streetscapes. Such outcome can also be applied to surrounding properties with the same zoning and controls.
- The proposal is consistent with the R3 Medium Density zone objectives and the building height objectives.
- Despite the building height non-compliance, the proposed height is compatible with neighbouring 4-storey buildings to the south and east of the site. The bulk and scale of the proposal are compatible with the locality's existing and desired future character, as established in Section 4.2.3 of this SEE.

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- The components of the development that do not comply with the building height control (i.e. the top of the lift overrun and rear north-east corner of the Level 3 roof) will not generate any unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity, and a reduction in this height would not create additional benefit for adjoining properties or the locality.
- As demonstrated in the Shadow Diagrams submitted with this application, the components of the development that do not comply with the building height control will not result in additional overshadowing to the adjoining properties to the west. Shadow from the lift overrun will fall primarily on the front setback and Moore Street, while the north-east corner roof is on the opposite side to the western neighbour and not produce any shadow impacts. The properties to the south and east are both across streets with significant separation and the non-complying elements will have no shadow impacts that result in these properties receiving non-compliant amounts of solar access.
- As demonstrated by the attached View Loss Analysis (**Appendix 2**), the view loss impacts of the non-compliant elements to surrounding properties and the public domain are considered minor.
- The subject site is not a heritage item or near a conservation area or heritage item and the height breach will therefore have no adverse heritage impacts.
- The site falls approximately 3m from the rear front of the site (RL 29.14) to rear of the site (RL 25.86), with a gradual drop across the site from west to east, resulting in the north-east corner of the site being the lowest. Greater excavation, therefore, occurs at the rear of the site towards driveway entrance from Major Street. The height variation at the rear north-east corner of the building is partly due to the slope of the site, which has been established in the land and environment court judgement of *Merman Investments v Woollahra Council* [2021] as constituting sufficient environmental ground.
- The proposal's compliance with the FSR control confirms that the development overall represents a suitable density for the site, with the non-compliant height related to the topography of the site and considered design that slims the footprint by increasing setbacks, resulting in a reduced bulk and scale.
- The recessed, indented and material palette of the upper storey and building overall further limits the visual bulk of the building. Overall, his design results in an improved streetscape outcome and reduced amenity impacts to surrounding buildings when compared to a building that contains the GFA in a wider footprint on the lower floors and a compliant height limit through a reduced 4th storey.
- The building height variation is partially attributed to the latest BCA requirements, which require more floor-to-floor height (i.e. slab thickness) to achieve the ADG 2.7m ceiling height requirement. The proposed floor-to-ceiling heights also ensure a high degree of internal amenity to each unit.

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- The building height non-compliance is minor and related to lift overruns and roofs, and will therefore be indiscernible from the streetscape and surrounding properties.
- A reduction of the proposed building height would provide for an indiscernible benefit to the streetscape, reduce the amenity of the units and restrict the realisation of the full FSR afforded under the Housing SEPP, and the provision of affordable housing on the site.
- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the Housing SEPP, including landscaping, deep soil, solar access, cross ventilation, private open space, apartment and room sizes, storage and car parking. The excess building height, thereby, does not compromise the ability to meet or outperform the above criteria.
- The proposal complies with the Housing SEPP controls for landscaping and deep soil. The high-quality landscape design that includes planting a variety of trees, shrubs, and turf. Landscaping is provided within the front, side and rear setback areas on the Ground Floor, including a consolidated deep soil area at the front and rear of the site and planter landscaping along the eastern and western side setbacks. Refer to the Landscape Plan prepared by Place Design Group submitted with this application. The proposed landscaping will enhance the amenity and visual setting of the proposed development and soften the visual built form of the proposal, notwithstanding the building height non-compliance.
- The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represent the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

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

Conclusion

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

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

- economic welfare of the community and a better environment (Section 1.3(a))
- orderly and economic use and development of land (Section 1.3(c))
- delivery and maintenance of affordable housing (Section 1.3(d))

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- protect the environment (Section 1.3(e))
- sustainable management of built heritage (Section 1.3(f))
- good design and amenity of the built environment (Section 1.3 (g))
- proper construction and maintenance of buildings, including the protection of the health and safety of their occupants (Section 1.3(h))

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

For reasons mentioned herein, this Clause 4.6 variation request is forwarded in support of the development proposal at 30 – 32 Moore Street, Coogee and is requested to be looked upon favourably by the consent authority.

Appendix 3: DCP Compliance Table

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 Appendix 1.

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 Appendix 1.

Part B7: Transport, Traffic, Parking and Access

Council is satisfied that the proposed development meets the parking requirements in accordance with Part B7 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer at Appendix 1.

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 Appendix 1.

Part B10: Foreshore Scenic Protection Area

Council is satisfied that the proposed development meets the requirements for development in the foreshore scenic protection area in accordance with Part B10 of RDCP 2013.

The proposed development is generally consistent with the scale of surrounding development, which comprises dwellings, semi detached dwellings, and RFBs ranging in height from two (2) to four (4) storeys. As demonstrated in this report, the proposal will not compromise the scenic qualities of the foreshore location and has been designed to minimise adverse impacts to views from neighbouring properties.

Part C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance
2.	Site Planning		
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area is to be landscaped open space.	Required = 235.1m ² Proposed = 235.37m ²	Yes
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	Required = 117.55m ² Proposed = 83.76m ² Acceptable on merit noting that compliance with 7% ADG control is achieved. The proposal represents a significant improvement in deep soil area relative to the existing situation.	On merit

DCP Clause	Control	Proposal	Compliance
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.	Complies	Yes
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.	Complies	Yes
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.	Complies	Yes
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.	Complies	Yes
2.3	Private and communal open space		
2.3.1	Private open space		
	Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.	Complies	Yes
	For residential flat buildings: (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m ² and a minimum dimension of 2m.	Complies	Yes
2.3.2	Communal open space		
	Communal open space for residential flat buildings is to be: (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.	Nil proposed – acceptable on merit noting that suitably sized private open space is provided for each unit. The site is in close proximity to public spaces, including Coogee Beach.	On merit
3.	Building Envelope		
3.3	Building depth		

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DCP Clause	Control	Proposal	Compliance
	For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.	All apartments are provided with suitable natural ventilation and solar access.	Yes
3.4	Setbacks		
3.4.1	Front setback		
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	<p>Proposed = 4.8m to Moore St – NB: consistent with adjacent semi-detached dwelling and consistent with DA/277/2022 approval</p> <p>Secondary street frontage (Major St) = 1.5m – NB: increased setback relative to DA/277/2022 approval, which provided 0.9m setback and relative to existing building, which has an approx. 0.5m setback</p>	Yes
3.4.2	Side setback		
	<p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - 12m ≤ site frontage width < 14m: 2m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that</p>	<p>East side = 1.5m - 2.7m West side = 1.2m - 3.6m</p> <p>Refer to discussion at Key issues section of this report.</p>	On merit

DCP Clause	Control	Proposal	Compliance
	will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.		
3.4.3	Rear setback		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.	Required = 5.77m Existing = 6.9m - 10.5m Proposed = 7.3m (basement level) to 11.1m (upper levels)	Yes
4.	Building Design		
4.1	Building façade		
	<ul style="list-style-type: none"> (i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes. (vi) Conceal building services and pipes within the balcony slabs. 	The proposed building façade design is considered suitable. The façades are suitably articulated by way of varying materials, recessed elements, and window/balcony openings.	Yes
4.2	Roof design		
	<ul style="list-style-type: none"> (i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building. (ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access. (iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape. (iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms. (v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape. 	<p>The proposed flat roof design is acceptable as it has been designed to reduce the perceived bulk and scale of the building. The roof form is consistent with other medium density dwellings and RFBs in the locality.</p> <p>No roof terraces are proposed.</p>	Yes

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DCP Clause	Control	Proposal	Compliance
	<p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
4.3	Habitable roof space		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development. 	No habitable roof space is proposed.	N/A
4.4	External wall height and ceiling height		
	<p>(ii) Where the site is subject to a 9.5m building height limit under the LEP, a</p>	Refer to discussion at Key Issues section of this report.	On merit

DCP Clause	Control	Proposal	Compliance
	maximum external wall height of 8m applies.		
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	Proposed = > 2.7m	Yes
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Complies	Yes
	(ii) Present new development to the street in the following manner: <ul style="list-style-type: none"> - Locate building entries so that they relate to the pedestrian access network and desired lines. - Design the entry as a clearly identifiable element in the façade composition. - Integrate pedestrian access ramps into the overall building and landscape design. - For residential flat buildings, provide direct entries to the individual dwellings within a development from the street where possible. - Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably integrated into a wall adjacent to the primary entry (and at 90 degrees to the street rather than along the front boundary). - Provide weather protection for building entries. Postal services and mailboxes <ul style="list-style-type: none"> (i) Mailboxes are provided in accordance with the delivery requirements of Australia Post. (ii) A mailbox must clearly mark the street number of the dwelling that it serves. (iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street. 	Complies	Yes
4.6	Internal circulation		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. 	Complies	Yes

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DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 		
	(ii) Use multiple access cores to: <ul style="list-style-type: none"> - Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites. - Articulate the building façade. - Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units. 	Complies	Yes
	(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.	Complies	Yes
4.7	Apartment layout		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.	Complies	Yes
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	Complies	Yes
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	Complies	Yes
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	Complies	Yes
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	Each unit is provided with a balcony greater than 8m ² in area.	Yes
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m ² . All ground floor apartments are to have direct access to a terrace.	Suitably sized balconies and landscaped planters are provided to the units at ground floor level.	On merit
4.9	Colours, materials and finishes		

DCP Clause	Control	Proposal	Compliance
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. (v) Avoid the following materials or treatment: <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts (vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration. (vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.	The proposed colours, materials, and finishes are generally suitable. In accordance with guidance from Council's Design Panel, a condition is included to replace the proposed black metal cladding (MC-1) and dark charcoal paint (PF-1) with a lighter grey colour.	Yes
4.12	Earthworks Excavation and backfilling		
	(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification. (ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site. (iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.	The proposal involves excavation works up to 4.5m depth to accommodate a basement level for car parking, residential storage, services, and bin storage. The proposed basement has been suitably designed to reduce the perceived bulk and scale of the building and to maximise opportunities for deep soil planting.	On merit
5.	Amenity		
5.1	Solar access and overshadowing		
	Solar access for proposed development		

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DCP Clause	Control	Proposal	Compliance
	(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.	Suitable solar access will be provided to living rooms and POS areas.	Yes
	(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.	All units will receive at least three (3) hours of solar access to living rooms and POS areas.	Yes
	(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.	There are no proposed units with a single, south aspect.	Yes
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.	Not applicable.	N/A
	Solar access for surrounding development		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	Refer to discussion at Key Issues section of this report.	Yes
	(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.		
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
5.2	Natural ventilation and energy efficiency		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	Complies	Yes
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	Complies	Yes
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.	Complies	Yes
	(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.	Complies	Yes
	(v) A minimum of 90% of residential units should be naturally cross ventilated. In	Complies	Yes

DCP Clause	Control	Proposal	Compliance
	cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.		
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.	Complies	Yes
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.	Complies	Yes
5.3	Visual privacy		
	<ul style="list-style-type: none"> (i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences. (iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 	Refer to discussion at Key Issues section of this report.	Yes
5.4	Acoustic privacy		
	<ul style="list-style-type: none"> (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate "quiet areas" such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies 	The proposed development, comprising four (4) residential units, is unlikely to result in significant adverse noise.	Yes

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DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> - Walls to courtyards - Sealing of entry doors 		
5.5	View sharing		
	<p>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</p> <p>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>	Refer to discussion at Key Issues section of this report.	Yes
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.	Complies	Yes
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	Complies	Yes
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	Complies	Yes
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	Complies	Yes
	(vi) Resident car parking areas must be equipped with security grilles or doors.	Complies	Yes
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	Complies	Yes

DCP Clause	Control	Proposal	Compliance
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	Complies	Yes
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks.	Complies	Yes
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	Complies	Yes
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	Complies	Yes
6. Car parking and access			
6.1	Location		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	The proposed basement car park is accessed via Major Street (i.e. the secondary street frontage).	Yes
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	Complies	Yes
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.	Subject to conditions, the proposed driveway is considered suitable. Refer to detailed assessment by Council's Development Engineer at Appendix 1 of this report.	Yes
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.	Not applicable.	N/A
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage. (c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition,	Complies	Yes

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DCP Clause	Control	Proposal	Compliance
	the entry and driveway must be located towards the side and not centrally positioned across the street frontage.		
6.2	Configuration		
	(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.	Complies	Yes
	(ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible.	Complies	Yes
	(iv) Provide basement or semi-basement car parking consistent with the following requirements: (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain.	Complies	Yes
7. Fencing and Ancillary Development			
7.1	Fencing		
	(i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering. (ii) Sandstone fencing must not be rendered and painted. (iii) The following materials must not be used in fences: - Steel post and chain wire - Barbed wire or other dangerous materials	The proposed fencing comprises stone cladding and vertical aluminium blades and is considered suitable.	Yes

DCP Clause	Control	Proposal	Compliance
	(iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided.		
7.2	Front Fencing		
	(i) The fence must align with the front property boundary or the predominant fence setback line along the street.	Complies	Yes
	(ii) The maximum height of front fencing is limited to 1200mm, as measured from the footpath level, with the solid portion not exceeding 600mm, except for piers. The maximum height of front fencing may be increased to 1800mm, provided the upper two-thirds are partially open, except for piers.	Complies	Yes
	(iii) Construct the non-solid portion of the fence with light weight materials that are at least 30% open and evenly distributed along the full length of the fence.	Complies	Yes
	(iv) Solid front fence of up to 1800mm in height may be permitted in the following scenarios: <ul style="list-style-type: none"> - Front fence for sites facing arterial roads. - Fence on the secondary street frontage of corner allotments, which is behind the alignment of the primary street façade. Such solid fences must be articulated through a combination of materials, finishes and details, and/or incorporate landscaping, so as to avoid continuous blank walls.	Complies	Yes
	(v) The fence must incorporate stepping to follow any change in level along the street boundary. The height of the fence may exceed the aforementioned numerical requirement by a maximum of 150mm adjacent to any stepping.	Complies	Yes
	(vi) The preferred materials for front fences are natural stone, face bricks and timber.	Complies	Yes
	(vii) Gates must not open over public land.	Complies	Yes
	(viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians.	Complies	Yes
7.3	Side and Rear Fencing		
	(i) The maximum height of side, rear or common boundary fences is limited to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing).	The proposed side and rear fencing have been designed to follow the sloping topography of the site and is considered acceptable. Consistent with the DCP requirements, the fence height does not exceed 2.2m.	Yes
	(ii) In the scenario where there is significant level difference between the		

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DCP Clause	Control	Proposal	Compliance
	<p>subject and adjoining allotments, the fencing height will be considered on merits.</p> <p>(iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment.</p> <p>(iv) Side or common boundary fences must be finished or treated on both sides.</p>		
7.6	Storage		
	<p>(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling.</p> <p>(ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles.</p> <p>(iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <p>(a) Studio apartments – 6m3</p> <p>(b) 1-bedroom apartments – 6m3</p> <p>(c) 2-bedroom apartments – 8m3</p> <p>(d) 3 plus bedroom apartments – 10m3</p>	Suitable storage is provided for future residents.	Yes
7.7	Laundry facilities		
	<p>(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.</p>	Suitable space is available for clothes drying.	Yes
	<p>(ii) Provide internal laundry for each dwelling unit.</p>	Each unit is provided with a laundry.	Yes
7.8	Air conditioning units:		
	<ul style="list-style-type: none"> Avoid installing within window frames. If installed in balconies, screen by suitable balustrades. Air conditioning units must not be installed within window frames. 	Capable of complying, subject to conditions.	Yes

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/351/2025

Draft Development Consent Conditions (Medium Density Residential)



D36/25

Folder /DA No:	DA/351/2025
Property:	30-32 Moore Street, COOGEE NSW 2034
Proposal:	Demolition of the existing structures to enable the construction of a 4-storey residential flat building, including 4 units (2 x 3 bedroom, 1 x 2 bedroom, 1 x 1 bedroom), basement car parking with 6 spaces and associated landscaping works
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>
A004, Rev. D – Site Plan Basement	Arkhaus	24/06/2025	27/06/2025
A005, Rev. D – Site Plan Ground Floor	Arkhaus	24/06/2025	27/06/2025
A006, Rev. D – Development Data	Arkhaus	24/06/2025	27/06/2025
A008, Rev. D – Demolition Plan	Arkhaus	24/06/2025	27/06/2025
A101, Rev. D – Basement Plan	Arkhaus	24/06/2025	27/06/2025
A102, Rev. D – Ground Floor Plan	Arkhaus	24/06/2025	27/06/2025
A103, Rev. D – Level 1 Plan	Arkhaus	24/06/2025	27/06/2025
A104, Rev. D – Level 2 Plan	Arkhaus	24/06/2025	27/06/2025
A105, Rev. D – Level 3 Plan	Arkhaus	24/06/2025	27/06/2025
A106, Rev. D – Roof Plan	Arkhaus	24/06/2025	27/06/2025
A201, Rev. D – East Elevation	Arkhaus	24/06/2025	27/06/2025
A202, Rev. D – North Elevation	Arkhaus	24/06/2025	27/06/2025
A203, Rev. D – West Elevation	Arkhaus	24/06/2025	27/06/2025
A204, Rev. D – South Elevation	Arkhaus	24/06/2025	27/06/2025
A301, Rev. D – Section	Arkhaus	24/06/2025	27/06/2025
A302, Rev. D – Section	Arkhaus	24/06/2025	27/06/2025
A1309, Rev. D – Window Schedule	Arkhaus	24/06/2025	27/06/2025
A1310, Rev. D – Window Schedule	Arkhaus	24/06/2025	27/06/2025
A1311, Rev. D – Door Schedule	Arkhaus	24/06/2025	27/06/2025

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
1790394M	04/04/2025	22/04/2025

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

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

2. **Amendment of Plans & Documentation**

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

	Condition
	following requirements:
	<p>a. The swimming pool at Level 3 (and associated equipment area at Level 2 below) shall be deleted and replaced with non-trafficable planters. The balustrade to the west of the pool and the door to the equipment area (at Level 2) shall also be deleted.</p> <p>b. The balustrade adjoining the eastern edge of the planter at Level 3 shall be deleted. Window W40 and door D08 shall be revised accordingly.</p> <p>c. A 1m wide planter shall be provided to the western side of the rear balcony at Level 1.</p> <p>d. The rear balcony columns on all levels shall be deleted and the balconies shall be engineered without the need for structural column support.</p> <p>e. The west-facing living room windows at Level 3 (W42 and W43) shall have a minimum sill height of 1.7m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height.</p> <p>f. All tree planting in the rear setback area shall comprise species with a maximum mature height of 3m.</p> <p>Amended plans shall be submitted to and approved by Council's Manager Development Assessment prior to issue of any construction certificate.</p> <p>Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.</p>
3.	<p>Surrender of Development Consent (DA/277/2022)</p> <p>The development consent for Development Application DA/272/2022 shall be surrendered prior to the issue of any Construction Certificate.</p> <p>Condition Reason: To ensure the previous consent does not overlap or conflict with the new consent.</p>
4.	<p>Air Conditioning Units</p> <p>Air conditioning units shall not be installed within window frames or balconies, unless screened by suitable balustrades.</p> <p>Condition Reason: To ensure compliance with RDCP 2013.</p>
5.	<p>Affordable Rental Housing Component</p> <p>As identified on Dwg. No. A006, Rev. D (prepared by Arkhaus dated 24 June 2025), Unit 1B shall be provided as affordable housing in accordance with the SEPP (Housing) 2021.</p> <p>The dwelling to be used for the purpose of 'affordable housing', as per the provisions of the SEPP (Housing) 2021, shall be used as such for at least 15 years from the date of the issue of the Occupation Certificate.</p> <p>The affordable housing component must be managed by Mission Australia (the registered Community Housing Provider (CHP)) in accordance with the letter dated 07 May 2025.</p> <p>The CHP must ensure compliance with the occupant restriction and other provisions of the regulatory code established through regulations under the Housing Act 2001.</p> <p>A restriction must be registered, before the date of the issue of the occupation</p>

Condition
<p>certificate, against the title of the property, in accordance with Section 88E of the Conveyancing Act 1919 that will ensure that the above requirements are met and that the terms of restriction may not be varied without Council's consent.</p> <p>Prior to an Occupation Certificate being granted, evidence must be provided to Council demonstrating that the section 88E covenant has been registered on the title stating that the affordable rental housing component must be used for affordable rental housing and managed by a registered CHP.</p> <p>Condition Reason: To ensure the affordable housing component is provided in accordance with the consent and managed in accordance with the Housing SEPP.</p>

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition
<p>6. 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>7. 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, with the following exception:</p> <ul style="list-style-type: none"> The proposed black metal cladding (MC-1) and dark charcoal paint (PF-1) shall be replaced with lighter grey colours. <p>An amended materials schedule shall be submitted to and approved by Council's Manager Development Assessment prior to issue of any construction certificate.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
<p>8. Section 7.12 Development Contributions</p> <p>Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$3,906,231.00 the following applicable monetary levy must be paid to Council: \$39,062.30.</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.</p> <p>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>

- | | Condition |
|-----|---|
| | <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> |
| 9. | <p>Long Service Levy Payments</p> <p>Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction Industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with Section 6.8 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p><i>At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p> |
| 10. | <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"> • \$8,000.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p> |
| 11. | <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> |

	Condition
	<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.sydneyswater.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>
<p>12.</p>	<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>The works are to be carried out in compliance with the 'BCA & Access Report', prepared by Building Innovation Australia, dated 5 June 2025 (Reference No. PRO-09509-JOK0. Details of compliance is to be provided to the Principal Certifier's satisfaction.</p> <p>Access and facilities for people with disabilities must be provided to new building work in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010 and relevant Australian Standards, to the satisfaction of the Registered Certifier for the development and details are to be included in the construction certificate for the development.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
<p>13.</p>	<p>BASIX Requirements</p> <p>In accordance with section 4.17(11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 75 of the <i>Environmental Planning and Assessment Regulation 2021</i>, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and 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>

	Condition
	<p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
14.	<p>Site stability, Excavation and Construction work</p> <p>A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:</p> <ul style="list-style-type: none"> (a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties. (b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings. (c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration. (d) Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work. (e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate. <p>Condition Reason: To ensure the subject site/development and adjoining land is adequately supported and protected during any works.</p>
15.	<p>Survey Infrastructure</p> <p>Prior to the issue of any Construction Certificate, documentary evidence must be prepared by a Registered Surveyor and submitted to the appointed Certifying Authority and the Council that includes and addresses the following:</p> <ul style="list-style-type: none"> (a) A letter, signed by a current NSW Registered Land Surveyor and including his or her Board of Surveying and Spatial Information (BOSSI) identification number, stating that all investigations required under Surveyor-General's Direction No.11 have been made for the subject site. (b) The above letter is required to confirm if any survey infrastructure will be affected or impacted upon by the proposal. If no impact is identified this must be detailed by the Registered Land Surveyor. (c) In the event that survey infrastructure is identified as vulnerable or will be affected or impacted upon by the approved development, a copy of any Surveyor-General's Approval for Survey Mark Removal granted by NSW Spatial Services for the subject site, including all documentation submitted as part of that application (for example the survey mark audit schedule, strategy plan and strategy report) is required. <p>The applicant must, where possible, ensure the preservation of existing survey infrastructure undisturbed and in its original state or else provide evidence of the Surveyor-General's authorisation to remove or replace marks.</p>

	Condition
	<p>Note: Under Section 24 of the Surveying and Spatial Information Act 2002, it is an offence to remove, damage, destroy, displace, obliterate or deface any survey mark unless authorised to do so by the Surveyor-General.</p> <p>Condition Reason: To ensure the development satisfies requirements with regards to the Preservation of Survey Infrastructure (POSI) under Section 24 of the Surveying and Spatial Information Act 2002.</p>
16.	<p>Traffic conditions</p> <p>Adequate provisions are to be made to provide pedestrian visibility and safety. All new walls (and/or landscaping) adjacent to vehicular crossings should not exceed a height of 600mm above the internal driveway level for a distance of 1.5m within the site or new walls (including landscaping) should splayed 1.5 metres by 1.5 metres. Details of compliance, to the satisfaction of the Principal Certifier, are to be included in the construction certificate documentation.</p> <p>Plans submitted for the construction certificate must demonstrate compliance with the following amendments/requirements to maintain vehicle access into the neighbouring property at 2A Major Street;</p> <ul style="list-style-type: none"> • A 1.5m x 1.5m splay concrete hardstand at the northeastern corner of the site is to be maintained/reconstructed to facilitate vehicle access across the Council laneway to 2A Major Street. • A Right of Carriageway in favour of Council encompassing the above area is to be registered on title prior to issuing of a full occupation certificate. <p>The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with these requirements.</p> <p>Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.</p>
17.	<p>Design Alignment levels</p> <p>The design alignment level (the finished level of concrete, paving or the like) at the property boundary for driveways, access ramps and pathways or the like, shall be:</p> <ul style="list-style-type: none"> • Match the back of the existing footpath along the full site frontage. <p>The design alignment levels at the property boundary as issued by Council and their relationship to the roadway/kerb/footpath must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.</p> <p>Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.</p> <p>Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881/9093-6923.</p> <p>Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.</p>
18.	<p>Design Alignment levels</p> <p>The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of \$2434 calculated at \$63.00 (as of 1st July 2024) per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.</p>

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Condition	
	Condition Reason: To ensure all driveway & footpath works are designed and constructed in accordance with Council requirements and Australian Standards.
19.	<p>Design Alignment levels</p> <p>The gradient of the internal access driveway must be designed and constructed in accordance with AS 2890.1 (2004) – Off Street Car Parking and the levels of the driveway must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate.</p> <p>The height of the building must not be increased to satisfy the required driveway gradients.</p> <p>Condition Reason: To ensure all driveway & footpath works are designed and constructed in accordance with Council requirements and Australian Standards.</p>
20.	<p>Stormwater Drainage & Flood Management</p> <p><u>Stormwater drainage plans have not been approved as part of this development consent.</u> Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the Principal Certifier. The drawings and details shall include the following information:</p> <ol style="list-style-type: none"> A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition. A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system. The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories: <ol style="list-style-type: none"> Roof areas Paved areas Grassed areas Garden areas Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof. Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels. The details of any special features that will affect the drainage design e.g. the nature of the soil in the site and/or the presence of rock etc. <p>The site stormwater drainage system is to be provided in accordance with the following requirements:</p> <ol style="list-style-type: none"> The stormwater drainage system must be provided in accordance with the relevant requirements of Building Code of Australia and the conditions of

Condition	
	this consent, to the satisfaction of the Principal Certifier and details are to be included in the construction certificate.
b)	<p>The stormwater must be discharged (by gravity) either:</p> <ol style="list-style-type: none"> Directly to the kerb and gutter <u>in front</u> of the subject site in Major Street/road; or Directly into Council's underground drainage system located in Major Street via an existing kerb inlet pit; or
c)	<p>Should stormwater be discharged to Council's street gutter the maximum discharge from the site must not exceed 25L/S for all storm events up to the 1 in 20 year storm event. All stormwater run-off from the site exceeding this amount is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the Principal Certifier.</p> <p>An overland escape route or overflow system (to Council's street drainage system) must be provided for storms having an average recurrence interval of 100 years (1 in 100 year storm), or, alternatively the stormwater detention system is to be provided to accommodate the 1 in 100 year storm.</p>
d)	<p>Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1% AEP (1 in 100 year), 2 hour storm assuming both pumps are not working.</p> <p>The pump system must also be designed and installed strictly in accordance with Randwick City Council's Private Stormwater Code.</p>
e)	If connecting to Council's underground drainage system, a reflux valve shall be provided (within the site) over the pipeline discharging from the site to ensure that stormwater from Council drainage system does not surcharge back into the site stormwater system.
f)	Generally all internal pipelines must be capable of discharging a 5% AEP (1 in 20 year) storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.
g)	<p>A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.</p> <p>Sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements:</p> <ul style="list-style-type: none"> The base of the pit being located a minimum 300mm under the invert level of the outlet pipe. The pit being constructed from cast in-situ concrete, precast concrete or double brick. A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes.

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	<ul style="list-style-type: none"> • A galvanised heavy-duty screen being provided over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent). • The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system. • A child proof and corrosion resistant fastening system being provided for the access grate (e.g. spring loaded j-bolts or similar). • Provision of a sign adjacent to the pit stating, "This sediment/silt arrester pit shall be regularly inspected and cleaned".

Sketch details of a standard sediment/silt arrester pit may be obtained from Council's Drainage Engineer.

- h) The floor level of all habitable, retail, commercial and storage areas located adjacent to any detention and/or infiltration systems with above ground storage must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be provided.

(In this regard, it must be noted that this condition must not result in any increase in the heights or levels of the building. Any variations to the heights or levels of the building will require a new or amended development consent from the Council prior to a construction certificate being issued for the development).

- i) The maximum depth of ponding in any above ground detention areas and/or infiltration systems with above ground storage shall be as follows (as applicable):
- 150mm in uncovered open car parking areas (with an isolated maximum depth of 200mm permissible at the low point pit within the detention area)
 - 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10)
 - 600mm in landscaped areas where the side slopes of the detention area have a maximum grade of 1 in 10
 - 1200mm in landscaped areas where a safety fence is provided around the outside of the detention area
 - Above ground stormwater detention areas must be suitably signposted where required, warning people of the maximum flood level.

Note: Above ground storage of stormwater is not permitted within basement car parks or store rooms.

- j) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
- k) A 'V' drain (or equally effective provisions) are to be provided to the perimeter of the property, where necessary, to direct all stormwater to the detention/infiltration area.
- l) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.

Condition Reason: To control and manage stormwater run-off so as not to

	Condition
	adversely impact the development, neighbouring properties and Council's stormwater assets.
21.	<p>Site seepage</p> <p>The development must comply with the following requirements to ensure the adequate management of site seepage and sub-soil drainage:</p> <ul style="list-style-type: none"> a) Sub-soil drainage must not be connected or discharged directly or indirectly to Council's street gutter. <ul style="list-style-type: none"> i. Adequate provision is to be made for the ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site). b) Sub-soil drainage systems (if provided) must comply with one or more of the following requirements: <ul style="list-style-type: none"> ii. The system may be connected directly to Council's underground drainage system (but only with the prior written approval of Council, as required under the Roads Act 1993). iii. Any sub-soil drainage systems must be restricted from entering the basement areas of the building and the stormwater drainage system, by tanking/waterproofing the basement areas of the building. iv. Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to be fully managed within the site, without causing a nuisance to any premises and ensuring that it does not drain or discharge (directly or indirectly) to the street gutter. c) Details of the proposed stormwater drainage system including methods of sub-soil drainage, tanking/waterproofing (as applicable) must be prepared or approved by a suitably qualified and experienced Professional Engineer to the satisfaction of the Principal Certifier and details are to be included in the construction certificate. A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Principal Certifier. <p>Condition Reason: To manage site seepage.</p>
22.	<p>Waste Management</p> <p>Waste Management provisions must be implemented in general accordance with the Waste Management Plan submitted with the development application (Prepared by Dickens Solutions dated March 2025), subject to the following amendments/requirements;</p> <ul style="list-style-type: none"> • The frequency of green waste/FOGO collection is to be amended to once per week in accordance with Council's requirements. • Collection of bins is to be from Moore/Major Street (the WMP on page 4 incorrectly refers to Mount St) subject to the approval of Council's Lead Specialist Strategic Waste. <p>The amended Waste Management Plan is required to be submitted to and approved by Council's Lead Specialist Strategic Waste.</p> <p>The waste storage areas are to be provided with a tap and hose and the floor is to be graded and drained to the sewer to the requirements of Sydney Water.</p> <p>Condition Reason: To ensure adequate waste management for the life of the</p>

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	development.
23.	<p>Public Utilities</p> <p>A <i>Public Utility Impact Assessment</i> must be carried out to identify all public utility services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the building works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>
24.	<p>Undergrounding of Site Power</p> <p>Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Major Street. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.</p> <p>Condition Reason: To minimise the use of private poles in accordance with Council's resolution and protect street amenity.</p>
25.	<p>Environmental Amenity</p> <p>All recommendations detailed in the acoustic report prepared by Koikas Acoustics dated 17th March 2025 are to be included in the construction certificate plans.</p> <p>The acoustic consultant shall assess all mechanical plant including but not limited to assessment of pool pumps, air conditioning, mechanical plant, lift motors, etc).</p> <p>The acoustic consultant shall confirm in writing to the certifying authority that all acoustic requirements have been included in construction certificate plans prior to a construction certificate being issued.</p> <p>Condition Reason: To ensure environmental amenity.</p>
26.	<p>Street Tree Management</p> <p>The applicant must submit a total payment of \$5,820.25 (GST inclusive), to cover Council's costs for the following:</p> <ol style="list-style-type: none"> To remove, stump grind and dispose of the two <i>Lagunaria patersonii</i> (Norfolk Island Hibiscus) roughly halfway along the length of Council's Major Street verge, as they are undesirable due to being highly irritable to both humans and animals, so are listed as an 'exempt species' in Council's DCP, with their eradication sought in all instances as this then allows local native coastal species to be provided in their place which will benefit local biodiversity; To supply, install and maintain through until maturity 1 x 45 litre <i>Grevillea</i> spaced centrally across the width of the Moore Street verge, then 3 x 45 litre <i>Banksia seratta</i> (Old Man Banksia's) spaced evenly along the length of the Major Street verge at the completion of all works. <p>This fee must be paid into Tree Amenity Income via Council's Customer Service Centre, prior to a Construction Certificate being issued for the development.</p> <p>The applicant must then contact Council's Landscape Development Officer on</p>

	Condition
	<p>9093-6613 (quoting the receipt number) AND GIVING UP TO SIX WEEKS NOTICE to arrange for removal prior to commencement and planting upon completion.</p> <p>After advising of the receipt number, any further enquiries regarding scheduling/timing or completion of tree works are to be directed to Council's Central Area Tree Preservation & Maintenance Coordinator on 9093-6728.</p> <p>Condition Reason: Protection and/or maintenance of existing environment public infrastructure, community assets and significant trees.</p>
27.	<p>AMENDED Landscape Plans</p> <p>The Landscape Plans by Place Design Group, rev C dated 19/03/25 must be amended further to now comply with the following requirements:</p> <ol style="list-style-type: none"> Be revised where necessary to now be consistent with the current set of architectural plans by Arkhaus, issue D, dated 24/06/25, including clarifying both the location and extent of podium planters on the First-Third Floor Levels. The selection of <i>Opuntia ficus-indica</i> (Barbary Fig/Prickly Pear) in the Planting Plan (page 8) and Plant Schedule (page 9) is not supported in such an environmentally sensitive zone immediately adjacent Gordons Bay Reserve, as this area contains remnant native coastal vegetation which Council directs significant time, funds and resources to maintaining and protecting, so must be deleted and replaced with an alternative, non-invasive native coastal species that will perform a similar function. The synthetic turf in the courtyard fronting Moore Street is not supported and must be replaced with a combination of natural turf for passive recreation and planting for future amenity. Details confirming compliance are to be provided. To maximise the benefit of areas of deep soil as well as to complement the native coastal species in Dunningham Park and Gordons Bay Reserve, a minimum of 2 x 100 litre (pot/bag size at the time of planting) evergreen native coastal canopy trees (not palms) must be provided, comprising one within the front setback, then one in the rear setback, in the northeast site corner, selecting those which will achieve a minimum height of 6 metres at maturity, and must be at the expense of those exotics which are currently indicated for both areas. The trees described in point 'd' above must be planted only in deep soil, with measurements to be included confirming that the new tree in the front setback will be offset a minimum of 2.5 metres from the building. Construction details must be providing confirming that the soil depths and volumes provided for any podium planters will, at minimum, comply with what is specified in the NSW ADG, Parts 4O and 4P for plants, shrubs and trees, with notations to be included confirming the depth and dimensions of each of these areas. <p>Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that this revised scheme, submitted for the Construction Certificate, complies with the requirements specified above, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.</p>

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

BEFORE BUILDING WORK COMMENCES

Condition

28. **Building Certification & Associated Requirements**

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

- a) a *Construction Certificate* must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

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

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

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

29. **Home Building Act 1989**

In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and sections 69 & 71 of the *Environmental Planning and Assessment Regulation 2021*, in relation to residential building work, the requirements of the *Home Building Act 1989* must be complied with.

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.

Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.

30. **Dilapidation Reports**

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

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	<p>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>
31.	<p>Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.</p> <p>A <i>Construction Noise & Vibration Management Plan</i> must be developed and implemented throughout demolition and construction work.</p> <p>(a) The <i>Construction Noise & Vibration Management Plan</i> must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority <i>Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline</i> (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.</p> <p>(b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.</p> <p>(c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the <i>Construction Noise & Vibration Management Plan</i> and which demonstrates compliance with relevant criteria.</p> <p>(d) Any recommendations and requirements contained in the <i>Construction Noise & Vibration Management Plan</i> and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.</p> <p>A copy of the Construction Noise & Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.</p> <p>(e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
32.	<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</p>

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	include the following measures, as applicable to the type of development:
	<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>
33.	<p>Sediment and Erosion Control Plan A <i>Sediment and Erosion Control Plan</i> must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p>
	<p>Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.</p>
34.	<p>Public Liability The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p>
	<p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p>
35.	<p>Construction Traffic Management An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Major St or Moore St for the duration of the demolition & construction works.</p> <p>The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.</p> <p>The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of</p>

	Condition
	<p>Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.</p> <p>Condition Reason: To ensure construction traffic is appropriately managed and there is sufficient on-street space for construction and delivery vehicles as required.</p>
36.	<p>Construction Traffic Management</p> <p>A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.</p> <p>The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:</p> <ul style="list-style-type: none"> • A description of the demolition, excavation and construction works • 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 • Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority) • Any activities proposed to be located or impact upon Council's road, footways or any public place • Measures to maintain public safety and convenience <p>The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.</p> <p>Condition Reason: To ensure construction traffic is appropriately managed and there is sufficient on-street space for construction and delivery vehicles as required.</p>
37.	<p>Authority Approvals</p> <p>Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.</p> <p>All conditions and requirements of the NSW Police, Roads & Maritime Services, State Transit Authority and Council must be complied with at all times.</p> <p>Condition Reason: To ensure construction traffic is appropriately managed and that any requirements of relevant external agencies are met.</p>
38.	<p>Public Utilities</p> <p>Documentary evidence from the relevant public utility authorities confirming they have agreed to the proposed works and that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any demolition, excavation or building works.</p>

Condition

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

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

39. **Hazardous Identification**

A hazardous materials survey is to be undertaken by a suitably qualified person prior to the commencement of any building or demolition works.

All identified hazardous materials must be appropriately identified prior to commencement of work. Any hazardous material managed to maintain worker health and safety during demolition works and prevent the spread of hazardous substances onto the site (soil) surfaces. An asbestos clearance certificate shall be undertaken by a suitably qualified person confirming asbestos is not present on the site and the site is suitable for commencement of work.

Condition Reason: To protect against hazardous materials.

DURING BUILDING WORK

Condition

40. **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.

41. **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

Condition	
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.

42. **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.

43. **Public Safety & Site Management**

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

- Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- 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.
- Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- 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.
- Public safety must be maintained at all times and public access to any

	Condition
	<p>demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.</p> <p>Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.</p> <p><i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i></p> <p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>j) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
44.	<p>Dust Control</p> <p>Dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.</p> <p><i>Dust control measures and practices may include:</i></p> <ul style="list-style-type: none"> • <i>Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).</i> • <i>Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.</i> • <i>Installation of water sprinkling system or provision hoses or the like.</i> • <i>Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.</i> • <i>Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.</i> • <i>Landscaping and revegetation of disturbed areas.</i> <p>Condition Reason: To require details of measures that will minimise impacts to the public, and the surrounding environment, during site works and construction.</p>
45.	<p>Site Accessway</p> <p>A temporary timber, concrete crossing or other approved stabilised access is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council throughout the works, unless access is via an existing suitable concrete crossover.</p>

	Condition
	<p>Any damage caused to the road, footpath, vehicular crossing or nature strip during construction work must be repaired or stabilised immediately to Council's satisfaction.</p> <p>Condition reason: To minimise and prevent damage to public infrastructure.</p>
<p>46. Site Fencing & Hoardings</p> <p>Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:</p> <ol style="list-style-type: none"> Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing. Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting. All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible. Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land. Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time. <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>	
<p>47. Excavations and Support of Adjoining Land</p> <p>Tin accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 74 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.</p> <p>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>	
<p>48. Complaints Register</p> <p>A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.</p>	

	Condition
	<p>Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigation, actioned and responded to and documented in a Complaints Register accordingly.</p> <p>Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.</p> <p>Condition reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.</p>
49.	<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>
50.	<p>Survey Report</p> <p>A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</p> <ul style="list-style-type: none"> • prior to construction (pouring of concrete) of footings for the building and boundary retaining structures, • prior to construction (pouring of concrete) of new floor levels, • prior to issuing an Occupation Certificate, and • as otherwise may be required by the Principal Certifier. <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p> <p>Condition Reason: To ensure compliance with approved plans.</p>
51.	<p>Road/Asset Opening Permit</p> <p>Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:</p> <ol style="list-style-type: none"> A <i>Road / Asset Opening Permit</i> 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 <i>Roads Act 1993</i> and all of the conditions and requirements contained in the <i>Road / Asset Opening Permit</i> must be complied with. Council's <i>Road / Asset Opening Officer</i> must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out. Relevant <i>Road / Asset Opening Permit</i> fees, construction fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place, The owner/developer 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 <i>final occupation certificate</i> or occupation of the development (whichever

Condition	
	is sooner).
e)	Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
f)	Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date.
g)	Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf.
h)	The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each day's activities and upon completion.
i)	The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand.
j)	Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident.
k)	The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place.

Condition Reason: To ensure protection and/or repair of Council's Road & footpath assets and ensure public safety.

52. **Roadway**

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) days' notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

Condition Reason: To ensure excavation works are undertaken in accordance with the relevant requirements.

53. **Traffic Management**

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.

All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 – Traffic Control Devices for Works on Roads, at all times.

All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.

Condition Reason: To ensure construction traffic is appropriately managed and any requirements of relevant external agencies are met.

Condition	
54.	<p>Stormwater Drainage</p> <p>Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.</p> <p>The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.</p> <p>Condition Reason: To control and manage stormwater run-off during excavation/construction so as not to adversely impact neighbouring properties and Council's stormwater assets.</p>
55.	<p>Groundwater/seepage</p> <p>A separate written approval from Council is required to be obtained in relation to any proposed discharge of seepage/groundwater into Council's drainage system external to the site, in accordance with the requirements of Section 138 of the Roads Act 1993.</p> <p>Condition Reason: To control and manage any seepage/groundwater during excavation/construction so as not to adversely impact neighbouring properties and Council's stormwater assets.</p>
56.	<p>Vegetation</p> <p>Due to their small size and insignificance, approval is granted for the removal of all vegetation within this development site where needed to accommodate the approved works as shown, subject to full implementation of the approved/revised Landscape Plans.</p> <p>Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.</p>
57.	<p>Major Street Verge</p> <p>Should the applicant seek to upgrade the Major Street verge in low native coastal plantings, as can be seen in front of other properties nearby, rather than a standard turfed verge, then the applicant must contact Council's Landscape Development Officer on 9093-6613 to obtain Council's requirements, and if written approval is provided for this, Council's directions for works on public property must be strictly complied with at all times. These works will be wholly at the applicant's cost, with Council's Officer to provide written satisfaction of completion, prior to any Occupation Certificate.</p> <p>Condition Reason: Protection and/or maintenance of existing environment public infrastructure, community assets and significant trees.</p>
58.	<p>Soil materials</p> <p>Fill material that is imported to the site must satisfy the requirements of the NSW <i>Protection of the Environment Operations (Waste) Regulation 2014</i> and the NSW Environment Protection Authority (EPA) <i>Waste Classification Guidelines</i> (2008). Fill material must meet the relevant requirements for Virgin Excavated Natural Material (VENM) or be the subject of a (general or specific) Resource Recovery Exemption from the EPA.</p> <p>Details of the importation of fill and compliance with these requirements must be provided to the private certifier.</p> <p>All soil materials that are designated for off-site disposal, including any virgin excavated natural material (VENM), must be pre-classified in accordance with the NSW EPA (2014) <i>Waste Classification Guidelines</i>.</p> <p>Hazardous or intractable wastes arising from the works must be removed, managed and disposed of in accordance with the relevant requirements of Safe</p>

Condition
work NSW and the Environment Protection Authority, including: <ul style="list-style-type: none"> • Work Health and Safety Act, 2011 and associated Regulations, • Protection of the Environment Operations Act 1997 (NSW) and • NSW DECC/EPA Waste Classification Guidelines (2008). <p>Should asbestos be present on the site, an asbestos clearance inspection and certificate shall be completed by a suitably qualified professional following the removal of all Asbestos Containing Material (ACM) from the site. The asbestos clearance certificate shall confirm asbestos has been satisfactorily removed from the site.</p> <p>Condition Reason: To protect against hazardous materials.</p>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition
<p>59. 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>60. 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>61. Post-construction Dilapidation Report</p> <p>A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.</p> <p>The dilapidation report shall detail whether:</p> <ul style="list-style-type: none"> (a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and (b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent. <p>The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council</p>

	Condition
	shall be provided with a list of owners to whom a copy of the report has been provided.
	Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.
62.	<p>Fire Safety Certificate</p> <p>A single and complete <i>Fire Safety Certificate</i>, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the <i>Fire Safety Certificate</i> must be displayed in the building entrance/foyer at all times and a copy of the <i>Fire Safety Certificate</i> and <i>Fire Safety Schedule</i> must also be forwarded to Fire and Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, and that adequate provision is made for fire safety in the premises for building occupant safety.</p>
63.	<p>Structural Certification</p> <p>A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal Certifier</i>. A copy of which is to be provided to Council.</p> <p>Condition Reason: To ensure the structural adequacy of the building and works.</p>
64.	<p>Sydney Water Certification</p> <p>A <i>section 73 Compliance Certificate</i>, under the <i>Sydney Water Act 1994</i> must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site www.sydneypwater.com.au > <i>Building and developing</i> > <i>Developing your Land</i> > <i>Water Servicing Coordinator</i> or telephone 13 20 92.</p> <p>Please make early contact with the Water Servicing Coordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.</p> <p>The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
65.	<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</p>

	Condition
	<p>an occupation certificate being issued.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
66.	<p>Street and/or Sub-Address Numbering</p> <p>Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.</p> <p>If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.</p> <p><i>Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.</i></p> <p>Condition Reason: To ensure properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.</p>
67.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>The owner/developer must meet the full cost for a Council approved contractor to:</p> <ol style="list-style-type: none"> Re-construct kerb and gutter for the full site frontage in Major Street except opposite the vehicular entrance and exit points, to Council's specifications and requirements Carry out a full depth, 1.0m wide, road construction in front of the kerb and gutter along the Major Street site frontage, to Council's specifications and requirements. Re/construct a 1.3m wide concrete footpath along both the Moore Street and Major Street full site frontage. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification. Construct minimum 1.3m wide footpath at the northern end of Major Street between the Coastal Walk and the council vehicle crossing immediately behind the kerb line. <p>Prior to issuing a final occupation certificate or occupation of the development (whichever is sooner), the owner/developer must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:</p> <ol style="list-style-type: none"> Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details. Works on Council land must not commence until the written letter of

	Condition
	<p>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.</p> <p>c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.</p>
	<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>
68.	<p>Survey Infrastructure – Restoration</p> <p>Where a Surveyor-General's Approval for Survey Mark Removal has been granted by NSW Spatial Services, documentary evidence of restoration of the removed survey mark must be prepared by a Registered Surveyor and submitted to the appointed certifying authority and the Council prior to the issue of an occupation certificate.</p> <p>The documentary evidence is to consist of a letter Signed by a Registered Land Surveyor confirming that all requirements requested under the Surveyor-General's Approval for Survey Mark Removal under condition "Survey Infrastructure – Identification and Recovery" have been complied with.</p> <p>Condition Reason: To ensure the development satisfies requirements with regards to the Preservation of Survey Infrastructure (POSI) under Section 24 of the Surveying and Spatial Information Act 2002.</p>
69.	<p>Sydney Water</p> <p>A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required, will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).</p> <p>Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.</p> <p>The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to the issuing of an <i>Occupation Certificate</i> or <i>Subdivision Certificate</i>, whichever the sooner.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements with regards to any upgrade/adjustment of Sydney Water's assets.</p>
70.	<p>Carparking</p> <p>The proposed carpark shall be finished in a manner fit for its intended use. The car spaces shall be formalised with line-marking and numbering/labelling with such works completed prior to the issuing of an occupation certificate.</p> <p>Condition Reason: To ensure the completed carpark is fit for purpose and ready for occupation.</p>
71.	<p>Undergrounding of Power</p> <p>The Principal Certifier shall ensure that power supply to the completed development has been provided as an underground (UGOH) connection from the nearest mains distribution pole in Moore or Major Street. All work is to be to the</p>

	Condition
	<p>requirements and satisfaction of Ausgrid and at no cost to Council.</p> <p>NOTE: Any private poles must be removed prior to the issuing of an occupation certificate.</p> <p>Condition Reason: To minimise the use of private poles in accordance with Council's resolution and protect street amenity.</p>
72.	<p>Stormwater Drainage</p> <p>A works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):</p> <ul style="list-style-type: none"> • Finished site contours at 0.2 metre intervals; • The location of any detention basins/tanks with finished surface/invert levels; • Confirmation that orifice plate/s have been installed and orifice size/s (if applicable); • Volume of storage available in any detention areas; • The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes; • Details of any infiltration/absorption systems; and • Details of any pumping systems installed (including wet well volumes). <p>The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.</p> <p>The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.</p> <p>The applicant shall submit to the Principal Certifier and Council certification from a suitably qualified and experienced professional engineer, confirming that the walls of the basement have been fully tanked and waterproofed to prevent the entry of all groundwater in the basement level/s and that any required sub-soil drainage systems have been provided in accordance with the conditions of this consent. There must be no dry weather seepage/groundwater flows discharging to Council's street gutter.</p> <p>Condition Reason: To control and manage stormwater run-off so as not to adversely impact neighbouring properties and Council's stormwater assets.</p>
73.	<p>Waste Management</p> <p>Prior to the occupation of the development, the owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services for the premises.</p> <p>The waste storage areas shall be clearly signposted.</p> <p>Condition Reason: To ensure adequate waste management for the life of the development.</p>
74.	<p>Creation of Right of Way</p> <p>Prior to occupation of the development, a 1.5m x 1.5m (approximate) splay Right of Way shall be created on the title of the subject property at the northeastern corner to maintain vehicle access across Kildare Lane and into the neighbouring property</p>

Condition	
	at 2A Major Street.
	Condition Reason: To maintain existing levels of vehicle access across the laneway to 2A Major Street.
75.	<p>Sighting Mirror</p> <p>The applicant shall meet the full costs of a sighting mirror to be installed on the power pole on Major Street near the northern end of the site to allow vehicles and pedestrians exiting Kildare Lane to see traffic exiting the subject site.</p> <p>Condition Reason: To maintain existing levels of pedestrian and driver safety at the intersection of Kildare Lane and Major Street.</p>
76.	<p>Landscaping 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 Design Report by Place Design Group, rev C dated 19/03/25, and any relevant conditions of consent.</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>The nature-strip upon Council's footways shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay (and/or landscape/planting improvements as described earlier), wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.</p> <p>Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.</p>
77.	<p>Acoustic Report</p> <p>A report, prepared by a suitably qualified and experienced consultant in acoustics, shall be submitted to the Principal Certifier and Council, which demonstrates and certifies that noise and vibration from the development satisfies the relevant provisions of the Protection of the Environment Operations Act 1997, NSW EPA Noise Policy for Industry 2020, Council's conditions of consent (including any relevant approved acoustic report and recommendations and additional reports requested as part of the consent conditions issued for this development). The assessment and report must include assessment of compliance for all relevant fixed noise sources and acoustic design requirements.</p> <p>Condition Reason: To ensure acoustic amenity.</p>

OCCUPATION AND ONGOING USE

Condition	
78.	<p>Use of parking spaces</p> <p>The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.</p> <p>All prospective owners and tenants of the building must be notified that Council will not issue any residential parking permits to occupants/tenants of this development.</p> <p>A notice shall be placed in the foyer/common areas of the building advising tenants/occupiers that they are in a building which does not qualify for on-street</p>

	Condition
	<p>resident parking permits.</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>
79.	<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>
80.	<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>
81.	<p>Operational conditions</p> <p>The use and operation of the site must not cause any environmental pollution, public nuisance or, result in an offence under the <i>Protection of the Environment Operations Act 1997</i>, associated Regulations, Guidelines and Policies.</p> <p>The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997</i> and Regulations.</p> <p>In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background (L_{A90}), 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed as an $L_{Aeq, 15 \text{ min}}$ and adjusted in accordance with the NSW Environmental Protection Authority's Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).</p> <p>The use of the premises and the operation of plant and equipment shall not give rise to the transmission of vibration or damage to other properties.</p> <p>There are to be no emissions or discharges from the premises which will give rise to a public nuisance or result in an offence under the <i>Protection of the Environment Operations Act 1997</i>.</p> <p>Air conditioning and pool pumps shall operate between the hours stipulated in Protection of the Environment Act and Regulation</p> <p>Adequate provisions are to be made within the premises for the storage, collection</p>

Condition
and disposal of waste and recyclable materials, to the satisfaction of Council.
A tap and hose is to be provided within or near the waste storage area and suitable drainage provided so as not to cause a nuisance.
Waste/recyclable bins and containers must not be placed on the footpath (or road), other than for waste collection, in accordance with Council's requirements.
Condition reason: To protect the amenity of the surrounding area and residents.

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition
<p>82. Demolition Work</p> <p>A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <ol style="list-style-type: none"> a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy. b) The Demolition Work Plan must include the following details (as applicable): <ul style="list-style-type: none"> • The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor • Details of hazardous materials in the building (including materials containing asbestos) • Method/s of demolition (including removal of any hazardous materials including materials containing asbestos) • Measures and processes to be implemented to ensure the health & safety of workers and community • Measures to be implemented to minimise any airborne dust and asbestos • Methods and location of disposal of any hazardous materials (including asbestos) • Other measures to be implemented to ensure public health and safety • Date the demolition works will commence/finish. <p>The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.</p> <p>If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.</p> <p><i>Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.</i></p> <p><i>A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.</i></p>

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

DURING DEMOLITION WORK

Condition

83. **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. D37/25

Subject: 3-4 Llanfoyst Street, Randwick (DA/437/2025)

Executive Summary

Proposal:	Amend DA/526/2022 for alterations and additions to the approved development, including the addition of three (3) residential storeys to create a seven (7) storey residential flat building, with basement parking and associated landscaping works.
Ward:	East Ward
Applicant:	Llanfoyst Street Development Pty Ltd
Owner:	Parseh Llanfoyst Pty Ltd
Cost of works:	\$3,280,714.80
Reason for referral:	The development contravenes the development standards for building height, parking spaces, ceiling heights, and number of storeys by more than 10%; the development is subject to Chapter 4 'Design of residential apartment development' of the Housing SEPP 2021 as the proposed development is for the erection of a new building that is 3 or more storeys and contains at least 4 dwellings; and >10 unique submissions by way of objection were received.

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/437/2025 to amend DA/526/2022 for alterations and additions to the approved development, including the addition of three (3) residential storeys to create a seven (7) storey residential flat building, with basement parking and associated landscaping works, at No. 3-4 Llanfoyst Street, Randwick NSW 2031, for the following reasons:

1. Pursuant to clause 2.3 of RLEP 2012, the proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone in that it does not recognise the desirable elements of the existing streetscape and built form, fails to protect the amenity of residents, and does not encourage housing affordability.
2. Pursuant to clause 4.6 of RLEP 2012, the Applicant has failed to submit a written request to vary the parking spaces and ceiling height 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.
3. Pursuant to section 16 of the SEPP (Housing) 2021, the Applicant has failed to confirm which dwellings are to be included in the affordable housing component. Inconsistency in the proposed development makes it unclear what the applicable additional floor space ratio and building height subject to the development are located.
4. Pursuant to sections 16, 175(2), and 180(2)(b) of the SEPP (Housing) 2021, the proposed variations to the maximum building height and number of storeys development standards are not supported as 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 section 20(3) of the SEPP (Housing) 2021, the proposed development is incompatible with the character of the local area. In addition, the Applicant has failed to demonstrate that if the precinct is undergoing transition, that the development is compatible with the desired future character of the precinct.
6. Pursuant to section 147 of the SEPP (Housing) 2021, the proposed development was not supported by the Randwick Design Advisory Panel in that the quality of the design was inadequate for the proposed building. In addition, the development fails to demonstrate consistency with the following design criteria of the ADG:
 - a. Section 3D 'Communal and Public Open Space'.
 - b. Section 3E 'Deep Soil Zone'.
 - c. Section 3F 'Visual Privacy'.
 - d. Section 4A 'Solar and Daylight Access'.
 - e. Section 4C 'Ceiling Heights'.
 - f. Section 4G 'Storage'.
7. Pursuant to section 177(2) of the SEPP (Housing) 2021, the proposed development does not provide adequate deep soil zones and canopy tree coverage on the site.
8. Pursuant to clause 6.10 of RLEP 2012, the Applicant has failed to sufficiently demonstrate that adequate arrangements have been made for electricity supply to the proposed development.
9. Pursuant to clause 6.11 of RLEP 2012, the proposed development does not exhibit design excellence.
10. 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 Randwick Development Control Plan 2013:
 - a. Part B7: Transport, Traffic, Parking and Access
 - i. Section 3.2 'Vehicle parking rates'.
 - b. Part C2: Medium Density Residential
 - i. Section 2.2.2 'Deep soil area'.
 - ii. Section 2.3.2 'Communal open space'.
 - iii. Section 3.4 'Setbacks'.
 - iv. Section 4.1 'Building façade'.
 - v. Section 4.2 'Roof design'.
 - vi. Section 4.4 'External wall height and ceiling height'.
 - vii. Section 4.9 'Colours, materials and finishes'.
 - viii. Section 5.1 'Solar access and overshadowing'.
 - ix. Section 5.3 'Visual privacy'.
 - x. Section 5.5 'View sharing'.
 - c. Part C3: Adaptable and Universal Housing
 - i. Section 3 'Adaptable housing'.
11. Pursuant to Section 26 of the *Environmental Planning and Assessment Regulation 2021* and Section 21(1)(b) of the SEPP (Housing) 2021, the development application does not specify the name of the registered community housing provider who will manage the affordable housing component.
12. 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.
13. 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.
14. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to survey plan, architectural plan information,


photomontages, design analysis, feasibility study, view sharing, acoustic report, waste management, electricity supply, and performance solution report.

Attachment/s:

Nil

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Subject Site

Submissions received

North

Locality Plan

N.b. a total of seventy-five (75) submissions received during the notification period including residents outside the map area above, some without any addresses provided, and some from consultant town planners.

1. Executive Summary

The application is referred to the Randwick Local Planning Panel (RLPP) for the following reasons:

- The development contravenes the development standard for building height by more than 10% under the Chapter 2 and 6 of the Housing SEPP 2021.
- The development contravenes the development standard for parking spaces by more than 10% under the Chapter 2 of the Housing SEPP 2021.
- The development contravenes the development standard for ceiling height by more than 10% under the Chapter 4 of the Housing SEPP 2021.
- The development contravenes the development standard for number of storeys by more than 10% under the Chapter 6 of the Housing SEPP 2021.
- The development is subject to Chapter 4 ‘Design of residential apartment development’ of the Housing SEPP 2021 as the proposed development is for the erection of a new building that is 3 or more storeys and contains at least 4 dwellings.
- 75 unique submissions by way of objection were received.

The proposal seeks development consent to amend DA/526/2022 for alterations and additions to the approved development, including the addition of three (3) residential storeys to create a seven (7) storey residential flat building, with basement parking and associated landscaping works.

The proposal seeks to benefit from the recently in-force ‘Low and Mid Rise Housing’ (LMR) provisions of the Housing SEPP that allow for the subject site, being within the inner ‘LMR’ area, to have a building height of 22m (and up to 6 storey) and FSR of 2.2:1, respectively. In addition, the proposal seeks to use the ‘In-fill Affordable Housing’ provisions of the Housing SEPP to receive a further building height and FSR bonus in providing floor area for an affordable housing component.

Council notes that on 25 June 2025, the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Council's deemed refusal of the development application.

The key issues associated with the proposal relate to affordable housing component, building envelope, design excellence, residential amenity, car parking, landscaping, and insufficient information. The extent of issues is evident throughout this report, including many jurisdictional matters of consideration that the Applicant has failed to satisfy through their application.

Therefore, the proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as 3 & 4 Llanfoyst and is legally described as Lot 1 & Lot 3 in DP 449211. The site is a rectangular parcel of land, with a northern boundary of 26.4m, a southern boundary of 27.24m, a combined eastern boundary of 29.63m and a western boundary of 27.70m providing a total site area of 784.5m².

The site is relatively steep, with falls to the south and east. The site has a fall of 2.35m (RL 60.98 AHD to RL 58.63 AHD) from north to south along the Llanfoyst Street frontage and another fall of 6.65m (RL 64.95 AHD to RL 58.30 AHD) from west to east through the centre of the site.

To the southern side of the site is a part three and part four storey residential flat building at No. 5 Llanfoyst Street. To the south western corner of the site is an eight storey residential flat building at No. 12 Milford Street. To the west of the site is a three storey residential flat building over grade parking at No. 3 Albert Street. To the north of the site, at the corner of Albert Street, stands an older style residential flat building of two storeys in height at No. 5 Albert Street.

The site is currently vacant except for earthworks and site preparation works that have begun on the site in accordance with the approved Development Application No. DA/526/2022 and DA/526/2022/A (as modified).

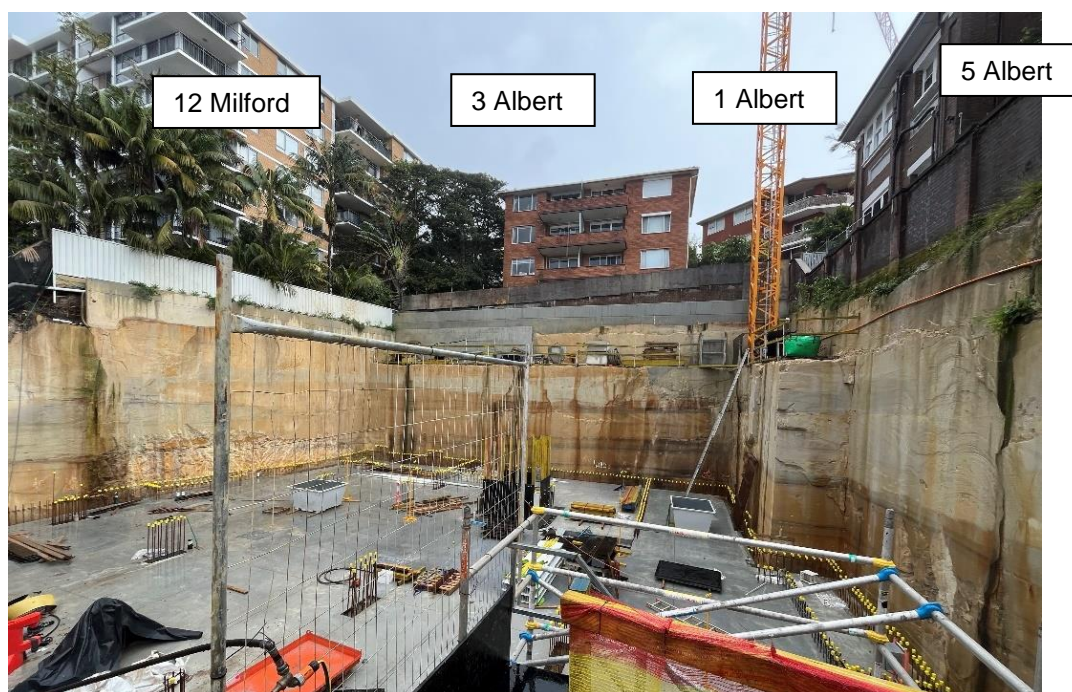


Figure 1: Photo of the front of the subject dwelling and surrounding buildings (Source: Randwick City Council)

D37/25

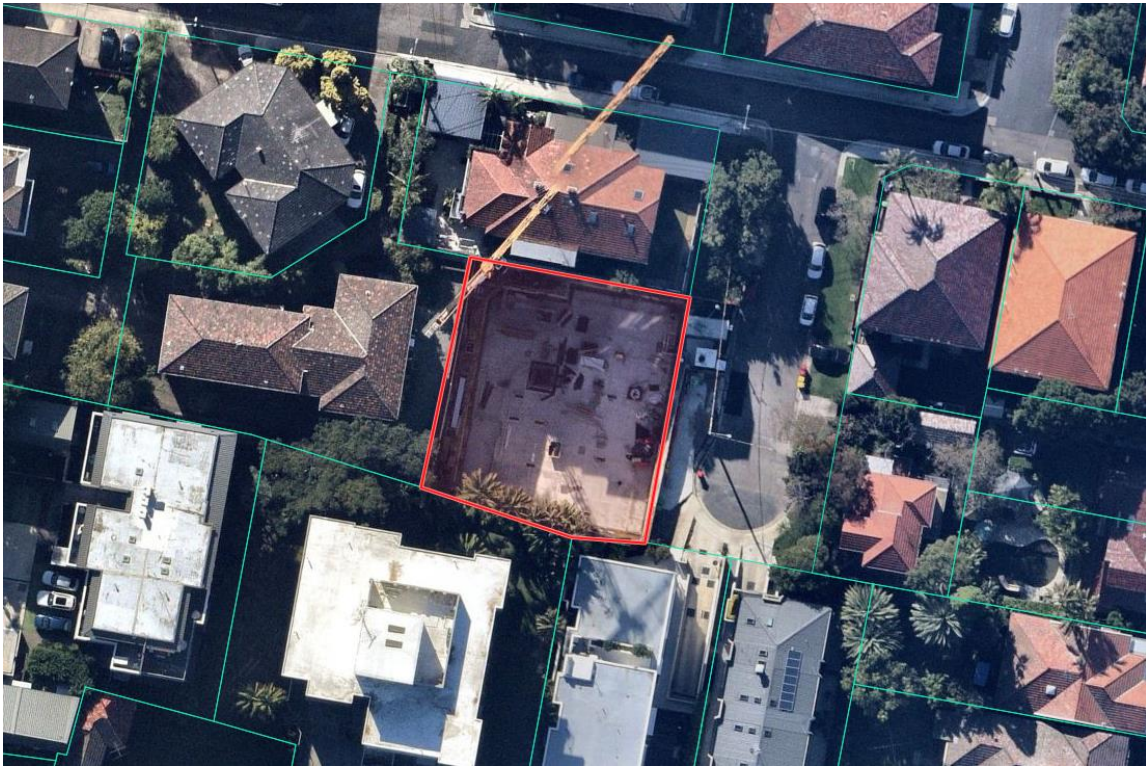


Figure 2: Aerial view of the local neighbourhood (June 2025) – 3-4 Llanfoyst Street, Randwick (Source: Nearmap)



Figure 3: West oblique view of the local neighbourhood (April 2024) – 3-4 Llanfoyst Street, Randwick (Source: Nearmap)

3. Relevant History

On 14 February 2024, Development Application No. DA/526/2022 for 'Demolition of existing building, lot amalgamation and construction of a residential flat building comprising eight three-bedroom units and three one-bedroom units with basement carparking and landscaping' was approved by the Court.

On 12 December 2024, Modification Application No. DA/526/2022/A for 'Modification to the LEC approved development for the reconfiguration of internal layout, amendments to leisure centre,

selected openings, landscaping and planters, minor extension at staircase, addition of solar panel' was approved by the RLPP. Excerpts of the approved modification application have been reproduced below:



Figure 4 & 5: Approved modified basement 1 and ground floor plan under DA/526/2022/A – 3-4 Llanfoyst Street, Randwick (Source: Orosi)



Figure 6 & 7: Approved modified first and second floor plan under DA/526/2022/A – 3-4 Llanfoyst Street, Randwick (Source: Orosi)

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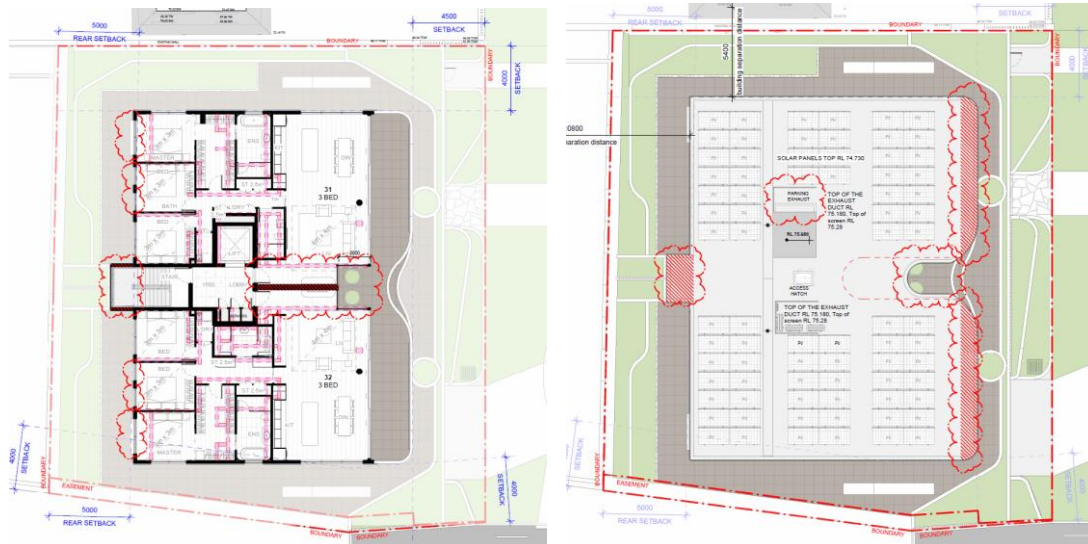


Figure 8 & 9: Approved modified third floor and roof plan under DA/526/2022/A – 3-4 Llanfoyst Street, Randwick (Source: Orosi)

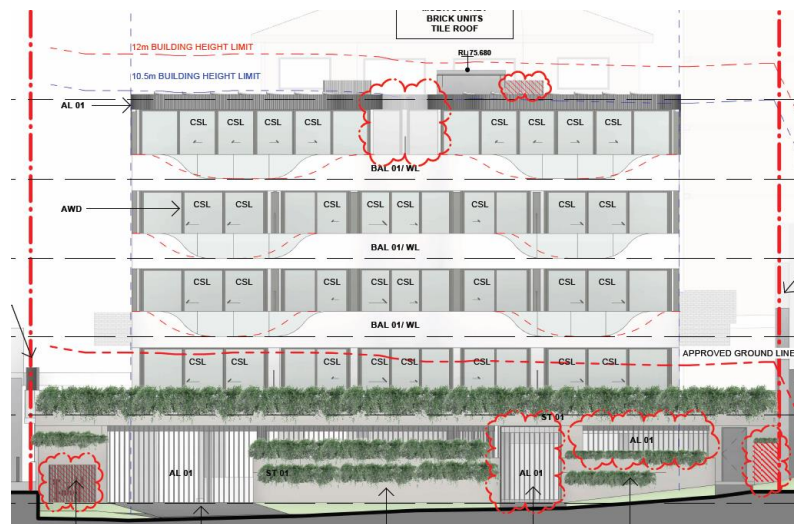


Figure 10: Approved modified eastern elevation under DA/526/2022/A – 3-4 Llanfoyst Street, Randwick (Source: Orosi)



Figure 11: Approved modified northern elevation under DA/526/2022/A – 3-4 Llanfoyst Street, Randwick (Source: Orosi)



Figure 12: Approved modified section under DA/526/2022/A – 3-4 Llanfoyst Street, Randwick (Source: Oros)

On 26 February 2025, Chapter 6 “Low and mid rise housing” of the Housing SEPP came into force.

On 25 June 2025, the Applicant commenced proceedings in Class 1 of the Land and Environment Court’s jurisdiction appealing against the Respondent’s deemed refusal of the development application.

4. Proposal

The proposal seeks development consent to amend DA/526/2022 for alterations and additions to the approved development, including the addition of three (3) residential storeys to create a seven (7) storey residential flat building, with basement parking and associated landscaping works.

Specific details of the development application are as follows:

Basement 2

- Reconfiguration of level including changes to location of bicycle parking spaces, storage rooms, new comms room, electrical room, and 30KL fire water tank.

Basement 1

- Reconfiguration of level including changes to location of waste room, zen garden, mechanical risers, and motorbike parking.

Ground Floor

- Conversion of Units G1 and G3 from 3-bedroom units to 2-bedroom units with study rooms.
- Reinstatement of enlarged planters and POS areas to the northern and sides of the building.

First Floor

- Conversion of Units 11 and 13 from 3-bedroom units to 2-bedroom units with study rooms.

Second Floor

- Conversion of Units 21 and 23 from 3-bedroom units to 2-bedroom units with study rooms.

Third Floor

- Conversion of Units 31 and 32 from 3-bedroom units to 2-bedroom units with study rooms.

Fourth Floor

- Addition of a new fourth floor with 2x 2-bedroom units with study rooms.

Fifth & Sixth Floors

- Addition of a new fifth and sixth floor with 2x 3-bedroom units.

Overall, the development consists of 17 x dwellings, being:

- 3x 2-bedroom dwellings,
- 10x 2-bedroom + study dwellings, and
- 4x 3-bedroom units.

The development includes dwellings that comprise of the 'affordable housing component' (AHC), in accordance with the 'in-fill affordable housing' provisions of the Housing SEPP. However, there are discrepancies through the development application regarding which dwellings comprise the AHC. The AHC comprises of either:

- 2x dwellings on Level 1 (being 2x 2 bedroom + study), or
- 6x dwellings on Levels 1 and 2 (being 2x 2 bedroom + 4x 2 bedroom + study).



Figure 13: Proposed third floor plan – 3-4 Llanfoyst Street, Randwick (Source: Orosi)



Figure 14: Proposed fourth floor plan – 3-4 Llanfoyst Street, Randwick (Source: Orosi)



Figure 15: Proposed fifth and sixth floor plan – 3-4 Llanfoyst Street, Randwick (Source: Orosi)

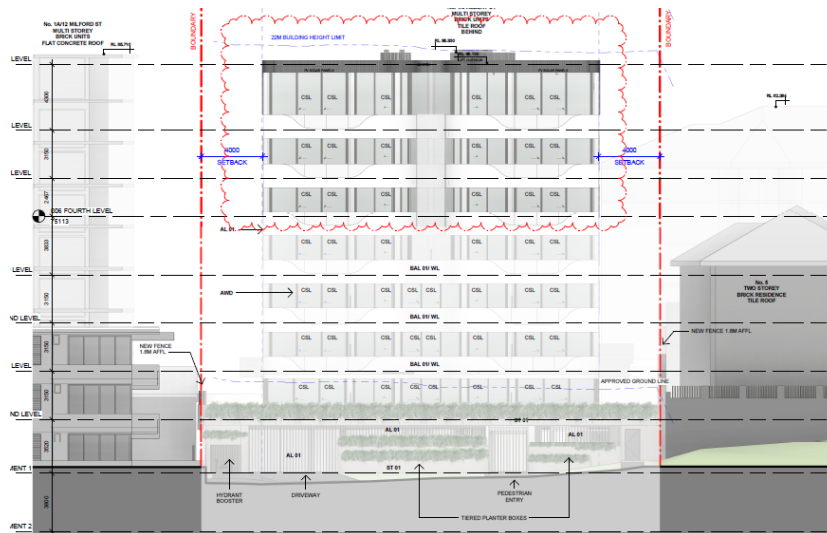


Figure 15: Proposed front elevation – 3-4 Llanfoyst Street, Randwick (Source: Orosi)



Figure 16: Proposed northern elevation – 3-4 Llanfoyst Street, Randwick (Source: Orosi)

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development between 22 May 2025 and 05 June 2025 for 14 days, in accordance with the Randwick Community Engagement Strategy. Due to the significant community interest in the development, Council extended the public exhibition period for a further 7 days until 12 June 2025.

- 1 Llanfoyst Street
- 2 Llanfoyst Street
- 3/2 Llanfoyst Street, x4 submissions
- 4/2 Llanfoyst Street, x2 submissions
- 1/1 Albert Street
- 2/1 Albert Street
- 3/1 Albert Street
- 4/1 Albert Street
- 5/1 Albert Street
- 211/2 Albert Street, x2 submissions
- 212/2 Albert Street, x2 submissions
- 303/2 Albert Street
- 401/2 Albert Street
- 2 Albert Street
- 2 Albert Street & 155 Avoca Street
- 1/3 Albert Street, x2 submissions
- 2/3 Alfred Street
- 4/3 Albert Street, x2 submissions
- 5/3 Albert Street
- 8/3 Albert Street, x2 submissions
- 2/5 Albert Street
- 3/5 Albert Street x3 submissions
- 4/5 Alfred Street
- 5 Albert Street
- 4/7 Albert Street
- 1/10 Albert Street
- 10/169 Avoca Street
- 11/169 Avoca Street, x3 submissions

- 12/169 Avoca Street, x3 submissions
- 1/173 Avoca Street
- 17/173 Avoca Street
- 3A/12 Milford Street
- 4D/12 Milford Street
- 5A/12 Milford Street
- 6A/12 Milford Street, x2 submissions
- 3/139 Mount Street
- 2 George Street
- 8 George Street
- 4/10 George Street
- 8/10 Pitt Street
- 18 Pitt Street, x3 submissions
- 21 Pitt Street
- 22 Pitt Street
- Pitt Street Resident
- 2/4 Victoria Street
- 4/15 Victoria Street
- 15 Victoria Street
- Planning Consultant on behalf of the Body Corporate of 3 Albert Street
- Planning Consultant on behalf of 3/5 Albert Street
- Planning Consultant on behalf of SP5129 (12 Milford Street)
- No address provided, x7 submissions

The development application has also received a petition with 341 verified signatures on the Change.Org website at the time of the completion of this report. A link to the petition is as follows: <https://www.change.org/p/stop-the-7-storey-overdevelopment-proposal-at-llanfoyst-st-randwick-developer-orosi>.

The submissions have been paraphrased and summarised below:

Issue	Comment
Building Envelope and Overdevelopment <ul style="list-style-type: none"> - The additional storeys are an overdevelopment of the site. This will set a bad precedent. - The development contravenes the building height and FSR development standards. - Building height of 31.3m above EGL exceeds 12m height limit. - Excessive storey height over 3.3m at 4.3m to the top floor. - Clause 4.6 statement inadequate to address height variation. Not adequately justified as no view analysis. - The FSR and GFA calculations are wrong, appear to exclude areas that should be included. - The development breaches the maximum number of storeys of 6 (SEPP). Applicant misrepresents storeys as excludes basement levels. 9 storeys with basements, variation of 50%. - The provisions for infill affordable housing are unacceptable and inappropriate for this site due to amenity impacts (visual, solar, views, privacy). 	<p>Whilst Council acknowledges that the site is within the inner LMR area (as per Chapter 6 of Housing SEPP), Council agrees that the proposed development has a form that cannot be supported.</p> <p>The development does not exhibit design excellence or have a form that respects the character of the locality.</p> <p>The development will adversely impact upon the amenity of the adjoining neighbours in terms of visual amenity, solar, privacy and views. Council notes that the Applicant has failed to provide any view assessment with the development. See Key Issues below for a detailed consideration.</p> <p>In terms of FSR, the development complies (subject to sufficient affordable housing component being designated, of which is currently unclear).</p> <p>In terms of building height and number of storeys, Council agrees that the development has not been adequately demonstrated an</p>

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Issue	Comment
	outcome that can be supported in the context of the proposed variations. See detailed assessment in clause 4.6 assessment below.
<u>Existing Ground Level and Survey</u> <ul style="list-style-type: none"> - Existing GL is to be measured from the excavated level, as per Merman Investments Pty Ltd x Woollahra Council 2021 (NSW1582), which states measured from level as disturbed or undisturbed. - Ground level should be measured from what the community sees and experiences. - Height calculation not supported by survey data and does not address planning tests. - Survey has a note that a 'plan of redefinition' be prepared and registered to guarantee boundary dimensions. Request a plan of redefinition but submitted with the DA. This will impact setbacks, separation and envelope controls. - The current plan still shows the ROW across 3 Albert Street. What is the legal status of this ROW? 	<p>Agreed, the existing ground level is to be measured from the underside of the concrete slab of the newly excavated area.</p> <p>Agreed, no current survey plan provided with the development application. The existing ground level has been assumed based on the excavated levels of the approved plans under DA/526/2022 (as modified), however a survey is required to confirm the level is accurate and confirm the exact boundaries.</p> <p>The ROW on 3 Albert Street does not form part of the considerations of this DA. This is a matter to be addressed outside of the consideration of this DA.</p>
<u>Separation, Design and Character</u> <ul style="list-style-type: none"> - Variations to ADG separation requirements, between 5-6.5m to side and rear boundaries. Results in design, visual amenity, solar and privacy impacts to neighbouring buildings - Does not comply with side and rear setbacks in the RDCP. - Too close to neighbouring buildings. - Building design does not represent residential design but more commercial design. - Façade treatment is repetitious, visual dominance of form. - The preeminent street level entry is a large, imposing and private gated compound. - Development will impact upon character of area. - Not in keeping with Randwick character. 	<p>Agreed, the development is not adequately separated from the site boundaries, which impacts upon the amenity of the adjoining neighbours. See Key Issues for detailed consideration.</p> <p>Agreed, the façade treatment is of a scale that is not in keeping with the locality and is not supported from a design perspective. See clause 6.11 of RLEP assessment below for detailed consideration of the design excellence, of which this development does not exhibit.</p> <p>Agreed, the development will impact upon the character of the area. Council is not satisfied that the proposed development is compatible with the desirable elements of the character of the local area. In addition, the Applicant has failed to demonstrate that if the area is undergoing transition, that the development is compatible with the desired future character of the precinct. See Key Issues for detailed assessment below.</p>
<u>Affordable Housing</u> <ul style="list-style-type: none"> - The original development had 75% of apartment as affordable, now only 4/17 are affordable. - Inconsistencies in rates and relevant parking space requirements. - Lack of affordable housing, providing more for luxury apartments. - The rents being charged are above market rates in similar developments. 	<p>The rates of the affordable housing component is subject to new provisions under the Housing SEPP. Previous consent was granted under the ARH SEPP (which has now been repealed).</p> <p>Agreed, there are inconsistencies in the documentation about which dwellings comprise the affordable housing component, which impacts upon the scale of the development (in</p>

Issue	Comment
<ul style="list-style-type: none"> - No registered community housing provider nominated. 	<p>terms of building height and FSR), as well as parking.</p> <p>The rent for affordable housing units do not form part of this DA assessment.</p> <p>Agreed, no registered community housing provider has been nominated.</p>
<p><u>Housing Affordability</u></p> <ul style="list-style-type: none"> - Development does nothing to alleviate affordable housing crisis. Will worsen housing affordability by driving up prices. - Development results in luxury apartments and penthouses, not affordable dwellings that are needed. 	<p>Noted.</p> <p>Council is not satisfied the proposal will encourage housing affordability (an objective of the R3 Zone) by failing to clarify the dwellings to be nominated for affordable housing, as well as providing oversized dwellings which lack a diversity in unit types and configurations.</p>
<p><u>Apartment Mix and Dwelling Configuration</u></p> <ul style="list-style-type: none"> - The dwelling mix has changed. Council should require a market analysis to support change of dwelling mix. - Most units are 2-bedroom + study which could easily be converted into 3 bedrooms. 	<p>Agreed. As above, Council is concerned the development provides oversized dwellings which lack a diversity in unit types and configurations.</p>
<p><u>Parking and Traffic</u></p> <ul style="list-style-type: none"> - Minimal off-street parking in Llanfoyst Street. - In the immediate area of this site, there is already a shortfall of 17 parking spaces. - Lack of parking spaces for the additional units. - Additional cars will cause traffic issues in Llanfoyst street. - Albert Street is only 1 way, impact on traffic flow from the additional cars. - Traffic will overflow into Pitt Street. - Potential safety impacts for pedestrian and vehicles on footpath. - Development will remove 2 street parking spaces on Llanfoyst Street. - Shortfall of 8 parking spaces in this development. - 3-bedroom units are show as 2 bedroom with study. No meaningful change to layout. Should assess these dwellings as 3bedroom units for parking rates. - Accessible parking, visitor parking, not shown on plans. - Swept plans not provided to show parking acceptable. 	<p>Agreed, Council is concerned that the development lacks sufficient parking for the development, in an area that is already constraint.</p> <p>Council agrees that the 2-bedroom + study dwellings should use the 3-bedroom parking rates.</p> <p>The development will not increase the loss of on-street parking from what has been approved under DA/526/2022 (as modified).</p> <p>2x accessible parking spaces have been provided.</p> <p>Agreed, no visitor parking has been provided, which is required.</p> <p>See Key Issues and Development Engineering comments in Appendix 1 for a detailed consideration of parking and traffic issues.</p>
<p><u>Privacy</u></p> <ul style="list-style-type: none"> - Loss of amenity from lack of privacy, both visual and acoustic. - Windows will look directly into neighbouring buildings and private open space areas/balconies. - Will increase in adverse noise pollution. 	<p>Agreed, the development will adversely impact upon the privacy of the neighbouring dwellings. See Key Issues for a detailed assessment.</p>

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Issue	Comment
<p><u>Overshadowing</u></p> <ul style="list-style-type: none"> - Development will adversely overshadow neighbouring buildings on all sides of the development. - Solar impacts from side setback non-compliance. - Neighbouring buildings will not receive adequate daylight from the towering development. 	<p>Agreed, the development will result in adverse solar impacts on adjoining neighbours, in particular it will overshadow the living rooms windows and balconies of the north-eastern apartments at 12 Milford Street. This is a result from a building that lacks sufficient separation and modulation.</p> <p>Other buildings will receive adequate solar access, including those at 3 Albert Street and 5 Llanfoyst Street.</p> <p>Daylight impacts are not a direct planning consideration in a DA, however, can be attributed to the massing of the development, of which Council does not support.</p>
<p><u>View Sharing</u></p> <ul style="list-style-type: none"> - Development will block existing views across the site to the water, Wedding Cake Island, and the city skylines including Bondi Junction. - Images of views currently experienced provided in a number of submissions. - No detailed view analysis conducted. - Development does not satisfy Clause 5.5 of RDCP regarding view sharing. 	<p>Agreed, the development will impact upon existing views from several nearby neighbours. Council's Assessing Officer has attended the properties of such neighbours to confirm this.</p> <p>The Applicant has failed to provide any detailed view assessment and therefore the full extent of impact from the development is unclear. The onus is on the Applicant to demonstrate such impact.</p>
<p><u>Light Pollution & Airflow</u></p> <ul style="list-style-type: none"> - Adverse light pollution caused by windows to development in the evening. - The development will block airflow, increase heat and reliance on mechanic ventilation with additional costs. - Existing development has resulted in substantial carbon emissions from heavy machinery and vehicles, additional floors will worsen this. 	<p>Noted, however these matters are not a direct planning consideration in this DA, however, can be attributed to the massing of the development, of which Council does not support.</p>
<p><u>Heritage</u></p> <ul style="list-style-type: none"> - The building will dwarf existing heritage buildings - The development will adversely impact upon the heritage item 'Nugal Hall' at 16-18 Milford Street in terms of form, massing and bulk. 	<p>Council is satisfied the development does not impact upon the fabric of any nearby heritage items and conservation areas.</p>
<p><u>Ecological Sustainable Development</u></p> <ul style="list-style-type: none"> - The additional levels impose heavy lifecycle footprints. - Will generate particulate and pollution issues. - Carbon impact of development not adequately addressed. 	<p>Council is satisfied that the development complies with BASIX requirements and would have been conditioned to meet Section J 'Energy Efficiency' requirements of the NCC 2022, should the DA have been supported.</p>
<p><u>Lack of Infrastructure</u></p> <ul style="list-style-type: none"> - No new public amenities for upgrading to offset the increase in size of the development. 	<p>The development is located with the inner LMR area (as per Chapter 6 of the Housing SEPP). The amount of local infrastructure is not a matter of consideration for this DA, as being</p>

Issue	Comment
<ul style="list-style-type: none"> - Create extra demand on nearby government services already under stress (e.g. library and schools). - There are no meaningful public benefits, i.e. new green space or community facilities. 	<p>within the inner LMR area allows for development with greater densities.</p>
<p><u>Commercial Use of Zen Garden</u></p> <ul style="list-style-type: none"> - If the zen garden is repurposed for commercial use, would this require an amended DA to address additional parking, infrastructure, amenities? SEE states development provides demand for commercial floor space. 	<p>A separate DA would be required to convert the approved zen garden under DA/526/2022 (as modified) into a separate commercial tenancy. This would be subject to a detailed assessment on the merits of the application.</p>
<p><u>Precedent</u></p> <ul style="list-style-type: none"> - Concern it will set precedent for similar development, impacting character of neighbourhood. 	<p>Noted.</p>
<p><u>Construction Activities and Impacts</u></p> <ul style="list-style-type: none"> - Development construction has already generated noise, dust and traffic congestion. Amendments will extend construction time and impact my quality of life. - Construction related issues already occurred from development including damage to adjoining neighbour properties. - Drilling has surpassed recommended safety limits. 	<p>Noted.</p> <p>Council acknowledges that there have been reports of issues with construction of the development as approved on the site under DA/526/2022 (as modified), however construction and compliance matters are not a relevant matter of consideration for the subject DA.</p>
<p><u>Incremental Development and Developer</u></p> <ul style="list-style-type: none"> - The Applicant has engaged in incremental amendments to push larger development. This erodes confidence in the planning system. - The developer is already advertising the 7-storey building on their website. - Development serves private interests at the expense of existing residents. 	<p>Noted.</p> <p>Council notes that DA/526/2022 was approved on 14 February 2024. The LMR provisions that allow for greater densities under Chapter 6 "Low and mid rise housing" of the Housing SEPP came into force on 26 February 2025.</p>
<p><u>Property Devaluation</u></p> <ul style="list-style-type: none"> -The development will devalue nearby properties, as a result of loss of views and privacy, and the visual impacts. 	<p>Noted, however, not a matter of consideration under the EP&A Act.</p>
<p><u>Neighbouring Agreement.</u></p> <ul style="list-style-type: none"> - If a neighbouring agreement is negotiated during DA assessment with Council or is this a private matter between developer and neighbours? 	<p>A neighbourhood agreement is for a civil matter between the developer/owner and neighbours, and does not form part of this DA.</p>
<p><u>Lack of Information</u></p> <ul style="list-style-type: none"> - Applicant has failed to detail amenity impacts on neighbours. 	<p>Agreed. The development lacks details and assessment of the direct impact it will have on privacy, overshadowing and views.</p>
<p><u>Land and Environment Court</u></p> <ul style="list-style-type: none"> - Should the DA proceed to LEC, then I request the opportunity to attend any hearing in person or online. 	<p>Noted. The DA is subject to a Class 1 Appeal in the Land and Environment Court. Council's Solicitors will contact all submitters as required in relation to the Court proceedings.</p>

Issue	Comment

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

The aims of Chapter 2 are:

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

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

6.2. SEPP (Housing) 2021

Chapter 2 ‘Affordable housing’

The development application seeks to use the in-fill affordable housing provisions under Division 1 ‘In-fill affordable housing’ in Part 2 ‘Development for affordable housing’ of Chapter 2 of the Housing SEPP to provide affordable housing by allowing for greater building height and FSR bonuses for development that includes an affordable housing component.

See Appendix 3 for a detailed assessment against each relevant clause of the in-fill affordable housing provisions of the Housing SEPP.

Affordable Housing Component

Section 16(1) and (3) of Housing SEPP allows for an additional floor space ratio and building height (respectively) of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

The development application includes discrepancies between which dwellings are to be included in the affordable housing component. The Calculation Plan (Drawing No. DA 7001) states that 2 dwellings (being Units 11 and 13 comprising of 192sqm) comprise the affordable housing component. In contrast, the Applicant’s Traffic and Parking Assessment and Compliance Table on the Calculation Plan states that 6 dwellings (being Units 11, 12, 21, 22, 31 and 32) comprise of affordable housing component.

The inconsistency in the proposed development fails to clarify the sufficient floor area for affordable housing and does not clearly demonstrate the applicable additional floor space ratio subject to the development.

For this reason, the development application is recommended for refusal.

Building Envelope

Council is satisfied that the subject site is located within the low and mid rise housing inner area, in accordance with the relevant definitions of the Housing SEPP (see Chapter 6 considerations below). Under these provisions, Section 180(2)(b) of the Housing SEPP states that for residential flat building development on land in a low and mid rise housing inner area, a maximum building height of 22m applies.

Section 16 of the Housing SEPP states the following:

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the

development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

(2)

(2) *The minimum affordable housing component, which must be at least 10%, is calculated as follows—*

$$\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$$

(3) *If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).*

It is noted that the Applicant has failed to confirm the affordable housing component for the development application.

That being said, the proposed development has an FSR of 2.72:1 (or 2132sqm), which is an additional FSR of 23.6%. This complies with the section 16(1) of the Housing SEPP if 11.8% of FSR comprises of the affordable housing component.

The resultant maximum building height is 27.19m, being an additional height of 23.6%.

The proposed building height is 31.98m (to the air-conditioning condenser) and 31.29m (to the roof parapet), exceeding the maximum building height development standard by 4.79m or 17.6% (to the air-conditioning condenser) and 4.1m or 15% (to the roof parapet).

The development application does not result in a size and scale of development that recognises the desirable elements of the existing streetscape and built form, being a greater height than envisioned in the area that is already built up with strata-subdivided residential flat buildings. The development application will adversely impact on the amenity of adjoining and neighbouring land in terms of visual amenity, loss of privacy, overshadowing and views.

The Applicant has failed to adequately demonstrate the view impacts of the variation to the building height development standard, noting that a detailed view sharing analysis showing the impact of proposed development and a compliant building height has not been submitted for assessment.

See Clause 4.6 Assessment below to consider the variation of the building height being sought.

For these reasons, the development application is recommended for refusal.

Chapter 4 'Design of residential apartment development'

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

The proposed development is subject to the provisions of Chapter 4 in that the development is for the purposes of residential flat building, consisting of the erection of a new building that is 9 storey in height and contains 17 dwellings (pursuant to section 144 of the Housing SEPP).

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

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

Design Excellence Advisory Panel (DEAP)

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

The DA was referred to the Design Excellence Advisory Panel for advice concerning the design quality of the development. The DEAP has advised that the proposal needed to be revised to address the existing character of development in the area, as well as issues relating to scale, setbacks, landscaping, and the external finishes/articulation.

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

For these reasons, the development application is recommended for refusal.

Design Quality Principles

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

Apartment Design Guide

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

Council is not satisfied that the development is consistent with the design criteria in the ADG. For this reason, the development application is recommended for refusal.

Non-Discretionary Development Standards

Section 148(2)(c) of the Housing SEPP requires that ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

The ADG specifies that habitable rooms must have a ceiling height of 2.7m.

The proposed development includes habitable rooms with a ceiling height of 2.4m, as illustrated in section plan DA3002.

The proposed development results in a poor amenity for future occupants. Any services that are required for the development should be located within ceiling areas of non-habitable areas (which can have a ceiling height of 2.4m) or within wall cavities.

The Applicant has not submitted a written request pursuant to clause 4.6 of RLEP 2012 in relation to the contravention of the development standards. As such, the Applicant has not demonstrated the following matters as required by 4.6(3) of RLEP 2012:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- That there are sufficient environmental planning grounds to justify the contravention of the development standard in sections 148(2)(c) of the Housing SEPP.

For these reasons, the development application is recommended for refusal.

Chapter 6 'Low and mid rise housing'

The development application seeks to use the 'Low and Mid Rise' (LMR) housing provisions under Part 4 'Residential flat buildings and shop top housing' of Chapter 6 of the Housing SEPP to that allow for greater development controls, which seek to encourage more low and mid-rise housing to be built within 800m walking distance from nominated town centres and transport hubs.

See Appendix 3 for a detailed assessment against each relevant clause of the LMR housing provisions of the Housing SEPP. In addition, consideration of the building envelope is considered under Chapter 2 of the Housing SEPP above.

Number of Storeys

Section 175(2) of the Housing SEPP requires that for residential flat buildings development on land in a low and mid rise housing inner area, development consent must not be granted for a building height of up to 22m unless the consent authority is satisfied the building will have 6 storeys or fewer.

Section 175(4) of the Housing SEPP states that a storey does not include a basement within the meaning of the standard instrument, relevant to this section of the Housing SEPP.

The Standard Instrument contains the following definitions for “basement” and “storey”:

*“**basement** means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).*

...

***storey** means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include—*

- (a) a space that contains only a lift shaft, stairway or meter room, or*
- (b) a mezzanine, or*
- (c) an attic.”*

The proposed development consists of a building with 9 storeys, considering the existing excavated level on the site.

The proposed development results in a built form that is inconsistent with the character of development in the area and lacks sufficient modulation and articulation to the built form to justify an 8 storey presentation to Llanfoyst Street. See Clause 4.6 Assessment below to consider the variation of the number of storeys being sought.

For these reasons, the development application is recommended for refusal.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 ‘Remediation of land’

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

Clause 4.6 of SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land. The subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject to a site audit statement. In this regard it is Council’s position that the site will be suitable for the proposed development, posing no risk of contamination. Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered to be suitable for the proposed land use.

6.4. SEPP (Sustainable Buildings) 2022

A BASIX Certificate has been submitted, satisfying the requirements of the *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022. The submitted BASIX Certificate includes a BASIX materials index which calculates the embodied emissions and therefore the consent authority can be satisfied the embodied emissions attributable to the development have been quantified.

6.5. SEPP (Transport and Infrastructure) 2021

Section 2.48 ‘Determination of development applications—other development’ requires the consent authority to given written notice to Ausgrid and take into consideration any response for development within proximity to electrical transmission and distribution infrastructure.

The proposed works are located within 5m of an exposed overhead electricity power line, located on Llanfoyst Street. As such, the proposal was referred to Ausgrid for comment. See Appendix 1 for the Ausgrid referral which notes that Ausgrid does not object to the proposed development. As such, Clause 2.48 of the Transport and Infrastructure SEPP has been satisfied.

6.6. Randwick Local Environmental Plan 2012 (RLEP 2012)

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 Residential R3 Medium Density under RLEP 2012.

The proposed development seeks consent for a ‘residential flat building’, which has the following definition in the Standard Instrument:

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

A ‘residential flat building’ is a land use type that is permissible with consent in Zone R3 with Council’s consent.

The proposal is inconsistent with the specific objectives of the zone in the following ways:

- The proposed development application does not recognise the desirable elements of the existing streetscape and built form in seeking an additional three storeys to the approved 4 storey building or proposing these storeys as a direct extrusion of the approved storeys below. The Applicant has not demonstrated that the precinct is undergoing transition by failing to demonstrate the viability and feasibility for greater densities resultant from the “low and mid rise housing” and “in fill affordable housing” provisions of the Housing SEPP.
- The proposed development application does protect the amenity of residents in failing to provide any communal open space, sufficient off-street parking, landscaping, solar access, storage, visual amenity, privacy and view sharing for both the future occupants of the building and the neighbouring residents.
- The proposed development application does not encourage housing affordability in failing to clarify the dwellings to be nominated for affordable housing and demonstrating that sufficient floor area has been allocated in accordance with the relevant “in-fill affordable housing” provisions in the Housing SEPP. The proposed development also seeks to provide oversized dwellings that lack a diversity in unit types and configurations, which fails to encourage housing affordability within the locality.

Therefore, the proposed development is recommended for refusal.

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

Clause	Development Standard	Proposal	Compliance
Clause 4.3: Building Height (max)	12m Chapter 6 of the Housing SEPP for inner LMR area prevails, with a	31.98m (to the air-conditioning condenser) and 31.29m (to the roof parapet).	No, see Clause 4.6 Assessment below.

	<p>maximum height of 22m and 6 storeys.</p> <p>Furthermore, the development can seek an additional 30% bonus if an appropriate affordable housing component is provided (i.e. a maximum height of 28.6m if 15% AHC provided).</p>		
Clause 4.4: Floor Space Ratio (max)	<p>0.9:1</p> <p>Chapter 6 of the Housing SEPP for inner LMR area prevails, with a maximum FSR of 2.2:1.</p> <p>Furthermore, the development can seek an additional 30% bonus if an appropriate affordable housing component is provided (i.e. a maximum height of 2.86:1 if 15% AHC provided).</p>	2.72:1 (or 2132sqm).	Yes, if 11.8% of FSR comprises of the AHC. However, the AHC has not been clearly indicated in the assessment documentation.

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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.

The amending DA does not include any further earthworks. As such, Council is satisfied that the development is consistent with clause 6.2.

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.

Council is satisfied that the proposed development will adequately address stormwater management, subject to conditions.

6.6.4. *Clause 6.8 – Airspace operations*

Clause 6.8 requires the consent authority to be consulted with the relevant Commonwealth body if the proposed development will penetrate the Limitation or Operations Surface.

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 1 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.

Council is not satisfied that the Applicant has considered that adequate arrangements have been made for electricity supply to the proposed development. The development application has not been accompanied by an infrastructure assessment to determine if adequate arrangements for electricity supply have been made to accommodate the additional dwellings and load on the existing electricity network.

As such, the subject development does not satisfy clause 6.10 and is recommended for refusal.

6.6.6. Clause 6.11 – Design excellence

Section 6.11(2) of the RLEP 2012 states that development consent must not be granted to development to which this Clause applies unless the consent authority is satisfied that the proposed development exhibits design excellence.

The proposed development does not exhibit design excellence as it does not provide a high standard of architectural design, materials and detailing, as follows:

- a) The proposed development consists of 3-bedroom units, which are shown as 2-bedroom dwellings with a study. The size of the dwellings far exceeds the minimum internal area requirements of the ADG, and the additional area significantly contributes the overall massing, character and built form issues of the development, as well as adversely impacting the amenity of the surrounding neighbours.
- b) Pursuant to section 4.9(ii) in Part C2 of RDCP, the selection of colour and material palette must complement the character and style of the building.
- c) Pursuant to section 4.9(vi) in Part C2 of RDCP, use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.
- d) The proposed development includes external walls sections that have a repetitious façade treatment for all floors of the building. The rendered and painted walls over a building of this scale are not supported and should be amended to include self-finished materials such as face bricks and precast concrete with an integral finish which is more compatible with the locality and provides greater longevity and reduces long term maintenance issues.

The proposed development does not exhibit design excellence as it does not have the form and external appearance that will improve the quality and amenity of the public domain, as follows:

- a) Pursuant to section 4.1(iii) in Part C2 of RDCP, the proposal does not adequately articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.
- b) The proposed development has a consistent envelope to all floors, failing to have a form that divides the envelope into sections that present a human scale and contribute the existing local character of the area. The built form and architectural treatment are indistinct between the approved lower floors and approved upper floors, which detracts from the desirable elements of local character.
- c) The proposal has extruded the approved design by another 3 storeys creating a 7-8 storey building, which exhibits different proportions and scale to a 5 storey development. Such a significant increase in scale requires the architectural character, form and materiality to be reconsidered and amended to minimise the increased bulk and scale.

- d) The existing character of the local area comprises of mainly 4-storey scale of existing buildings. Council notes that the 8-storey “Milford Towers” building at 12 Milford Street is not easily seen from surrounding streets as it is located in the centre of this relatively large block. This tower is an anomaly relative to the predominant character of the area and should not be referenced as a desirable precedent.
- e) The desirable elements of the character of the local area include the predominant 4 storey scale of buildings. When viewed from Llanfoyst Street and the surrounding streets, the proposed development does not reflect the 4 storey scale in the local area, is visually dominant and detracts from the character of the locality.

The proposed development does not exhibit design excellence as it does not respond to the environmental and built characteristics of the site or achieve an acceptable relationship with the surrounding existing context and other buildings on neighbouring sites, as follows:

- a) The Applicant has failed to provide contextual analysis or urban design justification for the existing extruded tower form or street wall scale.
- b) The Applicant has failed to provide contextual analysis or urban design justification to assess the potential impacts of the proposed height exceedance within the character of the locality.
- c) The proposed fire staircase protrudes beyond the rear building envelope for the full height, which fails to be well integrated into the overall architectural design, exacerbating the inadequate setback for upper levels and exacerbating the visual dominance of the overall built form.
- d) The proposed development results in a built form that is of similar scale to 12 Milford Street, which is not supported as it is an outlier in the wider context of the locality.
- e) The proposed development will visually dominate the other adjoining sites and buildings, which is not responsive to the existing or desired character of future form.
- f) The proposed additional 2 bedroom plus study and 3 bedroom apartments do not require windows to the living rooms and bedrooms on the northern and southern facades to comply with the BCA – all rooms contain windows facing east and west, sufficient for compliance and reasonable amenity. The northern and southern windows result in undue privacy impacts on nearby buildings.

The proposed development does not exhibit design excellence having regard to meeting sustainable design principles in terms of sunlight, natural ventilation, safety and security, energy efficiency and urban heat island effect mitigation, as follows:

- a) The proposed development fails to provide adequate solar access to dwelling living rooms, which will therefore require additional mechanical lighting that is inconsistent with sustainable design principles.

The proposed development does not exhibit design excellence as the proposed development detrimentally impacts on view corridors and landmarks, as follows:

- a) The proposed development will impact upon existing view corridors within the vicinity. The Applicant has failed to provide a comprehensive view sharing assessment to determine the view impact of the proposed development.

As such, the subject development does not exhibit design excellence as required under clause 6.11 and is therefore recommended for refusal.

7. Clause 4.6 - Exception to a Development Standard

The proposal seeks to vary the following development standards contained within the Housing SEPP 2021:

SEPP 2021 (Housing)	Development Standard	Proposal	Proposed variation	Proposed variation (%)

D37/25

Clause 16(3) & 180(2)(b): Height of Building	<p>Base height = 22m.</p> <p>Maximum = 27.19m.</p> <p>N.b. maximum height based on base height of 22m + 23.6% (being the equivalent proposed FSR bonus)</p>	<p>31.98m (to the air-conditioning condenser).</p> <p>31.29m (to the roof parapet).</p>	<p>4.79m.</p> <p>4.1m.</p>	<p>17.6%</p> <p>15%</p>
Clause 19(2)(e-f): Parking Spaces	<p>1x space per affordable housing dwelling containing at least 3 bedrooms.</p> <p>1x space per market dwelling containing 2 bedrooms.</p> <p>1.5x spaces per market dwelling containing at least 3 bedrooms.</p> <p>Total Minimum = 23 spaces, assuming:</p> <ul style="list-style-type: none"> • 2x 2-bedroom + study affordable housing dwelling as a 3-bedroom • 3x 2-bedroom market dwellings • 4x 3-bedroom market dwellings • 8x 2-bedroom + study market dwellings as a 3-bedroom 	18 spaces	5 spaces	27.8%
Clause 148(2)(c): Ceiling Heights	2.7m for habitable rooms, as per Part 4C of the Apartment Design Guide.	2.4m	0.3m	12.5%
Clause 175(2): Number of Storeys	6 storeys	9 storeys	3 storeys	50%

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 Buildings: Section 16(3) and 180(2) of Housing SEPP

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

Council notes that the Applicant's written justification incorrectly references the building height development standard as Section 175(2), when it should be Section 180(2). In addition, the maximum building height has been calculated as 31.3m to the top of the roof plant screen, whereas it is 31.98m to the air-conditioning condenser. As such, the written justification is incorrect and as a jurisdictional matter, the RLPP cannot be satisfied with the written justification.

Nonetheless, Council has considered the merits of the Applicant's written justification, as below.

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 principles of the Housing SEPP policy are still achieved (as there are no objectives relating specifically to the maximum building height standards), and that the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Firstly, the principles of the Housing SEPP are set out in Section 3 of Housing SEPP, 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.*

The Applicant's written justification argues that the proposed development is consistent with these principles by noting the follow:

"The proposed residential flat building will provide for a greater number housing options and housing diversity in a growing area that is well located with regards to goods, services and public transport, that will meet the needs of households in need of housing. It also provides high amenity for future residents in compliance with Apartment Design Guide (ADG) and Chapter 4 Design of Residential Apartment Development of the Housing SEPP. Furthermore, affordable housing in accordance with the infill affordable housing provisions is provided, and the proposal does not result in any adverse climate or environmental impacts.

Importantly, while the proposal exceeds the maximum building height control, it complies with the 26.4m height limit under Clause 16(3) and the 22m height limit under Clause 175(1) of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022. The built form respects the intended massing outcome and achieves the visual and environmental objectives the height limit is intended to support."

Secondly, the Applicant's written justification argues that strict compliance with the numerical maximum building height development standards would undermine the underlying objective and purpose of the development standards in the following ways:

"Strict compliance with the numerical maximum building height standards would undermine the underlying objective and purpose of the development standards in the following ways:

- Requiring strict compliance with a height control would result in underutilisation of the permissible built form envelope.*
- The proposed development presents 6-storeys when considered from ground level (existing) at the time of lodgement of DA/526/2022. The proposed built form respects the intended massing outcome of the control in that it complies with the 26.4m height limit under Clause 16(3) of the Housing SEPP, and maximum number of storeys above the approved existing ground level.*
- It is contended that the proposal achieves the visual and environmental objectives the height limit is intended to support noting that the basements contribute to building height under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development.*
- Requiring compliance would constrain site-responsive and well-designed proposal that meet height, bulk, and amenity objectives without yielding any public benefit.*

The consequence is that requiring strict compliance would thwart the underlying objectives and purpose of achieving appropriate built form, residential amenity, and housing supply aligned with strategic planning objectives."

Assessing officer's comment: The Applicant's written request has not adequately demonstrated that compliance with the Building Height development standard is unreasonable or unnecessary in the circumstances of the case, and that strict compliance with the numerical maximum building height development standards would undermine the underlying objective and purpose of the development standards.

The assessing officers' reasons in forming this opinion are as follows:

- The development fails to clearly demonstrate which dwellings comprise the affordable housing component and as such, it is inconclusive if sufficient floor area for the affordable housing component has been provided.
- The proposed development provides oversized dwellings which lack a diversity in unit types and configurations, which fails to encourage housing affordability within the locality.
- The development does not exhibit design excellence, is inconsistent with the local character and ADG design guidelines, and has a form that will adversely impact upon the amenity of residents, both of the subject building and neighbouring buildings.

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

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

1. Site-Specific Built Form Response

a) The proposed development presents 6-storeys when considered from ground level (existing) at the time of lodgement of DA/526/2022. The proposed additional levels result in a built form that respects the intended massing outcome of the height control in that it complies with the 22m height limit under Clause 175(1) of the Housing SEPP,

and the 26.4m height limit under Clause 16(3) of the Housing SEPP when measured from the approved existing ground level.

b) The proposal achieves the visual and environmental objectives the height limit is intended to support noting that basements contribute to building height under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development. Importantly, while the proposal exceeds the maximum building height control, it complies with the 26.4m height limit under Clause 16(3) and the 22m height limit under Clause 175(1) of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022. The built form respects the intended massing outcome and achieves the visual and environmental objectives the height limit is intended to support.

c) The proposed development envelope, scale, and impact remains consistent with the intent of the height control that is in my view to provide for a maximum of 26.4m above ground level existing.

d) The proposed design features a functional and high quality development, with high levels of amenity.

2. Compatibility with Desired Future Character

a) The proposed development is consistent with the precincts' high density character, defined by tall multistorey buildings and emerging higher density forms under the Housing SEPP framework.

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 design supports functional living environments for future residents, incorporating compliance with ADG and Housing SEPP controls for solar access, natural ventilation, privacy, and open space.
- The height breach does not result in additional overshadowing, privacy or view loss impacts to adjoining development when considered against the backdrop of a compliant building envelope formulated by the 26.4m height limit above the approved existing ground level.
- The proposed development envelope, scale, and impact remains consistent with the intent of the height control that is in my view to provide for a maximum 26.4m building above the approved ground level existing.
- The proposal exceeds the maximum building height control, however it complies with the 22m height limit under Clause 175(1) of the Housing SEPP and bonus height under the infill housing provisions of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022.
- The built form respects the intended massing outcome and achieves the visual and environmental objectives the height limit is intended to support.

4. Orderly and economic use of land

a) The social benefits of providing a development that improves the functionality and amenity of the residential flat development should be given weight in the consideration of the variation request.

b) Given the nature of the alterations and additions, strict numerical compliance with the height standard would sterilise part of the site's permissible height and undercut housing delivery in an area identified for increased capacity.

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 R3 Medium Density Residential 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 accommodation 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: 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 as follows:

- The development application includes discrepancies between, which dwellings are to be included in the affordable housing component. The inconsistency in the proposed development fails to clarify the sufficient floor area for affordable housing and makes it unclear what is the applicable additional floor space ratio and building height standard that is subject to the development.
- The development application does not result in a size and scale of development that recognises the desirable elements of the existing streetscape and built form, being a greater height that what is envisioned in the area that is already built up with strata-subdivided residential flat buildings.
- The proposed form is a direct extrusion of the floor plates of the approved building, which is inconsistent with the existing streetscape and built form. The additional levels as a direct extrusion ignore key existing and likely future alignments in built form and scale and exacerbate the bulk and scale of the building. No additional front or side setback is proposed to the new levels in recognition of the intended scale and streetscape character.
- Level 6 has an excessive floor to roof height of 4.3m, which exacerbates the height of the development unnecessarily.
- The development application will adversely impact on the amenity of adjoining and neighbouring land in terms of visual amenity, loss of privacy, overshadowing and views. The proposal does not provide additional side and rear setbacks to achieve the ADG required separation distances.
- The Applicant has failed to adequately demonstrate the view impacts of the variation to the building height development standard in not providing a detailed view sharing analysis showing the impact of proposed development and a compliant building height.
- Overall, the design does not exhibit design excellence, as per the comments of the Design Excellence panel.
- The proposal does not meet the objectives of the R3 Zone or Section 1.3 of the EP&A 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 Building Height development standards.

7.2. Parking Spaces: Section 19(2)(e-f) of Housing SEPP

The Applicant has failed to provide a written request to vary the Parking Space development standard applying to the site under sections 19(2)(e-f) of the Housing SEPP.

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

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

7.3. Ceiling Heights: Section 148(2)(c) of Housing SEPP

The Applicant has failed to provide a written request to vary the Ceiling Heights development standard applying to the site under section 148(2)(c) of the Housing SEPP.

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

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

7.4. Number of Storeys: Section 175(2) of Housing SEPP

The applicant's written justification for the departure from the Number of Storeys 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 principles of the Housing SEPP policy are still achieved (as there are no objectives relating specifically to the maximum building height standards), and that the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Firstly, the principles of the Housing SEPP are set out in Section 3 of Housing SEPP, 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.*

The Applicant's written justification argues that the proposed development is consistent with these principles by noting the following:

"The proposed residential flat building development is considered to be consistent with these principles.

The proposed residential flat building will provide for a greater number housing options and housing diversity in a growing area that is well located with regards to goods, services and public transport, that will meet the needs of households in need of housing. It also provides

high amenity for future residents in compliance with Apartment Design Guide (ADG) and Chapter 4 Design of Residential Apartment Development of the Housing SEPP. Furthermore, no existing affordable housing is being reduced, and the proposal does not result in any adverse climate or environmental impacts.

Importantly, while the proposal exceeds the maximum number of storeys control, it complies with the 22m height limit under Clause 175(1) of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022. The built form respects the intended massing outcome and achieves the visual and environmental objectives the storey limit is intended to support."

Secondly, the Applicant's written justification argues that strict compliance with the numerical maximum building height development standards would undermine the underlying objective and purpose of the development standards in the following ways:

"Strict compliance with the numerical maximum building height standards would undermine the underlying objective and purpose of the development standards in the following ways:

- The 22m height control is capable of accommodating more than six storeys in particular on sloping sites. Requiring strict compliance with a 6-storey maximum storey control would result in underutilisation of the permissible built form envelope.*
- The definition of "storey" under the LEP Standard Instrument stipulates:
"storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include—
(a) a space that contains only a lift shaft, stairway or meter room, or
(b) a mezzanine, or
(c) an attic."*

Based on the above, a 'storey' includes basement level or levels that are located below ground which do not contribute to overall visual bulk or scale thereby penalising designs that incorporate functional and site-responsive basement levels.

- The proposed development presents 6-storeys when considered from ground level (existing) at the time of lodgement of DA/526/2022. The proposed built form respects the intended massing outcome of the control in that it complies with the 22m height limit under Clause 175(1) of the Housing SEPP, and maximum number of storeys above the approved existing ground level.*
- It is contended that the proposal achieves the visual and environmental objectives the storey limit is intended to support noting that basements to be counted as storeys under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development.*
- Requiring compliance would constrain site-responsive and well-designed proposal that meet height, bulk, and amenity objectives without yielding any public benefit.*

The consequence is that requiring strict compliance would thwart the underlying objectives and purpose of achieving appropriate built form, residential amenity, and housing supply aligned with strategic planning objectives."

Assessing officer's comment: The applicant's written request has not adequately demonstrated that compliance with the Number of Storeys development standard is unreasonable or unnecessary in the circumstances of the case, and that strict compliance with the numerical maximum building height development standards would undermine the underlying objective and purpose of the development standards.

The assessing officers' reasons in forming this opinion are as follows:

- The development presents as an 8-storey development, which results in a built form that is inconsistent with the character of development in the area and lacks sufficient modulation and articulation to the built form to justify an 8 storey presentation to Llanfoyst Street.*
- The development fails to clearly demonstrate which dwellings comprise the affordable housing component and as such, it is inconclusive if sufficient floor area for the affordable housing component has been provided.*

- The proposed development provides oversized dwellings that lack a diversity in unit types and configurations, which fails to encourage housing affordability within the locality.
- The development does not exhibit design excellence, is inconsistent with ADG design guidelines, and has a form that will adversely impact upon the amenity of residents, both of the subject building and neighbouring buildings.

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 Number of Storeys development standard as follows:

1. Site-Specific Built Form Response

- a) The proposed development presents 6-storeys when considered from ground level (existing) at the time of lodgement of DA/526/2022. The proposed additional levels result in a built form that respects the intended massing outcome of the height control in that it complies with the 22m height limit under Clause 175(1) of the Housing SEPP, and the 26.4m height limit under Clause 16(3) of the Housing SEPP when measured from the approved existing ground level.*
- b) The proposal achieves the visual and environmental objectives the storey limit is intended to support noting that basements to be counted as storeys under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development. Importantly, while the proposal exceeds the maximum number of storeys control, it complies with the 22m height limit under Clause 175(1) of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022. The built form respects the intended massing outcome and achieves the visual and environmental objectives the storey limit is intended to support.*
- c) The proposed development envelope, scale, and impact remains consistent with the intent of the storey control that is in my view to provide for a maximum of 6-storeys above ground level existing.*
- d) The proposed design features a functional and high quality development, with high levels of amenity.*

2. Compatibility with Desired Future Character

- a) The proposed development is consistent with the precincts' high density character, defined by tall multistorey buildings and emerging higher density forms under the Housing SEPP framework.*
- 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 design supports functional living environments for future residents, incorporating compliance with ADG and Housing SEPP controls for solar access, natural ventilation, privacy, and open space.*
 - *The storey count breach does not result in additional overshadowing, privacy or view loss impacts to adjoining development when considered against the backdrop of a compliant building envelope formulated by the 22m height limit above the approved existing ground level.*
 - *The proposed development envelope, scale, and impact remains consistent with the intent of the storey control that is in my view to provide for a maximum of 6-storeys above ground level existing.*

- *The proposal exceeds the maximum number of storeys control, however it complies with the 22m height limit under Clause 175(1) of the Housing SEPP and bonus height under the infill housing provisions of the*
 - *Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022*
 - *The built form respects the intended massing outcome and achieves the visual and environmental objectives the storey limit is intended to support.*
4. Orderly and economic use of land
- a) *The social benefits of providing a development that improves the functionality and amenity of the residential flat development should be given weight in the consideration of the variation request.*
 - b) *Given the nature of the alterations and additions, strict numerical compliance with the number of storey standard would sterilise part of the site's permissible height and undercut housing delivery in an area identified for increased capacity.*
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 R3 Medium Density Residential 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 accommodation 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: 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 as follows:

- The development presents as an 8-storey development, which results in a built form that is inconsistent with the character of development in the area and lacks sufficient modulation and articulation to the built form to justify an 8 storey presentation to Llanfoyst Street.
- The development application includes discrepancies between which dwellings are to be included in the affordable housing component. The inconsistency in the proposed development fails to clarify the sufficient floor area for affordable housing and makes it unclear what is the applicable additional floor space ratio and building height standard is subject to the development. This in turn impacts upon the potential number of storeys the development would be expected to achieve.
- The development application does not result in a size and scale of development that recognises the desirable elements of the existing streetscape and built form. The proposed form is a direct extrusion of the floor plates of the approved building, which is inconsistent with the existing streetscape and built form. The additional levels as a direct extrusion ignore key existing and likely future alignments in built form and scale and exacerbate the bulk and scale of the building. No additional front or side setback is proposed to the new levels in recognition of the intended scale and streetscape character.
- Overall, the design does not exhibit design excellence, as per the comments made by the Design Excellence panel.
- The proposal does not meet the objectives of the R3 Zone or Section 1.3 of the EP&A 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 Number of Storeys development standard.

8. Development Control Plans and Policies

8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in Appendix 5.

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 5 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	<p>The relevant clauses of the Regulations have been satisfied.</p> <p><u><i>Environmental Planning and Assessment Regulation 2021</i></u> Section 26 requires a development application for development to specify the name of the registered community housing provider who will manage the affordable housing component.</p> <p>The Applicant has failed to provide the name of the registered community housing provider who will manage the affordable housing component. As such, the development cannot be approved and for this reason forms part of the refusal recommendation.</p> <p><u><i>Housing and Productivity Contribution</i></u> The proposed development is subject to a housing and productivity contribution (HPC) in accordance with section 7.28 of the <i>EP&A Act 1979</i>. The Applicant lodged the development application without</p>

Section 4.15 'Matters for Consideration'	Comments
	acknowledging the imposition of the HPC. Council asserts that the HPC is applicable in accordance with the Act and Regulations.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is inconsistent with the dominant character in the locality.</p> <p>The proposal will result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site is located in close proximity to local services and public transport.</p> <p>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.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been 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. Building Separation

Pursuant to Part 3F-1 of the ADG, the minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

The proposed development consists of the following side and rear setbacks from habitable rooms to boundaries:

- Northern side boundary: 2.53m-4.3m to all storeys including windows to habitable rooms.
- Southern side boundary: 4m to all storeys including windows to habitable rooms.
- Western rear boundary: 3.55m-5.2m to all storeys including windows to habitable rooms and the circulation stair for the development.

The proposed development does not provide adequate separation to its side and rear boundaries. The development will be within close proximity to the adjoining buildings including only separated 6m to 5 Albert Street and 10m to 3 Albert Street and 12 Milford Street respectively.

The lack of separation between the proposed development and its respective side and rear boundaries results in unacceptable visual bulk in close proximity to existing development, visual and acoustic privacy, and overshadowing impacts to the streetscape and neighbouring buildings.

The proposed development will also impact upon view corridors, to which the full extent the Applicant has failed to demonstrate.

Council notes that whilst some portions of the building may comply with the setback controls in Part C2 of RDCP, this section of the RDCP does not envision residential flat buildings greater than 12 metres (or 4 storeys) in height. As such, the controls relate to a form significantly smaller than that proposed under the new “low and mid rise housing” provisions of the Housing SEPP.

For these reasons, the development application is recommended for refusal.

9.1.2. *Desired Future Character*

Section 20(3) of the Housing SEPP requires the consent authority to take into consideration whether the design of the development is compatible with the character of the local area, or for precincts undergoing transition, the desired future character of the precinct.

The Applicant’s SEE states the following:

“The proposal is consistent with the desired future and emerging character within the precinct guided by the overarching State policy encouraging the provision of affordable housing in well serviced and located areas.”

The Applicant relies upon the potential height and FSR bonuses that may be achieved on adjoining or nearby sites via the “low and mid rise housing” and “in fill affordable housing” provisions of the Housing SEPP to demonstrate that the proposed development is compatible with the desired future character of the area. However, the Applicant has failed to provide any detailed modelling to demonstrate that such development would in fact be achievable on adjoining and nearby properties, showing compliance with all relevant development standards and controls (including in terms of indicative residential layouts, parking provisions, tree canopy coverage, common open space and building envelopes showing likely separation, visual bulk, privacy and solar access impacts). In the case of the immediately adjoining sites, the following should be provided:

- A financial feasibility study demonstrating such development would be financially feasible having regard to the number of dwellings required to be used for affordable housing purposes and the need to purchase the existing strata title units; and
- An analysis of whether sufficient building separation can be achieved between that site and the subject site in line with the requirements of the Housing SEPP and Apartment Design Guide.

For these reasons, the development application is recommended for refusal.

9.1.3. *Residential Amenity*

Communal Open Space

Section 3D-1 of the ADG includes the following design criteria:

- “1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).”

Section 2.3.2(i) in Part C2 of RDCP 2013 requires communal open space for a residential flat building to be as follows:

- “(a) Of a sufficient contiguous area, and not divided up for allocation to individual units.
- (b) Designed for passive surveillance.
- (c) Well oriented with a preferred northerly aspect to maximise solar access.
- (d) adequately landscaped for privacy screening and visual amenity.
- (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.”

The proposed development has designated the internal common spa area on the basement 1 floor as the building's COS. This area is not 'common open space' under 3D of the ADG. COS is described in the ADG as '*an important environmental resource that provides outdoor recreation opportunities for residents, connection to the natural environment and valuable breathing space between apartment buildings.*'

The spa area is an insufficient area within the site in terms of residential amenity and does not provide for outdoor recreation or landscape design, and thereby adversely impacts upon the amenity of the future occupants of the building.

Whilst the proposed internal space was previously supported for development consent under DA/526/2022 (as modified) on the basis of a smaller number of residents, the increase in the number of dwellings and occupants in the building justifies the provision of true COS of sufficient design and area to provide amenity to support the buildings residents.

Solar Access

Section 4A of the ADG requires that living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours of direct sunlight.

The proposed development consists of 17 dwellings. Therefore, at least 12 dwellings must have 2 hours of direct sunlight to living rooms and private open spaces.

The Applicant asserts that 15 of the 17 dwellings (or 88%) of dwelling living rooms receive 2 hours of direct sunlight. Council asserts that only 10 of 17 dwellings (or 59%) of dwelling living rooms receive 2 hours of direct sunlight, in considering the planning principle for access to sunlight under *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.

The discrepancy of 5 dwellings accounts includes Dwellings G12, G22, G32, G42, and G52 which Council notes do not receive sufficient solar access to living rooms windows at 11am, and therefore insufficient solar access for 2 hours between 9am-11am. As demonstrated in the plan below, only a small portion of the windows receive solar access. Figure 18 has been reproduced below with Council mark-ups, showing that only a small portion of the glazing receive direct sunlight to the living room windows to Dwellings G12, G22, G32, G42, and G52.

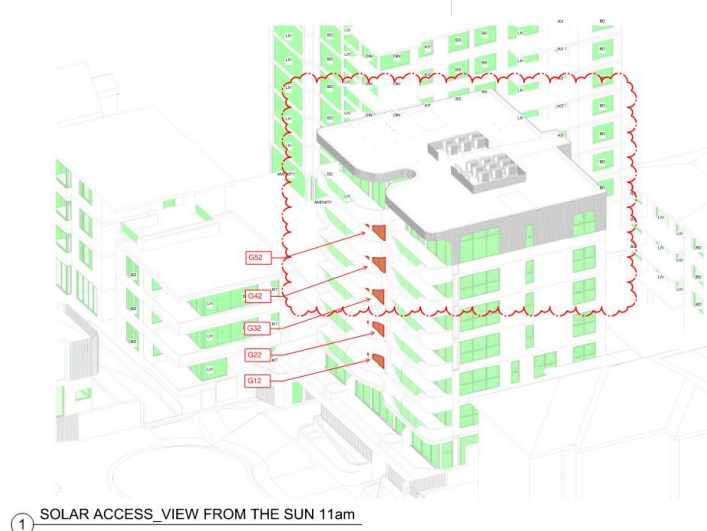


Figure 18: Sun eye diagram for the proposed development at 11am with Council markings in red showing window areas that receive solar access – 3-4 Llanfoyst Street, Randwick (Source: Orosi)

In accordance with the access to sunlight planning principle under *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082, the following assessment has been undertaken:

"Where guidelines dealing with the hours of sunlight on a window or open space leave open the question what proportion of the window or open space should be in sunlight, and whether the

sunlight should be measured at floor, table or a standing person's eye level, assessment of the adequacy of solar access should be undertaken with the following principles in mind, where relevant:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Council comments: The development is considered a midrise development, in accordance with the Housing SEPP. This principle is not as relevant for solar considerations to the subject development, as it is written as solar impact to adjoining dwellings.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Council comments: as above, this principle is not as relevant for solar considerations to the subject development, as it is written as solar impact to adjoining dwellings.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Council comments: as above, this principle is not as relevant for solar considerations to the subject development, as it is written as solar impact to adjoining dwellings. That being said, Council acknowledges that the proposed development is poorly designed and does not exhibit design excellence. The lack of adequate solar access to living rooms of the dwellings subject to the development is a result of poor quality design, which could be amended to demonstrate a better design that increases solar access to these living rooms.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

Council comments: Council is not satisfied that a small portion of the eastern living room glazed windows to the dwellings is sufficient. The proportion of the glazed area receiving sunlight can be described as negligible, especially when considered in relation to the overall size of the eastern glazing.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

Council comments: Council confirms that the sufficient number of private open spaces of dwellings in the proposed development receive sufficient solar access.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Council comments: Overshadowing by fences, roof overhangs and changes in level have been taken into account and demonstrated on the submitted solar diagrams. Planting within the north-eastern corner of the site includes 'native trees' and 'native palms', which were qualitatively taken into account.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

Council comments: The Applicant has failed to model the building envelope of a redeveloped 5 Albert Street, which they rely upon to demonstrate the desired future character of the area, and of which would likely have solar impacts on the living rooms windows of the proposed development.

As such, the proposed development fails to provide adequate solar access to dwelling living rooms, and thereby adversely impacts upon the amenity of the future occupants of the building.

Storage

Section 4G-1 of the ADG includes the following design criteria:

"1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

Dwelling type	Storage size volume
Studio apartments	4m ³
1 bedroom apartments	6m ³
2 bedroom apartments	8m ³
3+ bedroom apartments	10m ³

At least 50% of the required storage is to be located within the apartment".

The proposed development includes storage areas for each dwelling both within the basement 2 floor and internally to each dwelling.

The Applicant has failed to demonstrate that sufficient storage has been provided to each dwelling in accordance with the ADG minimum requirements or that 50% of the required storage is provided within the apartment. In addition, internal storage to dwellings is narrow and does not appear to provide sufficient depth for adequate storage.

A lack of storage for each dwelling thereby adversely impacts upon the amenity of the future occupants of the building.

For these reasons, Council is not satisfied that the development provides sufficient amenity for future residents, and the development application is recommended for refusal.

9.1.4. Neighbouring Residential Amenity

The proposed development will have an adverse impact upon the amenity of the neighbouring sites in terms of visual amenity, privacy, solar access, and view sharing, as follows:

- In terms of visual amenity, the proposed development has an 8 storey and 1 basement level building envelope that maintains a consistent envelope across all levels. The proposed development has a massing and envelope that fails to have sufficient modulation/articulation or exhibit design excellence, which has an adverse impact upon visual amenity of the nearby neighbours.

- In terms of visual privacy, Section 5.3(i) in Part C2 of RDCP 2013 requires windows and balconies of habitable rooms to be located to minimise overlooking of POS, windows or glazed doors in adjoining dwellings (whether part of the development or on adjoining properties). The proposed development has habitable room windows that are separated approximately 9.5m from the habitable room windows and balcony of adjoining residential flat buildings. The proposed development will result in direct overlooking of living room and adjoining balconies, and bedroom windows of adjoining dwellings, without any privacy considerations, which will impact upon the privacy and amenity of residents and future occupants.
- In terms of solar access, Section 5.1(i) under 'Solar access for surrounding development' in Part C2 of RDCP 2013 requires that living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June. The proposed development will overshadow the living rooms windows and balconies of apartments at 12 Milford Street, particularly those in the north-eastern side of the building. The proposed development will adversely impact upon the solar access to dwellings within 12 Milford Street, which results from a massing and lack of separation and modulation of the building and does not exhibit design excellence.
- In terms of view sharing, the proposed development will result in view impacts from neighbouring dwellings within the vicinity, of both ocean views (including coastal headlands and Wedding Cake Island) and district city views, as demonstrated from the submissions received during the public exhibition period. The Applicant has failed to provide any detailed view impact assessment with the submitted development application. The full extent of the impact on existing views is not clear. As such, a detailed consideration of the proposed development cannot be undertaken based upon the submitted information.

For these reasons, the development application is recommended for refusal.

9.1.5. Car Parking

Section 19(2)(e) and (f) of the Housing SEPP relevantly states the following parking rates for "in fill housing" development:

- "(e) the following number of parking spaces for dwellings used for affordable housing—*
- (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,*
 - (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,*
 - (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,*
- (f) the following number of parking spaces for dwellings not used for affordable housing—*
- (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,*
 - (ii) for each dwelling containing 2 bedrooms—at least 1 parking space,*
 - (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,"*

The proposed development will increase the number of dwellings from 11 to 17 units comprising of:

- 3x 2-bedroom dwellings,
- 10x 2-bedroom + study dwellings, and
- 4x 3-bedroom dwellings.

Table 1 in Part B7 of RDCP specifies the following parking rate for carparking for residential flat buildings:

"1 visitor space per 4 dwellings (but none where development is less than 4 dwellings)."

The development application includes a discrepancy in the number of affordable housing dwellings that form part of the affordable housing component. This discrepancy impacts the calculated parking demand, however in both scenarios result in an unacceptable parking shortfall.

For the purposes of a parking assessment, the Applicant's Traffic and Parking Report has assessed the 2 bedroom + study apartments as 2 bedrooms resulting in a lower parking demand. This is not supported as the proposed study rooms are of an approximate dimension of 3m x 3m and can be easily converted to bedrooms post-approval. These study rooms have therefore been assessed as bedrooms for the purposes of Council's parking assessment.

When assuming 2x of the 3-bedroom units will form the affordable housing component, the minimum car parking rate is 27 parking spaces (including 4x for visitor parking required under RDCP 2013).

The proposed development includes 18 parking spaces, which is a parking shortfall of:

- 9 spaces for the overall development, being a variation of 33%.
- 5 spaces with the Housing SEPP requirements, being a variation of 28%.

The site is within a locality that is experiencing high parking demand pressures. Llanfoyst Street especially experiences very high demand for on-street parking, which is often not available within the entire street. Further adding to this high demand with secondary parking impacts likely to extend beyond the limits of Llanfoyst Street is not acceptable in this instance.

The Applicant has not submitted a written request pursuant to clause 4.6 of RLEP 2012 in relation to the contravention of the development standards. As such, the Applicant has not demonstrated the following matters as required by 4.6(3) of RLEP 2012:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- That there are sufficient environmental planning grounds to justify the contravention of the development standard in sections 19(2)(e) and (f) of the Housing SEPP.

For these reasons, consent cannot be granted, and the development application is recommended for refusal.

9.1.6. Landscaping

Section 177(2) of the Housing SEPP relevantly states that for a residential flat building development, the consent authority must consider the *Tree Canopy Guide for Low and Mid Rise Housing*, published by the Department in February 2025.

Table 6 in the Tree Canopy Guide requires the following minimum landscaping components:

Table 6. Tree canopy and deep soil
(residential flat buildings and shop-top housing)

Site area	Tree canopy (min % site area)	Deep soil (min % site area)
All lots	15%	7%

Guidance notes in the Tree Canopy Guide state that deep soil requirements align with the design criteria under Objective 3E-1 of the ADG. Pursuant to Part 3E-1 of ADG, the minimum dimensions for deep soil zones where the site area is between 650-1,500sqm is 3m.

The development application includes a deep soil zone of 10.8% (being 85m²), however does not have a minimum width of 3m. The application also includes a planting schedule which does not achieve the minimum tree canopy coverage of 15%.

The proposed development accordingly does not provide sufficient landscaped areas within the site, which impacts upon the quality of life and attractiveness of the town centre, as well as failing to bring about relevant environmental benefits.

Whilst the proposed deep soil zone was previously supported for development consent under DA/526/2022 (as modified), the increase in the massing and scale of the proposed development is not adequately balanced with sufficient deep soil areas and canopy tree planting.

For these reasons, the development application is recommended for refusal.

9.1.7. Insufficient Information

Council notes that a full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to:

- Survey Plan: The submitted survey plan does not show the current condition of the existing site, following the demolition of the previous dwellings and levels of the laid concrete subflooring with sufficient spot heights.
- Architectural Plans: The submitted architectural plans do not contain sections showing that all habitable rooms have a floor-to-ceiling height of at least 2.7m. In addition, the submitted architectural plans do not show in detail the adaptable dwellings and how they have been designed in accordance with AS 4299 'Adaptable Housing'.
- Photomontage: The development application is not accompanied by a photomontage of that the development will look like from a number of vantage points within the vicinity, including but not limited to, the lower and higher sides of Llanfoyst Street, Albert Street, George Street and Victoria Street.
- Design Analysis: The development application is not accompanied by a contextual analysis or urban design justification to assess the potential impacts of the proposed height exceedance within the character of the locality.
- Feasibility Study: The development application is not accompanied by any financial feasibility study to substantiate the development potential of neighbouring sites (including but not limited to 3 & 5 Albert Street), noting that a percentage of dwellings would need to be reserved for affordable housing purposes, in accordance with the "low and mid rise housing" and "in-fill affordable housing" provisions of the Housing SEPP. Further information is required to demonstrate how a potential development of that land would be consistent with the development standards of these respective policies and the feasibility of purchasing a sufficient number of the strata units of the existing respective buildings.
- View Sharing: The development application has not been accompanied by a comprehensive view sharing assessment to determine the view impact of the proposed development. An assessment is required against clause 5.5 in Part C2 of RDCP and against the planning principle for views under *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.
- Acoustic Report: The development application has not been accompanied by an Acoustic Report addressing the potential adverse acoustic impacts of the proposed development.
- Waste Management: The development application has not been accompanied by a bin presentation plan showing how & where the waste bins room will be transferred & presented kerbside for collection.
- Electricity Supply: The development application has not been accompanied by an infrastructure assessment to determine if adequate arrangements for electricity supply have been made to accommodate the additional dwellings and load on the existing electricity network.
- Performance Solution Report: The development application has not been accompanied by a Performance Solution Report by a suitably qualified fire engineer to determine the viability of the performance solutions raised in the submitted BCA Performance Requirements Compliance Statement.

For a lack to sufficient information with the submitted package, the development application is recommended for refusal.

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/437/2025 to Amend DA/526/2022 for alterations and additions to the approved development, including the addition of three (3) residential storeys to create a seven (7) storey residential flat building, with basement parking and associated landscaping works at No. 3-4 Llanfoyst Street, Randwick NSW 2031 for the following reasons:

1. Pursuant to clause 2.3 of RLEP 2012, the proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone in that it does not recognise the desirable elements of the existing streetscape and built form, fails to protect the amenity of residents, and does not encourage housing affordability.

2. Pursuant to clause 4.6 of RLEP 2012, the Applicant has failed to submit a written request to vary the parking spaces and ceiling height 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.
3. Pursuant to section 16 of the SEPP (Housing) 2021, the Applicant has failed to confirm which dwellings are to be included in the affordable housing component. Inconsistency in the proposed development makes it unclear what the additional floor space ratio and buidling height standards that are applicable to the subject development.
4. Pursuant to sections 16, 175(2), and 180(2)(b) of the SEPP (Housing) 2021, the proposed variations to the maximum building height and number of storeys development standards are not supported as the Applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
5. Pursuant to section 20(3) of the SEPP (Housing) 2021, the proposed development is incompatible with the character of the local area. In addition, the Applicant has failed to demonstrate that if the precinct is undergoing transition and that the development is compatible with the desired future character of the precinct.
6. Pursuant to section 147 of the SEPP (Housing) 2021, the proposed development was not supported by the Randwick Design Advisory Panel in that the quality of the design was inadequate for the proposed building. In addition, the development fails to demonstrate consistency with the following design criteria of the ADG:
 - a. Section 3D 'Communal and Public Open Space'.
 - b. Section 3E 'Deep Soil Zone'.
 - c. Section 3F 'Visual Privacy'.
 - d. Section 4A 'Solar and Daylight Access'.
 - e. Section 4C 'Ceiling Heights'.
 - f. Section 4G 'Storage'.
7. Pursuant to section 177(2) of the SEPP (Housing) 2021, the proposed development does not provide adequate deep soil zones and canopy tree coverage on the site.
8. Pursuant to clause 6.10 of RLEP 2012, the Applicant has failed to sufficiently demonstrate that adequate arrangements have been made for electricity supply to the proposed development.
9. Pursuant to clause 6.11 of RLEP 2012, the proposed development does not exhibit design excellence.
10. 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 Randwick Development Control Plan 2013:
 - a. Part B7: Transport, Traffic, Parking and Access
 - i. Section 3.2 'Vehicle parking rates'.
 - b. Part C2: Medium Density Residential
 - i. Section 2.2.2 'Deep soil area'.
 - ii. Section 2.3.2 'Communal open space'.
 - iii. Section 3.4 'Setbacks'.
 - iv. Section 4.1 'Buidling façade'.
 - v. Section 4.2 'Roof design'.
 - vi. Section 4.4 'External wall height and ceiling height'.
 - vii. Section 4.9 'Colours, materials and finishes'.
 - viii. Section 5.1 'Solar access and overshadowing'.
 - ix. Section 5.3 'Visual privacy'.
 - x. Section 5.5 'View sharing'.

c. Part C3: Adaptable and Universal Housing
i. Section 3 'Adaptable housing'.

11. Pursuant to Section 26 of the *Environmental Planning and Assessment Regulation 2021* and Section 21(1)(b) of the SEPP (Housing) 2021, the development application does not specify the name of the registered community housing provider who will manage the affordable housing component.
12. 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.
13. 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.
14. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to the survey plan, architectural plan information, photomontages, design analysis, feasibility study, view sharing, acoustic report, waste management, electricity supply, and performance solution report.

D37/25

Appendix 1: Referrals

1. External Referral Comments:

1.1. Randwick Design Excellence Advisory Panel

Randwick Design Excellence Advisory Panel Final Endorsed Comments



DA INFORMATION	
Application Number	DA/437/2025 7 storey residential flat building
Address	3-4 Llanfoyst Street Randwick NSW 2031
Meeting Date	2 June 2025
Panel Members	Russell Olsson (chair), Linda Gosling, Vishal Lakhia
Report Date	11 June 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.

PANEL COMMENTS

1. Context and Neighbourhood Character

- a. The context is comprised predominantly of residential apartment development built over many decades with a range of architectural styles. However, the predominant building height is 4 storeys, with minor exceptions as noted below. The characteristics of development in surrounding streets are :
 - i. Llanfoyst Street : 2 and 3 storey older dark brick apartment buildings; 3 and 4 storey modern apartment buildings; one 2 storey house;
 - ii. Albert Street : great majority of buildings 4 storey apartment buildings; one recent 4 storey dark brick apartment building at 2 Albert Street; 2 storey plus attic older apartment building at 5 Albert Street raised to 3 storey plus attic scale due to topography adjoining northern boundary of subject site; a 4 storey apartment building at 3 Albert Street adjoining western boundary of subject site;
 - iii. Avoca Street : 3 and 4 storey apartment buildings from different periods;

- iv. Milford Street : Mix of older 2 storey brick and stone houses and 3 storey apartment buildings; 8 storey apartment building in centre of block with address 12 Milford Street.
 - b. The visibility of buildings varies when viewed from the public realm. In particular, the 8 storey "Milford Towers" building at 12 Milford Street is not easily seen from surrounding streets as it is located in the centre of this relatively large block. The mainly 4 storey scale of existing buildings predominates and characterises the neighbourhood.
 - c. The approved development is 5 storeys when viewed from Llanfoyst Street, comprised of 4 residential storeys and one carparking level above ground.
 - d. The desirable elements of the character of the local area include the predominant 4 storey scale of buildings. The approved 5 storey development is not out of scale with the 4 storey built form context. When viewed from Llanfoyst Street the proposed 8 storey development does not reflect the 4 storey scale in the local area, as the approved residential floorplates are repeated on the proposed upper floors. The Panel recommends that the built form and architectural treatment of upper floors be distinct from the lower, approved floors, to complement the desirable elements of local character.
 - e. The Panel recognizes that future built character will possibly be 6 storeys in this inner LMR zone, but consider that the comment above re an 8 storey development still applies.
 - f. The architectural drawings did not include any urban design or context analysis for the proposal. In this regard, the overall height and built form suitability of the proposal has not been adequately contextualised within the immediate surroundings and the local character, as described in paragraphs 1a to 1d.
 - g. As a minimum, the Panel expects the scheme to be presented alongside potential future redevelopment scenarios for the remaining properties within the urban block which will possibly be redeveloped to 8 storeys based on uplift available through the Low and Mid-Rise Housing Policy. This should include the adjacent properties located north and west of the site.
2. Built Form and Scale
 - a. The proposed development is 8 storeys viewed from Llanfoyst Street. The approved development which is under construction is visually 5 storeys. As noted above, the proposed additional 3 storeys repeated vertically above the approved 5 storeys contribute to an excessive scale of development in relation to the existing and future context;
 - b. The Panel identifies a need for upper level setbacks from the rear boundary (west) and the side boundaries (north and south) for the newly introduced top 3 storeys for improving the built form suitability of the proposal with its vicinity. The applicant should test and determine the extent of upper level setback that meets the objectives, criteria or guidance under the NSW ADG Part 3F – Visual Privacy, whilst mitigating potential visual and overshadowing impacts on both the existing and potential future neighbours.
 - c. The proposed 2 bedroom plus study and 3 bedroom apartments are up 129 m2 in area and balconies are approximately 22 m2 in area. The built form created by these relatively large apartments and balconies could be reduced in size.
 - d. It is desirable to set back the upper levels of the development to reduce its scale.
 - e. It is recommended that the balconies and eastern façade on the proposed top 2 storeys be set back 2 metres further than the lower 6 storeys.
 - f. It is recommended that the western façade on the proposed top 2 storeys be set back further than the lower 5 storeys. (Note that the built form above ground on the rear elevation is 7 storeys).
 - g. It is recommended that the southern and northern façades on the proposed top 2 storeys be set back further than the lower 5 storeys. (Note that the built form above ground on the side elevations is 7 storeys).
 - h. These setbacks would reduce the scale of development, minimise overshadowing on the existing apartments at 12 Milford Street and would increase views out from the upper levels of 12 Milford Street, which would otherwise be reduced without the setbacks.
 - i. In summary, the Panel recognises there is need for upper level setbacks (top 2 or 3 levels) for improving the built form suitability of the proposal with its vicinity. The applicant should test and determine the extent of upper level setbacks that meet either the objective, criteria and guidance

of NSW ADG 3F Visual Privacy, whilst mitigating potential visual and overshadowing impacts on both the existing and potential future neighbours.

3. Density

As noted in '1. Context and Neighbourhood Character' and '2. Built Form and Scale', the proposed built form does not reinforce the local built form character and should be reduced in size, which would reduce the overall floor area.

The Panel considers that the floor space ratio and height are only maximum controls and environmental impacts on the neighbours and suitability within the built form context need to be successfully established as part of the design excellence process.

4. Sustainability

- a. Solar access and natural cross ventilation criteria under the NSW ADG appear to be satisfied.
- b. The proposed provision of the rooftop Photo Voltaic (PV) system is supported and the applicant should investigate whether equitable power allocation to the individual apartments is possible. Alternatively, the PV system should be used to power the common areas and the basement.

5. Landscape

- a. It is noted that the Tree Canopy Guide for Low and Mid-rise Housing requires 15% of the site to have canopy tree cover. It appears that the proposed development would not achieve that area of canopy cover.
- b. Lack of communal open space is considered problematic in terms of residential amenity and the landscape design proposition is not supported by the Panel.

6. Amenity

- a. The proposed development has a built form set back of 4m from the eastern end of the southern boundary and a minimum of 2.5m from the western end of the southern boundary. This built form has a height of 7 storeys. The building separation distance to the 8 storey building at 12 Milford Street is 9m to 10m.
- b. Objective 3B-2 of the Apartment Design Guide regarding minimising overshadowing of neighbouring properties requires that living areas, private open space and communal open space of neighbouring properties should receive solar access in accordance with sections 3D communal and open space and 4A solar and daylight access. With regard to this proposed development, 70% of the balconies and living rooms of the building at 12 Milford Street are to receive 2 hours sun between 9am and 3pm in midwinter.
- c. Given the site orientation and surrounding development, including the approved 4 storey development at 3 & 4 Llanfoyst Street, it is probable that the existing building at 12 Milford Street receives the required 2 hours sun. The proposed development overshadows many of the east facing balconies and living rooms at 12 Milford Street.
- d. It is recommended that eye of the sun solar testing between 9am and 3pm in mid-winter is made to the balconies and living rooms of all apartments at 12 Milford Street with the proposed development included. If the shadow impact does not allow 70% of existing balconies and living rooms in the building at 12 Milford Street to receive the required 2 hours sun, the top storeys should be set back to ensure that the required solar access is achieved.
- e. The proposed development has living room windows set back 4m from the eastern end of the southern boundary and bedroom windows set back approximately 2.5m from the western end of the southern boundary. This built form has a height of 7 storeys. The building separation distance to the 8 storey building at 12 Milford Street is 9m to 10m. Objective 3F-1 of the ADG requires that the separation distance of 8 storey buildings with habitable room windows is 18m, to achieve reasonable levels of privacy. Figure 3F.3 shows that the top 3 storeys of the proposed 7 storey building with habitable room windows should be set back 9m from the side and rear boundaries.
- f. The adjacent site to the north at 5 Albert Street has re-development potential. The proposed upper floors containing windows to habitable rooms are set back 4m from the northern side boundary. The potential for future building separation and privacy impacts is substantial.

- g. It is recommended that the southern and northern façades on the proposed top 2 storeys be set back further than the lower 5 storeys.
- h. The proposed 2 bedroom plus study and 3 bedroom apartments do not require windows to the living rooms and bedrooms on the northern and southern facades to comply with the BCA – all rooms contain windows facing east and west, sufficient for compliance and reasonable amenity.
- i. To avoid privacy impacts to the existing building at 12 Milford Street and potential future built form and privacy impacts to 5 Albert Street, it is recommended that no windows be provided in the proposed apartments on the top 3 storeys to the southern or northern facades. In addition the frosted glass in the approved lower 4 storeys should be re-instated in this Modification.
- j. To avoid privacy impacts to the neighbour to the west, both existing and future, at 1/3 Albert Street, it is recommended that the proposed additional floors be set well back from the boundary, noting the ADG requirement for a 9m setback to habitable rooms.
- k. Parking provision: Despite adding 6 large apartments, the proposal will not provide additional car spaces, putting more pressure on on-street parking in the area. This is an indication that the proposal is an over-development and that floor space reduction is required.
- l. View analysis: The proposal will affect ocean views from both 12 Milford St to the south-east and from 1/3 Albert St to the west. Using the principle of view sharing, the Panel recommends that the upper floors be re-configured to maximise views from neighbouring properties. The applicant needs to provide a thorough view analysis for these neighbours.

7. Safety

There is no change to the safety performance of this proposal compared to the approved development.

8. Housing Diversity and Social Interaction

The affordable housing component of this proposal would contribute to housing diversity.

9. Aesthetics

- a. The residential floors of the proposed development are visually undifferentiated one from the other, except for the top floor, which is made more visually prominent than the lower floors due to the curved "cornice" on the top floor. The Panel does not support the proposed unvarying architectural treatment for the full 7-8 storeys. The overall form and expression when extruded to 8 storeys requires upper level setbacks, much greater design resolution, additional articulation to create facade depths, and a well considered materiality.
- b. Use of self finished materials such as face bricks and concrete with an integral finish are preferred compared to the proposed rendered and painted walls. Rendered and painted surfaces should be avoided due to potential longevity and long term maintenance issues.
- c. The Panel notes the fire stairs protrude beyond the rear building envelope for the full 8 storey height and recommends more thoughtful and elegant integration with the overall architectural design.

SUMMARY

The Panel does not support this proposal and recommends that changes be made as described above.

1.2. Sydney Airport Corporation



D37/25

Reg No.: 25/0381

Wednesday, 21 May 2025

To: RANDWICK CITY COUNCIL & NSW PLANNING
PORTAL

Notice to Proponent of Property Development

Dear Sir / Madam,

Application for approval of a controlled activity pursuant to:

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

Proposed Activity: PROPERTY DEVELOPMENT
Location: 3-4 LLANFOYST STREET RANDWICK
Proponent: RANDWICK CITY COUNCIL & NSW
PLANNING PORTAL
Date: 21/05/2025

Sydney Airport received the above application from you.

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

The application sought approval for the PROPERTY DEVELOPMENT to a height of 86.00 metres Australian Height Datum (AHD).

In my capacity as Manager, Airfield Spatial & Technical Planning and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, I have no objection to the erection of this development to a maximum height of 86.00 metres AHD.

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

Sydney Airport

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

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

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

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

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

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

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

The height of the prescribed airspace at this location is 120.00 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones:

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

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

Sincerely,

1.3. 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.

D37/25

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

1.4. Sydney Water Corporation



D37/25

6 June 2025

Our reference: N/A

William Joannides
Randwick City Council

william.joannides@randwick.nsw.gov.au

RE: Development Application DA/437/2025 at 3-4 Llanfoyst Street, Randwick

Thank you for notifying Sydney Water of DA/437/2025 at 3-4 Llanfoyst Street, Randwick, which proposes construction of a 7-storey residential flat building and 2 levels of basement parking which will provide a total number of 17 residential dwellings. Sydney Water has reviewed the application based on the information supplied and provides the following Sydney Water requirements to assist in understanding the servicing needs of the proposed development.

Sydney Water position:	Condition of Consent applies
Condition of Consent which applies:	Section 73 and Building Plan Approval required See Attachment 1 for recommended wording for Sydney Water conditions to be included in the consent letter.
Additional comments:	N/A
Other information:	This advice is not formal approval of our servicing requirements. Detailed requirements will be provided once the development is referred to Sydney Water for further applications. The <i>Sydney Water Development Application Information Sheet (for proponent)</i> enclosed contains details on how to make further applications to Sydney Water and further information on Infrastructure Contributions. A copy of this should be provided to the proponent in conjunction with the development consent.

If you require any further information, please contact 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

Sydney Water Corporation ABN 49 776 225 038

2 Parramatta Square, 1 Smith Street, Parramatta, NSW 2150 | PO Box 399, Parramatta, NSW 2124

Telephone 13 20 92 sydneywater.com.au



2. Internal Referral Comments:

2.1. Development Engineering

General Comments

The original DA approved under DA/526/2022 was for 11 units comprising of 8 x 3-bedroom + 3 x 1-bedroom with 17 carspaces provided in the basement.

The amending DA proposes 3 additional stories increasing it to a 7-storey flat building. The number of dwellings will increase from 11 to 17 units comprising of 3 x 2-bedroom + 10 x 2-bedroom + study + 4 x 3-bedroom units.

The application is not supported on parking grounds and is recommended for refusal in its present form.

Parking Comments

For the purpose of the parking assessment, the proposed studios have been counted as bedrooms since they are of approximate dimension 3.6m, x 3m and could be easily converted to bedrooms post approval hence the development has been assessed as 3 x 2 bedroom + 14 x 3-bedroom dwellings

The submitted traffic & parking report states that there will be 6 units on Levels 1 and 2 intended to be dedicated as affordable housing comprising of 2 x 2 bedroom + 4 x 3 bedroom (2B + Study). The units not intended to be dedicated as affordable housing will comprise o

Parking Requirements for the future development have been assessed as per the following applicable parking rates specified in Part 2 Division 1 Clause 19 of the SEPP(Housing) 2021 being non-discretionary development standards:

- (e) the following number of parking spaces for dwellings used for affordable housing—
 - (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,
 - (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,
 - (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,
- (f) the following number of parking spaces for dwellings not used for affordable housing:
 - (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,
 - (ii) for each dwelling containing 2 bedrooms—at least 1 parking space,
 - (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,

Parking Demand under SEPP Housing (2021)

Parking Demand (Affordable Housing component) = 2 x 0.5 (for 2 bedroom) + 4 x 1.0 (3 bedroom)

(6 units) = 5 spaces

Parking Demand (Remaining component) = 1 x 1.0 (for 2 bedroom) + 10 x 1.5 (3 bedroom)

(11 units) = 16 spaces

Total Parking Required under SEPP = 5 + 16
= 21 spaces

Total Parking Provided = 18 spaces

Total Parking Shortfall = 3 spaces (16.7%)

The submitted traffic and parking report has assessed the 2 bedroom + study apartments as 2 bedrooms resulting in a calculated overall lower demand of 18 spaces and therefore argues it is compliant under the SEPP. This is not supported by Development Engineering as the

proposed studies are of approximate dimension 3.6m x 3m and could be easily converted to bedrooms post approval.

The development should be assessed as 3 x 2-bedroom + 14 x 3-bedroom dwellings

The site is located within an area that is experiencing high parking pressures and already receives a discounted parking rate due to the affordable housing component. **The 3-space deviation is not supported, and the proposal is recommended for refusal.**

Discrepancy in number of Affordable Housing units

It is noted that there is also a discrepancy between the Traffic report and drawing 7001 of the architectural plans in that the architectural plans indicate only 2 x 2B + study (counted as 3-bedroom) units are intended to be dedicated as affordable housing. If this is accurate the parking shortfall will be even worse at 5 spaces. See detailed calculations below.

Parking Demand (Affordable Housing component) = 2 x 1.0(3 bedroom)
(2 units) = 2 spaces

Parking Demand (Remaining component) = 3 x 1.0 (for 2 bedroom) + 12 x 1.5(3 bedroom)
(15 units) = 3 + 18
= 21 spaces

Total Parking Required under SEPP = 2 + 21
= 23 spaces

Total Parking Provided = 18 spaces

Total Parking Shortfall = 5 spaces (22%)

Waste Management Comments

Comments on the number of Waste Bins

Appendix 3 in Part B6 of Council's DCP specifies a waste bin requirement rate for residential flat buildings houses of 1 x 240L or 660L bulk bins based on 120L/Unit bin per 2 rooms for normal garbage and 1 x 240L bin per 2 rooms for recycling.

There are no specific requirements for green waste in Part B6 of the DCP however since March of 2021 Council has introduced a Garden Organic Food organic (FOGO) collection service. As some landscape areas are also proposed it is recommended that a minimum of 3 x 240L bins also be provided for FOGO.

Total Number of BINS required = 9(normal) + 9(recycling) + 3(FOGO)
= 21 x 240L BINS
= or 3 x 660L(normal) + 3 x 660L(recycling) + 3 (FOGO)

Total Number of BINS proposed = 6x 660L BINS and 5 x 240L BINS

The required total volume of BINS has been met however due to the narrow footpaths in Llanfoyst St the smaller 240L bin size may be preferable to Council as there may not be sufficient room kerbside for presentation of 660L bins.

A bin presentation plan shall be submitted showing how & where the waste bins room will be transferred & presented kerbside for collection.

2.2. Development Landscaping

Amended Landscape Plans have been submitted with this application, and when compared to the scheme approved under DA/526/2022/A, the following differences have been summarised below:

- a. The same quantity of planting has been maintained at the northeast site corner, but is no longer in a raised planter, and is now provided at grade/ground level, which complies with condition 2(d) of DA/526/2022/A.
- b. Similarly, the planters in the terraced gardens between the front of the building and the front property boundary have maintained the same quantity of planting but the retaining walls have been slightly adjusted.
- c. OSD Tanks are nominated directly beneath the two gardens areas discussed in point 'b' above.
- d. The amount/width of paving in both northern, southern and western setbacks of the Ground Floor Level has been increased, which has directly reduced the amount of planting in these areas, resulting in a more lineal design, with a retaining wall now appearing to clearly delineate trafficable areas and gardens, rather than the informal gathering spaces that were previously shown.
- e. An additional native feature tree is now provided on podium across the front, eastern elevation of the Ground Floor Level, taking the total here from 2 to 3 trees.
- f. Accent planting (Grass Trees) in two new pots are now shown at the Third Floor Level to create 'a focal point from the entry', where there was previously no planting.

However, none of the matters described above are seen to result in any adverse or unacceptable outcome or impacts when compared to the previously adopted Landscape scheme, with this amended proposal deemed to still fulfill the intent of the original approval.

This application achieves numerical compliance with the minimum Landscape Area standard (7% required, 7% provided), and while no Calculation Plans have been provided to confirm otherwise, there appears to be a deficiency in meeting the minimum Canopy Tree Coverage standard of 15% that is nominated in the *Tree Canopy Guide for Low and Mid Rise Housing*, published by the Department in February 2025.

2.3. Environmental Health

Comments:

In order to assess the existing and potential noise sources and emissions from the proposed development, and potential impact upon the amenity of the locality, an Acoustic Report should be provided to Council for assessment.

According to the architectural plans on the roof there is a machinal plant equipment. It is noted that there is a there has been many submissions have been raised the concern regarding noise from the proposed development, to ensure that all the appropriate acoustic treatment is applied Council requests that an acoustic report is prepared by a suitably qualified experienced consultant and submitted before determination.

Recommendation:

The following information is required to be submitted to Council prior to determination of the development application.

1. An Acoustic Report is required to be prepared by a suitably qualified and experienced consultant in Acoustics and be submitted to Council prior to determination of the application.

The acoustic assessment and report is to be completed in accordance with the NSW Environmental Protection Guidelines, including the *Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance)* and relevant Australian Standards.

The report is to include (but not be limited) to;

- Noise emissions from all plant and equipment within the subject development (e.g. mechanical ventilation systems, refrigeration equipment etc);
- Noise emissions arising from the use and operation of the proposed development (including associated activities which may generate noise);
- Noise emission into the proposed development from the surrounding environment;
- Interior acoustic privacy (in accordance with Council's Development Control Plan);

2.4. Building Compliance

Council's Building Compliance Department is largely supportive of the proposed development. That being said, the submitted development application includes a BCA Performance Requirements Compliance Statement which outlines a number of Performance Based Solutions that the development will need to rely upon.

The development application has not been accompanied by a Performance Solution Report by a suitably qualified fire engineer to determine the viability of the performance solutions raised in the submitted BCA Performance Requirements Compliance Statement.

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

1. Building Height:

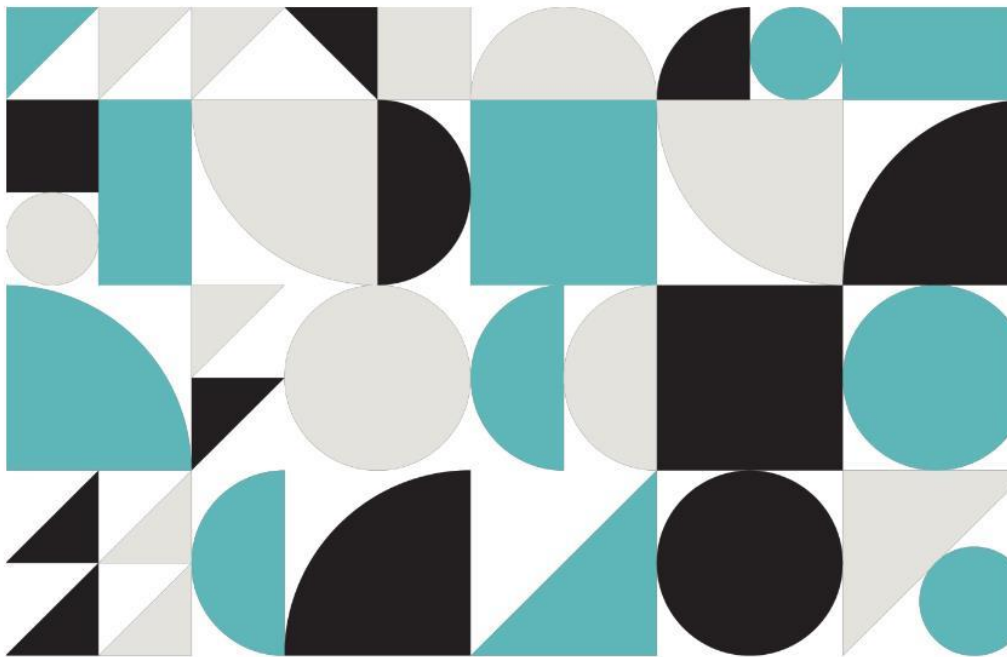
Clause 4.6 Variation Request – Height of Building



Clause 4.6 Variation Request Statement

Height of Buildings Development Standard (Clause 16(3) and 175(2) of the Housing SEPP)

3-4 Llanfoyst Street, Randwick





Prepared by Paro Consulting for Orosi

May 2025

Clause 4.6 Variation Request – Height of Building

Document status

Revision	Date	Name	Signature
1	07/05/2025	Daniel Barber, Director B.Plan (Hons) M.ProDev, MPIA, CPP	
		Wilson Perdigao, Principal Planner B.Plan (Hons)	

Contact Details

Item	Details
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Disclaimer

This Clause 4.6 Variation Request Statement has been prepared with reasonable effect made to ensure that this document is correct at the time of printing, Paro Consulting and its employees make no representation, undertake no duty and accepts no responsibility to any third party who use or rely upon this document or the information contained in it.

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 the development standard for building height contained within Chapter 2, Part 2, Division 1, Clause 16(3) and Chapter 6, Part 4, Division 1, Clause 175(2) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Clause 4.6 of the Randwick LEP 2012 enables a consent authority to grant consent for a development even though the development contravenes a development standard of the LEP or another environmental planning instrument, such as in this case, the Housing SEPP. This variation request is to accompany a Development Application (DA) at 3-4 Llanfoyst Street, Randwick (the site) for alterations and additions to the approved DA/526/2022, including alterations to the internal building configuration and the addition of three (3) residential storeys to create a seven (7) storey residential flat building, with basement parking and associated landscape works (the proposal).

Clause 16(3) of the Housing SEPP stipulates that a bonus additional building height of 20% for the land above the applicable height standard applies to development that is for the purposes of a residential flat building providing a minimum of 10% of the total GFA as affordable housing.

Clause 175(2) of the Housing SEPP stipulates that a maximum 22m building height control applies to development that is for the purposes of a residential flat building on land located in the low and midrise housing inner area, as identified in Chapter 6 of the Housing SEPP.

In the context of the site, the development is therefore subject therefore to a maximum 22m building height standard under Clause 175(2) and an additional 4.4m building height as per Clause 16(3) of the Housing SEPP. The development is therefore subject to a maximum 26.4m height of building standard.

The proposed development includes a maximum overall building height of:

- 22m to the top of the roof plant screen (to RL 85.83) as measured from the approved ground level (existing);
- 31.3m to the top of the roof plant screen (to RL 85.83) as measured from the ground level (existing).

The proposal, as measured from 'ground level (existing)', therefore exceeds the maximum permissible height by:

- 4.9m (or a 18.56% variation) when considered against Clause 16(3); and
- 9.3m (or a 42.27% variation) when considered against Clause 175(2).

Notwithstanding the above, the development achieves a maximum overall building height of 22m to the top of the roof plant screen (to RL 85.83) as measured from the approved 'ground level (existing)' in compliance with Clause 16(3) of the SEPP. This Clause 4.6 Variation Request has been submitted for abundant caution in relation to the variation to the exceedance of the statutory height standard as measured from ground level (existing) due to the commencement of excavation having altered the ground level of the site.

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 16(3) and Clause 175(2) of the Housing SEPP.

The variation request relates to a development application submitted to Randwick Council for alterations and additions to the approved DA/526/2022, including alterations to the internal building configuration and the addition of three (3) residential storeys to create a seven (7) storey residential flat building, with basement parking and associated landscape works (the proposal) at 3-4 Llanfoyst Street, Randwick (the Site).

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').

3. Standard to be Varied

The development standard for building height that is proposed to be varied relates to:

- Clause 16(3) within Chapter 2, Part 2, Division 1 of the Housing SEPP; and
- Clause 175(2) within Chapter 6, Part 4, Division 1 of the Housing SEPP.

Section 16 allows additional floor space and FSR if the development includes a residential flat building and meets certain pre-conditions as outlined in Section 15C. Under Clause 16(3), an additional 4.4m height above the 'maximum permissible building height for the land' (which is separately defined in the Housing SEPP) can be applied under the condition that the development also meets requirements specified under Clause 16(1) and 16(2).

Clause 16 of the Housing SEPP is stated as below.

16 Affordable housing requirements for additional floor space ratio

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

Example—

Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.

(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio."

Clause 16(3) of the SEPP permits a bonus additional building height of 20% for the land above the applicable height standard as an affordable housing component is to be provided (equating to a minimum 10% of the total GFA of the development).

The Housing SEPP defines "maximum permissible building height" as:

"maximum permissible building height means the maximum building height permitted on the land under Chapter 5 or 6, where relevant, an environmental planning instrument, other than this Policy, or a development control plan."

Under the Chapter 6, Part 4 of the Housing SEPP the height of buildings for development standard for the construction of a residential flat building in the 'low and mid rise inner area' as set out in Clause 175(2) of the Housing SEPP is subject to a 22m building height development standard. Clause 175(2) of the Housing SEPP states:

"175 Development standards—low and mid rise housing inner area

(1) This section applies to land in a low and mid rise housing inner area in Zone R3 Medium Density Residential or R4 High Density Residential.

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(2) Development consent must not be granted for development for the purposes of residential flat buildings with a building height of up to 22m unless the consent authority is satisfied the building will have 6 storeys or fewer.

(3) Development consent must not be granted for development for the purposes of a building containing shop top housing with a building height of up to 24m unless the consent authority is satisfied the building will have 6 storeys or fewer.”

Clause 175(2) of the Housing SEPP stipulates that a maximum 22m building height control applies to development that is for the purposes of a residential flat building on land located in the low and midrise housing inner area, as identified in Chapter 6 of the Housing SEPP.

Clause 16(3) of the Housing SEPP permits a bonus additional building height of 20% for the land above the applicable height standard.

The development is therefore subject therefore to a maximum 22m building height standard under Clause 175(2) and an additional 4.4m building height as per Clause 16(3) of the Housing SEPP.

The development is therefore subject to a maximum 26.4m height of building standard.

4. Extent of Variation

The proposed development includes a maximum overall building height of:

- 22m to the top of the roof plant screen (to RL 85.83) as measured from the approved ground level (existing);
- 31.3m to the top of the roof plant screen (to RL 85.83) as measured from the ground level (existing).

The proposal, as measured from 'ground level (existing)', therefore exceeds the maximum permissible height by:

- 4.9m (or a 18.56% variation) when considered against Clause 16(3); and
- 9.3m (or a 42.27% variation) when considered against Clause 175(2).

Notwithstanding the above, the development achieves a maximum overall building height of 22m to the top of the roof plant screen (to RL 85.83) as measured from the approved 'ground level (existing)' in compliance with Clause 16(3) of the SEPP.

This Clause 4.6 Variation Request has been submitted for abundant caution in relation to the variation to the exceedance of the statutory height standard as measured from ground level (existing) due to the commencement of excavation having altered the ground level of the site.

4.1 Measuring Ground Level (Existing)

The maximum building height is to be measured in accordance with the definition contained in the Dictionary to the LEP.

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,

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".

The "ground level (existing)" is defined as "the existing level of a site at any point". It is essential, therefore, that an existing ground level is nominated in order to determine the height of the building. This is usually achieved by taking the lowest level on an existing site, directly beneath the highest part of the proposed development, to determine the maximum building height.

However, in circumstances where there is an existing building on the site that occupies the whole of the site area, such as this, this method cannot always be applied.

In these circumstances, the Land and Environment Court has determined that an alternate method for determining the existing ground level should be applied, known as the 'extrapolation approach'. The leading decision on this methodology is *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* (Bettar). In *Bettar*, Commissioner O'Neill held that where a site contains an existing building, the existing ground level should be determined based on "the level of the footpath at the boundary", as this "bears a relationship to the context and the overall topography" of the site (at [41]).

This decision of *Bettar* has been applied in several subsequent decisions of the Court, including *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189* (Stamford), *Tony Legge v Council of the City of Sydney [2016] NSWLEC 1424*

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(Tony Legge) and *Nicola v Waverley Council* [2020] NSWLEC 1599. For example, in *Stamford, Pearson C and Smithson AC*, held that the extrapolation approach provides a “practical application” to the definition of “ground level (existing)” because it “places the building in its context, rather than relying on the present built form of an existing development on a site”. This approach was reinforced in *Tony Legge* by Commissioner Dickson, in which she held that “it is appropriate to take the levels of the site as its interface with the public domain” (at [41]).

The existing ground level of the site has been determined using the extrapolation approach by adopting the footpath levels immediately outside the site boundary.

The ‘extrapolation approach’ remains good law and has been cited by the Court as recently as October 2024 (see *Yarranabbe Ventures v Council of the Municipality of Woollahra* [2024] NSWLEC 1613).

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 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

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Figure 2 below illustrates the extent of the height non-compliance as measured from *ground level (existing)*:

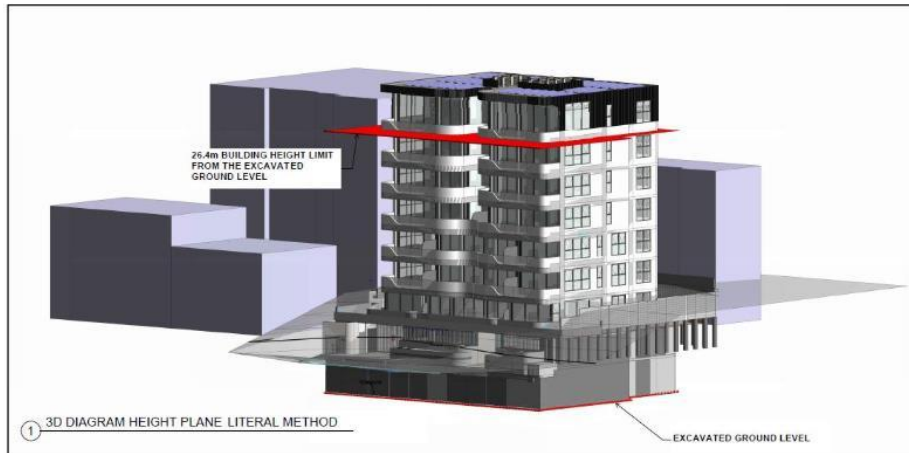


Figure 3 below illustrates the extent of the height non-compliance as measured from the *approved ground level (existing)*:



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 16 and 175 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 standards to be varied is a Development Standard to which Clause 4.6 applies.

Clause 16 of the Housing SEPP is expressed as ‘additional’ floor space ratio and building height on land. Clause 175(2) of the Housing SEPP is contained within a clause which is titled ‘Development standards—low and mid rise housing inner area’ and is a numeric development standard capable of being varied under clause 4.6 of the LEP.

The standard instrument defines a ‘development standard’ as:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.”*

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Based on the above definition, and with previous decisions of the Land & Environment Court in relation to matters which constitute development standards it is considered that the wording of the maximum building height standards constitutes a “development standard” as it is described as a numeric measure of building height, bulk and scale – so it is a numeric development standard capable of being varied under clause 4.6 of the LEP.

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 16(3) and Clause 175(2) are not “expressly excluded” from the operation of Clause 4.6 in the Randwick LEP 2012. It is also noted that these clauses do not contain a provision which specifically excludes the application of clause 4.6.

On this basis it is considered that these clauses are development standards for which clause 4.6 applies.

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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** and **Third 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 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.

There are no objectives relating specifically to the maximum building height standards, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling low and mid rise housing development with a component of affordable rental housing. 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 residential flat building development is considered to be consistent with these principles.

The proposed residential flat building will provide for a greater number housing options and housing diversity in a growing area that is well located with regards to goods, services and public transport, that will meet the needs of households in need of housing. It also provides high amenity for future residents in compliance with Apartment Design Guide (ADG) and Chapter 4 Design of Residential Apartment Development of the Housing SEPP. Furthermore, affordable housing in accordance with the infill affordable housing provisions is provided, and the proposal does not result in any adverse climate or environmental impacts.

Importantly, while the proposal exceeds the maximum building height control, it complies with the 26.4m height limit under Clause 16(3) and the 22m height limit under Clause 175(1) of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022. The built form respects the intended massing outcome and achieves the visual and environmental objectives the height limit is intended to support.

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.

Notwithstanding the above, compliance with a development standard is also demonstrated to be unreasonable or unnecessary in another way being *Test 3* of *Wehbe*, outlined below:

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Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Strict compliance with the numerical maximum building height standards would undermine the underlying objective and purpose of the development standards in the following ways:

- Requiring strict compliance with a height control would result in underutilisation of the permissible built form envelope
- The proposed development presents 6-storeys when considered from ground level (existing) at the time of lodgement of DA/526/2022. The proposed built form respects the intended massing outcome of the control in that it complies with the 26.4m height limit under Clause 16(3) of the Housing SEPP, and maximum number of storeys above the approved existing ground level.
- It is contended that the proposal achieves the visual and environmental objectives the height limit is intended to support noting that the basements contribute to building height under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development.
- Requiring compliance would constrain site-responsive and well-designed proposal that meet height, bulk, and amenity objectives without yielding any public benefit.

The consequence is that requiring strict compliance would thwart the underlying objectives and purpose of achieving appropriate built form, residential amenity, and housing supply aligned with strategic planning objectives.

Summary

In accordance with the decision in *Wehbe*, compliance with a development standards is demonstrated to be unreasonable or unnecessary in two ways (*Test 1* and *Test 3*). 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.

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. Site-Specific Built Form Response

- a) The proposed development presents 6-storeys when considered from ground level (existing) at the time of lodgement of DA/526/2022. The proposed additional levels result in a built form that respects the intended massing outcome of the height control in that it complies with the 22m height limit under Clause 175(1) of the Housing SEPP, and the 26.4m height limit under Clause 16(3) of the Housing SEPP when measured from the approved existing ground level.
- b) The proposal achieves the visual and environmental objectives the height limit is intended to support noting that basements contribute to building height under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development. Importantly, while the proposal exceeds the maximum building height control, it complies with the 26.4m height limit under

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Clause 16(3) and the 22m height limit under Clause 175(1) of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022. The built form respects the intended massing outcome and achieves the visual and environmental objectives the height limit is intended to support.

- c) The proposed development envelope, scale, and impact remains consistent with the intent of the height control that is in my view to provide for a maximum of 26.4m above ground level existing.
- d) The proposed design features a functional and high quality development, with high levels of amenity.
- 2. Compatibility with Desired Future Character**
 - a) The proposed development is consistent with the precincts' high density character, defined by tall multi-storey buildings and emerging higher density forms under the Housing SEPP framework.
 - 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 design supports functional living environments for future residents, incorporating compliance with ADG and Housing SEPP controls for solar access, natural ventilation, privacy, and open space.
 - The height breach does not result in additional overshadowing, privacy or view loss impacts to adjoining development when considered against the backdrop of a compliant building envelope formulated by the 26.4m height limit above the approved existing ground level.
 - The proposed development envelope, scale, and impact remains consistent with the intent of the height control that is in my view to provide for a maximum 26.4m building above the approved ground level existing.
 - The proposal exceeds the maximum building height control, however it complies with the 22m height limit under Clause 175(1) of the Housing SEPP and bonus height under the infill housing provisions of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022
 - The built form respects the intended massing outcome and achieves the visual and environmental objectives the height limit is intended to support.
- 4. Orderly and economic use of land**
 - a) The social benefits of providing a development that improves the functionality and amenity of the residential flat development should be given weight in the consideration of the variation request.
 - b) Given the nature of the alterations and additions, strict numerical compliance with the height standard would sterilise part of the site's permissible height and undercut housing delivery in an area identified for increased capacity.
- 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 R3 Medium Density Residential 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 accommodation 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)).

Clause 4.6 Variation Request – Height of Buildings

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development.

Insistence on compliance with the building height development standards will result in the proposal failing to meet the development of low and mid rise housing in areas including provision of affordable rental housing that is well located with regard to goods, services and public transport and housing 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 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.

Number of Storeys:

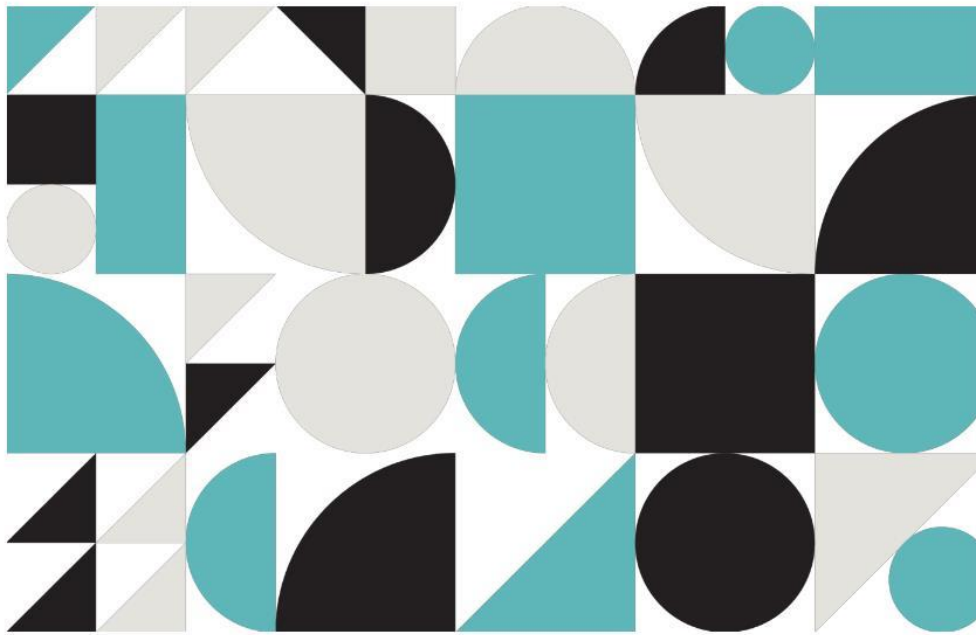
Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

D37/25

Clause 4.6 Variation Request Statement

Number of Storeys Control (Clause 175(2) of Housing SEPP)

3-4 Llanfoyst Street, Randwick



Prepared by Paro Consulting for Orosi



May 2025

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Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

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Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

1. Executive Summary

This Clause 4.6 variation request statement has been prepared in relation to Clause 175 'Development standards—low and mid rise housing inner area' of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) to accompany a Development Application (DA) at 3-4 Llanfoyst Street, Randwick (the site). The DA seeks consent for alterations and additions to the approved DA/526/2022, including alterations to the internal building configuration and the addition of three (3) residential storeys to create a seven (7) storey residential flat building, with basement parking and associated landscape works (the proposal).

Clause 175(2) stipulates that a maximum six (6) storey control applies to development that is for the purposes of a residential flat building on land located in the low and midrise housing inner area, as identified in Chapter 6 of the Housing SEPP. In the context of the site, the land is located within the 'inner area' of the low and mid rise housing area and the proposal is for the purpose of a residential flat building with a total of nine (9) storeys inclusive of two (2) basement levels. This represents three (3) storey variation, or 50% variation to the number of storey control when considered against Clause 175(2).

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 – Clause 175(2) maximum number of storeys control

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 number of storeys development standard prescribed in *Clause 175(2)* of the Housing SEPP. The variation request relates to a development application submitted to Randwick Council for alterations and additions to the approved DA/526/2022, including alterations to the internal building configuration and the addition of three (3) residential storeys to create a seven (7) storey residential flat building, with basement parking and associated landscape works at 3-4 Llanfoyst Street, Randwick.

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 – Clause 175(2) maximum number of storeys control

3. Standard to be Varied

The standard that is proposed to be varied is the maximum number of storeys development standard for the construction of a residential flat building in the 'low and mid rise inner area' as set out in Clause 175(2) of the Housing SEPP.

Clause 175(2) of the Housing SEPP states:

"175 Development standards—low and mid rise housing inner area

(1) This section applies to land in a low and mid rise housing inner area in Zone R3 Medium Density Residential or R4 High Density Residential.

(2) Development consent must not be granted for development for the purposes of residential flat buildings with a building height of up to 22m unless the consent authority is satisfied the building will have 6 storeys or fewer.

(3) Development consent must not be granted for development for the purposes of a building containing shop top housing with a building height of up to 24m unless the consent authority is satisfied the building will have 6 storeys or fewer."

Clause 175(2) of the Housing SEPP stipulates that a maximum six (6) storey control applies to development that is for the purposes of a residential flat building on land located in the low and midrise housing inner area, as identified in Chapter 6 of the Housing SEPP. In the context of the site, the land is located within the 'inner area' of the low and mid rise housing area and the proposal is for the purpose of a residential flat building with a total of nine (9) storeys inclusive of two (2) basement levels.



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

4. Extent of Variation

Clause 175(2) of the Housing SEPP stipulates a maximum of six (6) storeys applies to development that is for the purposes of a residential flat building on land located in the low and midrise housing inner area, as identified in Chapter 6 of the Housing SEPP. In the context of the site, the land is located within the 'inner area' of the low and mid rise housing area and the proposal is for the purpose of a residential flat building with a total of nine (9) storeys inclusive of basement levels.

This represents a three (3) storey variation, or 50% variation to the number of storeys control when considered against Clause 175(2) of the Housing SEPP.

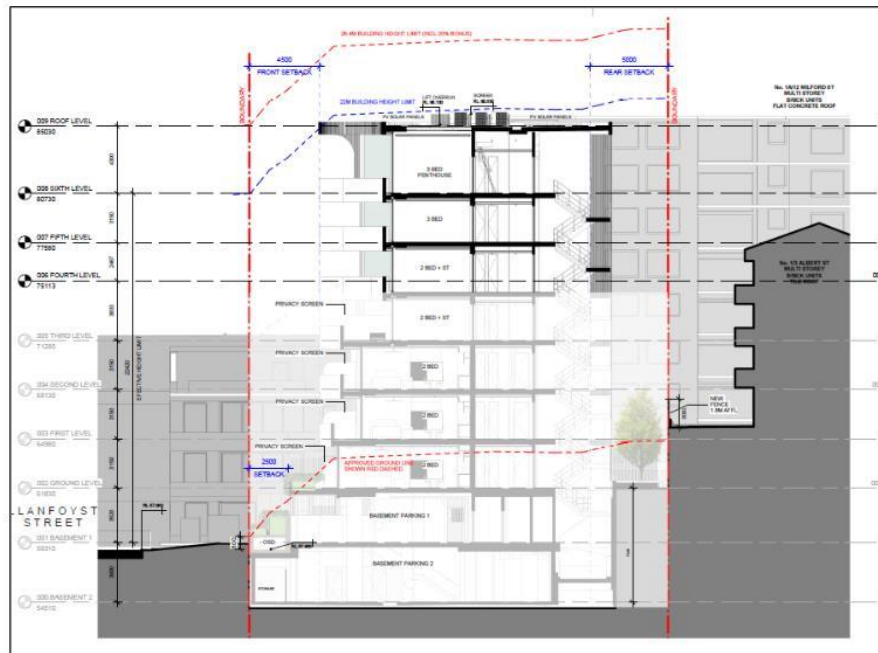


Figure 1: Section of the proposed development indicating the number of storeys – noting the ground line at the time of lodgement of DA/526/2022 is also shown on the plan.



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

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,*

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Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

- (c) clause 5.4,
- (caa) clause 5.5,
- (ca) clause 6.16(3)(b).

It is noted that Clause 175 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 175(2) of the Housing SEPP is contained within a clause which is titled ‘Development standards—low and mid rise housing inner area’ and is a numeric development standard capable of being varied under clause 4.6 of the LEP.

The standard instrument defines a ‘development standard’ as:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

(o) such other matters as may be prescribed."

Based on the above definition, and with previous decisions of the Land & Environment Court in relation to matters which constitute development standards it is considered that the wording of the maximum number of storeys control for residential flat buildings in the low and mid rise housing area in Clause 175(2) of the Housing SEPP constitutes a "development standard" as it is described as a numeric measure of building height, bulk and scale.

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 175(2) 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 175 does not contain a provision which specifically excludes the application of clause 4.6.

On this basis it is considered that clause 175 is a development standard for which clause 4.6 applies.



Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

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** and **Third 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 – Clause 175(2) maximum number of storeys control

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 number of storeys standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling low and mid rise housing 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 residential flat building development is considered to be consistent with these principles.

The proposed residential flat building will provide for a greater number housing options and housing diversity in a growing area that is well located with regards to goods, services and public transport, that will meet the needs of households in need of housing. It also provides high amenity for future residents in compliance with Apartment Design Guide (ADG) and Chapter 4 Design of Residential Apartment Development of the Housing SEPP. Furthermore, no existing affordable housing is being reduced, and the proposal does not result in any adverse climate or environmental impacts.

Importantly, while the proposal exceeds the maximum number of storeys control, it complies with the 22m height limit under Clause 175(1) of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022. The built form respects the intended massing outcome and achieves the visual and environmental objectives the storey limit is intended to support.

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.

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Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

Notwithstanding the above, compliance with a development standard is also demonstrated to be unreasonable or unnecessary in another way being *Test 3* of *Wehbe*, outlined below:

Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Strict compliance with the numerical maximum number of storeys control would undermine the underlying objective and purpose of the development standard in the following ways:

- The 22m height control is capable of accommodating more than six storeys in particular on sloping sites. Requiring strict compliance with a 6-storey maximum storey control would result in underutilisation of the permissible built form envelope.
- The definition of "storey" under the LEP Standard Instrument stipulates:

"storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include—

(a) a space that contains only a lift shaft, stairway or meter room, or

(b) a mezzanine, or

(c) an attic."

Based on the above, a 'storey' includes basement level or levels that are located below ground which do not contribute to overall visual bulk or scale thereby penalising designs that incorporate functional and site-responsive basement levels.

- The proposed development presents 6-storeys when considered from ground level (existing) at the time of lodgement of DA/526/2022. The proposed built form respects the intended massing outcome of the control in that it complies with the 22m height limit under Clause 175(1) of the Housing SEPP, and maximum number of storeys above the approved existing ground level.
- It is contended that the proposal achieves the visual and environmental objectives the storey limit is intended to support noting that basements to be counted as storeys under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development.
- Requiring compliance would constrain site-responsive and well-designed proposal that meet height, bulk, and amenity objectives without yielding any public benefit.

The consequence is that requiring strict compliance would thwart the underlying objectives and purpose of achieving appropriate built form, residential amenity, and housing supply aligned with strategic planning objectives.

Summary

In accordance with the decision in *Wehbe*, compliance with a development standard is demonstrated to be unreasonable or unnecessary in two ways (Test 1 and Test 3). 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 – Clause 175(2) maximum number of storeys control

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 number of storey 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 number of storeys development standard:

1. Site-Specific Built Form Response

- a) The proposed development presents 6-storeys when considered from ground level (existing) at the time of lodgement of DA/526/2022. The proposed additional levels result in a built form that respects the intended massing outcome of the storey control in that it complies with the 22m height limit under Clause 175(1) of the Housing SEPP, and maximum number of storeys above the approved existing ground level.
- b) The proposal achieves the visual and environmental objectives the storey limit is intended to support noting that basements to be counted as storeys under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development. Importantly, while

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the proposal exceeds the maximum number of storeys control, it complies with the 22m height limit under Clause 175(1) of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022. The built form respects the intended massing outcome and achieves the visual and environmental objectives the storey limit is intended to support.

- c) The proposed development envelope, scale, and impact remains consistent with the intent of the storey control that is in my view to provide for a maximum of 6-storeys above ground level existing.
- d) The proposed design features a functional and high quality development, with high levels of amenity.

2. Compatibility with Desired Future Character

- a) The proposed development is consistent with the precincts' high density character, defined by tall multi-storey buildings and emerging higher density forms under the Housing SEPP framework.
- 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 design supports functional living environments for future residents, incorporating compliance with ADG and Housing SEPP controls for solar access, natural ventilation, privacy, and open space.
 - The storey count breach does not result in additional overshadowing, privacy or view loss impacts to adjoining development when considered against the backdrop of a compliant building envelope formulated by the 22m height limit above the approved existing ground level.
 - The proposed development envelope, scale, and impact remains consistent with the intent of the storey control that is in my view to provide for a maximum of 6-storeys above ground level existing.
 - The proposal exceeds the maximum number of storeys control, however it complies with the 22m height limit under Clause 175(1) of the Housing SEPP and bonus height under the infill housing provisions of the Housing SEPP, when considered from ground level (existing) at the time of lodgement of DA/526/2022
 - The built form respects the intended massing outcome and achieves the visual and environmental objectives the storey limit is intended to support.

4. Orderly and economic use of land

- a) The social benefits of providing a development that improves the functionality and amenity of the residential flat development should be given weight in the consideration of the variation request.
- b) Given the nature of the alterations and additions, strict numerical compliance with the number of storey standard would sterilise part of the site's permissible height and undercut housing delivery in an area identified for increased capacity.

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 R3 Medium Density Residential 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:

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Clause 4.6 Variation Request – Clause 175(2) maximum number of storeys control

- The proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential accommodation 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 number of storey development standard will result in the proposal failing to meet the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport and housing 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.*

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 – Clause 175(2) maximum number of storeys control

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.



Appendix 3: Housing SEPP 2021 Compliance Tables

1. Chapter 2 'Infill Affordable Housing' Compliance Table

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
15C Development to which division applies		
(1) This division applies to development that includes residential development if—		
(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and	Residential flat buildings are permitted in the zone, with consent.	Yes, complies
(b) the affordable housing component is at least 10%, and	Unclear what dwellings allocated for AHC.	No
(c) all or part of the development is carried out— (i) or development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.	The subject site is in an accessible area.	Yes, complies
(2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division.	Affordable housing not required in another policy, EPI or planning agreement.	Yes, complies
16 Affordable housing requirements for additional floor space ratio		
(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).	2.72:1 (or 2132sqm)	Yes, if 11.8% of FSR comprises of the AHC.
(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows— $\text{affordable housing component} = \frac{\text{additional floor space ratio (as a percentage)}}{2}$	Minimum = 10% Unclear what dwellings allocated for AHC.	No
(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).	31.98m (to the air-conditioning condenser) and 31.29m (to the roof parapet).	No, see Clause 4.6 assessment above.
(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.	N/A	N/A
19 Non-discretionary development standards—the Act, s 4.15		
(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—		
(a) a minimum site area of 450m ² ,	Proposed = 784.5m ²	Yes, complies
(b) a minimum landscaped area that is the lesser of— (i) 35m ² per dwelling, or (ii) 30% of the site area,	Minimum = 385m ² Proposed = 402m ²	Yes, complies
(c) a deep soil zone on at least 15% of the site area, where— (i) each deep soil zone has minimum dimensions of 3m, and	As per clause 19(3), not applicable as	N/A

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,	Chapter 4 applies. See below.	
(d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,	As per clause 19(3), not applicable as Chapter 4 applies. See below.	N/A
(e) the following number of parking spaces for dwellings used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms—at least 1 parking space,	Unclear what dwellings allocated for AHC, but assuming if G11 and G13 AH: Minimum = 2 (assuming 2x 2-bedroom + study as a 3-bedroom) Total Minimum = 23 (see below) Proposed = 18	No, see Clause 4.6 assessment above.
(f) the following number of parking spaces for dwellings not used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	Unclear what dwellings allocated for AHC, but assuming if G11 and G13 AH: Minimum = 21 (3x 2-bedroom, 4x 3-bedroom and assuming 8x 2-bedroom + study as a 3-bedroom) Total Minimum = 23 (see above) Proposed = 18	No, see Clause 4.6 assessment above.
(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,	Min 2 bed = 70m ² Min 3 bed = 90m ² Proposed 2 bed = 75m ² Proposed 3 bed = 96m ²	Yes, complies
(h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,	N/A	N/A
(i) if paragraphs (g) and (h) do not apply, the following minimum floor areas— (i) for each dwelling containing 1 bedroom—65m ² , (ii) for each dwelling containing 2 bedrooms—90m ² , (iii) for each dwelling containing at least 3 bedrooms—115m ² plus 12m ² for each bedroom in addition to 3 bedrooms.	N/A	N/A

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Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.	As above, (2)(c) and (d) do not apply.	Yes
20 Design requirements		
(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.	N/A	N/A
(2) Subsection (1) does not apply to development to which Chapter 4 applies.	N/A	N/A
(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with— (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	Council not satisfied that the proposed development is compatible with the desirable elements of the character of the local area. In addition, the Applicant has failed to demonstrate that if the area is undergoing transition, that the development is compatible with the desired future character of the precinct.	No, see Key Issues
21 Must be used for affordable housing for at least 15 years		
(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development— (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider.	Details of the registered community housing provider have not been provided.	No
(2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.	N/A	N/A
22 Subdivision permitted with consent		
Land on which development has been carried out under this division may be subdivided with development consent.	No land subdivision proposed.	N/A

2. Chapter 4 'Design of Residential Apartment Development' Compliance Table

Standard	Proposal	Compliance
Part 4: Design of residential apartment development		
148 Non-discretionary development standards for residential apartment development		
(2) The following are non-discretionary development standards—		

Standard	Proposal	Compliance
Part 4: Design of residential apartment development		
(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,	The proposed development provides sufficient bicycle and motorbike parking specified in Part 3J of the Apartment Design Guide.	Yes, complies
(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,	The proposed development provides sufficient minimum internal area for the 2 and 3 bedroom units.	Yes, complies
(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.	The proposed development fails to provide sufficient minimum ceiling heights for habitable rooms in the development, with some bedrooms having floor-to-ceiling heights of 2.4m.	No, see Clause 4.6 Assessment below.

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3. Chapter 6 'Low and Mid Rise Housing' Compliance Table

Standard	Proposal	Compliance
Part 4 'Residential flat buildings and shop top housing'		
Division 1 Preliminary		
174 Development permitted with development consent		
Development for the purposes of residential flat buildings is permitted with development consent on land to which this chapter applies in a low and mid rise housing area in Zone R2 Low Density Residential or R3 Medium Density Residential.	Proposal is for a residential flat building in a low and mid rise housing area in R3 Medium Density Residential.	Yes, complies
175 Development standards—low and mid rise housing inner area		
(1) This section applies to land in a low and mid rise housing inner area in Zone R3 Medium Density Residential or R4 High Density Residential.	The site falls within a low and mid rise housing inner area in Zone R3 Medium Density, being land within 400m walking distance of the 'Randwick town centre and light rail station'.	Yes, complies
(2) Development consent must not be granted for development for the purposes of residential flat buildings with a building height of up to 22m unless the consent authority is satisfied the building will have 6 storeys or fewer.	Proposal = 9 storeys	No, see Clause 4.6 assessment above.
177 Landscaping—residential flat buildings or shop top housing		
(1) This section applies to land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.	The site falls within a low and mid rise housing	Yes, complies

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Standard	Proposal	Compliance
Part 4 'Residential flat buildings and shop top housing'		
	inner area in Zone R3 Medium Density.	
(2) Development consent must not be granted for development for the purposes of residential flat buildings or shop top housing unless the consent authority has considered the <i>Tree Canopy Guide for Low and Mid Rise Housing</i> , published by the Department in February 2025.	Proposed DSPA = 10.8% (being 85m ²), however does not have a minimum width of 3m. Proposed canopy = <15%, not been adequately demonstrated by the Applicant.	No, see Key Issues
178 Minimum lot size for residential flat buildings or shop top housing		
(1) This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.	Proposal is for a residential flat building in a low and mid rise housing area in R3 Medium Density Residential.	Yes, complies
(2) A requirement specified in another environmental planning instrument or development control plan in relation to the following does not apply to development that meets the standards in section 180(2) or (3)— (a) minimum lot size, (b) minimum lot width.	Noted – however proposal seeks consent using the 'infill affordable housing' provisions of the SEPP, which are relevant in terms of minimum lot size in this case. Noted regarding minimum lot width.	N/A, see Appendix 3 for details on lot size min requirement.
Division 2 Non-discretionary development standards—the Act, s 4.15		
180 Non-discretionary development standards—residential flat buildings and shop top housing in Zone R3 or R4		
(1) This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.	Proposal is for a residential flat building in a low and mid rise housing area in R3 Medium Density Residential.	Yes, complies
(2) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing inner area—		
(a) a maximum floor space ratio of 2.2:1,	2.72:1 (or 2132sqm)	See assessment above.
(b) for residential flat buildings—a maximum building height of 22m,	31.98m (to the air-conditioning condenser) and 31.29m (to the roof parapet).	See assessment above.

Appendix 4: Apartment Design Guide Compliance Table

Clause	Design Criteria	Proposal	Compliance												
Part 3: Siting the Development															
3D-1	Communal and Public Open Space														
	Communal open space has a minimum area equal to 25% of the site.	The proposed development has designated the internal common spa area on the basement 1 floor as the building's COS. This area is not 'common open space'.	No, see Key Issues												
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	None provided as above.	No.												
3E-1	Deep Soil Zone														
	Deep soil zones are to meet the following requirements: 3m dimension, 7% site area	The development application includes a deep soil zone of 10.8% (being 85m ²), however does not have a minimum width of 3m.	No, see Key Issues												
3F-1	Visual Privacy														
	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>(i) Northern side boundary: 2.53m-4.3m to all storeys including windows to habitable rooms.</p> <p>(ii) Southern side boundary: 4m to all storeys including windows to habitable rooms.</p> <p>(iii) Western rear boundary: 3.55m-5.2m to all storeys including windows to habitable rooms and the circulation stair for the development.</p>	No, see Key Issues
Building Height	Habitable Rooms and Balconies	Non-habitable rooms													
Up to 12m (4 storeys)	6m	3m													
Up to 25m (5-8 storeys)	9m	4.5m													
Over 25m (9+ storeys)	12m	6m													
3J-1	Bicycle and Car Parking														

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Clause	Design Criteria	Proposal	Compliance
	<p>For development in the following locations:</p> <ul style="list-style-type: none"> on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p>See parking rate in Housing SEPP</p> <p>See bicycle rate in Part B7 RDCP.</p>	See above.
Part 4: Designing the Building			
4A	Solar and Daylight Access		
	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter.	<p>Min = 12 of 17 apartments</p> <p>Proposed = 10 apartments</p>	No, see Key Issues
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	All apartments receive some direct sunlight.	Yes, complies
4B	Natural Ventilation		
	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	<p>Min = 10.2 of 17</p> <p>Proposed = 14 of 17</p>	Yes, complies
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	<18m.	Yes, complies
4C	Ceiling Heights		
	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable – 2.4m Attic spaces – 1.8m at edge with min 30 degree ceiling slope Mixed use areas – 3.3m for ground and first floor <p>These minimums do not preclude higher ceilings if desired.</p>	Generally 2.7m to habitable rooms except for some habitable rooms with 2.4m.	No, see Clause 4.6 assessment above.
4D	Apartment Size and Layout		
	<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> Studio - 35m² 1 bedroom - 50m² 2 bedroom - 70m² 	<p>Min 2 bed = 70m²</p> <p>Min 3 bed = 90m²</p> <p>Proposed 2 bed = 75m²</p> <p>Proposed 3 bed = 96m²</p>	Yes, complies

Clause	Design Criteria	Proposal	Compliance															
	<ul style="list-style-type: none">3 bedroom - 90m²																	
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Satisfactory	Yes, complies															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Satisfactory	Yes, complies															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Satisfactory	Yes, complies															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Satisfactory	Yes, complies															
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Satisfactory	Yes, complies															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Satisfactory	Yes, complies															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Satisfactory	Yes, complies															
4E	Private open space and balconies																	
	<div>All apartments are required to have primary balconies as follows:<table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4 m²</td><td>-</td></tr><tr><td>1 bedroom</td><td>8 m²</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10 m²</td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12 m²</td><td>2.4m</td></tr></table></div> <div>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</div>	Dwelling type	Minimum area	Minimum depth	Studio	4 m ²	-	1 bedroom	8 m ²	2m	2 bedroom	10 m ²	2m	3+ bedroom	12 m ²	2.4m	Sufficiently sized balconies provided to the eastern side with adequate depth and area.	Yes, complies
	Dwelling type	Minimum area	Minimum depth															
Studio	4 m ²	-																
1 bedroom	8 m ²	2m																
2 bedroom	10 m ²	2m																
3+ bedroom	12 m ²	2.4m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	G1 and G3 provided with courtyards.	Yes, complies															
4F	Common Circulation and Spaces																	
	The maximum number of apartments off a circulation core on a single level is eight.	Satisfactory	Yes, complies															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A	N/A															
4G	Storage																	
	<div>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:<ul style="list-style-type: none">Studio apartments - 4m³1 bedroom apartments - 6m³</div>	The Applicant has failed to demonstrate that sufficient storage has been provided to each dwelling or that 50% of the required storage is	No, see Key Issues															

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Clause	Design Criteria	Proposal	Compliance
	<ul style="list-style-type: none"> 2 bedroom apartments - 8m³ 3+ bedroom apartments - 10m³ <p>At least 50% of the required storage is to be located within the apartment.</p>	provided within the apartment. In addition, internal storage to dwellings is narrow and does not appear to provide sufficient depth for adequate storage.	

Appendix 5: DCP Compliance Table

1.1. 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.

1.2. Part B4: Landscaping and Biodiversity

Council is not satisfied that the proposed development meets the landscape requirements in accordance with Section 177(2) of the Housing SEPP and the *Tree Canopy Guide for Low and Mid Rise Housing*, as well as Part B4 of RDCP 2013. Refer to detailed assessment by Council's Landscape Officer at the Appendix 1 section of this report.

1.3. 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 the Appendix 1 section of this report.

1.4. Part B6: Recycling and Waste Management

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

1.5. Part B7: Transport, Traffic, Parking and Access

Council is not satisfied that the proposed development meets the parking requirements in accordance with Section 19(2) of the Housing SEPP and Part B7 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer at the Appendix 1 section of this report.

1.6. Part C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance
2.	Site Planning		
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area is to be landscaped open space.	Minimum = 392.25m ² Proposed = 402m ² Complies with requirements under section 19(b) of Housing SEPP	Yes, complies
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	10.8% (being 85m ²), however does not have a minimum width of 3m. The application also includes a planting schedule which does not achieve the minimum tree canopy coverage of 15%.	No, see Key Issues
2.3	Private and communal open space		

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DCP Clause	Control	Proposal	Compliance
2.3.1	Private open space		
	Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.	POS adjoins living rooms, mostly to the east that allow passive surveillance.	Yes, complies
	For residential flat buildings: (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m ² and a minimum dimension of 2m.	Satisfactory as per ADG requirements.	Yes, complies
2.3.2	Communal open space		
	Communal open space for residential flat buildings is to be: (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.	The proposed development has designated the internal common spa area on the basement 1 floor as the building's COS. This area is not 'common open space'	No, see Key Issues
3.	Building Envelope		
3.3	Building depth		
	For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.	Building depth of 14.3m, a minor variation which is satisfactory as most dwelling have dual aspects and sufficient cross ventilation.	Yes, on merit.
3.4	Setbacks		
3.4.1	Front setback		
	(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street.	Consistent with approved DA, however not in scale with character of area. See	No, see clause 6.11 of RLEP assessment above.

DCP Clause	Control	Proposal	Compliance
	<p>Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	design excellence for further details.	
3.4.2	Side setback		
	<p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - 20m and above: 4m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>	<p>Side setbacks do not recognise of the intended scale and streetscape character. In addition, side setbacks do not achieve the ADG required separation distances.</p> <p>Whilst some portions of the building may comply with the setback controls in Part C2 of RDCP, this section of the RDCP does not envision residential flat buildings greater than 12 metres (or 4 storeys) in heights. As such, the controls relate to a form significantly smaller than that proposed under the new “low and mid rise housing” provisions of the Housing SEPP.</p>	No.
3.4.3	Rear setback		

DCP Clause	Control	Proposal	Compliance
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.	As above in relation to side setbacks.	No.
4. Building Design			
4.1	Building façade		
	<ul style="list-style-type: none"> (i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes. (vi) Conceal building services and pipes within the balcony slabs. 	The proposed development has a consistent envelope to all floors, failing to have a form that divides the envelope into sections that present a human scale and contribute the existing local character of the area. The built form and architectural treatment are indistinct between the approved lower floors and approved upper floors, which detracts from the desirable elements of local character. See design excellence for further details.	No, see clause 6.11 of RLEP assessment above.
4.2	Roof design		
	<ul style="list-style-type: none"> (i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building. (ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access. (iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape. (iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms. (v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be 	<p>Roof form dominate within the local built context.</p> <p>Roof services will be hidden behind screening.</p>	No.

DCP Clause	Control	Proposal	Compliance
	<p>sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p>		
4.4	External wall height and ceiling height		
	<p>(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.</p>	The proposed development has a consistent envelope to all floors, failing to have a form that divides the envelope into sections that present a human scale and contribute the existing local character of the area. The built form and architectural treatment are indistinct between the approved lower floors and approved upper floors, which detracts from the desirable elements of local character.	No.
	<p>(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.</p>	Generally 2.7m to habitable rooms except for some habitable rooms with 2.4m.	No, see Clause 4.6 assessment above.
4.5	Pedestrian Entry		
	<p>(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.</p>	Entrance as approved under DA/526/2022.	Yes, complies
4.6	Internal circulation		
	<p>(i) Enhance the amenity and safety of circulation spaces by:</p> <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 	Satisfactory.	Yes, complies

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DCP Clause	Control	Proposal	Compliance
4.7	Apartment layout		
	<p>(i) Maximise opportunities for natural lighting and ventilation through the following measures:</p> <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. <p>Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.</p>	Satisfactory.	Yes, complies
4.8	Balconies		
	<p>(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.</p>	Satisfactory.	Yes, complies
4.9	Colours, materials and finishes		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices 	<p>The proposed development includes external walls sections that have a repetitious façade treatment for all floors of the building. The rendered and painted walls over a building of this scale are not supported and should be amended to include self-finished materials such as face bricks and precast concrete with an integral finish which is more compatible with the locality and provides greater longevity and reduces long term maintenance issues. See design excellence for further details.</p>	No, see clause 6.11 of RLEP assessment above.

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none">- Large expanses of rendered masonry- Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>		
5. Amenity			
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.	Min = 12 of 17 apartments Proposed = 10 apartments	No, see Key Issues
	Solar access for surrounding development		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	Submitted solar diagrams demonstrate that the proposed development will overshadow the living rooms windows and balconies of apartments at 12 Milford Street, particularly those in the north-eastern side of the building. This results from a massing and lack of separation and modulation of the building.	No, see Key Issues
	(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.		
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
5.2	Natural ventilation and energy efficiency		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	Satisfactory.	Yes, complies
5.3	Visual privacy		
	(i) Locate windows and balconies of habitable rooms to minimise	The lack of separation between the proposed development and its	No, see Key Issues

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DCP Clause	Control	Proposal	Compliance
	<p>overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 	<p>respective side and rear boundaries results in unacceptable visual privacy.</p> <p>The proposed additional 2 bedroom plus study and 3 bedroom apartments do not require windows to the living rooms and bedrooms on the northern and southern facades to comply with the BCA – all rooms contain windows facing east and west, sufficient for compliance and reasonable amenity. The northern and southern windows result in undue privacy impacts on nearby buildings.</p>	
5.5	View sharing		
	<p>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</p> <p>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the</p>	<p>The development application has not been accompanied by a comprehensive view sharing assessment to determine the view impact of the proposed development. An assessment is required against clause 5.5 in Part C2 of RDCP and against the planning principle for views under <i>Tenacity Consulting v Warringah Council [2004] NSWLEC 140</i>.</p>	No, see Key Issues

DCP Clause	Control	Proposal	Compliance
	<p>neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>		
5.6	Safety and security		
	<p>(i) Design buildings and spaces for safe and secure access to and within the development.</p> <p>(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.</p>	Satisfactory.	Yes, complies
6.	Car parking and access		
6.1	Location		
	<p>(v) For residential flat buildings, comply with the following:</p> <p>(a) Car parking must be provided underground in a basement or semi-basement for new development.</p> <p>(b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage.</p> <p>(c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.</p>	Location as approved under DA/526/2022 (as modified).	N/A
6.2	Configuration		
	<p>(iv) Provide basement or semi-basement car parking consistent with the following requirements:</p> <p>(a) Provide natural ventilation.</p> <p>(b) Integrate ventilation grills into the façade composition and landscape design.</p> <p>(c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This</p>	Configuration as approved under DA/526/2022 (as modified).	N/A

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DCP Clause	Control	Proposal	Compliance
	<p>control does not apply to sites affected by potential flooding.</p> <p>(d) Use landscaping to soften or screen any car park enclosing walls.</p> <p>(e) Provide safe and secure access for building users, including direct access to dwellings where possible.</p> <p>(f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as:</p> <ul style="list-style-type: none"> - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain. 		

1.7. Part C3: Adaptable and Universal Housing

DCP Clause	Control	Proposal	Compliance
3.	Adaptable Housing		
2.1	Site Layout Options		
	i) In addition to the requirements of clause 2(i) controls, a minimum 20% of dwellings in new multi dwelling housing, shop top housing and residential flat buildings containing 10 or more dwellings must be adaptable dwellings and designed and constructed to a minimum Class C Certification under AS 4299 Adaptable Housing.	Min = 3.4 of 17 units Proposed = 3	Yes, complies
	ii) Where the development does not provide for lifts, the adaptable dwellings are to be located on the ground floor of the development.	Lift provided.	Yes, complies
	iv) Where proposed, the adaptable dwellings must be clearly identified on the submitted DA plans.	The submitted architectural plans do not show in detail the adaptable dwellings and how they have been designed in accordance with AS 4299 'Adaptable Housing'.	No, see Key Issues

1.8. Section F3: Sydney Airport Planning and Noise Impacts

DCP Clause	Controls	Proposal	Compliance
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2	Airspace operations		
	<ul style="list-style-type: none"> i) Submit to Council accurate and detailed drawings clearly indicating the height levels (above AHD) of various roof elements (including parapet, lift overrun, roof ridge and roof-mounted installations) for referral to SACL. ii) Landscaping must consider bird and obstacle hazard management and ensure trees to be planted are not capable of intruding the Obstacle Limitation Surface when mature (ie over 15 metres). iii) Submit to Council details on the proposed height of any crane that may be used during construction works for referral to SACL. 	DA supported by Sydney Airport Corporation. See Appendix 1 for details.	Yes, complies

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Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/437/2025